

1 THE COMMONWEALTH OF MASSACHUSETTS
2 MASSACHUSETTS GAMING COMMISSION
3 PUBLIC MEETING #163
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6 CHAIRMAN

7 Stephen P. Crosby
8

9 COMMISSIONERS

10 James F. McHugh

11 Bruce W. Stebbins

12 Enrique Zuniga
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19 September 17, 2015 10:30 a.m. - 1:45 p.m.

20 MASSACHUSETTS GAMING COMMISSION
21 101 Federal Street, 12th Floor
22 Boston, Massachusetts
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P R O C E E D I N G S :

CHAIRMAN CROSBY: We will call to order the 163rd meeting of the Massachusetts Gaming Commission again at our offices on Federal Street. First on the agenda as usual is the minutes, Commissioner McHugh.

COMMISSIONER MCHUGH: Mr. Chairman, the minutes of the September 3, 2015 -- Oh, there it is. I thought that little green thing was winking at me. -- The minutes of the September 3, 2015 meeting are in the book. I'd move their approval in the form they appear there with our usual reservation and power to correct typographical and mechanical errors.

CHAIRMAN CROSBY: Second?

COMMISSIONER STEBBINS: Second.

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

COMMISSIONER MCHUGH: Aye.

COMMISSIONER STEBBINS: Aye.

CHAIRMAN CROSBY: Opposed?

COMMISSIONER ZUNIGA: One
abstention, because I wasn't present for the

1 meeting.

2 CHAIRMAN CROSBY: Commissioner
3 Zuniga abstains. Next up is Director Wells at
4 the moment as Interim Executive Director.

5 MS. WELLS: Thank you. Good morning
6 Mr. Chairman and members of the Commission. As
7 a preliminary matter under the general update,
8 I'd like to turn the microphone over to our CIO
9 John Glennon to introduce the newest member of
10 the Massachusetts Gaming Commission.

11 MR. GLENNON: Thank you, Karen.
12 Commissioners, it is with really great pleasure
13 that I'm going to introduce to you this morning
14 our new Manager of Gaming Technology Floyd
15 Barroga.

16 Floyd comes to us from Williams and
17 WMS Gaming in a number of roles including
18 senior jurisdictional engineer. He worked on
19 the manufacturing line for slot machines and
20 has worked in iGaming and various parts of
21 regulatory matters for the manufacturer.

22 He spent his first week at
23 Plainridge and we are very pleased to have
24 Floyd on board. It's been a long process to

1 get him here and I'm very happy to have him
2 here. Floyd.

3 MR. BARROGA: Thanks, John. I just
4 want to say thank you to the Commission for the
5 opportunity. And anyone that I have come into
6 contact with have been extremely kind. Thank
7 you for having me here.

8 This week I was at Plainridge and
9 reviewing the process of the field agents and
10 the daily verification of all the slot
11 machines. Bruce's team has done a great job
12 with those machines and ensuring that those
13 machines are in fact validated and tested
14 identical to what was evaluated by the
15 independent test labs. So, thank you for
16 having me.

17 COMMISSIONER MCHUGH: Great and
18 welcome aboard.

19 COMMISSIONER ZUNIGA: It's good to
20 have you, welcome.

21 CHAIRMAN CROSBY: Are you moving to
22 get here?

23 MR. BARROGA: Yes. I'll be moving
24 from Chicago to Boston by the end of the month

1 or early October.

2 COMMISSIONER MCHUGH: Great.

3 CHAIRMAN CROSBY: Welcome.

4 MR. GLENNON: Thank you, very much.

5 MS. WELLS: Welcome Floyd. The next
6 item on the agenda, I'm going to turn it over
7 to Commissioner Stebbins for an update on the
8 Executive Director search.

9 COMMISSIONER STEBBINS: Thank you,
10 Director Wells. In the packet under tab 3(a)
11 you have a number of documents. You have the
12 posting which we approved at our last meeting
13 two weeks ago.

14 I'm pleased to report the position
15 has been posted with the help of HR Manager
16 Banda. It's now up on the state's website.
17 With her help, we put together that first memo
18 is reflective of a strategy and the tools and
19 resources we are going to use to post and
20 promote the position.

21 This process does mirror our first
22 search in that one Commissioner was assigned to
23 lead the process. That is near the rear of tab
24 3(a).

1 I just will go through some of the
2 highlights again. This process will begin with
3 the postings you'll see highlighted again in
4 the attached memo. I had great assistance from
5 HR Manager Banda in putting together and
6 talking about where the position will be
7 promoted.

8 We are not using a search for this
9 time. I feel we have an HR department which we
10 did not have the last time out that I feel will
11 help with screening, the reference follow-up,
12 the promotion, the handling of the resumes as
13 they come in.

14 We'll also, I think, be using the
15 contacts we have culminated amongst the five of
16 us and among our directors and our team over
17 the last three years to get notice of this
18 position posting out.

19 We're going to reach out to
20 executives in other jurisdictions, our
21 consultants, gaming experts who can share
22 information about the opportunity.

23 We have also expanded the search
24 this time beyond gaming professionals and

1 included experienced executive who have a
2 background in enforcement and/or regulatory
3 management.

4 A second new element in this process
5 I want to highlight is as we begin to screen
6 candidates and bring candidates in, we are
7 going to afford them the opportunity to sit
8 down with our senior management and our
9 directors. It's going to give our candidates a
10 chance to learn more about the inner workings
11 of the Commission. It's also going to give our
12 team the opportunity to help our candidates
13 understand our priorities and share with them
14 their responsibilities.

15 At the end of this process, again,
16 our goal is to have multiple finalists for the
17 Commission to interview in a public meeting.
18 My hope is we can approve this process today
19 after some discussion. General Counsel Blue
20 and I have talked about the fact we'll share
21 this process with the AG's office. We have a
22 new AG in place. The old AG gave some review
23 to our process the first time around.

24 The last time we decided that final

1 interviews need to be conducted in public. We
2 did hear along the way that that might have
3 been a deterrent for some candidates. It's my
4 understanding there isn't much way around that
5 in light of the public meeting law.

6 I'm happy to answer any questions
7 you might have about the process as we
8 presented it in the book.

9 CHAIRMAN CROSBY: Anybody?

10 COMMISSIONER MCHUGH: I had a couple
11 of questions. What factors went into the
12 decision not to use a search firm? I know the
13 last time around when we were doing a lot of
14 hiring for various positions, we had mixed
15 results with search firms to put it mildly.

16 But the best that we got out of
17 those search firms was an entrée into a rolodex
18 of people who might not otherwise have been
19 interested in or might have heard about our
20 positions and an outreach to those people to
21 see if they'd be interested.

22 I recognize that we do have a good
23 HR group now. I recognize that a chunk of what
24 the good search firms did last time could be

1 done in-house this time. But it's the outreach
2 piece and the encouragement piece that I
3 wondered if we aren't losing by not having a
4 good search firm.

5 COMMISSIONER STEBBINS: It's a valid
6 point. Again, I would point to the fact that
7 we've expanded our reach. We're not just
8 looking at gaming experience.

9 Part of it is having the HR
10 department, which we did not really have
11 staffed to its full potential last time around.
12 And I think to the degree that all of us,
13 including our executive team, have really
14 created relationships in other jurisdictions
15 with other gaming executives are just
16 relationships we built being one gaming
17 jurisdiction. I think reaching out to those
18 folks.

19 I've already heard from one
20 individual in another jurisdiction who was
21 aware of our posting and had a candidate or two
22 that he would recommend apply. To the degree
23 -- To your point, the idea of kind of ginning
24 up interest in doing that deep dive into

1 finding people, I'd like to see how this goes.
2 I'm pretty confident we'll be able to find some
3 good candidates through those relationships
4 that we have, not to mention some of the other
5 resources where the job will be posted.

6 COMMISSIONER MCHUGH: I don't want
7 to beat this. And I respect that and
8 understand that. On the other hand, the
9 contacts we've made and the places where we're
10 likely to reach out to are likely to be within
11 a relatively narrow confine.

12 I am thinking of the person at some
13 university who has got a major administrative
14 position and is thinking of leaving it;
15 somebody who is working for a construction
16 company that is thinking of leaving; somebody
17 who is working for something that has nothing
18 to do with gaming that our contacts would not
19 likely know about.

20 We conducted a nationwide search
21 last time. And it was a good search. And this
22 is such an important position that I just
23 wonder how we would find those people. And
24 maybe the wealth of people in the areas where

1 our searches will likely reach is going to be
2 sufficient. So, that's what brought my
3 question.

4 COMMISSIONER ZUNIGA: I would argue
5 that that's a tool that we have at any time
6 really, going with a search firm. And I think
7 it's a good approach to try just what we're
8 doing now which is try to look at the existing
9 infrastructure here with HR and others. And if
10 we are getting very little interest, for
11 example, or a field that appears to be too
12 narrow, we could always reevaluate.

13 COMMISSIONER MCHUGH: That's
14 certainly true. Time is another issue, but I
15 hear you.

16 CHAIRMAN CROSBY: The two examples
17 that you gave, of somebody from a university or
18 someone from a construction firm are probably
19 not viable with our job, because we have said
20 either gaming experience or other kind of
21 regulatory or enforcement experience.

22 COMMISSIONER MCHUGH: Is desired.

23 CHAIRMAN CROSBY: Yes.

24 COMMISSIONER MCHUGH: Right, they're

1 not mandatory.

2 CHAIRMAN CROSBY: But I think that's
3 pretty far, pretty long stretch. Sometimes for
4 administrative positions that don't have any
5 specialty knowledge you can bring in an
6 outsider, a real strange outsider like me.

7 COMMISSIONER MCHUGH: Like the four
8 of us.

9 CHAIRMAN CROSBY: Like the four of
10 us, very strange. I just wanted to highlight
11 two things. One is the role of the directors.
12 That was a role that we didn't have really in
13 place last time.

14 We also had the directors, our
15 executive staff very involved in the writing of
16 the job description. So, I think that's an
17 important factor for everybody to be aware of.
18 That this project really is very much done in
19 collaboration with our executive staff.

20 And the second thing is, and I
21 mentioned this to you, but to mention it more
22 broadly, last time you had the function of some
23 outside people to work with you to do
24 interviewing. Because we couldn't get a group

1 of Commissioners to do it, so you tried to find
2 some people who had somewhat kind of similar
3 perspectives and experience and so forth to
4 help you make those preliminary judgments.

5 And I know you have that in here as
6 something you might do. I really would hope
7 that you could find somebody or two people who
8 you could do that with. I think that's a very
9 -- Particularly the kinds of people you came up
10 with last time, that's a really valuable
11 perspective to add to the mix.

12 COMMISSIONER STEBBINS: Absolutely.
13 It is my intention to use those. I classify
14 them as stakeholders, but sometimes they're
15 just professional executives that know the
16 industry. I think the last time out, we
17 probably did not engage our consultants in this
18 process as much as we could. I would like to
19 turn to them.

20 But the last time out, you're right,
21 we used the CEO of an executive search firm who
22 actually sat in on a couple of the second and
23 third calls that I did with a couple of
24 candidates to get his impression.

1 So, we will look to do that again.
2 If I said we may use it, I could change it to
3 say we shall.

4 CHAIRMAN CROSBY: Okay.

5 COMMISSIONER MCHUGH: I had one
6 other question and that is paragraph three.
7 What is the function of this phone screen?

8 COMMISSIONER STEBBINS: The phone
9 screen is a chance for us to -- Dean from our
10 HR department would be making follow-up calls,
11 acknowledging we received their resume, any
12 questions they had about the position, put them
13 through some basic questions.

14 We've been preparing those and
15 looking at those. Giving examples of their
16 work where they see it might fit, talking to
17 them about the process, answering any questions
18 they might have about the process. But we are
19 finalizing that list of questions that Dean
20 from the HR department can do with candidates
21 that we think have a worthwhile resume to
22 consider.

23 COMMISSIONER MCHUGH: What value do
24 we gain from that? I ask this question,

1 because I wonder at this level if a telephone
2 screen might not be a turn off to be perfectly
3 blunt.

4 COMMISSIONER STEBBINS: Okay.

5 COMMISSIONER MCHUGH: However
6 carefully it's done and whatever value it
7 yields, this is a very high level position.
8 And without diminishing the role of HR and the
9 importance of the process, I just wonder if
10 that piece of it isn't conceivably something
11 that would deflate as opposed to increase
12 interest in a position.

13 COMMISSIONER STEBBINS: Okay. We've
14 used this with some of the other various
15 positions but understand and I hear you
16 concern. I definitely don't want to turn
17 anybody off in this process.

18 It might wind up being something
19 that myself and Dean can do. Again, I would
20 give us the flexibility again to see how many
21 resumes we get it. If it's a small number, he
22 and I might be able to find the time to do it
23 together. If we get a large volume, it might
24 be a good initial step. I think some of that

1 will depend on the volume of resumes that we
2 receive.

3 MR. LENNON: Commissioners, I can
4 tell you that the executive search firm when I
5 was interviewing for this position did a phone
6 screen to me. And I can tell you it's the type
7 of questions that they asked to try to figure
8 out if you're serious about the position.

9 So, I think what Bruce is talking
10 about, making sure you don't have questions or
11 turn them off that you would do in an entry-
12 level position but try and get an understanding
13 of where this person is coming from is pretty
14 essential. And it didn't turn me off. It
15 actually showed that someone had an interest
16 and was doing a thorough search for the
17 company.

18 COMMISSIONER MCHUGH: I get that.
19 And I appreciate that. I know that one of the
20 search firms we used did that as well. But
21 they did like a two hour, in some cases a
22 three- or four-hour interview before they came
23 in. I take it -- I guess I've made my point.

24 And I guess what I'd like to see as

1 part of the screening process is a sales pitch
2 for those who we determine are in the pool.
3 Because it's a good opportunity to emphasize
4 how exciting really this position can be and
5 what the next steps are going to hold and the
6 ability to be creative. And use it as a
7 selling tool as well as an information
8 gathering tool.

9 COMMISSIONER STEBBINS: Absolutely.

10 CHAIRMAN CROSBY: I'm really glad
11 you brought that up. It was bothering me too,
12 but the thought hadn't crystallized. And now
13 that you framed it, I realize that I was a
14 little bit troubled that for much of the same
15 reasons.

16 If it's not done well, there is a
17 risk. And I felt that sometimes. Routinely
18 search firms do have a more junior person give
19 even pretty senior candidates sort of a
20 screening call. Maybe you could talk to this,
21 sort of what is the practice, Trupti.

22 But I want to make sure that we see
23 the questions. And I think it ought be done
24 thoughtfully. As the resumes come in, think

1 about them, separate out. Maybe there's some
2 we don't want to do that because they're so
3 obviously legitimate candidates. I think it's
4 something, a really good point to be sensitive
5 to. But go ahead.

6 MS. BANDA: So, the process of phone
7 screening is to just get an overall layout of
8 the candidate's background. But in addition to
9 Commissioner McHugh's point, is to sell them on
10 the opportunity that speaks beyond the job
11 description.

12 And also it's to include candidates
13 rather than exclude them. So, the idea would
14 be we have a list of 20 candidates who we're
15 interested in. Or if we had to pare it down to
16 10 candidates who we can bring in, let's phone
17 screen the 20 because the logistics of
18 coordinating interviews and availability span
19 over weeks and months given everyone's
20 schedule.

21 So, the idea would be to start the
22 dialogue, have an understanding of their
23 background, talk to them about the opportunity,
24 the direction that the agency is going in, so

1 on and so forth as we move forward with the
2 next step in the process, which is to bring
3 them in.

4 Then once we have that information
5 beyond their resume and the candidate having a
6 deeper understanding of the position. So, it's
7 more of an informational opportunity for both
8 parties.

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: Okay.

11 COMMISSIONER ZUNIGA: Can I mention
12 something that you described and I really hope
13 we can get two or more finalists to come to the
14 Commission. I know that may be a deterrent for
15 somebody, but it would be my preference if we
16 could have before us everything you described
17 on here, and just like you say have a couple of
18 candidates or more choose from to be able to
19 vet and all agree on.

20 COMMISSIONER STEBBINS: That would
21 be my goal.

22 CHAIRMAN CROSBY: Any other
23 discussion? With this kind of flavoring, we'll
24 go ahead. Thank you, Commissioner.

1 MS. WELLS: The next item on the
2 agenda is the performance management process.
3 As I think as probably everyone in this room is
4 aware, the agency is good as the team, the
5 staff that support it. And I think we are very
6 fortunate in the MGC to have an extremely
7 strong staff here. And I think Director Banda
8 is going to go over the process for the
9 performance evaluation that we've implemented.

10 MS. BANDA: Good morning
11 Commissioners, Chairman. I'd like to walk
12 through our process today and the methodology
13 we used working collectively with the executive
14 team to craft the process and have deeper
15 conversations around.

16 So, on June 30, 2015 marked the
17 conclusion of the fiscal year 2015 and the last
18 12 month performance period. All regular
19 employees who were hired prior to April 1, 2015
20 are in the process of participating in the
21 performance review process, which includes a
22 written self-assessment, manager assessment,
23 development plans and performance discussions.

24 The purpose of this memo is to seek

1 your approval of the process and the
2 methodology applied for the merit increase
3 based on the results of the performance
4 reviews.

5 In the fiscal year 2016 budget, a
6 three percent pool was set aside for merit
7 increase awards. And an additional one percent
8 pool for a one-time lump sum payment to
9 recognize outstanding performance throughout
10 the year. This was done during our budget
11 process earlier through Derek, our CFAO.

12 My recommendation for the
13 methodology to distribute this pool is as
14 follows. Merit increase decisions will be
15 final on October 2, 2015. And the payouts will
16 be distributed on October 23 which is our next
17 pay cycle following the second.

18 All employees hired prior to April
19 1, 2015 have been or will be reviewed for the
20 merit increase. Eligible employees must have
21 completed performance reviews in order to be
22 considered for an increase. Employees who were
23 not eligible for an increase last year due to
24 their hire date will be eligible for an

1 increase retro to their one-year anniversary.

2 Employees who are hired after March
3 31, 2015 are not eligible for a merit increase
4 until next year. That's our 90-day
5 probationary period. They just joined us, so
6 it's a little challenging to review. So,
7 they'd be eligible for the next review cycle.

8 Employees who receive an overall
9 rating below consistently meets expectation
10 will be placed on performance improvement plan
11 and will not be eligible for a merit increase.

12 Employees who receive an equity or a
13 market adjustment and a promotional increase in
14 fiscal year 2015 may be eligible for a merit
15 increase. Decisions will be based on
16 individual performance as well as the timing
17 and the amount of the last pay increase.

18 Managers who nominate an employee for the one-
19 time payout pool must provide a justification
20 to a committee for approval.

21 So, the committee will be made up of
22 members of the executive team. And they will
23 be reviewing a justification for the approval
24 for that one-time adjustment.

1 Additional equity adjustments will
2 be considered on a case-by-case basis. Human
3 Resources will provide analysis and
4 recommendation to the Interim Executive
5 Director for her review and approval. The
6 analysis will include consideration of relevant
7 benchmark data, adopted MGC salary ranges and
8 internal equity.

9 With that I respectfully seek your
10 approval for adoption of the merit increase
11 process and the methodology as outlined. Any
12 questions?

13 COMMISSIONER MCHUGH: The one
14 percent pool is to reward particularly
15 meritorious performance right.

16 MS. BANDA: Correct.

17 COMMISSIONER MCHUGH: So, it's not
18 necessarily so that the entire one percent will
19 be utilized every year.

20 MS. BANDA: For this budget year,
21 one percent has been allocated perhaps --

22 COMMISSIONER MCHUGH: I understand
23 the allocation is there, but we are not
24 committed to giving out the entire one percent.

1 This truly is a premium for exceptional
2 performance, right?

3 MS. BANDA: Yes.

4 COMMISSIONER MCHUGH: And everybody
5 will understand that.

6 CHAIRMAN CROSBY: It's a one time,
7 it's not an additional pay raise? So, it's a
8 bonus.

9 MR. LENNON: Correct. It's
10 essentially a bonus. And there is an object
11 code in the state payment plan. What this
12 allows is for you to recognize someone for a
13 good contribution and not permanently increase
14 our bottom line.

15 So, you're just throwing it in this
16 one time. I think it's what you see a lot of
17 different areas moving towards so that you can
18 recognize yet not hurt the bottom line and
19 continue to build the salary base up.

20 COMMISSIONER MCHUGH: I think it's a
21 great idea as long as it's understood.

22 MR. LENNON: Correct. It's set
23 aside. It doesn't mean we have to spend it

24 CHAIRMAN CROSBY: What does that

1 come to? What is one percent more or less?

2 MR. LENNON: I think we had a \$5
3 million base. So, it's probably \$50,000, which
4 can be eaten up rather quickly if you've got 45
5 people.

6 CHAIRMAN CROSBY: Okay. Anything
7 else on this topic?

8 COMMISSIONER ZUNIGA: Do we need a
9 vote on this?

10 MR. LENNON: No, it's part of the
11 budget. It's part of the plan. If you had
12 anything that you objected to in here, any of
13 the methodology, we'd want to hear from you
14 before we went and implemented this.

15 COMMISSIONER MCHUGH: Okay. It
16 looks good.

17 COMMISSIONER ZUNIGA: I do have a
18 subset of that piece. In the packet is a memo
19 from me relative to Director Wells additional
20 responsibilities. And recommending that we
21 adjust her current salary to the midpoint
22 between what we were compensating our prior
23 Executive Director and where she is now.

24 That would mean an increase to

1 \$175,000 a year for her during the period that
2 she remains an Interim Executive Director.
3 This pay would go back to her increase salary
4 of IEB Director when we get a permanent
5 Executive Director. I can answer any questions
6 if anybody has any.

7 CHAIRMAN CROSBY: I had one but I
8 think you answered which was this ought to be
9 something that is some kind of a rational
10 formula that could be applied to other
11 circumstances.

12 And it sounds like what you did was
13 decide to take the midpoint between the
14 existing salary and the salary that the
15 outgoing person made.

16 COMMISSIONER ZUNIGA: Right.

17 CHAIRMAN CROSBY: It's somewhat
18 arbitrary but you don't want to necessarily go
19 all of the way to the top because a person may
20 or may not be qualified for that.

21 COMMISSIONER ZUNIGA: And we gave,
22 with the help of CFAO and HR Director, the
23 consideration there is our Executive Director
24 brought a lot of years of seniority and

1 experience before. And frankly, I think this
2 could also be an incentive for director to be
3 thinking about future roles perhaps.

4 CHAIRMAN CROSBY: Just for the
5 record, I think she well deserves it. So, I
6 agree. Do either of these need a vote?

7 MR. LENNON: No.

8 MS. BLUE: No. They're in the
9 budget and they're allocated. So, I think
10 you're fine.

11 CHAIRMAN CROSBY: All right.

12 COMMISSIONER MCHUGH: Excellent.
13 Thank you all.

14 MS. WELLS: The next item on the
15 agenda, Mr. Chairman is under the
16 Investigations and Enforcement unit. Item (a)
17 is the vote for the Commission on the key
18 gaming executive license. It's for Michael
19 Toma.

20 In December 2014, Mr. Toma was
21 promoted to vice president of operations for
22 Plainridge Park Casino in Plainridge (SIC),
23 Massachusetts. Prior to that promotion, he was
24 the acting general manager and director of

1 operations at Argosy Casino in Sioux City Iowa.
2 He submitted all of the required forms,
3 supplemental document requests.

4 The licensing division and the IEB
5 investigators conducted the normal rigorous
6 background check including his employment
7 history, criminal record, education,
8 references, media coverage, political
9 contributions, directorships and shareholder
10 interests, civil litigation, bankruptcies and
11 property ownership among others.

12 Mr. Toma was interviewed in person
13 by the IEB state police and financial
14 investigators as part of the standard key
15 gaming employee investigation protocol. And
16 investigators also conducted a financial
17 responsibility evaluation, which resulted in a
18 positive determination.

19 Mr. Toma attended Bellevue
20 University in South Bellevue, Nebraska where he
21 was awarded a BS in business administration in
22 2008. Prior to his current position at PPC,
23 Mr. Toma held several positions including, as
24 I've stated before, the acting general manager

1 and director of operations at a casino in Sioux
2 City, Iowa. Before that he had been a table
3 game dealer at Firefly Creek Casino in
4 Minnesota and also a table game dealer in
5 Mystic Lake Casino in Minnesota before that he
6 had been a nursing assistant.

7 Mr. Toma disclosed in his
8 application that he had been previously
9 licensed. And we confirmed he was previously
10 licensed by the Iowa Racing and Gaming
11 Commission, the Shakopee Mdewakanton Sioux City
12 Gaming Commission the Upper Sioux Community
13 Gaming Commission. All of his licenses were in
14 good standing and jurisdictions contacted
15 reported no derogatory information related to
16 Mr. Toma's licensure.

17 Overall, there were no significant
18 investigative issues uncovered related to his
19 application for licensure. And he has
20 demonstrated by clear and convincing evidence
21 that he is suitable for licensure in
22 Massachusetts. And therefore the IEB is
23 recommending the Commission find him suitable
24 for a key gaming license -- a key gaming

1 executive license, pardon me.

2 CHAIRMAN CROSBY: Great. Comments?

3 COMMISSIONER ZUNIGA: Thank you for
4 the report. I think it's great. As I was
5 reading and talking about this report, talking
6 to Director Wells, it occurred to me that this
7 is a great example of how this employment --
8 these opportunities really are career
9 opportunities.

10 Mr. Toma started as a nursing
11 assistant, went to school to become a dealer
12 and is now a key gaming executive. It just
13 reminded me of the economic development that
14 comes through the likes of this industry. And
15 I just thought it was worth mentioning.

16 CHAIRMAN CROSBY: Great. Anything
17 else? Thank you.

18 MS. WELLS: I think the Commission
19 needs to vote.

20 CHAIRMAN CROSBY: Commissioner
21 Stebbins?

22 COMMISSIONER STEBBINS: Mr.
23 Chairman, I move that the Commission approve
24 the key gaming executive license for Mr. Toma.

1 CHAIRMAN CROSBY: Second?

2 COMMISSIONER ZUNIGA: Second.

3 CHAIRMAN CROSBY: Further

4 discussion? All in favor, aye.

5 COMMISSIONER MCHUGH: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? The ayes

9 have it unanimously.

10 MS. WELLS: Thank you. I'll

11 coordinate with our licensing director about

12 issuing the license for Mr. Toma.

13 The next item on the agenda is an
14 exclusion list process discussion. And I have
15 Attorney Lillios who submitted a memo to the
16 Commission for your consideration. She's going
17 to lead the discussion on that. I think there
18 are some issues for the Commission to consider
19 when we go forward with the process for setting
20 folks on the exclusion list.

21 MS. LILLIOS: This exclusion list is
22 to be distinguished from the voluntary self-
23 exclusion list. And the persons on this
24 exclusion list are placed there on the

1 determination that they would pose some sort of
2 corruptive element.

3 The statute sets out a number of
4 criteria for placing persons on this list
5 including that they have been convicted of a
6 crime punishable by more than six months.
7 They've been convicted of a crime of moral
8 turpitude. They've violated the gaming laws.
9 They have a notorious reputation that would
10 adversely affect public confidence that gaming
11 establishments are free from a corruptive
12 element.

13 Or their presence would pose an
14 injurious threat to the interest of the
15 Commonwealth because they are for example a
16 known cheat or have a history of disruption to
17 gaming establishments or are subject to a no
18 trespass order from a casino.

19 These lists in other jurisdictions
20 are typically posted on the regulator's
21 website. And our regulations require that they
22 be posted on our website, including a dated
23 photo if obtainable and identifying information
24 of the individual.

1 A gaming licensee can be fined or
2 have some other adverse action against it if
3 the licensee knowingly or recklessly allows the
4 person to remain on the establishment and fails
5 to exclude the person.

6 Under our statute, if a person on
7 this list does gain any winnings by this person
8 are forfeited to the gaming revenue fund.

9 The IEB is looking for some guidance
10 from the Commission as to how it wants to
11 implement section 45 of the statute.

12 Currently, when the statute is read in
13 conjunction with the regulation, 205 CMR 152,
14 the process would envision that the IEB on its
15 own initiative or upon referral by the
16 Commission or the casino shall investigate
17 anyone who may meet one of the criteria.

18 So, as an initial matter, the IEB is
19 requesting an amendment to the regulation,
20 because as it now stands the universe of
21 individuals that the IEB has a duty to
22 investigate is extremely large given that there
23 is a criterion of anyone convicted of a crime
24 punishable by more than six months. That is

1 all but the most minimum of crimes in the
2 Commonwealth.

3 So, there is a suggestion in the
4 memo about an amendment to that area. And also
5 that sort of duty would not really have a
6 correlation to the effectiveness of an
7 exclusion list. It appears from my research
8 with other jurisdictions that keeping these
9 lists to a manageable number of persons can
10 lead to their effectiveness in terms of being
11 able to track and enforce the policy behind the
12 list.

13 So, I actually have an amendment to
14 my suggested amendment in the memo because the
15 suggestion in the memo is just a straight out
16 changing the shall to may, but mandating that
17 the Commission investigate any referral -- I'm
18 sorry, mandating that the IEB investigate any
19 referral by the Commission itself is certainly
20 something that makes sense.

21 So, the suggestion is that the IEB
22 may initiate an investigation on anyone that
23 may fit one of those criteria and shall upon
24 referral by the Commission.

1 Under the statute in the existing
2 reg., if the IEB after investigation determines
3 that a person should be placed on the list, the
4 IEB makes a referral to the full Commission in
5 writing with a factual basis for inclusion on
6 the list. And then the full Commission
7 considers that individual at an open meeting.

8 If the Commission places the person
9 on the list only then under the statute does
10 the person get notice of the placement on the
11 list and an advisement that he or she has the
12 right to an adjudicatory hearing before a
13 hearing officer.

14 The regulation gives the Commission
15 additional authority to give another layer of
16 notice in its discretion in advance of the
17 matter being brought before the Commission at
18 which point the individual may request a
19 hearing. And if the Commission decides to go
20 this route, the IEB will be looking for
21 direction and some clarification on what type
22 of hearing the Commission may envision at that
23 stage.

24 The last paragraph of the memorandum

1 that you have in your packet poses an
2 alternative that does not run afoul of section
3 45 the statute. The alternative would be to
4 allow the Commission to adopt a procedure
5 whereby the IEB notifies the individual that
6 the IEB intends to place the individual on this
7 exclusion list.

8 This notification from the IEB would
9 advise the individual that he or she may claim
10 an adjudicatory hearing before a hearing
11 officer at that stage and before that
12 placement. So, essentially that review by a
13 hearing officer would be a review of an order
14 from the IEB, which is an allowable matter
15 under our hearing regulation.

16 Under this procedure, all persons
17 placed on the list would have prior notice of
18 placement and an opportunity for a hearing
19 before any such placement. Then if the IEB --
20 I'm sorry, if the hearing officer affirms the
21 IEB's determination, the person would be placed
22 on the list. And the person could have an
23 opportunity for review at the full Commission.

24 Again, that alternative comports

1 with the statute but regulatory changes would
2 need to be made.

3 There is one other aspect of the
4 statute that I wanted to just bring to your
5 attention. That the statute does call for the
6 Commission to establish a compact with other
7 states for purposes of sharing information.
8 The IEB is certainly already in the process of
9 sharing information with other states. And
10 we're in the initial process of exploring a
11 more formal compact.

12 It does not appear that any other
13 jurisdictions have implemented a more formal
14 compact but those are the discussions that we
15 are entering into now.

16 CHAIRMAN CROSBY: On the second
17 issue, it sounds like you're asking for two
18 things. One is that there be a notice to an
19 individual in advance of the Commission's
20 decision to put him or her on the list. So,
21 you would notify of the intent to put somebody
22 on the list. And that's when there would be a
23 hearing opportunity.

24 Also, you're suggesting an interim

1 step which is a hearing officer hearing rather
2 than going straight to the adjudicatory
3 hearing, which is what is in the statute. Am I
4 right? Are those the two things you're asking
5 for?

6 MS. LILLIOS: The hearing before the
7 hearing officer is the adjudicatory hearing.
8 And the hearing regulation interprets the
9 adjudicatory hearing before the Commission to
10 mean in this instance when it's review of an
11 IEB order to be a hearing before the hearing
12 officer rather than the full Commission.

13 CHAIRMAN CROSBY: So, you substitute
14 the hearing officer hearing for the full
15 Commission hearing?

16 MS. LILLIOS: That is the way the
17 hearing regulation now reads. If it is an
18 appeal from an IEB order that appeal goes to
19 the hearing officer.

20 COMMISSIONER STEBBINS: It would
21 somewhat mirror what we do with racing.

22 MS. LILLIOS: That's correct.

23 COMMISSIONER MCHUGH: The way this
24 would work as laid out in the third paragraph

1 is a person would get the notice. The person
2 would elect or not to have this adjudicatory
3 hearing before the hearing officer.

4 That would be where evidence is
5 presented and the hearing officer would make a
6 written finding of facts and conclusions and
7 either say you are on list or you're not on the
8 list. And then either the IEB or the person
9 whose reputation was at stake could appeal to
10 the full Commission, but that appeal would be a
11 public hearing.

12 It would be on the record, but it
13 would be a public hearing. But that would be
14 the first time that the individual was seen by
15 the public as the target of the IEB's
16 reputationally damaging action.

17 MS. LILLIOS: The first time the
18 person would be seen would be when he was
19 placed on the list but yes.

20 COMMISSIONER MCHUGH: He would
21 appeal. He would already had the benefit of an
22 evidentiary hearing, or she, before a hearing
23 examiner and would know that the next step
24 would be a public step.

1 MS. LILLIOS: Correct.

2 CHAIRMAN CROSBY: But the statute --
3 Doesn't the statute say that the person has a
4 right to an adjudicatory hearing before the
5 Commission?

6 MS. LILLIOS: Read in conjunction
7 with our hearing reg. in 205 CMR 101, the
8 Commission has already determined that an
9 adjudicatory hearing before the Commission in
10 an instance where the individual is appealing
11 from an order of the IEB means that the hearing
12 goes not before the full Commission but to a
13 hearing officer.

14 COMMISSIONER MCHUGH: This is
15 similar to the way it is done with other
16 agencies when there is a hearing before an
17 agency. The MCAD works this way. The Worker's
18 Compensation hearings are this way. The
19 statutes may be slightly different but this is
20 not an uncommon procedure.

21 MS. LILLIOS: It effectively would
22 give the individual the right to two layers of
23 hearings within our Commission structure, so,
24 hearing officer and then to the full

1 Commission.

2 CHAIRMAN CROSBY: I understand that
3 but I am wondering about whether we are within
4 our rights to make the first one the
5 adjudicatory hearing and the second one a
6 public hearing.

7 Where is the reference in our regs.
8 that you're talking about that in effect
9 interprets the statute to make it something
10 which can appear before a hearing officer?

11 MS. LILLIOS: It's 205 CMR 101. I
12 did not provide that in your packet. It's
13 another reg. on -- I think the caption of the
14 reg. is adjudicatory hearings. And I think
15 it's the second full section. Catherine, I
16 don't know if you can shed any --

17 COMMISSIONER ZUNIGA: Are those
18 regs. stemming from racing statutes?

19 MS. BLUE: No, they don't. We have
20 a regulation that covers all hearings in front
21 of the Commission. It does cover racing
22 hearings, but it's broad across the Commission.
23 And under that regulation what we did was we
24 kept certain hearings at the Commission level.

1 So, hearings that impacted an actual
2 Category 1 or Category 2 gaming license went to
3 the Commission first. A penalty that resulted
4 in the revocation of a gaming license or a
5 racing meeting license goes to the Commission
6 first.

7 Every other kind of hearing goes to
8 a hearing officer first with a right of appeal
9 to the Commission as a whole. Part of the
10 reason for that is to get a situation where
11 they can have a full evidentiary hearing in
12 front of a hearing officer. They can take
13 their time. It goes on the record. They can
14 submit all kinds of evidence and testimony and
15 do it that way.

16 My concern, and I had conversations
17 with Loretta was that the way the statute is
18 drafted in this situation, the person wouldn't
19 be entitled to a hearing in front of the
20 Commission until after they went onto the list.
21 That's the way the statute is drafted.

22 And I'm a little concerned about, as
23 Commissioner McHugh pointed out, potential
24 reputational damage with a hearing after-the-

1 fact. So, we thought that in conjunction with
2 our hearing reg., which is clear that this kind
3 of a hearing can go to a hearing officer, we
4 would do notice first. That would be an order
5 issued by the IEB. The notice would be there.
6 They would have the right to a hearing before a
7 hearing officer. At that point --

8 CHAIRMAN CROSBY: Which would be
9 adjudicatory and private.

10 MS. BLUE: Yes. And then at the end
11 of that hearing, if the hearing officer
12 affirmed the IEB's recommendation, it would
13 come up to the Commission for final placement
14 on the list. At that time in a public meeting,
15 that person could come forward. They could
16 present evidence again, if they like. If they
17 choose not to, they can. And the Commission
18 could determine whether it goes on the list or
19 not.

20 CHAIRMAN CROSBY: Well, stays on the
21 list or not.

22 MS. BLUE: Well, it won't go on the
23 list until after there's a determination by the
24 hearing officer. If we do it in this alternate

1 procedure that has been proposed, they would
2 only get a notice of intent from the IEB to
3 place the person on the list.

4 COMMISSIONER MCHUGH: Let me say
5 first of all, I am not sure that this scheme is
6 a departure from the way the statute is
7 drafted. We can't depart from the way the
8 statute is drafted. I think the notion that
9 the adjudicatory hearing has to be before the
10 Commission includes an adjudicatory hearing
11 before a hearing officer. That's the way it
12 works. And I know that we don't disagree on
13 this, but I want the record to be clear.

14 That's the way we are interpreting
15 the horse-racing stuff. We set up this hearing
16 officer appeal to the Commission regulation to
17 talk about, to deal with a broad range of
18 things that the IEB has the potential to do.
19 And all of those things ultimately wind up
20 before the Commission.

21 The second thing is that the piece
22 of this that is before the full Commission is
23 still part of an adjudicatory hearing. It's an
24 appeal from the fact-finding hearing. And we

1 treat it just the same way we now do the
2 racing.

3 The racing hearing takes place
4 before the hearing officer. We get it on the
5 record. We get submissions by the lawyers or
6 the individuals on both sides. We read that.
7 We talk about it. We talk with counsel about
8 it and then we have an opinion that issues
9 either to affirm it or deny.

10 CHAIRMAN CROSBY: So, not in public?

11 COMMISSIONER MCHUGH: That piece we
12 could make that piece public, but we wouldn't
13 have to make that piece - Certainly, the piece
14 that would be public if it is, if we provided
15 for an opportunity for the lawyers to be heard
16 and also the person who was the target to be
17 heard.

18 We do that now I think with respect
19 to racing hearings. But nobody -- I think
20 we've had somebody that actually accepted an
21 invitation to talk to us about a racing matter.
22 This is a guidance exercise. We could have it
23 public or an opportunity to be heard by the
24 lawyers but no further evidence.

1 COMMISSIONER ZUNIGA: But the list
2 obviously is public once a determination has
3 been made to place that the person on list.

4 COMMISSIONER MCHUGH: Yes.

5 CHAIRMAN CROSBY: I have two
6 concerns here. One is the process itself, the
7 idea of having a hearing first -- a hearing
8 officer hearing first in theory is perfectly
9 reasonable to me. I am not sure that it fits
10 with our statute.

11 Commissioner McHugh says it does and
12 everybody else does it, but it doesn't make
13 sense to me. If we do indeed have the right to
14 write a reg. which makes a hearing before a
15 hearing officer an adjudicatory hearing before
16 the Commission even though it's before the
17 person has been placed on the list of excluded
18 persons, I don't see how that fits.

19 But if MCAD has similar language and
20 has done the same thing, then I am wrong. So,
21 that's one issue. Do we have the right? Are
22 we following the direction in the statute
23 properly, number one?

24 If we are, my only other concern is

1 that we've had a problem with racing with the
2 lapse of time between the event and the final
3 resolution. We've talked about this. We're
4 trying to improve it. Everybody is aware of
5 it. Nobody's at fault. It's just a
6 complicated process.

7 And I don't know whether that --
8 It's a little bit different in the case if
9 somebody gets kicked off a track and can't do
10 their life's work to have that appeal take
11 eight months is really problematic. Here I
12 guess if you aren't on the list yet, I guess it
13 really is prejudicial to us not prejudicial to
14 the person.

15 But I do think that somehow having
16 this process be expeditious is important. We
17 have got to try to figure out how to make this
18 really move.

19 I guess my issue really is the legal
20 one. Does this really fit within the language
21 of the statute on the two scores, adjudicatory
22 before the Commission and after he's been
23 placed on the list?

24 MS. LILLIOS: I did really struggle

1 with the first question in the past couple of
2 weeks. I am comfortable with it now. I think
3 if you have the statute in front of you. It's
4 in your packets subsection (d). Part this
5 requires that we interpret the word commission,
6 the small-c commission that can be delegated
7 and is delegated by our regulations, although
8 we could look at whether we need a specific
9 delegation in this instance.

10 But if you look at subsection (d)
11 and read it as IEB instead of Commission. So,
12 whenever the IEB places a name on the list, the
13 IEB has to serve the notice. And then looking
14 at the next section, within X days of the
15 notice the person gets an adjudicatory hearing
16 before the commission. And again, read in
17 conjunction in our other hearing reg.,
18 commission I think without running afoul of the
19 law is interpreted since we've got an order of
20 the IEB, orders of the IEB get appealed to a
21 hearing officer.

22 CHAIRMAN CROSBY: I thought it was
23 intent. You were notifying the person of
24 intent not that they're on the list.

1 MS. LILLIOS: It would be viewed as
2 a preliminary order. So, it would be an appeal
3 from a preliminary order of the IEB.

4 CHAIRMAN CROSBY: That's different.

5 COMMISSIONER MCHUGH: It's not
6 different. I don't mean to jump on this, but I
7 don't think it is different. And I think one
8 has to look at what the Legislature undoubtedly
9 intended here.

10 The idea that government can take an
11 action against an individual, label the
12 individual as a cheat and a crook, post that
13 person's picture on a website where it's
14 available to everybody and then say okay, now
15 you can have a hearing is a monumental invasion
16 of rights that an individual has in our
17 society. And I think it may rise to a
18 constitutional level.

19 And I think that one has to take a
20 look at what the Legislature intended in a
21 light that saves it from possible
22 constitutional infirmity.

23 And this solution, it seems to me,
24 does. Whether we should do some more research

1 to find out what other agencies do is something
2 that may well be worthwhile. But I think the
3 bottom line is taking a look at the big picture
4 of what the different interpretation of this
5 statute would entail. And I think it is
6 monumentally unfair.

7 CHAIRMAN CROSBY: How does it work
8 in other jurisdictions? When in the process
9 does someone have a right to an appeal?

10 MR. BAND: They are notified prior
11 to being placed on the list. But it's
12 sometimes advertised in the paper that they're
13 being placed on the list because they haven't
14 been able to confirm the person's address.

15 CHAIRMAN CROSBY: Well, that's a
16 little different if you can't reach the person.
17 Is what you're saying that Commissioner McHugh
18 is right in effect that in standard operating
19 procedure in other jurisdictions is that a
20 person if possible has an appeal right to a
21 private appeal before they are put on the list.

22 MR. BAND: I know in New Jersey it
23 works a little bit different because the order
24 to be placed on list is actually made by the

1 Commission itself. The evidence is presented
2 to them. They go through meeting and the
3 person is going to be placed on the list. I'm
4 not really sure of a lot of the other
5 jurisdictions.

6 MS. LILLIOS: I've looked at four
7 other jurisdictions, and it appears that in all
8 of them there is some sort of notice and an
9 opportunity for a hearing in advance of
10 actually publishing the information on the
11 exclusion list.

12 All of the statutes, nothing lines
13 up exactly with our statute. Sometimes the
14 hearing is before the full Commission.
15 Sometimes it's before a sub body or some sort
16 of hearing structure. But there is always
17 notice, in what I've looked at there's notice
18 and an opportunity to be heard in advance.

19 COMMISSIONER ZUNIGA: Isn't the
20 threshold pretty high in terms of the directive
21 to the IEB? When somebody is a known cheat,
22 when there's this big disrepute to that could
23 come to the Commonwealth that's a threshold for
24 beginning action. I do understand the

1 fundamental point you make, Commissioner, but I
2 view this it as a very high threshold.

3 COMMISSIONER MCHUGH: Six months in
4 jail is really a very low threshold.

5 MS. LILLIOS: If I may, it's not
6 even served six months. It's convicted of a
7 crime that is potentially punishable by six
8 months.

9 CHAIRMAN CROSBY: But you're
10 switching shall to may, which does raise the
11 standard. That's the whole point is it raises
12 the standard.

13 MS. LILLIOS: Yes.

14 CHAIRMAN CROSBY: I prefer process
15 because of what Commissioner McHugh was saying.
16 I was concerned that it may not fit within our
17 statute. But if you're telling me as a judge
18 that we have the right to deduce what they must
19 have attended, even if at one level it doesn't
20 seem to say that, then I am fine with that.

21 COMMISSIONER MCHUGH: Well, I am a
22 Commissioner here.

23 MS. BLUE: I think, Chairman Crosby,
24 it might be easier to think of it not so much

1 as doing something different, but adding an
2 extra layer of protection, which I think the
3 Commission has the ability to do. Because if
4 you look at the statute, the statute wouldn't
5 have the hearing until after notice.

6 We are just adding in an extra
7 protection before a notice. So, really they
8 have the potential for two hearings. So, I
9 think it's an additional safeguard. I don't
10 think it's so much that we are doing something
11 completely opposite of the statute. We are
12 building in an extra protection, which I think
13 is fair given the low threshold in the statute.

14 CHAIRMAN CROSBY: But there are two
15 fuzzy issues as I've heard you talk about this.
16 Is this in order to put you on the list or is
17 it an intent to put you on list. You've said
18 two different things as I've heard it.

19 And is the meeting before the
20 Commission a private meeting or not? And I
21 think initially you said it was a public
22 meeting. Now I'm hearing it could be either.
23 So, those two things need to get clarified.

24 MS. LILLIOS: The regulation as it

1 now stands says that it's a public meeting
2 before the Commission. But if we go this route
3 that we are evaluating now, we'd need to
4 redraft the reg., because the reg. does not
5 cover this alternative.

6 CHAIRMAN CROSBY: If there's a way
7 to do what Commissioner McHugh said, which was
8 make the hearing and the subsequent hearing
9 officer hearing and the meeting before the
10 Commission, if you could make those two things
11 the same meeting, sort of an extension, then it
12 could be adjudicatory at both levels. The
13 applicant has the right to an adjudicatory
14 hearing at both levels, then that would that
15 work. But I just think one way or the other,
16 those two things have to be clarified.

17 COMMISSIONER STEBBINS: I give
18 deference to this alternative. But proceeding
19 through this process, let me just lay out a
20 scenario Bruce and Burke, your experience may
21 help give me some guidance. Any of our
22 licensees can automatically remove an
23 individual who would fall under this criteria
24 at any time.

1 So, it's not just waiting for us to
2 -- What I see is we're going to have to
3 populate our own list, basically. The compact
4 is good because we are going to be sharing
5 information with other jurisdictions but not
6 wholesale adopting everybody that's on their
7 list.

8 MR. BAND: Right.

9 COMMISSIONER STEBBINS: It's going
10 to be up to the IEB and the team. So, as long
11 as the licensee can remove anybody from their
12 property while this process is being
13 undertaken, my only other concern and again I
14 do favor the alternative, is there any need for
15 this Commission to retain any authority that if
16 we know number one primo bad guy is about to
17 walk through the doors at Plainridge that we
18 can take swifter action or does that action
19 somewhat leave itself with the licensee knowing
20 the process that we've laid out?

21 MR. BAND: A lot of times, these
22 cheat thieves you kind of know through
23 intelligence are coming to your jurisdiction or
24 something. I could see a case where you might

1 want to make it for it -- You don't let those
2 people in. But I think you could probably
3 still do that at the casino level to identify
4 them.

5 COMMISSIONER MCHUGH: Doesn't the
6 casino always have the right to exclude any
7 person from the premises that it wants to?

8 MR. BAND: Yes.

9 CHAIRMAN CROSBY: So, the answer is
10 right. The casino does have the --

11 COMMISSIONER STEBBINS: The casino
12 does have -- And again, notwithstanding our
13 process to the points that Commissioner McHugh
14 made, I'm just wondering if we should reserve
15 the authority in those, and let's hope they're
16 extreme cases of bad group of people working
17 their way up the coast, then we are left to
18 defend ourselves and say here is our regulatory
19 process. Where we lose the authority to really
20 interject ourselves in a case that's obviously
21 visible and clear that we don't want these
22 people walking through the door. Not
23 necessarily just put that burden completely
24 back on the licensee.

1 MS. LILLIOS: We could think of a
2 provision for imminent -- if there are facts
3 that show imminent entry by --

4 CHAIRMAN CROSBY: There may well
5 already be something written down somewhere,
6 I'm sure there is that says that they have the
7 authority to prohibit entry to anybody they
8 want to within certain reasons. And I'm sure
9 there's no reason why our security people can't
10 talk to their security people.

11 So, if it's already there, you might
12 want to just make the point you might want to
13 say nothing here that counteracts that pre-
14 existing authority. But it's probably already
15 pretty clear.

16 MS. WELLS: I think ultimately the
17 IEB is looking for direction from the
18 Commission. Attorney Lillios sort of presented
19 two options. What I hear the Commission saying
20 is we'd like to consider that second option
21 where we have that added protection and notice
22 to the individual.

23 So, I think the next step would be
24 to draft a proposed regulation to come back

1 before the Commission for the Commission's
2 consideration of that draft regulation. Am I
3 correct in my understanding that that would be
4 what the next step and that's what the
5 Commission would direct the staff to do?

6 COMMISSIONER STEBBINS: I would
7 support that.

8 CHAIRMAN CROSBY: Yes. I don't hear
9 anybody objecting to the process. It's just
10 the exact details.

11 COMMISSIONER ZUNIGA: That is the
12 second alternative with a hearing officer.

13 MS. WELLS: Correct. And we can
14 certainly flesh out some more details of the
15 other jurisdictions and work on the details of
16 the language to address any concerns relative
17 to the statute.

18 CHAIRMAN CROSBY: And I didn't hear
19 anybody objecting to the shall to may change.

20 COMMISSIONER MCHUGH: No. I just
21 wanted to invite the consideration of having
22 the shall include a reference by the licensee.

23 MS. LILLIOS: Okay.

24 COMMISSIONER MCHUGH: Taking account

1 of what we were just talking about here.

2 COMMISSIONER ZUNIGA: I agree with
3 that. This is not a matter for today, but I
4 would be interested of course in that hearing
5 officer. I would assume that it would be
6 somebody similar to who we have now with some
7 relevant experience but certainly not somebody
8 at IEB.

9 MS. BLUE: No. It's an independent
10 hearing officer. Our current hearing officer
11 is getting up to speed on gaming issues. So,
12 he is being trained. But we can also bring
13 additional part-time hearing officers on if we
14 need them.

15 CHAIRMAN CROSBY: All set on (b)?
16 Let's take a quick break before we start (c).
17 It could take a little while.

18
19 (A recess was taken)

20
21 CHAIRMAN CROSBY: We will reconvene
22 at about 11:40. Interim Director Wells.

23 MS. WELLS: The next item on the
24 agenda, Mr. Chairman and members of the

1 Commission, is a process regarding fines and
2 penalties. Now that the Plainridge Park Casino
3 is open, the Commission is now morphing into an
4 agency where we have a regulatory and
5 enforcement responsibility to the operations of
6 a live casino that's in operation.

7 So, I think this is the appropriate
8 time to sort of have the discussion before the
9 Commission about fines, administrative
10 penalties, what the process is, and sort of
11 what we're doing and why we're doing it. And
12 also to get some guidance from the Commission
13 as to what are the priorities of the
14 Commission? What do you consider significant?
15 Directing at a policy level the IEB on what
16 kind of things concern the Commission in
17 particular.

18 One of the issues we discussed
19 initially is do we want to have some sort of
20 fee schedule, fine schedule that is defined per
21 offense. And we made the determination at the
22 IEB level and our recommendation is at this
23 point at least we would not do that, to leave
24 some discretion about individual matters so

1 that we could get a sense what would be the
2 appropriate reaction by the IEB as an
3 enforcement agency to matters.

4 I know Bruce Band has a couple of
5 examples from his experience where that really
6 makes sense. We can certainly always revisit
7 that. As time goes by, we will constantly be
8 looking at our own processes and our own
9 procedures and how things are working. But at
10 this point, especially in the initial stages
11 where we have one casino, we don't expect
12 enormous volume.

13 It's not as if we have 10 casinos
14 that we're operating simultaneously right now.
15 And if that certainly is the recommendation.
16 And we'll be apprising the Commission of
17 operations as we go forward and what kind of
18 actions we're taking, and we are certainly
19 receptive to feedback from the Commission on
20 how those things are progressing.

21 To sort of kick off the discussion
22 about this topic, Attorney Lillios had gone
23 through the statute. A lot of what we're doing
24 is guided by the statute, which is chapter 23K

1 section 36, which is included in your packet.
2 And we do have a one-page sheet, just sort of a
3 guide with the steps for administrative
4 penalties. And I'm going to turn it over to
5 Attorney Lillios just to walk through that step
6 and how that comports with the statute.

7 And then I think we'll after that
8 process, I'll have Assistant Director Band talk
9 to the Commission about some sample reasons
10 that we may want to even include some kind of
11 an administrative penalty just so we can get
12 some discussion among the Commissioners, get
13 some feedback for us as to what the priorities
14 are and what the Commission considers important
15 in that area that would be helpful.

16 CHAIRMAN CROSBY: Great, thank you.

17 MS. LILLIOS: So, implicit in
18 section 36 is the overriding goal that
19 achieving compliance is what the main directive
20 and mission is. So, you have a flowchart in
21 front of you that starts with some preliminary
22 steps that gaming agents and other members of
23 the IEB would go through as they become aware
24 of issues of noncompliance.

1 And then the large section five on
2 your flowchart really refers back to the steps
3 that are built into section 36.

4 So initially, in step number one you
5 have your gaming agents on site. They
6 physically observe an area of noncompliance.
7 And there's a documentation process that then
8 follows.

9 CHAIRMAN CROSBY: Excuse me,
10 Loretta. In one sense this is trivial, but an
11 act of noncompliance is observed. It could be
12 observed by a state trooper. It could be
13 observed by a security personnel. Would it be
14 more accurate to say an act of noncompliance is
15 observed and reported to a gaming agent and
16 then everything flows? Because it's not just
17 gaming agents.

18 MR. BAND: No. It could be anybody.
19 That was kind of an example.

20 CHAIRMAN CROSBY: I know that's sort
21 of trivial.

22 MS. LILLIOS: There's a
23 documentation process that occurs. Then there
24 is discussion between the gaming agent

1 supervisor and the property as the first step
2 in trying to bring the property into
3 compliance.

4 And then the issue is monitored for
5 reoccurrence. And reoccurrence is again
6 documented until we get to a point where we
7 pull section 36 and try to take some sort of
8 action even if it's a notice action.

9 So, at that point, our internal
10 process is for Bruce and myself to make a
11 recommendation to the director for an action
12 under section 36. And the various actions
13 could be the issuance of a written notice of
14 noncompliance which is by statute always
15 accompanied by a time for the property to come
16 into correction of the noncompliance.

17 Another option is the issuance of a
18 notice of intent to impose a civil
19 administrative penalty. And that is a
20 precursor to any time a fine is going to be
21 imposed. And the idea behind that is to give
22 the property the heads-up that some sort of
23 action is being taken.

24 The amount of the fine would not

1 necessarily be included in that notice of
2 intent, but it would give an opportunity for
3 there to be dialogue between IEB and the
4 property to come to, if possible, a joint
5 understanding of what unfolded and what their
6 experience might have been with the prior fines
7 in the past, but to make sure that there's a
8 dialogue in that process.

9 The next option is the actual
10 imposition of the penalty following the initial
11 notice of noncompliance. So that there's been
12 a notice of noncompliance. The time has
13 elapsed for the property to come into
14 compliance. Additional monitoring by the agent
15 shows that the property is not in compliance.
16 So, at that point notice of intent to impose
17 the fine comes down. And then the fine
18 actually comes down.

19 There is an option under subsection
20 (d) for the imposition of a fine without prior
21 notice in very restrictive circumstances.
22 Those are if there has been a pattern of
23 noncompliance and willful -- or the
24 noncompliance is willful or neglectful on the

1 part of the property and it is not the result
2 of some sort of error. And the noncompliance
3 resulted in a significant breach of integrity;
4 and the property failed to report the violation
5 to the Commission.

6 So, those are very restrictive
7 circumstances.

8 CHAIRMAN CROSBY: It says the
9 pattern of compliance, but I guess this would
10 mean the pattern of noncompliance that you have
11 just discovered. Because if there had been
12 noncompliance previously and you had talked to
13 them then this wouldn't fit in this stance.
14 This must be some really bizarre thing where
15 you suddenly discover that they have been
16 repeatedly in noncompliance. You didn't know
17 about it, but you just discovered it, and it
18 has all of these other criteria.

19 COMMISSIONER ZUNIGA: You could get
20 to this step after multiple fines.

21 CHAIRMAN CROSBY: Oh, multiple
22 fines?

23 COMMISSIONER ZUNIGA: Yes. They're
24 first establishing a pattern.

1 MS. LILLIOS: There are some
2 considerations set out in the statute about
3 what comprises a pattern. They are not
4 exclusive but they are considerations that the
5 IEB must consider, such as whether the operator
6 has been previously notified of the
7 noncompliance on more than one occasion in the
8 past month or anytime during the previous six-
9 month period. Whether the current and previous
10 noncompliance as considered together show a
11 potential threat to the integrity of the gaming
12 establishment.

13 So, those are the types of
14 considerations that would go into determining
15 whether there in fact has been a pattern.

16 So, at that point under our internal
17 protocol, the director evaluates the
18 recommendation. And if the action issues and
19 if it does include a fine, the operator under
20 the statute has the ability to review by a
21 hearing officer in an adjudicatory setting.

22 COMMISSIONER ZUNIGA: Or the
23 Commission. Under the statute, the review
24 could be by the Commission. We talked about

1 this in a different context.

2 MS. LILLIOS: I think we are drawing
3 back to the same provisions of our hearing
4 regulations, which state that review of an
5 order of the IEB first goes to the hearing
6 officer. And then the aggrieved party has the
7 ability to additional layer of review to the
8 Commission on the papers, on the records, so to
9 speak.

10 MR. BAND: I should kind of point
11 out in step three, if it ever got to the point
12 where we would have it sent up for Loretta or I
13 to review, someone in Burke's position would
14 have had numerous conversations with the casino
15 about the issue leading up to it. And it
16 would be documented as well.

17 We document everything we see and
18 keep it in a folder. And if it doesn't get
19 corrected then we bring everything out to show
20 that it's not the first time that we're seeing
21 this or talking to them.

22 MR. CAIN: Yes. If I could expand
23 on that a bit. Daily, three or four or times a
24 week I am always talking to each of the

1 managers of all the departments. Quite often
2 going down to the compliance manager's office
3 trying to let her know what we are seeing.

4 There might be a process of a thing
5 that involves eight steps perhaps number seven
6 is a little weak. We're working on that but I
7 am documenting it. Then I would have the
8 agents follow up. And I'm keeping Bruce in the
9 loop.

10 And every seven to 10 days Bruce is
11 on property where we also are talking to the
12 licensee. This is all before I would send
13 something up to Bruce and Loretta for
14 consideration. So, we're really good open
15 dialogue with the licensee I feel. And they're
16 responding back and we're working together to
17 try to get these things fixed.

18 COMMISSIONER MCHUGH: And that's how
19 it is hopefully to work with future licensees
20 and on into the indefinite future.

21 MR. CAIN: Exactly. And this is
22 before table games, which is speaking of fines
23 and penalties that's where a lot of things
24 happen. Examples we might be able to give in a

1 little while but that more so. The slot
2 machines are kind of running themselves right
3 now. They're approved GLI. Everything is
4 good. I think table games is where more issues
5 could be human element.

6 COMMISSIONER MCHUGH: I had couple
7 of questions. It looks like the dichotomy
8 between step three to step four that
9 everybody's allowed one free bite. Are there
10 circumstances where that might not be
11 desirable? Suppose somebody really does
12 something stupid and harmful?

13 MR. BAND: One thing could be an
14 employee stealing but the casino wasn't
15 following procedure that allowed that to
16 happen. That would be something that we would
17 probably send a letter on right away.

18 COMMISSIONER MCHUGH: So, does this
19 description of three or four need an escape
20 hatch to deal with those kinds of things,
21 because as it reads, it looks like four only
22 cuts in when the same -- nothing happens until
23 the same problem is repeated.

24 MR. BAND: It would have to be a

1 pervasive problem for us to actually send a
2 notice. Most of the time after we speak with
3 them, they correct the situation.

4 COMMISSIONER MCHUGH: I understand
5 the normal thing. But the person that steals
6 money and let's assume that he/she wasn't
7 licensed and the casino knew about it.

8 MR. BAND: Or they didn't follow the
9 proper procedures when that person took out
10 their bank or something like that. It would go
11 right up to level four where it would be sent
12 to Loretta and I.

13 CHAIRMAN CROSBY: So, Commissioner
14 McHugh is saying do you need to say that? If
15 this is going to be on the record as the
16 process, it needs to actually be bulletproof.

17 MS. LILLIOS: We can make that
18 adjustment.

19 COMMISSIONER MCHUGH: Then I had
20 just one other question, which is more minor.
21 And I'm not sure I fully understand the
22 difference between 5(B) and 5(C). Does (C)
23 just deal with the imposition of the penalty?

24 MS. LILLIOS: It does. And

1 preceding that imposition we would need to send
2 a letter of intent that we're going to impose a
3 fine.

4 So (B) says if you get to the point,
5 you sent your notice of noncompliance, there
6 ends up being a recurrence or they did not make
7 the correction in the time given, and we want
8 to impose a fine, we first send a notice of
9 intent that we're going to impose a fine. And
10 we explain why.

11 We don't necessarily have to say to
12 them what the fine is at that point, but we
13 send the notice of intent. The idea is that
14 that will trigger a dialogue. We would share
15 the information that we have with them, which
16 we expect that we would have already have
17 shared in the past.

18 But it's a formal opportunity for
19 them to review it, for us to learn anything
20 about the incident from their perspective that
21 we might not already know. And for us to have
22 dialogue about -- as we are building our body
23 of precedent about what types of fines are
24 appropriate for us in Massachusetts and we are

1 now looking to other jurisdictions for that,
2 but it allows us to hear from the licensee
3 about that as well.

4 MR. BAND: And a lot of times in
5 that conversation, it becomes a negotiated
6 settlement. The casino agrees to what the fine
7 is. So, it never really ends up getting
8 appealed.

9 COMMISSIONER MCHUGH: So, the
10 process can end at 5(B) and doesn't necessarily
11 have to inevitably wind up at 5(C), right? You
12 could learn something in the 5(B) discussion
13 that you didn't realize before that would lead
14 you to say okay, we'll stop here but don't do
15 this again.

16 MS. LILLIOS: That is a possibility.

17 COMMISSIONER MCHUGH: Right, right.
18 Okay. Got it. Thanks.

19 CHAIRMAN CROSBY: Others?

20 COMMISSIONER ZUNIGA: In this one,
21 and I understand why it's important to kind of
22 write it this way, but I would be less
23 comfortable of some of these appeals going to a
24 hearing officer as opposed to the Commission.

1 I think the risk that we had on the
2 other situation to personal reputational damage
3 in this context may be lessened. There is
4 reputational damage I would agree with when it
5 comes to fines to licensees, but I think it's
6 different.

7 CHAIRMAN CROSBY: I had sort of the
8 same wondering about this. First of all, what
9 exactly is this process? The same issues we
10 just talked about before. Is this consistent
11 with whatever the statute said? You actually
12 said earlier on that the statute says that they
13 would have a hearing officer or the Commission.
14 But anyway, we've got to make sure that's
15 right.

16 I sort of wonder whether this is the
17 kind of thing do we want a hearing officer
18 step? Or are these the kinds of things that
19 should go straight to the Commission? There
20 will have been a ton of fact-finding, a ton of
21 record building. These are pretty high-level
22 issues. This isn't like some guy -- So, I kind
23 of had that same instinct.

24 So, what is the thought process

1 about whether or not it is desirable from a
2 public policy standpoint to have the interim
3 step?

4 MS. BLUE: So, I think under our
5 hearing regulation, we defined what went
6 directly to the Commission and what went to a
7 hearing officer. And the only items that go
8 directly to the Commission are suitably type
9 hearings, so all of the individual qualifier
10 type hearings. And then any kind of a hearing
11 that results or could result in the suspension,
12 revocation or termination of the actual gaming
13 license.

14 So, at some point, if there were
15 enough of these fines and penalties where the
16 IEB wanted to recommend a suspension or a
17 revocation that would go straight to the
18 Commission. The everyday sort of fines that
19 come up would go to the hearing officer. And
20 then it would give the licensee a right of
21 appeal to the Commission, and then a further
22 right of appeal to the Superior Court if they
23 felt so inclined.

24 So, the idea would be to have the

1 first level be a hearing officer with that same
2 adjudicatory proceeding. Then with an appeal
3 to the Commission if that was what the person
4 wanted exercise that right.

5 COMMISSIONER MCHUGH: Let me just
6 jump in here to answer this question, because I
7 think we are proceeding maybe on a
8 misapprehension. If we have an adjudicatory
9 hearing in response to a notice of intent to
10 impose a fine, all of the stuff that's gone on
11 before has to be proved.

12 And we don't start with all of these
13 conversations. The nature of the conversations
14 can be disputed. It's rare, but if it gets to
15 that level that's what's going to happen. We
16 will have testimony by so-and-so that I spoke
17 to so-and-so. So-and-so will say no we didn't
18 have that conversation or we had the
19 conversation but it didn't happen exactly that
20 way. And by the way, I can prove, because I've
21 got six witnesses that the event didn't occur
22 the way the gaming agent thought it did. And
23 that's what those hearings are.

24 And to have six people, five people

1 sitting here taking that kind of evidence and
2 making rulings on its admissibility and the
3 like is an invitation to chaos, I think. The
4 benefit of a hearing examiner is that all of
5 that stuff happens in a structure where a
6 single person makes the admissibility exclusion
7 decisions, makes a judgment, creates a record.

8 And then we get a set of facts that
9 we can apply the policy judgment to which is
10 similar to what we do in the racing context.
11 We just did it. I think that decision has been
12 published --

13 MS. BLUE: It has, yes.

14 COMMISSIONER MCHUGH: -- in which we
15 said here are the facts. And we took the facts
16 from the hearing examiner. The hearing
17 examiner said that this was a threat under the
18 criminal process and the criminal law. We said
19 the criminal standard isn't the one that we're
20 looking at. We're looking at a different
21 standard. That was the policy judgment we
22 placed on the facts.

23 And that is a smooth operation, I
24 submit to you. And I think that that is a good

1 reason for doing it in this way.

2 COMMISSIONER ZUNIGA: I agree with
3 that. However, the cost of that is that we
4 don't have the initial luxury of having --
5 establishing a body of evidence -- Was that
6 the term?

7 MS. BLUE: The record.

8 COMMISSIONER ZUNIGA: -- in terms of
9 policy directive on what constitutes, what
10 level of fine, if you will, here. It's
11 effectively delegated to the IEB, isn't it?

12 COMMISSIONER MCHUGH: No, not
13 ultimately, because the IEB proposes a fine.
14 The statute defines what the criteria are. We
15 would get a record that contains the hearing
16 examiner's reasons for buying or not buying
17 what the IEB said.

18 There'd would be an appeal. The IEB
19 could appeal too to us and we get the ultimate
20 decision as to the policy as we did before.
21 So, we get it, but we don't get it after two
22 days say in a significant case, of sitting here
23 listening to evidentiary hearings and making
24 rules on evidence. And then trying to get the

1 five of us to agree on what the facts are based
2 on everything that we've heard. It's tough
3 enough when you have one doing that.

4 So, it seems to me that this process
5 has a huge efficiency value and a very
6 important policy distillation value for the
7 Commission to deal with.

8 CHAIRMAN CROSBY: How is it
9 distinguishable or is it distinguishable from
10 the suitability process?

11 COMMISSIONER MCHUGH: It is
12 distinguishable only in terms of frequency and
13 in terms of the granularity of what's likely to
14 be in front of us. Suitability hearings are
15 likely to be infrequent. And they're really
16 high-stakes. That's one thing.

17 The second thing is, and as our past
18 practice demonstrates, the issues we are
19 dealing with are likely to be high level
20 issues.

21 CHAIRMAN CROSBY: At the suitability
22 level.

23 COMMISSIONER MCHUGH: At the
24 suitability. We're talking about a history of

1 behavior in a jurisdiction. And at this level,
2 we're talking about who said what; who said
3 what to who; when did it occur.

4 Did the person really have a good
5 vantage see it? Did the event occur as it did?
6 What regulations were violated? What was the
7 prior contact and interaction with the gaming
8 agents about this?

9 And the granularity of that is huge.
10 And it makes it much more difficult for five
11 people to sit and listen to evidence and then
12 make a common judgment as to what to distill of
13 that. So, from a practical matter, it seems to
14 me this is a far better and fully just way of
15 dealing with these things.

16 CHAIRMAN CROSBY: That satisfies my
17 concern.

18 COMMISSIONER ZUNIGA: That's fine,
19 same here.

20 MS. WELLS: The other matter --
21 Unless you had any other questions on that.

22 CHAIRMAN CROSBY: Yes, I had a few
23 other things. On step seven raises the same
24 issue that we've talked about before.

1 Paragraph D of section 36 says a licensee or
2 registrant shall have the right to an
3 adjudicatory hearing under chapter 30A. I
4 don't even know what that is.

5 MS. BLUE: Our regulations require
6 us to hold hearings pursuant to 30A. So, our
7 hearing reg. is governed by the sections of
8 30A.

9 CHAIRMAN CROSBY: Okay. So, the
10 question is -- This doesn't say an adjudicatory
11 hearing before the Commission. It just says an
12 adjudicatory hearing. So, the hearing officer
13 step would be adjudicatory. Then if it were
14 appealed to the Commission, would that be
15 public or private? Would that be adjudicatory
16 or --

17 MS. BLUE: An adjudicatory hearing
18 is a hearing that can be public or private.
19 It's up to the body. So, you could certainly
20 have an adjudicatory hearing in public like we
21 do with the suitability hearings. The
22 Commission could also do what it does sometimes
23 on appeals, and simply have those appeals on
24 the record with no testimony.

1 I would concur the Commissioner
2 McHugh that if you are going to take testimony,
3 we would definitely do it in public. So, it's
4 a question of whether you think you need that
5 at that point.

6 CHAIRMAN CROSBY: Okay. Other
7 stuff? The statute refers repeatedly to civil
8 administrative penalty. We have substituted
9 the word fine, effectively, for that. There
10 are all kinds of other penalties that I would
11 think this would -- Even the statute sort of
12 seems to imply that it is thinking fine most of
13 the time because it talks about paying the
14 penalty.

15 But might there also be suspension
16 of an individual, suspensions of a unit,
17 suspension of a license? I can think of a host
18 of other kinds of civil administrative
19 penalties that you might want to impose which
20 isn't really maybe I think by inadvertence
21 isn't covered in this. If you took the word
22 fine out and kept talking about penalty --

23 MS. LILLIOS: I think more precision
24 along exactly what you're saying should be

1 built into the process.

2 MR. BAND: There was a case in New
3 Jersey where there was a lot of regulatory
4 violations that occurred. And they weren't
5 fined but the property was closed for a day.
6 And during that day, they had to provide
7 training to all of their staff. Since the
8 property is making \$5-\$600,000 a day at that
9 point, it was financial as well, but that's not
10 what the fine was. It was closure for a day.

11 CHAIRMAN CROSBY: That's my point.
12 I think it's clear anyway but the language
13 obscures what I think the real intent is here.

14 MS. LILLIOS: I think it was
15 shorthand. And it's better not to use
16 shorthand here. Thank you.

17 CHAIRMAN CROSBY: So, when you start
18 to think about -- The first incidents begin to
19 occur and you first determine how to administer
20 the penalties, what are you going to use for
21 standards? What are you going to use for
22 benchmarks? How are you going to come up and
23 how do our licensees know or licensee at this
24 point know what they are dealing with?

1 MS. WELLS: I think as a preliminary
2 matter, considering that we are a new agency,
3 we are not the first jurisdiction to do gaming.
4 And all of our licensees, all three of them
5 have properties in other jurisdictions. So,
6 we're not dealing with operators who are
7 unfamiliar with being in a regulated industry.

8 So, I think our plan as Attorney
9 Lillios had mentioned is also look at what is
10 the norm in other jurisdictions as we are
11 building our body of precedent within our own
12 agency. I think our ultimate goal is to be
13 firm and fair. That we want to do the right
14 thing. And we do want to do it the right way.

15 And it is not unheard of for example
16 to get a several thousand penalty for an
17 underage -- allowing underage patrons in the
18 establishment. That's pretty standard across
19 gaming jurisdictions. So, we would use that
20 information to build our own precedent. I
21 think that's what would preliminarily help us
22 as we get started.

23 MR. BAND: One thing you have to be
24 careful like setting up a fee structure or

1 anything is that sometimes the violation causes
2 profit for the casino. I revert back to a case
3 I was aware of. They had a customer that came
4 in and lost \$10 million. They let this guy do
5 whatever he wanted in the property, which was
6 violating every reg. there was.

7 We fine them \$600,000. That's a
8 good business decision for them. They made a
9 lot of money. And that's the way a lot of the
10 people in this industry to look at it. You
11 have to make the fine for it's not a profitable
12 move for them to have had those violations.

13 COMMISSIONER ZUNIGA: I would also
14 submit that instances like this are not in a
15 vacuum. They submit their internal controls.
16 And they're supposed to follow certain
17 procedures. And if they don't, are alerted to
18 it, and the lack of follow-up results in one of
19 the examples here, I would submit, that it's an
20 instance that could be very well put in context
21 as to what do other jurisdictions do. And we
22 are going to come up with a fine as a result of
23 you saying that you're going to do something
24 and not do it.

1 CHAIRMAN CROSBY: Is there any
2 reason, Commissioner McHugh in particular
3 maybe, is there any reason for us to have
4 anywhere, state that as we build our own body
5 of experience that we will utilize industry
6 norms or something like that? Is there any
7 affirmative reason why that would be
8 constructive or is it common sense and we can
9 forget about it?

10 MS. WELLS: I think to Assistant
11 Director Band's position, you want to be
12 careful not to box yourself in too much that
13 you have to look at these things on a case-by-
14 case basis as we build our expertise and look
15 at these.

16 MR. BAND: I think most
17 jurisdictions you'll find don't box themselves
18 in. And the circumstances of that infraction
19 are looked at closely. And that can be a large
20 variation in what is ended up fined, what's
21 considered past history and a lot of other
22 factors to do that.

23 So, there's a wide range of what
24 people will get fined for various things like

1 underage gambling or people on the self-
2 exclusion list being allowed to play.

3 MS. WELLS: I think this is where
4 our previous discussion of these added layers
5 of review come into play. So, it's not as if
6 as the Director of the IEB I can impose a \$16
7 million penalty for something and that be
8 completely unreasonable. We do have the
9 hearing officer and we do have Commission's
10 review.

11 So, there is a body to review. And
12 there's checks and balances in the process to
13 make sure what we are doing is appropriate.

14 COMMISSIONER MCHUGH: I agree with
15 that. I think the sort of common law way of
16 approaching this is the best way. Basically,
17 to let it grow organically. Let's test it out.
18 Let's try to be fair. Let's look at everything
19 that's relevant including other jurisdictions
20 but not mandate that we're somehow going to
21 follow a customary practice because I suspect
22 that there isn't any customary practice. It's
23 hugely fact specific.

24 MS. WELLS: The other matter, if

1 there are no other comments on the last topic,
2 if any of the individual Commissioners or the
3 Commission as a body have any comments on the
4 sample reasons for receiving an administrative
5 penalty that Assistant Director Band put
6 together, there were 16 samples, if there's any
7 comments that the Commissioners have about
8 things that are particularly important, they
9 consider particularly egregious, it would
10 certainly be helpful to the IEB, either in the
11 public meeting or other ways of communicating
12 to the IEB.

13 We are certainly interested in what
14 the Commission's perspective is as the overall
15 policy body for the Commonwealth.

16 MR. BAND: This isn't an all-
17 inclusive list. It's just samples. It could
18 be others.

19 COMMISSIONER ZUNIGA: To me, it
20 would be a risk-based approach to think of it
21 in terms of what the event could result in,
22 what we're trying to prevent. It's very hard
23 to sort the risk to the integrity of the game
24 and the risk of the cash, for example. But I

1 know we'll recognize the riskiest of events
2 ought to be at the top of our concern.

3 CHAIRMAN CROSBY: But I do think
4 there is sort of a public interest here. Your
5 first three, which is probably why they're the
6 first three are the ones that people talk
7 about, people are concerned about, have the
8 greatest visibility, create legitimate anxiety.

9 So, I would think that we would
10 consider those three things of particular
11 significance because they go right to the heart
12 of public confidence in our work. The others
13 are more tending to --

14 COMMISSIONER ZUNIGA: 11 is also
15 right up there.

16 COMMISSIONER MCHUGH: That's pretty
17 high.

18 CHAIRMAN CROSBY: Right. Okay, one,
19 two, three and 11, but you get the idea. And
20 I'm pretty sure that we would all agree.

21 MR. BAND: And you'll find probably
22 pretty much in every jurisdiction underage
23 drinking, underage gambling always results in a
24 fine. It's just the way it is if you do the

1 research.

2 CHAIRMAN CROSBY: The money-
3 laundering too, there's just so much
4 conversation about that. I know there's some
5 subtleties where there's nuance.

6 MR. BAND: What we would go on would
7 that they didn't follow their regulation. So,
8 it would be from that end. Most of their
9 problem would probably be on not doing the
10 proper reports.

11 CHAIRMAN CROSBY: Right, and we've
12 had that conversation.

13 MR. BAND: Yes.

14 COMMISSIONER STEBBINS: Bruce, do
15 you see a distinction between number seven
16 improper or insufficient?

17 MR. BAND: Do I see?

18 COMMISSIONER STEBBINS: Would
19 improper surveillance coverage also manifest
20 itself --

21 MR. BAND: Like if you had a bank of
22 cameras go down and they failed to fix it,
23 didn't notify us. That would be something you
24 could get fined for.

1 We do a pretty thorough inspection
2 of the surveillance system prior to them
3 opening to make sure there aren't any blind
4 spots on the floor but it is still their
5 responsibility to make sure they maintain the
6 system.

7 MS. WELLS: Any other questions on
8 that, any comments?

9 CHAIRMAN CROSBY: Anything else?
10 Great that was very helpful. Thank you.

11 COMMISSIONER MCHUGH: Good job, very
12 thoughtful.

13 MS. WELLS: The next item on the
14 agenda, the last matter for the Investigations
15 and Enforcement unit, Plainridge Park Casino
16 performance metrics discussion. I'll just turn
17 that over to Bruce Band. He just has some
18 comments for the Commission.

19 MR. BAND: Mr. Chairman,
20 Commissioners, I'm here today with Senior
21 Supervising Gaming Agent Burke Cain to update
22 you on the operations of Plainridge Park since
23 we've opened them 84 days ago today.

24 During the opening, we identified 16

1 areas that needed to be corrected or improved.
2 These areas included the employee badges so we
3 could read them through the surveillance
4 system. It included additional cameras that
5 needed to be installed in various secured areas
6 and rooms.

7 Some enhanced key and lock controls
8 and additional staff training in all of the
9 departments to improve operations. It also
10 included alarming some exit doors and
11 rectifying some slot ACSC communication issues
12 that were occurring on the property.

13 The gaming agents have been
14 monitoring these areas for the past 84 days.
15 Based on our review and our constant
16 communication with PPC, as of today they've met
17 all of those conditions that we put in there
18 certificate of operations to do. We will
19 continue to monitor their floor for compliance
20 going forward. And if we can update you on
21 anything else later, we certainly will.

22 COMMISSIONER MCHUGH: That is really
23 good to hear that they've met all of the
24 conditions that were in the operating

1 certificate.

2 MR. BAND: Yes.

3 COMMISSIONER ZUNIGA: Are there
4 still sister property people operating.

5 MR. BAND: No. Actually, there are
6 not staff left at property once their people
7 have been trained adequately -- as a matter-of-
8 fact they even ended up hiring a couple of the
9 sister property employees to be their
10 supervisors when they found areas that needed
11 to be strengthened up. So, no, there isn't
12 sister property help at this point.

13 CHAIRMAN CROSBY: Bruce, I thought
14 this was going to be a discussion of the
15 metrics that we were going to keep and make
16 public. What are the reports that we were
17 going talk about? What are the data points,
18 arrests, whatever? What are the metrics that
19 we use that we measure, but also and I thought
20 this was something, Elaine I'm looking at you,
21 was this in your mind we were going to be
22 talking about what data we will be releasing on
23 a regular matter? You were going to make sure
24 we understood what other agencies --

1 MR. BAND: I know when this was
2 originally put on the agenda, and it's been
3 kind of pending for a while, that's what I was
4 told was to update where they are on the
5 conditions and so on.

6 I believe the thing you're talking
7 about was under another title when we brought
8 that before the Commission last time.

9 MS. WELLS: And we have been working
10 on that with Elaine. So, I would expect that
11 discussion. We've met internally on the
12 metrics, and also the mechanism to present that
13 to the Commission and the public. So, we can
14 present that at another Commission meeting. I
15 think that was just under a different name, as
16 Bruce said.

17 CHAIRMAN CROSBY: Okay. So, Janice
18 just make sure that's a pending item, because
19 that's an important conversation.

20 COMMISSIONER MCHUGH: We did have
21 one iteration of that already, didn't we?

22 MR. BAND: Two meetings ago.

23 MS. WELLS: The staff has met
24 internally regarding that and modified that.

1 We want to present to the Commission the
2 ultimate recommendation on that.

3 COMMISSIONER MCHUGH: Great.

4 CHAIRMAN CROSBY: Okay. Anything
5 else to report, Burke, just sort of
6 subjectively on how things are going? What
7 your level of confidence in the personnel?

8 MR. CAIN: As I had stated earlier,
9 communication is very good between the property
10 and myself. And Bruce is coming over, so we
11 are in that circle of communication.

12 They're working towards getting the
13 secondary regulations, the primary things, the
14 camera room and everything is getting better
15 but some of the secondary things, as we turn
16 the page over on it, we look at it sometimes
17 they're little out of it, but they have picked
18 up on it quickly.

19 CHAIRMAN CROSBY: We had a tour of
20 the facility led but mostly by Burke of
21 representatives of our Gaming Policy Advisory
22 Committee earlier this week. And they came
23 away, these are people who have hardly ever
24 been in a casino before many of them, and they

1 came away incredibly impressed by how
2 complicated and overlapping and sophisticated
3 the processes are.

4 So, you did a good job and they were
5 impressed. I think we ought to think about
6 doing tours on a fairly regular basis for all
7 kinds of constituencies that have little idea
8 what actually goes on in there, and what our
9 systems are, what surveillance is all about it,
10 so on and so forth. It's a very powerful
11 teaching tool.

12 That's something else Elaine we
13 might keep in mind. We can even think about
14 doing some more of that for press or whatever.
15 But it was very good, thanks.

16 MS. WELLS: That concludes the
17 matters for the Investigations and Enforcement
18 Bureau. I think the next matter is Ombudsman
19 John Ziemba.

20 COMMISSIONER MCHUGH: Thank you very
21 much.

22 CHAIRMAN CROSBY: It's 12:20. We
23 had hoped to get through without stopping for
24 lunch. We've got three items to go. I am

1 perfectly happy to do whatever anybody wants.
2 Do you want to see if we can make it through or
3 do you want to take a break?

4 COMMISSIONER ZUNIGA: I'm fine
5 either way.

6 COMMISSIONER MCHUGH: I'm fine
7 either way.

8 CHAIRMAN CROSBY: All right. Well,
9 if everybody is okay to go ahead, let's go
10 ahead. Ombudsman Ziemba.

11 MR. ZIEMBA: Thank you, Mr.
12 Chairman, Commissioners. Today we will
13 provide a brief reminder of our Region C
14 evaluation process. We'll detail some of the
15 key upcoming dates and we'll present some
16 recommendations on how this process can be
17 organized.

18 Today's discussion is not about the
19 request for comment that we recently issued
20 relating to the Mass Gaming and Entertainment's
21 request regarding the pending land in trust
22 determination. Comments on that one are due
23 tomorrow. And we're going to discuss this at a
24 future meeting.

1 So, first in your packets and on the
2 Commission's website is a summary of our
3 comprehensive evaluation process for gaming
4 applications. This process has been used in
5 all of our evaluations for our slots license
6 and the Region A competition and notably in the
7 Region B process where there also was just one
8 sole applicant that remained at the end of the
9 process.

10 There are five evaluation criteria
11 as part of this very extensive process. I'll
12 just quickly read these. The five principle
13 criteria are the general overview. What about
14 this license applicant's project will make the
15 project unique in the industry, make it a
16 unique destination, reinforce the Massachusetts
17 brand and positively impact the Commonwealth.

18 Finance, will the project meet the
19 estimated revenue projections? Does the
20 proponent have suitable financing to complete
21 the project? And will they spend the required
22 minimum investment?

23 Economic development, how does the
24 project maximize a positive impact on area

1 visitor attractions, support small business in
2 the region and create viable and meaningful
3 pathways for employment?

4 Building and site design, does the
5 building meet requirements for energy
6 efficiency, have a design that integrates
7 itself into the community and meet permitting
8 requirements?

9 And then finally, mitigation, how
10 does the proponent solve travel problems,
11 address problem gambling, minimize its impact
12 on the lottery and mitigate any problems with
13 the host and surrounding communities?

14 The Commission is assisted in this
15 review by outside consultants and staff to
16 complete their review. The Commission
17 carefully evaluates all of the testimony that
18 it receives through hearings it will hold in
19 the host and surrounding communities.

20 In addition, the Commissioners
21 carefully evaluate the hundreds or thousands of
22 comments that we receive from the public. At
23 the end of the process, the Commission publicly
24 debates all of the points on the application.

1 Commissioners in charge of each
2 section make a presentation to his or her
3 fellow Commissioners. And then the Commission
4 determines ratings for each area. The
5 Commission also addresses any material areas
6 indicated by the applicant. One notable thing
7 that the Commission does during that evaluation
8 process is it goes over conditions that it may
9 place on the license.

10 While the Commission is not rating
11 this Region C applicant versus other
12 applications that have come before the
13 Commission, the Commission obviously has the
14 benefit of what it has seen in those other
15 applications and will be mindful of that when
16 they are reviewing this particular application.

17 Just a very quick reminder of some
18 the dates because they are coming up quickly.
19 First September 30 is the application deadline.
20 No later than October 13, communities that
21 believe that they are a surrounding community
22 but have not reached an agreement with Mass
23 Gaming and Entertainment or have not been
24 designated in the Mass Gaming and

1 Entertainment's application may petition the
2 Commission for surrounding community status.

3 On that date, communities that were
4 designated as surrounding communities in an
5 application must also provide an assent to such
6 designation to the Commission.

7 These dates apply equally as well to
8 the impacted live entertainment venue process.
9 Mass Gaming and Entertainment has until October
10 24 to respond to surrounding community
11 petitions and so-called ILEV petitions.

12 Shortly thereafter, we'll hold a
13 meeting where MG&E and the petitioners can
14 present their case to the Commission. Both
15 groups are likely to provide new information
16 that supplements whatever surrounding community
17 petition they sent into the Commission.

18 After that time, the Commission will
19 evaluate all of the information. They'll make a
20 determination. And after the determination of
21 surrounding community status, there is 30 days
22 to reach an agreement.

23 If an agreement is not reached
24 within those 30 days, there's an arbitration

1 process that follows. And then follow
2 arbitration where agreements are reached, then
3 no sooner than 30 days the Commission will make
4 its determination on the license.

5 Now for some recommendations. I am
6 joined here by Janice Reilly, Paul Connelly and
7 Nancy Stack from Pinck and Co. We, after
8 meetings with Director Wells and the Chairman,
9 we recommend that Janice Reilly be given the
10 responsibility for helping the Commission
11 coordinate the review for Region C.

12 We further recommend that we
13 continue to utilize the assistance of Pinck and
14 Co. to help with our process. Nancy can
15 provide further detail if you'd like. And then
16 we also recommend that Director of Licensing
17 Paul Connelly be responsible for reviewing the
18 administrative completeness of the application.
19 He'll be assisted by John Glennon and Dan
20 McDonald to fill the role of Artem Shtatnov who
21 helped prepare the application for review and
22 get it ready to put on the website.

23 Tomorrow, we are going to be meeting
24 with the applicant to go over the application.

1 And we'll answer any questions that they have.
2 One thing that I wanted to note for discussion
3 is that we have listed each of the
4 Commissioners that has responsibility for each
5 of the different sections. We will have soon,
6 unfortunately for all of us, Commissioner
7 McHugh will be entering his retirement.

8 So, that is an open question of what
9 happens with that area. In conversations with
10 the Commissioner, he noted that he would be
11 glad to assist up until the time of his
12 departure.

13 COMMISSIONER MCHUGH: And thereafter
14 to the extent necessary or helpful to ensure a
15 smooth transition.

16 CHAIRMAN CROSBY: Do any of you
17 Nancy or Janice in particular, have you got
18 sort of in your mind's eye when there might
19 start to be -- the report will be found
20 administratively complete or not. It will then
21 be parceled out to the five teams.

22 Do you have any sense of when there
23 might be consultant data back, particularly on
24 things like site and building design and

1 finance? Do you have any kind of a rough
2 schedule? If you don't it's fine. I'm just
3 curious.

4 The reason is because my group found
5 that it really needed some of the data from
6 some of the other groups before it could
7 reasonably its job. I'm thinking just to try
8 to scheduling the general overview group.

9 MS. STACK: We don't really have
10 specific dates outlined as yet. We'll be
11 meeting with each of the Commissioners to see
12 how frequently they want to meet. As John has
13 mentioned, certainly the coordination for the
14 building and site design group with
15 Commissioner McHugh just as we start up.

16 We anticipate somewhere around two
17 weeks, I'm just looking at Paul, before the
18 materials are actually ready for the
19 consultants to review after administrative
20 completeness. And then we would begin to dig
21 into the materials.

22 The big question mark is often
23 simply the volume of materials. Certainly,
24 this is a little bit different because we can

1 review just the one applicant rather than three
2 at once, which was done before. But it still
3 tends to be a fair amount of materials
4 available.

5 CHAIRMAN CROSBY: If it's available
6 say middle of October, then maybe middle of
7 November more or less there will probably be --

8 MS. STACK: And I think a good thing
9 worth doing because we have the experience of
10 the other procedures is that we can look at
11 particularly those areas that are most likely
12 to impact your group's evaluation.

13 And we can prioritize those a little
14 within the different groups. And I think that
15 that can make some sense. I know that there's
16 a lot of jobs' information for instance in
17 economic development around diversity
18 commitments. And we can make sure we dig into
19 that in a relative timely manner to support
20 some of your reviews.

21 Those are the kinds of things that I
22 think we can highlight amongst the groups from
23 the experience of the other evaluations.

24 CHAIRMAN CROSBY: Okay, great.

1 COMMISSIONER ZUNIGA: Will we be
2 able to and perhaps this is where John Glennon
3 comes in, will we be able to get a document
4 that captures all of our section or all of the
5 application? Just navigating through all of
6 the materials I remember being very time-
7 consuming until Artem came up with this
8 download that proved to be really useful.

9 MS. REILLY: And I'm meeting with
10 John and Dan McDonald next week to get that
11 system up and running again so that you can
12 have your individual reports accessible to you
13 and your teams.

14 COMMISSIONER ZUNIGA: That was key
15 in terms of timing. Just for my section I have
16 to toggle between different questions until I
17 was able to get the whole document. It was
18 time-consuming.

19 COMMISSIONER MCHUGH: But the thing
20 that we had before gave each of us access to
21 all of the sections.

22 COMMISSIONER ZUNIGA: Yes.

23 COMMISSIONER MCHUGH: And that's the
24 plan again, right?

1 MS. REILLY: Correct.

2 MR. ZIEMBA: That work is really
3 important to enable us to get the application
4 online as soon as we possibly can.

5 As a reminder under our process, we
6 have the applicant that has to send in a copy
7 of their redacted application to all of the
8 geographically adjacent communities so they get
9 it at the same time we do enabling them to do
10 their petitions.

11 But for anybody else in the outside
12 world, we try to get that up as absolutely
13 quickly as we can.

14 CHAIRMAN CROSBY: They redact it and
15 then we review the redactions?

16 MR. ZIEMBA: Yes.

17 COMMISSIONER MCHUGH: We get an
18 electronic unredacted copy of the application
19 too, right?

20 MR. ZIEMBA: Yes.

21 CHAIRMAN CROSBY: Anything else on
22 this?

23 MR. ZIEMBA: That's that matter.

24 COMMISSIONER MCHUGH: Can I just ask

1 one question? The form of the reports that are
2 contemplated here is the same as the form we
3 had before, right -- which has the ratings and
4 then a little narrative and then the overall
5 rating and narrative just the same way we did
6 it before.

7 MS. STACK: I think so. I think
8 we've really established that that's a pretty
9 effective template to work from unless anybody
10 has anything that they want to modify. We've
11 already reviewed the questions a little and
12 tightened those up. But I think the format for
13 the reports is definitely going to save us some
14 time.

15 COMMISSIONER MCHUGH: Right. Okay.

16 MS. WELLS: Just as a technical
17 matter under 205 CMR 118.03, the Executive
18 Director or his or her designees is tasked with
19 determining the administrative completeness.
20 So, unless there is any objection by the
21 Commission, I'm going to designate Paul
22 Connelly to do that task officially as of
23 today. Thank you.

24 COMMISSIONER ZUNIGA: Good. I have

1 one small comment on the document. Where it
2 says finance, it should also include finance
3 and operations. There's a portion of the
4 finance piece where we review their operation
5 plan and how that supports the projections that
6 they provide. But I'll give you that edit to
7 this document.

8 COMMISSIONER STEBBINS: John, just a
9 quick update. I have two new reviewers on my
10 reviewing team replacing an individual who left
11 administration and another person who has been
12 assigned different duties.

13 MR. ZIEMBA: Okay. Thank you.

14 CHAIRMAN CROSBY: All right.

15 MR. ZIEMBA: Thank you.

16 COMMISSIONER MCHUGH: Nancy, are you
17 available later today for a telephone
18 conversation on a different matter?

19 MS. STACK: Yes, I am.

20 MR. ZIEMBA: Commissioners, my
21 second item relates to an Ethics Commission
22 matter. Recently, we received a letter from
23 the Ethics Commission regarding the
24 responsibilities of Local Community Mitigation

1 Advisory Committee members.

2 As a reminder, the Local Community
3 Mitigation Advisory Committee is a subset of
4 the Gaming Policy Advisory committee. It's
5 comprised of members from surrounding
6 communities and other representatives that are
7 appointed by the Commission.

8 We at the very first meetings of the
9 Region A and Region B LCMAC meetings --
10 committees, excuse me, one of the first items
11 that we did is we had a presentation on ethics
12 responsibilities of those members serving as in
13 essence special state employees via their
14 status as a committee member.

15 Counsel Grossman provided a very
16 good update, an outline of the statute, and
17 some key points that committee members had to
18 be mindful of. We fielded a number of
19 questions. And one of the big questions that
20 we fielded was what about dual
21 responsibilities?

22 Specifically, if you are a municipal
23 member, if you are municipal employee and if
24 you have responsibilities related to gaming

1 matters, the specific question was in relation
2 to the community mitigation fund application,
3 if you have responsibilities under your job to
4 do something related to a community mitigation
5 fund application, is there any conflict between
6 those municipal duties and your duties to
7 advise the Commission as part of the committee?

8 We had been going under the
9 understanding that what the committee members
10 would be responsible for would be to only
11 provide advice on general policy matters on
12 community mitigation. And that no committee
13 member would be asked to opine on their
14 specific application before the Commission or
15 any application of their neighbors.

16 Specifically, that is a function
17 that is held by the Commission. The Commission
18 reviews all community mitigation fund
19 applications and makes all decisions. The
20 committees themselves, they don't opine on
21 specific applications.

22 So, we were operating, at least
23 initially when we started those meetings that
24 that process would be okay under the conflict

1 of interest law. And that that wouldn't cause
2 any difficulties for the municipal members, the
3 municipal employee members.

4 But we had further conversations
5 with the Ethics Commissions, Ethics Commission
6 staff. And they determined that after looking
7 at it closely, we thanked them very much for
8 their review that unfortunately that would
9 present an issue for municipal employee
10 members. And that the dual functions or dual
11 reporting functions to both the state and to
12 the municipality would present a difficulty.

13 Counsel Grossman can give you a
14 little more detail if you'd like, but what I
15 was going to focus on was what the next step
16 should be. We've notified all of the LCMAC
17 members. We notified the subcommittee on
18 community mitigation. We notified the Gaming
19 Policy Advisory Committee of this decision.

20 And what we will do shortly is we'll
21 reach out to each of these members to make a
22 determination if that member can still serve on
23 the committee. And if they can't serve on the
24 committee, then we would ask them to give us a

1 replacement member.

2 One particular thing that they could
3 do is potentially that member that municipal
4 employee member could just determine that they
5 would not work on any gaming related items at
6 the municipal level and could continue on in
7 their function of advising the Commission.

8 Some members perhaps they don't have
9 any duties. Perhaps if they're and elected
10 office and they don't have a direct oversight
11 over gaming applications, maybe they would be
12 unaffected by this. What the commission has
13 asked us to do, the Ethics Commission has asked
14 us to do is to recommend to all of the members
15 that they should seek individual advice from
16 the Ethics Commission. And we've just recently
17 sent out a notice where we recommended that
18 they do so.

19 So, shortly after we find out about
20 the revised membership of these committees, we
21 will then reconvene them and hopefully get back
22 to work on developing our policies on community
23 mitigation and on the fund.

24 COMMISSIONER MCHUGH: I take it it

1 doesn't make any difference whether they are
2 paid some kind of a stipend for being on this
3 committee or does it?

4 MR. ZIEMBA: No. That doesn't
5 matter but according to the advisory whether or
6 not they are paid or not at the local level has
7 some impact. So, Todd you could help me out
8 here.

9 COMMISSIONER ZUNIGA: Uncompensated
10 municipal employees may serve as opposed to
11 compensated municipal employees.

12 MR. ZIEMBA: If you take a look at
13 page five of the advisory, an uncompensated
14 municipal employee who sits on a LCMAC may do
15 work for no pay for a municipality relating to
16 LCMAC matters.

17 For example, an uncompensated member
18 of a municipal board who sits on the LCMAC may
19 do work in his municipal capacity relating to
20 LCMAC matters. So, that does have some impact
21 on what they can and cannot do.

22 One additional item that I do
23 recommend is that if we do have members that
24 unfortunately cannot participate in the LCMAC,

1 we will find a way to get their comments
2 related what we want to do on mitigation fund
3 policies and on community mitigation policies
4 either directly through comments to the
5 Commission or to the subcommittee. And we'll
6 work on a process for doing that.

7 CHAIRMAN CROSBY: In the meantime,
8 we're having a problem getting a quorum for our
9 Gaming Policy Advisory Committee. The statute
10 unfortunately refers to an absolute number of
11 bodies, which in effect is a majority of all
12 the potential appointees not a majority of
13 those who have been appointed.

14 So, as it stands right now in order
15 to have a quorum, we have to have every single
16 one of our appointed members. So, we need some
17 more members for practical purposes as well as
18 the purposes of the statute. Are there others
19 that we are waiting on?

20 MR. ZIEMBA: Yes. We've reached out
21 to the Governor's office recently and over the
22 course of the last few months to try to get
23 additional members to those committees. And
24 specifically we are trying to work with the

1 licenses to get them because they are by
2 statute on that committee.

3 But they want to make sure that they
4 don't run afoul of the state ethics law by
5 having their members who undoubtedly would have
6 a financial interest in outcomes from policy.
7 So, they're trying to find a way to make sure
8 that we get the proper advice that can without
9 inadvertently running afoul of the conflict of
10 interest law.

11 So, I think probably what will
12 happen is they will find a representative that
13 is not a direct employee of the actual gaming
14 licensee such as an outside counsel firm or
15 firm that does not routinely or ever show up
16 before the Commission to represent their
17 interests so that we can have a quorum.

18 CHAIRMAN CROSBY: Right. I see
19 representatives of at least two of our
20 licensees here. This is not the biggest issue
21 in the world with all else you've got going on
22 but it is important to us to get those
23 appointments made. So, if you could do that
24 and somebody can mention that to Penn.

1 MR. ZIEMBA: Penn is not by statute
2 on the --

3 CHAIRMAN CROSBY: Oh, it's just
4 casinos. All right. Thank you.

5 MR. ZIEMBA: That's it. Thank you.

6 CHAIRMAN CROSBY: The legal
7 division, General Counsel Blue.

8 MS. BLUE: Good afternoon. Today,
9 we are going to talk about the process for the
10 Wynn Section 61 Findings. We had a similar a
11 discussion when we talked about the process for
12 MGM.

13 So, as we know Wynn received its
14 MEPA certificate on August 28, 2015. The next
15 step in the process is for the Commission to
16 issue Section 61 Findings. So, I wanted to
17 discuss with the Commission today the proposed
18 framework for drafting and approving the
19 Commission's Section 61 Findings.

20 The Commission has previously
21 discussed a process for drafting and approving
22 Section 61 Findings for Category 1 licensees.
23 The Wynn MEPA certificate unlike the Plainridge
24 or the MGM certificate contain certain

1 additional steps that the Commission will need
2 to incorporate into its review process.

3 Before we talk about the steps the
4 Commission needs to take, I wanted to note that
5 the Wynn MEPA certificate also provided
6 additional steps that MassDOT had to take
7 before MassDOT could issue its Section 61s.
8 And as the Commission may recall, one of the
9 things that we do as the permitting authority
10 is we incorporate other permitting authorities
11 Section 61s into our overall Section 61s. So,
12 we will need to do that for MassDOT's as well.

13 Before MassDOT can issue its Section
14 61 Findings they have to do, they have to
15 revise their draft Section 61 Findings based
16 upon discussions with Wynn and other
17 stakeholders. MassDOT will need to identify
18 Wynn's financial contribution to the regional
19 working group. That was a working group
20 described in the MEPA certificate to consider
21 long-term mitigation.

22 MassDOT Section 61 Findings will
23 have to be published in the Environmental
24 Monitor for a 15-day public review and comment

1 period.

2 Within two weeks of the close of the
3 comment period, MassDOT will hold a public
4 meeting to review the comments they received
5 and solicit additional comments on their draft
6 Section 61 Findings. And then MassDOT will
7 publish final Section 61 Findings within 40
8 days of the publication of the draft Section 61
9 Findings. They publish it in the Environmental
10 Monitor.

11 MassDOT as part of its Section 61
12 Findings will resolve and consider some of the
13 following issues: the feasibility and
14 constructability of proposed improvements to
15 Sullivan Square, reviewing intersection
16 improvements around and within Sullivan Square
17 and evaluation of the safety of the proposed
18 right turn on red improvements. They will also
19 consult with DCR regarding the Mystic Valley
20 Parkway to minimize queuing on the Mystic
21 Valley Parkway.

22 So, in terms of timeframe for
23 MassDOT Section 61s, they will need at least 40
24 days from the time they publish their draft

1 Section 61 Findings before they can conclude
2 their process.

3 They have not as yet issued draft
4 Section 61 Findings. So, we should anticipate
5 there will be some time that MassDOT will need
6 to finish their findings.

7 Now while MassDOT is working on its
8 Section 61 Findings, the Commission will be
9 working on our Section 61 Findings. And the
10 ultimate goal is to incorporate MassDOT Section
11 61 Findings into our Section 61 Findings.

12 We have fewer additional
13 requirements from the MEPA certificate. So, we
14 should be able to complete our Section 61
15 Findings within at least the timeframe or very
16 close thereto to MassDOT's Section 61 Findings.

17 So, the certificate requires our
18 process to take the following steps: the draft
19 Section 61 Findings will be provided to the
20 Commission consultants for their review, and
21 this is similar to what we talked about for
22 MGM. The consultants will review the project
23 as currently configured against the draft
24 Section 61 Findings.

1 The purpose of the consultants'
2 review it to make recommendations on possible
3 changes to the draft Section 61 Findings or
4 additions to those findings. At the same time,
5 the draft Section 61 Findings will be given to
6 Wynn so that they can confirm the project
7 components and for any comments or suggestions
8 they have as well.

9 After the consultants complete their
10 review, they'll appear before the Commission to
11 discuss their recommendations. The Commission
12 will review the recommendations, authorize
13 staff to make any changes or additions, and
14 authorize staff to post the Section 61s to the
15 Environmental Monitor and on our website.

16 On our website, we will post them
17 with a request for comments. Staff suggests
18 that the comment period be 21 days. We picked
19 21 days because that's the customary comment
20 period for MEPA review. But we are not
21 required to use that period. So, we could use
22 a shorter or longer period if we prefer.

23 At the end of the comment period,
24 the Commission will hold a public hearing to

1 solicit comments from the public and to review
2 the comments we received and solicit comments
3 from any other interested parties.

4 If appropriate at that point, the
5 Commission can approve their final Section 61s.
6 They can also determine whether additions and
7 revisions need to be made. They can come back
8 to the Commission for another review after
9 those additions or revisions are made.

10 If the Commission approves the final
11 Section 61 Findings, we will file them for
12 publication in the Environmental Monitor. Then
13 at each quarterly report, Wynn will be required
14 to report on its compliance with its Section 61
15 Findings.

16 So, that's the overall process we
17 have. It will take us some time as well to get
18 the hearings in and solicit the comments as
19 required. So, any discussion or questions on
20 that process?

21 COMMISSIONER MCHUGH: Well, I
22 thought that given the text of the Secretary's
23 letter, we had to have the MassDOT findings in
24 hand before we did our public hearings.

1 It seemed to me that that's the way
2 that letter reads or at least they anticipated
3 that we'd have those findings in hand before we
4 did our public hearings. So that our public
5 hearing would build on the complete package
6 that was put together including the DOT
7 findings. Transportation and the configuration
8 of the layout, the roadway layout being among
9 the most important issues on the table.

10 MS. BLUE: I think the way the
11 letter is set up, I would agree with that. I
12 also think notwithstanding that it's not
13 entirely direct in that manner, it would be far
14 better for us to have the MassDOT Section 61s
15 so that we can see what they come up with. We
16 can also make any changes to ours.

17 Our consultants can take a look at
18 them to help us, advise us on that.

19 COMMISSIONER MCHUGH: And if we went
20 that way, and I for one think that is the
21 preferable way to go because I think we have to
22 be as bulletproof as we possibly can be at this
23 stage. And get it right so that the public has
24 a good fair chance to comment on a package and

1 not pieces of a package in different places.

2 But I also think that that allows us
3 to do the site design, the site revisitation
4 analysis, which we have to do in any event as
5 part of this review, separately and
6 independently because we are going to need to
7 know what to put in our own Section 61
8 Findings. And we won't be able to anchor that
9 down until we take a look at what's proposed.

10 We know some of what's proposed,
11 what's proposed and then what our consultants
12 recommend as conditions overlaid on what's
13 proposed. So, it seems to me that doing that
14 and doing that fairly soon would fulfill not
15 only our obligation under our regs. and the
16 MEPA regs. but also be part of a progression
17 towards this comprehensive Section 61 process
18 culminating in public hearings before the
19 Commission.

20 MS. BLUE: I think that's right.
21 It's a key component and it's a component that
22 we can sort of take out of the overall process
23 and get started on sooner. And it will help us
24 as we get through the Section 61's balance of

1 the process.

2 CHAIRMAN CROSBY: Is that already on
3 our agenda, Janice? The design changes
4 proposed by Wynn, where is that in our -- It's
5 still pending. Do we know, Ms. Wynn
6 representative, when you'll be prepared to come
7 forward with design changes?

8 MS. KRUM: We are looking at that
9 now and can see when the Commission would like
10 to schedule that.

11 COMMISSIONER MCHUGH: That's what I
12 wanted to talk to Ms. Stack about this
13 afternoon is trying to get the consultants
14 lined up. This has got to be a comprehensive
15 assessment. And get the data, get the
16 consultants to look at it, get a presentation
17 to the Commission, make whatever judgments we
18 want as a piece of this overall process.

19 CHAIRMAN CROSBY: Okay. Maybe after
20 you talk to Pinck you can make a recommendation
21 for what the schedule ought to be.

22 MR. ZIEMBA: We'll likely talk about
23 this. We hope to be meeting on Monday as well.

24 COMMISSIONER ZUNIGA: Just so I

1 understand it, it's all contingent on the
2 findings of MassDOT, isn't it? That precedes
3 all of this.

4 MS. BLUE: We would like to have
5 their findings first, yes. I think if for some
6 reason they took an unduly long time, we might
7 want to visit that. But I think it will be
8 much better to our overall process to have them
9 and understand them. And then when we
10 incorporate them into ours it is the whole
11 package that will be coming up at our public
12 hearing.

13 COMMISSIONER ZUNIGA: And we have no
14 indication of where that process might be for
15 MassDOT?

16 MS. BLUE: We are reaching out to
17 them. They have not finished their draft,
18 their first draft findings, which is
19 understandable. They have a lot of work to do
20 on the draft findings. The only thing we know
21 from the certificate is once they publish those
22 they have to complete their process in 40 days
23 after that.

24 COMMISSIONER ZUNIGA: Right. Okay.

1 So, there's an outside date.

2 MS. BLUE: Yes.

3 COMMISSIONER MCHUGH: But the site
4 design review doesn't have to wait for MassDOT.
5 That's a chunk of that's segregable.

6 COMMISSIONER ZUNIGA: Yes.

7 CHAIRMAN CROSBY: Okay. Anything
8 else about that process? Thank you.

9 CHAIRMAN CROSBY: 6(b), who is
10 leading this parade?

11 MS. BLUE: This is Mr. Grossman.

12 MR. GROSSMAN: Good afternoon. We
13 are back on the transfer of interest regs. 205
14 CMR 129. You've of course seen these
15 regulations before. They've gone through the
16 entire promulgation process.

17 We've received extensive public
18 input from the gaming licensees, which has been
19 tremendously valuable. Commissioner Zuniga and
20 Attorney Blue and I have spent considerable
21 time going through the comments and thinking
22 through some of the proposals and gaining an
23 understanding of exactly what we're trying to
24 accomplish here.

1 As you'll see before you, there are
2 a number of new additions since the last time
3 you saw this document. They're reflected in
4 green here. And as a preliminary matter, I
5 would just make a note that having shared these
6 with our licensees, the MGM contingent has
7 requested a little additional time given the
8 volume of the proposed amendments to review
9 this so that they can ensure that there is
10 nothing in here that would cause any
11 unanticipated consequences or anything of that
12 sort.

13 So, I would throw that out for your
14 consideration. I think we can still go through
15 this today. And at the end, you can determine
16 whether you are prepared to proceed with this
17 today or to grant some additional time to think
18 about it.

19 And with that I would if I may just
20 highlight a couple of points in here.
21 Certainly welcome any questions or comments
22 along the way. As I noted, we did receive two
23 specific sets of comments, one from Wynn and
24 NGM relative to these draft regulations and one

1 from Mass Gaming and Entertainment.

2 We as always made efforts to
3 incorporate as many of the proposals as
4 possible. Certainly, there were some we did
5 not incorporate.

6 Off the bat, I would point to right
7 on the first page the new definition of change
8 of control. That was based upon a comment we
9 received that noted that we hadn't actually
10 defined what we meant by a change of control.
11 And the import of that is that there are a
12 number of places within these regulations where
13 something is based upon whether there's a
14 change of control or there's not.

15 Notably, the payment of the
16 Commonwealth's share of any transfer so-called
17 fee is made contingent upon whether there's a
18 change of control. But there are a couple of
19 other places that hinge on that determination
20 as well.

21 So, we thought consistent with the
22 comment that we would add in a definition of
23 change of control. As you see here, it's
24 essentially once someone obtains over a 50

1 percent ownership interest in the gaming
2 licensee. And it's of course important to keep
3 in mind that what we're really focused on here
4 is the ownership and interest in the gaming
5 licensee itself.

6 And certainly, there are some
7 outside transfers that may impact that at the
8 parent or intermediary or holding company
9 level. But ultimately what we are looking at
10 here is whether the gaming licensee is affected
11 in any way. That's really the focus of these
12 regulations.

13 And you can see in paragraph two on
14 page one where we identify five types of
15 transfers that we would consider to be a
16 transfer of interest that would essentially
17 trigger this set of regulations.

18 Notably, we have paragraph (e) which
19 is perhaps the most difficult to manage in this
20 context. That talks about a transfer of
21 interest in the parent holding company or
22 intermediary company of the gaming licensee
23 that results in a change of control.

24 So, that's where our definition

1 starts from. That's where you're going to see
2 a lot of the transfers involving the SEC and
3 things like that publicly traded securities and
4 the like. It's all a matter as far as these
5 regulations are concerned in determining how it
6 affects the gaming licensee.

7 COMMISSIONER MCHUGH: So, if there
8 were a third or fourth level -- If the licensee
9 were a third or fourth level sub of a holding
10 company, and a 50 percent share in the holding
11 company were transferred that would be a change
12 of control.

13 MR. GROSSMAN: That's right 50.1 is
14 what we've said but yes.

15 COMMISSIONER MCHUGH: Even though
16 the three levels immediately above the sub that
17 held the license were unchanged.

18 MR. GROSSMAN: If I understood you,
19 so as long as there is a change of control
20 anywhere up the food chain yes that would be a
21 change of control. It's also important to keep
22 in mind what the impact --

23 COMMISSIONER MCHUGH: Regardless of
24 the voting powers?

1 MR. GROSSMAN: That's what we are
2 saying because essentially you are going to
3 have different ownership.

4 COMMISSIONER MCHUGH: Even though
5 the structure might be that the control as a
6 corporate matter of the holding company was
7 limited over what it could do vis-à-vis the
8 fourth level sub that owned the license.

9 MR. GROSSMAN: It is complicated. I
10 think there are varying degrees of concern that
11 the Commission would have and what the impact
12 of that would be.

13 COMMISSIONER MCHUGH: I understand
14 that.

15 MR. GROSSMAN: I think the answer to
16 your question is yes. If that happens on any
17 level, there by definition would be a change of
18 control that would trigger these regulations.

19 And ultimately what these
20 regulations do is give the Commission an
21 opportunity to (A) be put on notice of these
22 transfers and (B) approve of them where
23 appropriate. And conduct the suitability
24 reviews and other types of checks to ensure

1 that all of the statutory requirements are met
2 before allowing a new entity or individual to
3 come into the picture. That's really all we're
4 doing here.

5 COMMISSIONER ZUNIGA: I think that's
6 key. Much of what is here has an implication
7 on quite simply just a determination of
8 suitability of new qualifiers. And these regs.
9 should be read in conjunction with that.

10 There are instances that you spoke
11 about where it may result in a fee that's for a
12 subset of those transfers not for all of them.
13 And for that matter, we haven't even finalized
14 the notion of that fee.

15 MR. GROSSMAN: The fee is certainly
16 an important component but just to that point,
17 and we make clear in a number of other places,
18 on page two in particular, that these
19 regulations need to be read in conjunction with
20 205 CMR 116, which are our qualifier
21 regulations.

22 And there is a great deal of overlap
23 at times between the qualifier process in
24 determining whether someone or something is

1 suitable to be involved with the gaming
2 licensee and a transfer of interest that
3 results in a new qualifier.

4 So, we make clear on a couple of
5 occasions that these two sets of regulations
6 are to be read in harmony with one another.
7 And not designed to in anyway supersede any
8 requirements that are previously existing.

9 COMMISSIONER ZUNIGA: Well indeed,
10 some of what is crossed here is as a result of
11 us realizing that it's better left to the
12 qualifier regulations because we already talk
13 about that there.

14 MR. GROSSMAN: That's a great point.
15 Just by way of example, on page two you'll see
16 that we've struck paragraph (a). And on one of
17 the subsequent pages, we struck a paragraph
18 dealing with institutional investors.

19 The reason why these paragraphs were
20 stricken from this set of regulations is that
21 we felt as though it was overlapping with the
22 regulations we already have in place where
23 those particular interests are governed under
24 our qualifier regs.

1 So, if an institutional investor
2 comes into the picture, they are already
3 required to notify the Commission by way of the
4 IEB. The IEB already reviews their holding to
5 determine whether they qualify for
6 institutional investor status and whether to
7 grant them a waiver from having to go through
8 the qualifier process.

9 So, accordingly there was really no
10 need we felt to duplicate that and put an
11 institutional investor provision in these
12 regulations. It's already covered. It could
13 only we felt lead to confusion. So, that's why
14 we struck it from here, but it is covered.
15 It's not as though we are creating a loophole
16 or anything.

17 COMMISSIONER MCHUGH: I frankly have
18 not had time to go through this. It's a deeply
19 interlocking set of regs. And I haven't had
20 time to go through the changes. So, this is
21 helpful in thinking about it.

22 But the reason I brought up the
23 change of control is it seems to me that it's
24 separating -- has the potential to separate

1 corporate control from some other concept of
2 control that doesn't have a practical impact on
3 the operations of the licensee. But I'll talk
4 with you further about that.

5 MR. GROSSMAN: This might be a good
6 time on that point to fast-forward to the so-
7 called fee provision. That's been the cause
8 for most concern when it comes to these
9 transfers and when the fee would be triggered.

10 Just to address that point, we did
11 build in -- and this is on page 10, it's
12 paragraph 10 on page 10. You will see in the
13 first couple of lines, we built in what are
14 essentially exemptions if you will from the
15 potential of a share -- a payment being
16 required.

17 One of them would be for an internal
18 reorganization of entities in the chain of
19 ownership where ultimate control is not
20 affected. And I think, Commissioner McHugh,
21 that gets at least in part what you are
22 inquiring about. Just to point out that that
23 even though it might be a change of control by
24 definition, it would not trigger a payment of

1 the Commonwealth's share.

2 COMMISSIONER MCHUGH: Where ultimate
3 control of the licensee is not affected?

4 COMMISSIONER ZUNIGA: Yes.

5 MR. GROSSMAN: That's what's
6 intended that's right.

7 COMMISSIONER MCHUGH: Ultimate,
8 okay. I get it. I get the concept.

9 CHAIRMAN CROSBY: While we're on the
10 fee, just explain to me and I'm sure we've
11 talked about this before, but explain to me the
12 thought process on why the fee is being
13 assessed and what the amount is? How do you
14 come to that?

15 MR. GROSSMAN: As you've identified,
16 it is a two-part review. The first part is
17 more somewhat of a philosophical discussion.
18 It is based in the statute of course where the
19 statute talks about the Commission's ability,
20 the Commission may assess a payment to reflect
21 the Commonwealth's share in the event that
22 there is a transfer.

23 COMMISSIONER ZUNIGA: The
24 Commonwealth's share of the increased value.

1 MR. GROSSMAN: Of the increased
2 value of the license. And we got into this a
3 little bit the last time we discussed it. I
4 think it is a philosophical one, the
5 discussion, as to whether there should be any
6 fee at all.

7 It is a may for starters. So, it's
8 not mandatory that this fee be assessed. One
9 of the theories that I think I mentioned that
10 Commissioner Zuniga and I have discussed was
11 that the Legislature, the Great General Court,
12 when they came up with that provision were
13 potentially concerned that these licenses would
14 become subject of speculation early on.

15 When they set the \$85- and \$25
16 million fees at minimum respectively, there was
17 no telling whether that was an accurate
18 assessment of what the license was actually
19 worth. The potential existed for the license
20 -- for someone to come in, pay the \$85 million
21 and then sell the license for \$200 million
22 without having any intention of actually
23 building a casino here.

24 And I think the concern was just

1 that the Commonwealth should be able to share
2 in that increased value in the event that it
3 miscalculated what the actual fee should be.
4 So, that's one theory.

5 Now you'll also recall that early on
6 the Commission decided to leave the license fee
7 at \$85- and \$25 million and not truly figure
8 out, if you will, what the license was actually
9 worth.

10 Instead you wanted the bidders to
11 put whatever excess value there was into the
12 construction of the gaming establishment and
13 their development plans and not into the
14 Commonwealth's coffers upfront where we don't
15 really get the biggest bang for the buck.

16 So, that complicates the whole
17 philosophy behind figuring out what the value
18 of the license actually is upon a transfer
19 because the Commission never really figured out
20 what it was to begin with. So, that kind of
21 gets to your question. How did we come up with
22 this proposal here though?

23 COMMISSIONER ZUNIGA: I think
24 there's an ameliorating -- And I hate to

1 interrupt because you are always very
2 articulate and I know where you are going. But
3 there's also another factor that ameliorates
4 the notion of a fee which is embedded in here
5 is that if a transfer occurs that no ultimate
6 change of control that operator first is --
7 that new entity, if you will, is first deemed
8 to assume all of the conditions of the license
9 in terms of capital investment and in terms of
10 all the other things that the original
11 operators promised.

12 That factor also ameliorates the
13 notion or the risk of speculation, I would
14 argue that was initially perhaps a concern for
15 the Legislature.

16 MR. GROSSMAN: There are a number of
17 options then before you. One of them would be
18 to say that essentially if the Commission
19 doesn't find that any speculation is being
20 engaged in that there will be no fee, period,
21 end of story. And that the transfer can take
22 place with no so-called transfer fee.

23 On the opposite end of the spectrum
24 and this was you'll recall one of the options

1 we laid out is that there will always be a fee
2 no matter what it is and we'll tell you exactly
3 what it is so there's some certainty.

4 As we know, our licensees have
5 always requested a level of certainty when it
6 comes to our regulations and our operations.
7 So, that would be the other end of the spectrum
8 just to say that anytime there's a sale of the
9 license that this is what the fee would be.

10 But the approach that we chose is
11 somewhere in the middle. And it basically says
12 that there may be a fee only if there is an
13 overall increase in value to the enterprise.
14 Meaning if things sold at a loss or if the
15 present licensee is in bankruptcy or something
16 of that nature that there will be no transfer
17 fee.

18 It's only when they are selling it
19 giving it with an overall increase in value
20 that we say by regulation that effectively that
21 there is an increase in the value of the
22 license. And accordingly there will be a
23 payment requirement. That is the first part of
24 question is whether a payment will be required

1 to begin with.

2 The separate question is how do you
3 calculate it.

4 CHAIRMAN CRSOBY: Let me stick with
5 the first one for a minute. As a practical
6 matter, if one of our licensees wants to sell
7 its facility, it's not just going to sell the
8 license, right? It's going to sell the
9 facility, which will include the license. So,
10 it becomes pretty easy to say that the license
11 hasn't increased any value because as you
12 value the thing on a piece of paper, you say
13 it's worth whatever.

14 You're going to buy it. If Wynn
15 puts in \$2 billion, you're going to buy it for
16 something more than \$2 billion presumably. Or
17 you're going to buy it as some multiple of cash
18 flow or something.

19 The license is really sort of a
20 minor element of this. It was sort of a
21 customary practice to take a few bucks out of
22 somebody who gets this license but where the
23 real money is in the 25 or the 49 percent.

24 So, it seems like we're focused on

1 something that just doesn't really make any
2 sense. The license in and of itself nowadays -
3 - at the beginning maybe there was some value
4 to it inherently, but now it's just a piece of
5 this massive facility, which is what would be
6 sold.

7 So, to me it feels like we are sort
8 of torturing ourselves to come up with
9 something that doesn't have any intrinsic --
10 doesn't make any intrinsic sense. I don't know
11 where the may came from.

12 The speculation issue is over or
13 effectively. It never really probably was
14 possible anyway because of the way we set up
15 the licensing process. And we can say no, you
16 can't sell if we want to. And I've never
17 understood where this Commonwealth share thing
18 comes from. I can't figure out in equity or in
19 common sense.

20 We can do it because we get to. We
21 could say that. It's not huge money. A
22 million or five million isn't going to break
23 any bank, the limit that we've put on it. But
24 I don't see the economic rationale or the

1 public policy rationale.

2 And at some point -- We sort of put
3 this off trying to finally come to a conclusion
4 while we've wrestled our way through the
5 various iterations on the table. But in my
6 mind as it's evolving I'm prepared to say we
7 should forget this whole idea. I don't
8 understand the underlying economic or policy
9 rationale. I know we have the authority to do
10 it. Maybe we should for some reason because
11 it's in the Commonwealth's interest to get some
12 extra money, but I don't get it myself.

13 COMMISSIONER MCHUGH: I'm having
14 difficulty too, although I was initially a
15 supporter of it. And I think you can make a
16 rationale of the Legislature set the fee at \$85
17 million today. If they were doing it 10 years
18 from now they might have well have increased
19 that value by the way that the cost of living
20 or the consumer price index has bumped values
21 up generally over a 10-year period. But that's
22 speculation. So, I too am troubled by this
23 concept.

24 I am also troubled by this concept

1 of the valuation of the enterprise. It's a
2 delta in the valuation of the enterprise from
3 the time the license was awarded until the time
4 of the transfer. And I don't know how we are
5 going to do that valuation.

6 We know that the investment, the
7 licensing fee and the capital investment is X,
8 but that doesn't necessarily mean that that's
9 the value of the enterprise once that
10 investment of X is made. It may be more, it
11 may be less. And therefore the delta isn't
12 necessarily the difference between the market
13 value of the enterprise at some future time
14 when the sale is contemplated and that number
15 there.

16 And that's simply the trigger for
17 attempting to use this other measure to
18 determine what the Commonwealth's share is.
19 the delta in and of itself is just a delta.
20 It's either up or down. And then the
21 Commonwealth's share is determined
22 independently.

23 So, I know how you have struggled
24 with this, both of you, but I'm struggling with

1 it too at the moment.

2 MR. GROSSMAN: Just to the
3 Chairman's point, I would just add that I think
4 you're right. This is a drop in the bucket
5 essentially. I think we are looking at likely
6 under \$1 million at its highest for a fee
7 although there has been concern it could reach
8 upwards of \$14 million. But we've calculated
9 it out. I don't see that that's going to be
10 the case.

11 So, you're looking at maybe \$1
12 million as a fee if the license is transferred
13 in a Category 1 12 years down the road or
14 something like that obviously less.

15 So, that's kind of the universe
16 you're looking at. And when you compare it
17 against the 25 percent gross gaming revenue tax
18 and the fact that you can add on a licensing
19 fee for renewal after the 15-year period, it's
20 really more symbolic, I suppose, ceremonial
21 perhaps even.

22 But if you're going to do it, this
23 is the way we were suggesting you do it. But I
24 think your question needs to be answered first.

1 CHAIRMAN CROSBY: And I was waiting.
2 I've been withholding this thought because I
3 was waiting as you try to think it through and
4 try to come up with an approach. I suppose
5 there might be some extraordinary costs to the
6 Commission that we will recapture them I guess
7 in the suitability.

8 COMMISSIONER ZUNIGA: We get to
9 assess those and that's independent of this,
10 which extends even further as begs the question
11 that you're asking, the fundamental question of
12 why are we doing this. We get to assess the
13 new qualifiers and the new, etc. etc.

14 I tell you, I have been on both
15 sides of this argument with Todd, with myself.
16 I've convinced myself that it could go
17 literally either way. But it boils down to
18 what is the directive of the statute. And it's
19 in those very sentences may and the
20 Commonwealth's share. And it comes down to
21 this philosophical question what are we trying
22 to accomplish here.

23 Where we were earlier on I think is
24 a very different status. There's been all

1 kinds of commitments made already by the
2 licensees or the applicant by the way. I think
3 when it comes the assessment of the fee for the
4 Commonwealth's share, we could just as easily
5 say we are going to take the may and say there
6 is no fee because we already have processing,
7 etc., etc.

8 Notwithstanding all of that there
9 are a lot of reporting and qualifier language
10 here that has to happen as a matter of course
11 where this is very relevant. But when it comes
12 to that fee I could really go either way.

13 CHAIRMAN CROSBY: Commissioner
14 Stebbins, do you have an instinct on whether we
15 want to have a fee or not?

16 COMMISSIONER STEBBINS: My
17 preference would be not to have one.

18 CHAIRMAN CROSBY: My suggestion,
19 this is the kind of decision that we like to
20 have all of the Commissioners involved in. And
21 I don't know where Commissioner Cameron would
22 feel. And it looks to me that we are moving
23 pretty closely to a consensus.

24 But I'd say we simply table that

1 piece of it until next week when Commissioner
2 Cameron will be here and she ought to have a
3 say in this. But I think we get a sense of the
4 body that we're predisposed to eliminate the
5 fee section.

6 COMMISSIONER STEBBINS: You wanted
7 additional time on this anyway for more
8 comment.

9 COMMISSIONER ZUNIGA: MGM did, yes.
10 Well, MGM and Commissioner McHugh it sounded
11 earlier that we need a little bit more time for
12 review of this.

13 COMMISSIONER MCHUGH: I would
14 welcome a little bit more time and not only
15 this piece but some of the others.

16 COMMISSIONER ZUNIGA: On that note,
17 Todd could you summarize high-level the newest
18 language when it comes to the trust? That's
19 something that maybe we all could benefit from
20 a summary and then a follow-up.

21 MR. GROSSMAN: The broad overview,
22 the other big addition you'll notice comes on
23 page five through eight. And it deals with
24 really two concepts that are addressed in the

1 statute at section 23C.

2 It talks about the filing of an
3 executed and approved trust agreement. It also
4 talks about interim authorization of a gaming
5 establishment. This is the situation when a
6 new operator or a new qualifier -- It's
7 triggered by there being a new qualifier. A
8 new qualifier is coming in.

9 And the question is what happens if
10 they want to operate the casino immediately?
11 So, this talks about them putting, their
12 interest, their securities into a trust pending
13 the resolution of our suitability
14 investigation, but allowing them on an interim
15 basis to operate the casino, to be granting an
16 interim authorization.

17 We come up with the process under
18 which that would all work. Again, it's all
19 based upon the statute we recognize with the
20 good comment of our consultants that we hadn't
21 really addressed that in these regulations.
22 So, that with the impetus for this new
23 language, which is based upon, as I understand
24 it, the way it is done in New Jersey. I

1 haven't had a chance to check to see how other
2 jurisdictions handle this particular issue.

3 But at the end of the day, it
4 appears to me that it's really just a mechanism
5 by which the Commission could allow the
6 transferee to commence operations prior to a
7 complete suitability check being performed.
8 And it shouldn't in any other way really hinder
9 the operation in any way. It's intended to
10 actually help it. So, that's what pretty much
11 all of those provisions deal with.

12 CHAIRMAN CROSBY: I guess you never
13 know. So, theoretically you're ready for
14 everything. But why would we want to let a
15 transferee, a recipient, a new buyer operate
16 without being fully found suitable? What would
17 be the circumstances?

18 MR. GROSSMAN: A licensee could go
19 bankrupt and have to sell quickly and get out
20 presumably. And they found a buyer and you
21 want them to get started.

22 COMMISSIONER ZUNIGA: And in my view
23 rather than thinking of a scenario like how
24 feasible that scenario is, the way I think of

1 it is as having a tool if needed to be able to
2 react to a transaction, for example. If we're
3 uncertain about the timing, if we need to use
4 this, we don't have to. It would be just a
5 tool to bring in the toolkit.

6 CHAIRMAN CROSBY: I think that's
7 legit. But if a circumstance like that
8 presented itself, we can always look at the
9 circumstances and decide how we wanted to
10 handle it. If we wanted to have some kind of
11 interim process, we can come up with it.

12 This smacks of the process that we
13 went through for Sterling Suffolk when we
14 permitted them to put a 19 percent ownership in
15 trust. It's not a perfect analogy by a long
16 shot but I was never really very comfortable
17 with that. And we are solving here a
18 hypothetical problem, the particulars of which
19 we don't know. So, I'm just not sure it's
20 worth the exercise or not.

21 These things are so fact driven, it
22 would depend totally -- You said if somebody
23 went bankrupt. Well, they might be bankrupt,
24 but they may very well not have to sell

1 immediately. They might just be operating in
2 bankruptcy or whatever.

3 So, I don't know. There's no harm
4 in doing it. I'm just not sure that it's worth
5 the complexity of it when we don't even really
6 know for sure what we'd be dealing with.

7 MR. GROSSMAN: I think they are
8 designed to be fairly general in nature. We
9 don't get into exactly what the trust agreement
10 has to say. We cover some of the basics. The
11 converse to the Suffolk situation could be that
12 if we did have regulations, it might have been
13 an easier situation to navigate.

14 It's a tool that hopefully we'll
15 never have to use, but it is something that the
16 statute does discuss.

17 CHAIRMAN CROSBY: What does the
18 statute say?

19 MR. GROSSMAN: It's very general.
20 it says in the event that there's essentially a
21 contract to transfer any property or other
22 security holding in a gaming license that the
23 application, the RFA-1 presumably shall include
24 a fully executed and approved trust agreement.

1 That's all it says about the trust. It doesn't
2 get into what it needs to do.

3 And then further on, it just says
4 the Commission shall promulgate further
5 regulations for interim authorization of the
6 gaming establishment. That's it.

7 COMMISSIONER ZUNIGA: There's also a
8 120-day provision remind me that may be also
9 relevant.

10 MR. GROSSMAN: There is a 121-day
11 provision that has to be built into a contract
12 for the sale, which presumably is designed to
13 give the Commission time to conduct at least an
14 interim suitability investigation of the
15 transferee.

16 So, they can't just close on a deal,
17 which as I understand it is unlikely to happen
18 anyway, but they couldn't do it the next day or
19 within even 30 days. It has to be essentially
20 four months out.

21 CHAIRMAN CROSBY: Do you want to
22 opine on this?

23 COMMISSIONER MCHUGH: No. I'm too
24 far removed from it to talk about the detail.

1 It just strikes me that this is really a lot of
2 thoughtful work but it strikes me that we are
3 getting into the kind of complexity that from
4 time to time we stop and say do we really need
5 to have this kind of complexity. Or could we
6 accomplish the same ends a little bit more
7 smoothly and synchronously?

8 So, I'm going to think about this a
9 little bit more and talk to both of you about
10 that. There's been an awful lot of really
11 thoughtful work here, and I want to understand
12 it before I say anything further. I mean I
13 have plenty I can say.

14 COMMISSIONER ZUNIGA: That was the
15 biggest piece, the trust that I felt we needed
16 to consider here as Todd did.

17 COMMISSIONER MCHUGH: Right.

18 COMMISSIONER ZUNIGA: And MGM and
19 others might give additional feedback because
20 they did request some time to review this.

21 CHAIRMAN CROSBY: How much time did
22 they want?

23 MR. GROSSMAN: I think they
24 mentioned until your next meeting.

1 CHAIRMAN CROSBY: So, next week
2 would be all right?

3 MR. GROSSMAN: Next week or two
4 weeks. At this point, it might benefit
5 everyone having an extra week or two to look at
6 it.

7 COMMISSIONER MCHUGH: Yes. There's
8 no imminent sales, I hope.

9 MR. GROSSMAN: Let's hope not.
10 Hopefully, we'll never have to use any of this.

11 CHAIRMAN CROSBY: So, I think we're
12 done with this probably, right? Is there
13 anything else that you wanted to highlight to
14 bring to our attention before we get back into
15 this at a later time?

16 MR. GROSSMAN: No, I think that
17 covers it.

18 CHAIRMAN CROSBY: Okay. Turning to
19 Counsel Blue.

20 MS. BLUE: We wanted to start a
21 conversation today about the compliance
22 function.

23 CHAIRMAN CROSBY: There is an SBIS?

24 MS. BLUE: You could approve that

1 when you approve the whole regulation. So,
2 we'll do that the next time.

3 So, we wanted to start a
4 conversation today with the Commission about
5 the compliance function. We've had a number of
6 conversations at staff's level but we're at a
7 point where we could use guidance and the
8 Commission's thoughts.

9 Pursuant to Chapter 23K and the
10 Commission's regulations, the Commission
11 regulates many types of licenses, gaming
12 licenses, race meeting licenses, employee
13 licenses and vendor licenses. Each license is
14 subject to requirements set by statute,
15 regulation and the actual terms of the license
16 themselves.

17 Many of the requirements fall into
18 the jurisdiction of the IEB. The licensees
19 understand that the IEB and its staff are the
20 point of contact for those kinds of
21 requirements. But other requirements are more
22 general. And they're monitored at this point
23 by other Commission staff.

24 So, examples of those other types of

1 requirements would be things like reporting on
2 diversity goals in construction and operation,
3 reporting on various permitting matters while
4 the facility is being constructed. And then
5 reporting on compliance with individual license
6 conditions. Staff has been discussing the best
7 process for ensuring oversight of non, what we
8 currently call, non-IEB type of compliance.

9 Compliance is a current topic for
10 all organizations. Some governmental agencies
11 create what is called a compliance officer
12 function. And then the oversight of all
13 compliance matters roll up to that person. For
14 example, an agency I was in out of state had a
15 compliance officer who was responsible then for
16 all reporting required by the enabling act,
17 responsible for all complaints that came up
18 under diversity matters. That person also had
19 a more -- They had a direct reporting
20 relationship with the CEO or executive director
21 of that agency.

22 Other governmental agencies separate
23 their compliance functions. They have certain
24 kinds of compliance and certain parts of the

1 agency and certain staff takes care of certain
2 parts.

3 The private sector, and we've seen
4 this in our licensees, generally have a
5 consolidated compliance function that's
6 responsible for enterprise compliance across
7 the board.

8 So, after we get the Commission's
9 thoughts on compliance, we'll work on a
10 recommendation and we'll bring it back to the
11 Commission for review and consideration and
12 potential adoption.

13 COMMISSIONER ZUNIGA: We are talking
14 about external compliance or the compliance of
15 our licensees with our regulations? Or our
16 internal compliance with processes like our own
17 finance and accounting?

18 MS. BLUE: We would like to start
19 with the external. We had had some discussions
20 about internal controls and internal controls
21 being our internal controls. That's something
22 that we could consider or fold in later.

23 But right now we are more concerned
24 that external compliance has a potential to

1 fall through the cracks because one group may
2 be notified by the licensee but they don't
3 think to maybe pass it onto the appropriate
4 group that monitors it. So, we're concerned at
5 the moment with external compliance.

6 COMMISSIONER MCHUGH: Does external
7 compliance include such things as reports we
8 are required to file with others or is that
9 internal compliance?

10 MS. BLUE: That's a consideration.
11 That's something we would want to look at. If
12 we had a consolidated compliance function that
13 could be something that that function monitors
14 as well as things like license condition. Did
15 we get an update on a license condition? Do we
16 know whether they are in compliance?

17 COMMISSIONER MCHUGH: I think
18 definition here is going to be really important
19 because there are so many different kinds of
20 compliance. You've isolated out the IEB
21 compliance. The IEB has responsibility for
22 making sure that they comply with our regs.
23 basically.

24 There are at least two maybe three

1 others. One is -- It's not even exactly
2 compliance but compliance kind of implies I
3 think an institution's following the rules that
4 regulate it. Like are you complying with your
5 EEOC regs. or your OSHA regs. or all that kind
6 of stuff, which is one category of stuff not
7 very applicable to us. There isn't very much
8 of that. But that is one category of
9 compliance which I'm not thinking about.

10 There is complying with everything
11 in the statute. As you know, we've talked
12 about this, all of the different reports and so
13 forth that we're supposed to submit.

14 The second is a different kind of
15 compliance which is making sure that we have
16 our applicants, our licensees adhere to all of
17 the nuances of our license conditions, which is
18 their compliance not our compliance. But it is
19 not part of the IEB's job, I don't think,
20 unless we define it as part of the job.

21 So, those two categories making sure
22 that we don't inadvertently drop one of these
23 many detailed conditions or some portion of it
24 (A). Or (B) that we don't inadvertently not do

1 one of these multitudes of reports that we are
2 required to do. It seems to me that those two
3 categories of things are isolatable.

4 And for the sake of simplicity, I
5 would suggest that one person have that
6 responsibility. That somebody in your office
7 has the tickler file that has every single one
8 of at least those two kinds of compliance.

9 Maybe there's other categories that
10 go in it. I don't know. But at least those
11 two kinds where I think that responsibility is
12 a little diffused at the moment. And when it's
13 diffused, you run the risk of inadvertently
14 dropping the ball. That's my two cents on what
15 I would like to see handled here.

16 COMMISSIONER ZUNIGA: I guess it's
17 two different models. If you have an
18 organizational structure that has a culture of
19 compliance and everybody knows where they fit
20 into everything that has to be done, or
21 singling out a person or unit that will look to
22 everyone else to make sure that things are not
23 falling through the cracks.

24 You could say that an executive

1 director or a commissioner even is the one
2 ultimately tasked with being the compliance
3 chief, if you will. I'm talking about internal
4 compliance here. I know there's an additional
5 level.

6 CHAIRMAN CROSBY: I think Derek very
7 well might be --

8 COMMISSIONER ZUNIGA: He is our
9 current compliance officer.

10 CHAIRMAN CROSBY: To make sure we
11 comply with those regs. which apply to us which
12 is a third category.

13 COMMISSIONER ZUNIGA: And we have to
14 submit an internal controls questionnaire and
15 we do that every year. And it's ultimately
16 signed by either myself or the executive
17 director. We have to do all kinds of things
18 relative to personal information to protect it.
19 And there's areas where our CIO comes in for
20 data integrity, all kinds of things.

21 But then it becomes a bit of what's
22 the model that we want to choose, a unit or a
23 person or a department that double-checks on
24 everybody, or a culture of compliance across

1 the board.

2 COMMISSIONER MCHUGH: You said in
3 speaking about Derek, that lodged under his
4 watch is compliance with all of kinds of
5 things.

6 COMMISSIONER ZUNIGA: For us
7 internal compliance, yes.

8 COMMISSIONER MCHUGH: But the all
9 kinds of things, I'm not sure what the all
10 kinds of things are. And I don't need a list
11 here today. But conceptually shouldn't we have
12 some understanding of what that encompasses?

13 And if you take that next step, and
14 you have IEB has sort of a definable area of
15 responsibility. And Derek or that office has a
16 definable area of responsibility, internal
17 things. And then that leaves us with licensee
18 compliance with conditions that we've imposed.
19 And you could put those in three different
20 areas. And we would know, have an identifiable
21 compliance person in each of them. And he/she
22 would know that they were responsible for this
23 area. And that would prevent things from
24 falling through the cracks.

1 CHAIRMAN CROSBY: I would add the
2 third one that has the license conditions also
3 our obligations to report. That has to go
4 somewhere. I was thinking of going with that
5 bucket.

6 So, those three separable categories
7 is what I was thinking three different people
8 would be responsible. The IEB would be
9 responsible for one. The CFAO would be
10 responsible for one. And General Counsel's
11 office would be responsible for the third.

12 COMMISSIONER MCHUGH: Yes.

13 COMMISSIONER ZUNIGA: Sounds like a
14 directive.

15 CHAIRMAN CROSBY: They wanted a
16 sense from us. There may be issues that we're
17 missing here. This was not really what I was
18 concerned about but I do think everybody is
19 right that Derek if it is he probably does need
20 to make sure we have a list somewhere of all
21 the things.

22 I think he's got it pretty much in
23 his head, but all the various things that are
24 our own internal compliance rules. He's now

1 got the auditor coming in. I think he's pretty
2 well into that, but there probably ought to be
3 a checklist of some sort.

4 COMMISSIONER ZUNIGA: He does have
5 that.

6 CHAIRMAN CROSBY: Does that give you
7 what you were looking for on that?

8 MS. BLUE: I think that's a good
9 start. Thank you.

10 CHAIRMAN CROSBY: Is that it for
11 you?

12 MS. BLUE: Yes.

13 CHAIRMAN CROSBY: Director
14 Lightbaum, thank you for your patience.

15 DR. LIGHTBAUM: Good afternoon.
16 First of all, we've got a brief accounting of
17 the purses and the handles from the opening-day
18 at Suffolk. What Doug O'Donnell and I did was
19 compare it to a couple of other days at Suffolk
20 from last year. Opening-day which was a big
21 day because the Derby, Kentucky Derby so there
22 was a lot of interest in that race. Then the
23 closing day of Suffolk.

24 The numbers were very similar. The

1 handle, the attendance was very similar on
2 those. The ontrack betting on the live product
3 was similar. It fell just in between the two
4 other days.

5 The Suffolk exports which is what
6 the other tracks betting on a Suffolk product
7 was fairly similar. Then obviously on the
8 imports with it being Derby Day on 5/3/14 that
9 was a big day for people, but people at Suffolk
10 bet on outside tracks. So, that's what the big
11 difference there is.

12 Coming up on the 31st, the last of
13 the three days is Breeders' Cup Day. So, we're
14 looking forward to probably a very big day on
15 that day where there'll be a lot of interest in
16 the people that are attending the races at
17 Suffolk and betting on the Breeders' Cup races.
18 That should be a big day.

19 COMMISSIONER MCHUGH: American
20 Pharaoh is going to run in one of those races,
21 right?

22 DR. LIGHTBAUM: Yes. That's what
23 the plan is. So, that should be a very big
24 day, a very big day for interest in racing.

1 Our racing division licensing
2 department did an outstanding job. We had done
3 about 100 licenses before opening-day. And on
4 opening-day we did another 185 licenses. So,
5 that was quite a feat getting all of those
6 people in and processed. And state police were
7 very helpful working with us in getting people
8 fingerprinted and background checked.

9 Chip Tuttle from Suffolk Downs also
10 put in a little memo about the day. They gave
11 out about \$1000 more than the \$400,000 from the
12 Race Horse Development Fund that the Gaming
13 Commission had passed on to Suffolk for those.

14 The New England HBPA estimates about
15 76 percent of the horses in the races, not
16 including steeplechase, which we know weren't
17 involved at Suffolk before, but 76 percent of
18 the other horses had some type of a local
19 connection. We are waiting for an analysis
20 from Suffolk on an actual purse distribution
21 breakdown on that. Obviously, there was a high
22 percentage of participation from people who had
23 supported the local product in the past.

24 The day went remarkably smooth. One

1 mishap was one of the steeplechase riders came
2 off of his horse but the horse and rider were
3 fine. Other than that it was a smooth day of
4 racing.

5 Looking forward the Mass. bred
6 races, they're looking to raise the purses from
7 \$50,000 per race to \$75,000 due in part to the
8 Race Horse Development Fund, which is great for
9 them.

10 I've got Bruce Barnett from Suffolk
11 Downs here also if there's any questions.

12 COMMISSIONER MCHUGH: I had one
13 question for you. I know I should know the
14 answer to this, but I don't, Mr. Tuttle's letter
15 says the total purses for the day were 556 and
16 \$401,000 came from the Race Horse Development
17 Fund. Where did the other money come from?

18 DR. LIGHTBAUM: So, \$150,000 came
19 from the Mass. breeders' purses. That's a
20 separate amount.

21 So, the 400,000 -- And then they
22 also did the participation awards. So, horses
23 that finished out of the money were given money
24 for participating. So, that brought it up to

1 the total that Suffolk had. That was an
2 incentive for people who were having the
3 expense of shipping a horse all of the way to
4 Massachusetts to race.

5 COMMISSIONER MCHUGH: Right. So,
6 that \$5,000 came from Suffolk Downs?

7 DR. LIGHTBAUM: The \$1000 came from
8 Suffolk Downs because that was over the --

9 COMMISSIONER MCHUGH: I'm sorry, the
10 \$31,000 in participation awards, where did that
11 come from?

12 DR. LIGHTBAUM: That came out of the
13 Race Horse Development Fund money.

14 COMMISSIONER ZUNIGA: In the past
15 relative to the purse agreement, Suffolk could
16 supplement purses. That was not the case this
17 year.

18 MR. LIGHTBAUM: Yes. We don't have
19 a purse agreement yet. This is something
20 Catherine Blue and I have been working on with
21 Chip Tuttle and Bruce Patton and Anthony Spadea
22 from the HBPA. We've repeatedly asked for a
23 purse agreement from them. The latest is that
24 they're waiting to have their board approve it

1 at a meeting next week.

2 CHAIRMAN CROSBY: Whose board?

3 MR. LIGHTBAUM: The Horseman
4 Association board.

5 CHAIRMAN CROSBY: Anything else
6 you're looking to add?

7 MR. BARNETT: Two things,
8 Commissioner McHugh on your question, I'm not
9 sure where \$5000 came from. That is \$401,000
10 from overnights that amount includes, as I
11 understand it, the overnight purses, the
12 participation awards and the 3.5 percent that
13 the statute requires be paid to the breeders.
14 My understanding is that there was \$150,000 in
15 purses for the three Mass. bred races that's
16 551.

17 COMMISSIONER MCHUGH: The \$5000 was
18 just sort of a talisman for wherever the money
19 over \$400,000 came from. The five in and of
20 itself is not significant. Thank you.

21 MR. BARNETT: The Commission
22 approved at one point two total for the purses.
23 We were pretty spot on for the 400.

24 The other thing I want to say is to

1 add is as Mr. Tuttle does in his letter, our
2 appreciation for the Commission's licensing
3 staff and the state police who really did a
4 fantastic job as Director Lightbaum said to get
5 everybody licensed where they needed to me to
6 make it such a successful day. So, thank you
7 to them in particular.

8 MR. O'DONNELL: I'd like to add one
9 thing as well. In the past, Suffolk has always
10 paid additional monies to the purse
11 requirements, the statutory purse requirements.
12 They've exceeded that for the past number of
13 years.

14 COMMISSIONER MCHUGH: It sounds like
15 from all of the reports internal and external
16 that it was a great day. And it was a great
17 team exercise from Suffolk to our staff to the
18 state police, it really was a great team
19 effort. So, we've got two more days and look
20 forward to that as well. Terrific, great work.

21 COMMISSIONER ZUNIGA: How was the
22 field size?

23 MR. LIGHTBAUM: That's a good
24 question. I don't know what the average field

1 size was. There was one of the steeplechase
2 races was very short. There was only five
3 horses in that race. So, I think between the
4 two steeplechase races there were 12 entrants.
5 There was like seven in the other race.

6 So, I'm hoping that we'll have more
7 participation in those two races. Those two
8 races I believe had less betting overall on
9 them than the others. The two races that were
10 restricted to horses that had raced at Suffolk
11 in 2014 were full. There were somewhere like
12 nine or 10 entries in those races which was
13 great.

14 CHAIRMAN CROSBY: There were 82
15 horses exclusive of the steeplechase. So, 82
16 for 11 races is an average of eight.

17 MR. LIGHTBAUM: And that's good.

18 CHAIRMAN CROSBY: That's not bad.
19 Anything else from racing?

20 COMMISSIONER MCHUGH: Great. Thank
21 you all very much.

22 CHAIRMAN CROSBY: Is there anything
23 else on anybody's agenda? Do I have a motion
24 to adjourn?

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COMMISSIONER MCHUGH: So moved.

CHAIRMAN CROSBY: Second?

COMMISSIONER ZUNIGA: Second.

CHAIRMAN CROSBY: All in favor, aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER STEBBINS: Aye.

CHAIRMAN CROSBY: Opposed? The ayes
have it unanimously.

(Meeting adjourned at 1:45 p.m.)

1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission September
3 17, 2015 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission September
5 3, 2015 Meeting Minutes
- 6 3. Massachusetts Gaming Commission September
7 17, 2015 Memorandum Regarding Executive
8 Director Search Strategy
- 9 4. Massachusetts Gaming Commission September
10 17, 2015 Memorandum Regarding Performance
11 Reviews and Merit Increases
- 12 5. Massachusetts Gaming Commission September
13 17, 2015 Memorandum Regarding Interim
14 Salary Adjustment
- 15 6. Massachusetts Gaming Commission September
16 16, 2015 Memorandum Regarding
17 (Involuntary) Exclusion List w/attachments
- 18 7. Region C Estimated (Resort Casino)
19 Timeline
- 20 8. Massachusetts Gaming Commission September
21 16, 2015 Memorandum Regarding Obligations
22 of LCMAC Members Under the State Ethics
23 Law w/attachments
- 24 9. 205 CMR 129 Transfer of Interests - DRAFT

1 10. Amended Small Business Impact Statement

2 205 CMR 129

3 11. Massachusetts Gaming Commission September

4 14, 2015 Memorandum Regarding Suffolk

5 Downs Comparison of Handles

6

7 GUEST SPEAKERS:

8 Bruce Barnett, Suffolk Downs

9 Nancy Stack, Pinck and Co.

10

11 MASSACHUSETTS GAMING COMMISSION STAFF:

12 Bruce Band, Assistant Director, Gaming Agents

13 Division Chief

14 Trupti Banda, Human Resources Manager

15 Floyd Barroga, Manager Gaming Technology

16 Catherine Blue, General Counsel

17 Burke Cain, Sr. Supervising Gaming Agent

18 John Glennon, CIO

19 Todd Grossman, Deputy General Counsel

20 Derek Lennon, CFAO

21 Dr. Alex Lightbaum, Interim Director Racing

22 Loretta Lillios, Chief Enforcement

23 Counsel/Deputy Director

24 Doug O'Donnell, Senior Financial Analyst

1 MASSACHUSETTS GAMING COMMISSION STAFF:
2 Janice Reilly, Chief of Staff
3 Karen Wells, Interim Executive Director/
4 Director IEB
5 John Ziemba, Ombudsman
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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 20th day of September, 2015.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018