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THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #76

(VOLUME 1 of 2)

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron (not present)

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

September 4, 2013, 9:30 a.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 151-B

Boston, Massachusetts

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

CHAIRMAN CROSBY: I am pleased to call to order public meeting number 76 of the Massachusetts Gaming Commission. This one held at the Boston Convention Center September 4, 2013.

At the outset of these meetings, we typically take an opportunity to recognize and welcome elected officials who are attending. I believe Mayor DeMaria from Everett is here. Thank you. It's nice to have you here. And an elected official at one time, former Governor Weld, I think you count. Welcome, nice to have you here. I hope didn't miss any other --

COMMISSIONER ZUNIGA: Town Manager Joe Fernandes?

CHAIRMAN CROSBY: Town Manager Joe Fernandes isn't really an elected official.

One other introductory matter, Commissioner Gayle Cameron would ordinarily be here. As some of you know, she had knee replacement surgery. She's doing fine, but it was just a week or 10 days ago. She wasn't

1 able to attend this. So, she will not be
2 taking part in today's meeting, but she will be
3 back soon.

4 Lastly, we may need to take a
5 temporary adjournment while we get more space.
6 There are apparently more people coming. So,
7 we are going to go along for a little while.
8 And if it turns out we need more room and open
9 the doors, we'll do that. But we'll go-ahead.

10 Okay. The first item is the
11 approval of minutes, Commissioner McHugh.

12 COMMISSIONER MCHUGH: The minutes,
13 Mr. Chairman and colleagues, are in the book.
14 There are a couple of typos, which we will
15 correct in the ordinary course. And I think as
16 Commissioner Zuniga and I talked a minute ago,
17 the entry for 10:30 a.m. needs a little
18 fleshing out to put context there.

19 The context of that discussion was
20 that we had at our disposal at least three
21 maybe a combination of ways of resolving policy
22 questions that were raised by members of the
23 public. And I think the context would be
24 helpful to have those ways, the ones that are

1 listed here. But context was that discussion
2 about how we could resolve policy questions if
3 they arose.

4 So, I propose we add another
5 sentence simply to make sure that that context
6 is there. Otherwise, I would move that the
7 minutes in the form contained in the book, with
8 the typos corrected and with that addition be
9 approved.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER STEBBINS: Second.

12 CHAIRMAN CROSBY: All in favor, aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER MCHUGH: Aye.

16 CHAIRMAN CROSBY: Opposed? The ayes
17 have it unanimously. First item on our agenda
18 is the Ombudsman report, which will include the
19 two big public interest topics.

20 First of all, before I turn it over
21 to our Ombudsman and our General Counsel, a
22 couple of people have come in asking where the
23 sign-up sheet was for speaking. This is not
24 going to be a public hearing where we will have

1 an open mic. and invite people to speak.

2 There are several parties that have
3 been specifically asked to come and make
4 presentations. There are any number of
5 opportunities for people to register their
6 comments with us. As you know, we have a
7 website, mgc.comments. In fact, some of the
8 letters that came on that website are in our
9 briefing book today. That's always reviewed.

10 There will be public hearings about
11 these proposals as they go forward further in
12 the licensing process. And today we are for
13 one topic just going to be trying to establish
14 some facts. And the second topic trying to
15 just understand what the issues really are
16 before us.

17 It may turn out after we see the
18 facts clarified and after we understand exactly
19 what the issues are that we will consider
20 offering an opportunity for other people to
21 speak. But that is not our intention today,
22 just so everybody has a heads-up on that.

23 With that, I will turn it over to
24 Ombudsman John Ziemia and General Counsel

1 Catherine Blue.

2 MR. ZIEMBA: Thank you, Mr.
3 Chairman, members of the Commission. As you
4 are aware, we have a full plate today. The
5 first matter up for consideration is discussion
6 of the questions related to whether the city of
7 Boston should be determined to be a host
8 community to the Wynn Mass, LLC applicant.

9 At the last Commission meeting,
10 there was a discussion of the matter. And the
11 Commission asked me to invite both parties to
12 the Commission meeting to brief the Commission
13 about the issues before us today.

14 By way of further background, for
15 quite some time, Commission staff have been
16 communicating with both parties in an effort to
17 determine how they can come to a better
18 understanding of the issues. As reported to
19 the Commission at the last Commission meeting,
20 despite efforts by the parties and efforts by
21 the Commission staff, there still remain
22 questions that remain unresolved.

23 I am pleased to report that both
24 parties have accepted the Commission's

1 invitation. We have informed both parties that
2 they should limit their presentations to
3 approximately one half-hour. They have been
4 informed that the Commission would like to hear
5 from them about the nature of the issues, about
6 outstanding questions, and about how the
7 parties may be able to reach an understanding,
8 and how the Commission may play a role in
9 helping the parties reach such an
10 understanding.

11 We have told both parties that the
12 issue is how the definition of host community
13 applies to the situation. However, we
14 understand that the procedures and rights that
15 impact host and surrounding communities are
16 linked. Therefore, we understand that the
17 conversation is not strictly limited to the
18 definition of host community, although both
19 parties have been asked to try to talk about
20 that first and foremost.

21 Given that context, I would like to
22 turn to General Counsel Blue to outline the
23 statutory construct of the host and surrounding
24 community definitions. After Counsel Blue's

1 remarks, I will ask the city of Boston to brief
2 the Commission. The city's remarks will be
3 followed by Wynn Mass, LLC's remarks.

4 After the remarks, there will be an
5 opportunity for the Commission to discuss what
6 they've heard. Both parties understand that
7 the Commission will also raise questions during
8 their presentations. With that I turn to
9 Counsel Blue.

10 CHAIRMAN CROSBY: Just before you
11 start, I just want to just put my two cents
12 worth in on sort of what I think we're trying
13 to accomplish here.

14 First and foremost what we'd like to
15 do is facilitate a resolution of this issue
16 between the parties. That is the way it ought
17 to get resolved. It ought to be done and it
18 ought to be done quickly. If this process can
19 facilitate that that's by far the best way to
20 go.

21 Failing that this process is to give
22 us the underpinnings of the information that we
23 will need to decide it ourselves, which we will
24 do quickly if necessary.

1 But it's a two-step process. And
2 step one is to facilitate a resolution between
3 the parties which is far and away the preferred
4 way for this to go.

5 MS. BLUE: Good morning. We thought
6 it would be helpful to start with the
7 definitions in the statute and particularly the
8 definitions that apply to this particular
9 issue. We have up on the screen and
10 Commissioners, it's in your materials, the key
11 definitions.

12 CHAIRMAN CROSBY: Can everybody hear
13 in the back?

14 MS. BLUE: The first definition is
15 host community. This comes directly from the
16 statute. A host community is defined as a
17 municipality in which a gaming establishment is
18 located or in which an applicant has proposed
19 locating a gaming establishment.

20 The sub-definition that plays into
21 that is the definition of a gaming
22 establishment. And a gaming establishment is
23 the premises approved under a gaming license,
24 which includes a gaming area and any other

1 nongaming structure related to the gaming area
2 and may include but shall not be limited to,
3 hotels, restaurants or other amenities.

4 The next definition that is
5 important is the definition of surrounding
6 communities. That definition reads
7 municipalities in proximity to a host
8 community, which the Commission determines
9 experience or are likely to experience impacts
10 from the development or operation of a gaming
11 establishment, including municipalities from
12 which the transportation infrastructure
13 provides ready access to an existing or
14 proposed gaming establishment.

15 There are some key differences
16 between host community and the surrounding
17 community's definitions. A host community has
18 the ability to hold a referendum in the
19 community to determine whether the community
20 will accept that gaming establishment.

21 And they enter into a host community
22 agreement which is a broad -- an agreement that
23 covers a broad number of topics that include
24 mitigation in the community but then also

1 include other issues. Host community
2 regulations are found in 205 CMR 123.

3 A surrounding community is slightly
4 different. The surrounding communities do not
5 vote on the application for a casino.
6 Surrounding communities are determined in a
7 number of ways. They key ways which are they
8 are designated by the applicant and by the
9 surrounding community or by the Commission.
10 And you can see the process that in the
11 regulations at 205 CMR 125.

12 Surrounding communities enter into
13 surrounding community agreements that address
14 the impacts or potential impacts from the
15 gaming establishment. And if the surrounding
16 community does not enter into an agreement with
17 an applicant prior to the filing of the RFA-2
18 application, there is a process by which the
19 community and the applicant can go through
20 binding arbitration. So, they have different
21 obligations and slightly different processes.

22 The other definition that we think
23 is important to consider here is the definition
24 or the language found in Chapter 23K section

1 15.13, and this talks about the election.
2 Section 15.13 pertains only to the question of
3 how elections are held in host communities.

4 And if you look at the bottom of
5 that, what the language provides is if for the
6 purposes of this clause, which is for the
7 purposes of the election only, unless a city
8 opts out of this provision by a vote of the
9 local governing body, if the gaming
10 establishment is proposed to be located in a
11 city with a population of at least 125,000 if
12 by the most recently in the way of federal
13 census, the host community shall mean the ward
14 in which the gaming establishment is to be
15 located.

16 We just want to emphasize that this
17 definition applies to the election language and
18 does not supersede the host community
19 definition that is found earlier in this
20 section.

21 CHAIRMAN CROSBY: This is relevant
22 because there's been commentary in the media
23 that has -- I was asked the question is
24 Charlestown a host community or not. That

1 would be a misunderstanding. The question is
2 whether Boston is a host community or not. If
3 it were, where the election would be held would
4 be in the appropriate ward.

5 But that's why we want to clarify
6 that point, because there's been discussion in
7 the media that seems to misunderstand what a
8 host community might be.

9 MS. BLUE: So, those are the key
10 definitions that impact the discussion we are
11 going to have today. We were hoping that the
12 applicant will discuss this as will the other
13 presenter.

14 MR. ZIEMBA: Thank you, Counsel
15 Blue. With that I'd like to invite Elizabeth
16 Dello Russo. She's the executive director of
17 the Boston host community advisory committee.
18 And Abim Thomas, outside counsel for the city
19 of Boston to give their remarks.

20 MS. DELLO RUSSO: Thank you,
21 Ombudsman Ziemba. Elizabeth Dello Russo for
22 the city of Boston. And I'm joined by Counsel
23 Larry Kaplan and Abim Thomas from Goodwin
24 Procter.

1 I want to thank the Commission for
2 inviting us here today, Chairman Crosby,
3 members of the Commission and Commission staff.
4 We are hopeful for a productive and open
5 conversation.

6 I also want to acknowledge our
7 elected officials as well Mayor Carlo DeMaria,
8 former Governor Bill Weld, representatives and
9 members from the Charlestown neighborhood and
10 other Boston residents who are here today.

11 We are here for three important
12 reasons. The first of which is to help to
13 clear up confusion on the part of the
14 Charlestown neighborhood, which the city
15 represents.

16 We also want to understand the
17 effects of this proposed development on in
18 particular that Charlestown neighborhood, which
19 we feel will have a disparate impact.

20 We also are here to further our
21 request for information, which has kind of been
22 a long, ongoing process.

23 First to begin with, on behalf of
24 the Charlestown residents and businesses, there

1 is Chairman Crosby mentioned a petition that
2 has circulated amongst Charlestown. At this
3 point nearly 500 residents have signed this
4 petition. There is, I think, a point of
5 confusion in the petition regarding Charlestown
6 being its own host.

7 But the spirit of that petition is
8 that we are hearing clearly from many residents
9 that they are confused about the status. Some
10 are not confused. Some are adamant about the
11 status of Boston. On behalf of Boston, I would
12 say that the city itself is confused about the
13 status here. And part of that confusion is
14 because we're looking for some additional
15 information, which we have not yet obtained.

16 The confusion I think comes from the
17 developer itself. There have been images that
18 have been made public, which have led to the
19 city and the residents questioning where this
20 development lies, and whether or not it crosses
21 municipal boundaries. And we have some images
22 that we would like to show which illustrate
23 this confusion what appears to be a shifting
24 landscape of boundaries.

1 I'm sure that we are going to be
2 shown more maps today. And I'm hopeful that we
3 will be. Although long delayed in showing them
4 to the public, to Boston and the residents, we
5 welcome any clarity that maps or images or
6 explanations that this will bring to the
7 public.

8 I also want to talk about the
9 umbrella issue over things like images and
10 maps, which is the impacts on Charlestown and
11 on Boston, which is really where Boston has
12 spearheaded this entire conversation.

13 What we are looking for and what
14 we're trying to understand are the impacts.
15 And we believe that that comes directly out of
16 the Act itself, the Gaming Act. So, really
17 what we would like to see is some information
18 so that we can review it as we've done with
19 other applicants and we can let our
20 neighborhood of Charlestown know that we are
21 actively seeking to understand the impacts of
22 which we feel may be significant.

23 COMMISSIONER MCHUGH: Whether Boston
24 is a host community or a surrounding community

1 that is going to be part of the process --

2 MS. DELLO RUSSO: Yes.

3 COMMISSIONER MCHUGH: -- that has to
4 be undertaken for the application. So, in that
5 sense that's a given. Some form of review and
6 opportunity to focus on mitigating efforts is
7 going to be part of whatever package is
8 ultimately presented to the Commission.

9 MS. DELLO RUSSO: Thank you,
10 Commissioner. We agree that this kind of the
11 umbrella issue, the status of host versus
12 surrounding.

13 COMMISSIONER MCHUGH: I understand
14 that. But it's not an all or nothing
15 proposition. In other words, it's not if
16 you're a host community, you get a chance to
17 talk about mitigating impacts, if you're a
18 surrounding community, you don't. You get a
19 chance to talk about mitigating impacts in both
20 cases.

21 MS. DELLO RUSSO: Correct.

22 COMMISSIONER MCHUGH: Everybody
23 ought to understand that.

24 MS. DELLO RUSSO: Thank you.

1 CHAIRMAN CROSBY: While you were
2 talking, you said the second umbrella issue was
3 the impacts and you said that comes right out
4 of the Gaming legislation itself. Where are
5 you referring to that that comes out of the
6 legislation itself?

7 MS. DELLO RUSSO: I think that the
8 legislation speaks to, regardless of status of
9 host or surrounding community that if there are
10 impacts, they should be mitigated.

11 So, I think the city of Boston views
12 this as we are seeking information to
13 understand those impacts. That's really the
14 largest issue before the city of Boston. We
15 are confused about the status.

16 CHAIRMAN CROSBY: Understanding the
17 impacts doesn't speak to the issue of host
18 community versus surrounding community, which I
19 guess was Commissioner McHugh's point.
20 Understanding the impacts is very important and
21 will be something that has to happen whether or
22 not Boston is a host community.

23 MS. DELLO RUSSO: Correct.

24 CHAIRMAN CROSBY: I don't want to

1 conflate these two issues. Understanding the
2 impacts is a relevant topic to either issue, to
3 either designation. And we are here to figure
4 out what is the designation, not what are the
5 impacts.

6 MS. DELLO RUSSO: Let me clarify the
7 rub of this, Boston has sent multiple letters
8 seeking information to understand impacts. And
9 what we received in response is that once
10 Boston says it is a surrounding community,
11 information will be shared with us.

12 In part, we are looking for
13 information that clarifies our status. So, if
14 a developer will only share information upon
15 our saying we are a surrounding community, when
16 we are confused on that point I think that is
17 contrary to the spirit of the gaming law. And
18 I think that is where we are not being able to
19 obtain information. And that's why I say the
20 umbrella issue is the impacts.

21 COMMISSIONER MCHUGH: But there are
22 two ways to solve that at least, are there not?
23 One is to decide whether Boston is a
24 surrounding community or a host community. And

1 then the developers pledge to take action in
2 response to that, will have a platform to do
3 it.

4 And the second way is to have a
5 voluntary exchange of information, which as
6 Chairman Crosby said earlier would be the
7 preferred route. But in either event, that
8 issue ought to be resolved promptly, because
9 it's going to need -- the impact issue is going
10 to need some careful consideration before the
11 applications are filed, right?

12 MS. DELLO RUSSO: Yes.

13 CHAIRMAN CROSBY: I think we're on
14 the same page on this. But understanding the
15 impacts will not necessarily clarify the issue
16 if whether you are a host or a surrounding
17 community. If there has been a failure to give
18 you information to make a reasonable
19 determination whether you're a host community
20 or not that's something we are here to try to
21 facilitate. That is definitely on the table.
22 But I think we know what the distinctions are
23 here.

24 MS. DELLA RUSSO: I would hope,

1 Commissioner, that if there's a failure to give
2 information so Boston can understand impacts
3 that is something that the Commission would
4 hear us on. I think that time is of the
5 essence. So, for the city of Boston, for our
6 residents, we really do need to have some
7 information so that we can do some analysis.

8 In other applicants within the city
9 of Boston, we did years of analysis. So, I
10 understand that that is not possible in this
11 instance. This site was selected quite a bit
12 after. Suffolk Downs has been an ongoing site
13 for seven or eight years. So, there are some
14 distinctions there. But Boston is ready and
15 able to have experts do some analysis so we can
16 understand impacts and reach the appropriate
17 agreement.

18 I think I would like to turn it over
19 to Abim Thomas to explain why Boston has been
20 confused on the issue.

21 MS. THOMAS: Again, thank you
22 Chairman Crosby, thank you Commissioners for
23 having us here today. We really appreciate
24 this opportunity and we'll really rely on the

1 Commission to help get to the bottom of this
2 issue and to really help clarify this.

3 Liz hinted just briefly at what the
4 communications have been to date with the
5 developer here. That they unfortunately have
6 not been very forthcoming with information.
7 She discussed how at times when the city has
8 sought information, they have stated that they
9 would provide it but only on the condition that
10 the city of Boston state affirmatively that it
11 is only a surrounding community and not a host
12 community. And in our opinion that's just not
13 the way to have an effective conversation about
14 this topic.

15 So, I will talk just briefly about -
16 - I will quote just briefly really from letters
17 that Wynn has provided to the city. For
18 example, in their letters, the language states:
19 Prior to scheduling a meeting, we want to
20 clarify that Boston is no longer seeking host
21 community status. Following your
22 acknowledgment that Boston is not a host
23 community, we would be prepared to discuss with
24 you Boston's status as a surrounding community.

1 Again, that's just even to having a
2 meeting. With respect to gaining information,
3 Wynn has refused to share information except on
4 the condition that Boston declare that it is
5 not a host community. Wynn has stated in its
6 letters to the city, we will share impact
7 studies and traffic reports with you only in
8 the context of surrounding community
9 negotiations.

10 So, I think Wynn is really putting
11 the cart before the horse here in calling for
12 the city to declare that it is not a host
13 community for this proposed project. It would
14 be irresponsible for Boston to determine that
15 it is not a host community without additional
16 information.

17 Liz didn't mention this, but Boston
18 actually went so far as to submit a public
19 records request to the city of Everett in order
20 to get information because the city was having
21 such a hard time getting at this information,
22 and paid close to \$850 to obtain that
23 information. So, we couldn't be happier to be
24 here today to really rely on the Commission to

1 gain us the information we seek. We hope it
2 will be a much cheaper approach to getting this
3 information.

4 So, I'll just asked Larry Kaplan who
5 is also here on the city's behalf just to talk
6 through some of the information that the city
7 has sought to date.

8 MR. KAPLAN: Thank you, Mr.
9 Chairman, members of the Commission. Larry
10 Kaplan, I'm from Goodwin Procter. Very
11 briefly, we do want to be on board as to
12 whether we are host or surrounding community.

13 One of the things we are looking for
14 is a current site plan of the project that will
15 clearly define where the gaming establishment
16 is and all of the amenities. I think Abim will
17 show later, there have been several
18 inconsistent images that have been presented by
19 the Wynn representatives, several of which show
20 the project as being in the city of Boston,
21 which is one of the reasons that there's been
22 confusion as to whether the city is a host
23 community or not. And these are their own
24 images. They are not images that we have

1 produced.

2 COMMISSIONER MCHUGH: This is a
3 specific request that the city has made to Wynn
4 for a site plan showing the establishment and
5 the amenities? That has been part of a letter
6 that was sent, was it?

7 MR. KAPLAN: Yes.

8 CHAIRMAN CROSBY: And you have not
9 received that, the site plan and the amenities?
10 You have not received that?

11 MR. KAPLAN: No, we have not.

12 COMMISSIONER MCHUGH: Okay.

13 MR. KAPLAN: We are interested in
14 the municipal harbor plan that's underway.
15 We'd like to see the extent of that. We'd like
16 to see where exactly that plan is. Where any
17 boardwalks and harbor walks are going to be and
18 whether they are just going to be located in
19 Everett or whether they're going to be located
20 in the city of Boston.

21 COMMISSIONER MCHUGH: Wouldn't that
22 be part of the site plan? I don't want to
23 cross examine you. I'm just trying to figure
24 out.

1 MR. KAPLAN: I appreciate that. I
2 think it is, but I am just trying to be a
3 little more specific on some of the things
4 we're looking for, Commissioner.

5 And I know we're not here to talk
6 necessarily about impacts, because impacts we
7 agree, are whether you're a host or
8 surrounding. But since a great deal of our
9 representation of the Charlestown residents is
10 going to center on traffic impacts and so much
11 of the traffic is going to come over Boston
12 roadways, we would like to see current traffic
13 studies. Because we don't think they're taking
14 into consideration some of the traffic
15 downsizing, if I could say, or road narrowing
16 that the city is going to be undertaken, and
17 that's very important. Because we want to be
18 prepared to at least address these impacts,
19 whether or not we are a host community or a
20 surrounding community.

21 I know we are not here to talk about
22 impacts, but that's very important to the
23 Charlestown residents. So, I think that's kind
24 of it in a nutshell as to what we would like.

1 As Liz has mentioned, it has been difficult to
2 get and we're hoping that the Commission can
3 assist us on that.

4 COMMISSIONER MCHUGH: So, if I
5 understand you, what you are looking for is a
6 site plan?

7 MR. KAPLAN: We would like to --
8 Yes.

9 COMMISSIONER MCHUGH: Putting to one
10 side the traffic, which we all agree is
11 important, but that is important whether you're
12 a host community or a surrounding community.
13 What you are looking for is a site plan that
14 shows, precisely defines --

15 MR. KAPLAN: -- all buildings and
16 all amenities, Commissioner, correct.

17 COMMISSIONER MCHUGH: Including the
18 boardwalk, the whole shooting match, in precise
19 terms.

20 MR. KAPLAN: The whole shooting
21 match.

22 MS. THOMAS: Yes, in very precise
23 terms. And I'll just cite section 9 of Chapter
24 23K. It speaks to the location of the proposed

1 gaming establishment and what the applicant has
2 to provide to the Commission in its
3 application. And we know the application isn't
4 due until the end of the year. But we assume
5 that this is information that the applicant
6 already has.

7 In the statute it says: In
8 providing the location of the gaming
9 establishment, the applicant is required to
10 include "the address, maps, book and page
11 numbers from the appropriate registry of deeds,
12 assessed value of the land at the time of
13 application, and ownership interests over the
14 past 20 years including all interests, options,
15 agreements and property, and demographic,
16 geographic and environmental information and
17 any other information requested by the
18 Commission."

19 So again, it's early. I understand
20 they have not submitted their final application
21 yet. But as they are preparing that final
22 application and clearly putting that
23 information together, that would also be
24 information that would be helpful for us to

1 have.

2 COMMISSIONER MCHUGH: It would be
3 helpful perhaps in some ways, but the site
4 plan, it seems to me, for determining whether
5 they are a host community or not is the key, is
6 it not? Can we agree on that?

7 MS. THOMAS: Yes.

8 COMMISSIONER MCHUGH: Okay.

9 MS. THOMAS: I'll just go back.
10 We're just going to show some of the graphics
11 just to explain some of the confusion that
12 there has been to date with respect to the
13 project site.

14 And I'll start just by showing a
15 completely different site. This is the Suffolk
16 Downs proposal. And I show it just as an
17 example to clear up any additional confusion
18 about whether or not there can even be two host
19 communities.

20 This is the Suffolk Downs proposal.
21 And the line you see that bisects this proposal
22 shows the border between Boston and Revere.
23 So, this is an example of a proposal that's
24 located in two cities. You will see from this

1 image that Suffolk Downs retained a portion of
2 the track and some of its parking and offsite
3 facilities in Revere. And Suffolk Downs has
4 treated Revere as a host community for that
5 project and negotiated a host community
6 agreement with Revere, even though the planned
7 casino itself is located on the Boston city
8 side of the line.

9 CHAIRMAN CROSBY: I would say for
10 the record that I think that was an appropriate
11 decision.

12 MS. THOMAS: The next slide I want
13 to show here is an aerial view of the Monsanto
14 Chemical site. The Monsanto Chemical site is
15 relevant because this is how this site is
16 commonly referred to. You will see the portion
17 outlined in red here. That's the portion of
18 this aerial view here that is actually located
19 in Boston. And outlined in blue there you'll
20 see is actually the portion that is on land
21 within the city of Boston.

22 COMMISSIONER MCHUGH: I don't
23 understand that. Could you help me with that?
24 The part in the previous slide, the part that's

1 in red within the blue circle is what?

2 MS. THOMAS: Boston.

3 COMMISSIONER MCHUGH: What is the
4 rest of the blue circle that is outside?

5 MS. THOMAS: It is just to call
6 attention to the red sliver.

7 COMMISSIONER MCHUGH: So, that's
8 just an attention getter?

9 MS. THOMAS: Just an attention
10 getter, yes.

11 CHAIRMAN CROSBY: To the left of the
12 red line that's in blue is Everett. And to the
13 right of the red line, of the other red line is
14 in Boston?

15 MS. THOMAS: That is correct.

16 CHAIRMAN CROSBY: The straight line,
17 the red line that goes down and dog legs to the
18 left and down again that defines the Monsanto
19 site, so-called?

20 MS. THOMAS: It's also part of the
21 Monsanto site, but that too is in Boston. So,
22 what extends into the Mystic River there is
23 also Boston.

24 COMMISSIONER ZUNIGA: What is to the

1 right?

2 MS. THOMAS: Still Boston. I have a
3 pointer here, which I will try to use. This is
4 the site right here. And we'll get into more
5 detail about the site, but this is the site
6 here. One could argue this is the full site.
7 We've seen different images. We'll see more
8 images about the complete site. But this is
9 just an aerial view to help understand the
10 site.

11 To your question, all of this
12 located to the left here, this is all Everett,
13 everything located to the right here, this is
14 Boston including everything in red. But the
15 red outline defines the parcel of the Monsanto
16 Chemical site.

17 COMMISSIONER ZUNIGA: What is
18 southeast of the red outline?

19 MS. THOMAS: Southeast?

20 COMMISSIONER ZUNIGA: Everything
21 southeast?

22 MS. THOMAS: More of Boston.

23 COMMISSIONER ZUNIGA: I'm just
24 speaking of Route 99, all of that.

1 MS. THOMAS: Boston.

2 MS. DELLO RUSSO: In the extreme
3 lower right-hand corner, that is not Boston.
4 Route 99, the roadway you see there, the
5 property immediately to the right of the red
6 that is Boston.

7 COMMISSIONER ZUNIGA: Once you cross
8 99 into the site of the energy plant, the power
9 plant that's Everett; is that correct?

10 CHAIRMAN CROSBY: Use the pointer
11 because I am not sure what you are talking
12 about.

13 MS. THOMAS: Sorry. Commissioner
14 Zuniga, when you say when you cross 99 to enter
15 into the site are you referring to any
16 particular location?

17 COMMISSIONER ZUNIGA: Southeast,
18 yes. There's a power plant here, all of this
19 is Everett; is that correct?

20 MS. DELLO RUSSO: Correct.

21 COMMISSIONER ZUNIGA: And this is
22 Route 99.

23 MS. THOMAS: Boston.

24 COMMISSIONER ZUNIGA: This is

1 Boston?

2 MS. DELLO RUSSO: Yes.

3 MS. THOMAS: Sorry to compete with
4 pointers as well, here also more of Boston.

5 CHAIRMAN CROSBY: So, there's a
6 little skinny piece of Boston that comes up
7 with Everett on both sides?

8 MS. DELLO RUSSO: Correct, yes. And
9 this is part of the confusion here. Route 99
10 does become Everett, it becomes under Everett
11 jurisdiction just around, past the red marker.

12 CHAIRMAN CROSBY: Say it again.

13 MS. DELLO RUSSO: Would you like me
14 to stand up?

15 CHAIRMAN CROSBY: Yes.

16 MS. DELLO RUSSO: I will do my best
17 here. Here is Route 99. This is Boston
18 jurisdiction. This is Boston, Boston. The red
19 outline is Boston. Route 99 is Boston. Below
20 99 is not Boston. That is Everett. Then up
21 around here, Route 99 comes under Everett
22 jurisdiction and past the red, it is Everett
23 jurisdiction.

24 CHAIRMAN CROSBY: And past the red

1 on the right, is Everett also?

2 MS. DELLO RUSSO: Past the line here
3 is Boston.

4 CHAIRMAN CROSBY: From the top up on
5 the right is Everett?

6 MS. DELLO RUSSO: Yes.

7 CHAIRMAN CROSBY: I'd like to hear
8 the history of that little piece, James Michael
9 Curley had a hand in that one.

10 MS. THOMAS: And that is just really
11 as the first image, but I hope this helps to
12 clarify why there's been so much confusion
13 about this site. Again, this is just to
14 provide the backdrop of the Monsanto Chemical
15 site, which is how this site is often referred
16 to.

17 COMMISSIONER STEBBINS: Excuse me.
18 Is the piece outlined in red one parcel or
19 several parcels?

20 MS. DELLO RUSSO: The piece outlined
21 in red is a parcel that pays taxes within the
22 city of Boston. It is part of -- It is owned
23 by a company named, as a matter of public
24 record, FBT Everett Realty.

1 That company, we believe, owns the
2 Monsanto site. So, it also owns land in
3 Everett, the remainder of that big parcel
4 there. And it is our understanding and some of
5 what we are seeking clarity on that FBT Everett
6 Realty has a lease agreement with the Wynn
7 development. And we're trying to understand
8 does that lease include this red parcel, in
9 which case the lease itself would include
10 Boston land.

11 MS. THOMAS: So, this next slide is
12 an image that has been provided by the Mayor of
13 Everett's office, again, showing the same
14 parcel outlined in blue. And again, the circle
15 is just very broadly drawn to show this portion
16 of the site that's located within the city of
17 Boston. This image was taken and made
18 available back in March but my understanding is
19 that it even predates March 27. But this is an
20 image that was provided to describe the site
21 yet again.

22 This image is an image that is
23 provided in the Wynn Everett brochure that
24 shows the hotel and casino development along

1 with its amenities. And as Larry mentioned,
2 this harbor walk that it also shows, my
3 understanding is that the portion in the right-
4 hand corner there really is representing that
5 piece of land we showed earlier that's located
6 within the city of Boston.

7 You see the harbor walk that goes
8 along the edge of the river here, it comes
9 along. You see a lot of these amenities the
10 same on the left-hand side of the bank here
11 with the rocks and the landscaping. It's the
12 same along the right-hand side of the bank
13 here. All of this within the city of Boston.

14 COMMISSIONER ZUNIGA: Although it
15 should be noted that this is a rendering that
16 can be put together in many, many ways and
17 should not be construed as a site plan by
18 anyone.

19 MS. THOMAS: Absolutely. Just to be
20 clear, all of the images we are showing now are
21 just images to explain to the Commissioners and
22 to the public why there has been so much
23 confusion around this site and why the city has
24 been seeking more information to understand

1 exactly what Wynn's plans are for this site.

2 This image is taken from the Wynn
3 Everett host community agreement. This is an
4 attachment to the host community agreement that
5 is referred to as Exhibit A and referred to as
6 the project site plan. I'll also note that in
7 the Wynn Everett host community agreement, this
8 is also referred to again as the Monsanto
9 Chemical site.

10 Again, this image is very grainy and
11 probably hard to make out. And you see the
12 border between Everett and the city of Boston.
13 You see that border drawn. And you see it
14 again. There's that sliver. There's that
15 portion that is located in the city of Boston.

16 But again to be clear, this entire
17 image was the image that was provided to the
18 voters of Everett when the host community
19 agreement was entered into as the project site
20 for the Wynn proposed development.

21 Here is another image. This is an
22 image that was provided in a Wynn Everett
23 community meeting presentation. Again, this
24 presentation was provided on May 21. Going

1 back to the earlier slide, as I mentioned, this
2 is the Wynn community host community agreement.
3 This was entered into on April 19.

4 So, here you have the Wynn proposed
5 site from a presentation virtually one month
6 after the host community agreement was entered
7 into. Again, we see the outline of the site.
8 Again, we see this portion right here of the
9 site that is located within the city of Boston.

10 Part of that same presentation
11 included the same rendering we saw earlier with
12 the city of Boston off there in the lower
13 right-hand corner. And the same presentation
14 also included this image, which is a current
15 view of the Monsanto site today. Again, with
16 that lower right portion, the water as well as
17 the bank located in the city of Boston.

18 Here's just another rendering that
19 was provided, this one on June 13. This is a
20 3-D model of the Wynn proposal, again, with
21 that right bank all located within the city of
22 Boston.

23 So again, these are just images.

24 CHAIRMAN CROSBY: I just want to

1 clarify one thing. Back one slide, I guess the
2 property line runs --

3 MS. THOMAS: Again, I didn't draw
4 the property line here. We can provide you
5 with the exact property line. But I'll use my
6 pointer really quickly to try and draw it as
7 best I can. The property line would come --
8 And my pointer may no longer be working. I
9 apologize. -- it juts out into the bank.

10 CHAIRMAN CROSBY: Is it basically
11 parallel with the side of the water?

12 MS. THOMAS: No. It's actually
13 probably easiest to show -- It's hard to show
14 on this slide. It's probably easiest to get
15 the line really from here.

16 CHAIRMAN CROSBY: From the original.

17 MS. THOMAS: You'll see how it juts
18 out. It's really a very, very narrow opening
19 that provides entry really into that area if
20 you are to carve out the Boston portion. Does
21 that answer your question?

22 CHAIRMAN CROSBY: Yes.

23 MS. THOMAS: I share these images
24 really only to provide context for why we are

1 even here today and why the city of Boston has
2 sought more information from Wynn to try to
3 understand more about their development.

4 We are really here today before the
5 Commission to rely on the Commission's mission,
6 which is really to a fair, transparent and
7 participatory process as well as a speedy
8 process. So, we're really asking for the
9 Commission's help in obtaining the information
10 that we have been seeking because the
11 Commission is the body with the authority to
12 get this information.

13 Under its regulations, the
14 Commission has the authority to request this
15 information from Wynn. I'll cite to 205 CMR
16 112.01 subsection 1, which says the Commission
17 may request additional information and
18 documents from the applicant throughout the
19 application review process.

20 And Wynn would be required to comply
21 with this information under the same regulation
22 which states that "all applicants shall comply
23 with all requests of the Commission for
24 information and documents."

1 We know the Commission is eager to
2 move forward with this matter as is Boston.
3 And that's why we hope that the Commission will
4 not just request this information but also
5 expedite the process for getting it by relying
6 on its regulations, which impose a 10-day
7 deadline for providing this information.

8 Under 205 CMR 112.02 sub 1 it says:
9 "Applicant shall respond within 10 days or
10 within the time specified in an information
11 request by the Commission" -- under the same
12 cite I just cited above.

13 The Commission has not just the
14 authority to request this information but also
15 the ability to eliminate an applicant from the
16 process if the applicant fails to comply with
17 these information requests.

18 So, pursuant to 205 CMR 112.02
19 subsection 3, it says: "If the Commission
20 determines that an applicant has knowingly
21 failed to provide information or documents
22 requested by the Commission, the Commission may
23 with respect to such person find the person
24 ineligible to hold the license."

1 And finally, in our opinion, there
2 is really no better way for us to acquire this
3 information than really through the Commission
4 because we can be assured that the information
5 that will be provided will be accurate and
6 truthful information, or again the applicant
7 will risk its eligibility from a license.

8 Under 205 CMR 112.03 subsection 3 it
9 says: "No applicant shall knowingly provide
10 materially false or misleading information to
11 the Commission. If the Commission determines
12 that an applicant has knowingly provided
13 materially false or misleading information to
14 the Commission, the Commission shall find that
15 person ineligible to hold the license."

16 So, therefore we are really grateful
17 to the Commission for offering to help expedite
18 this process. And we ask the Commission for
19 their help in obtaining this information that
20 we have been seeking. With that I'd like to
21 turn it back to Liz.

22 MS. DELLO RUSSO: Thank you, Abim.
23 I hope that in going through these images and
24 having this open discussion that all parties

1 can leave here with some clarity, in particular
2 any residents that are here from Boston, from
3 Charlestown.

4 My hope is you understand why Boston
5 has posed the question. And I think it would
6 be irresponsible of Boston to not have asked
7 the question of what's going on in this parcel
8 and what's going on at this site and asked for
9 information, as I said, to understand the
10 impacts. That is incredibly important to
11 Boston knowing the limited amount of time but
12 also to understand status.

13 I very much look forward to what the
14 developer will share with us today and we're
15 hopeful for an open discussion here. Thank
16 you.

17 COMMISSIONER ZUNIGA: Can I ask a
18 question? Maybe Catherine you could help me
19 just put in context some of the regulations
20 that Ms. Thomas was referring to are
21 specifically with the 10-day limit, are
22 specifically for a time after the application
23 has been submitted. Is that not correct?

24 MS. BLUE: That is correct.

1 COMMISSIONER ZUNIGA: Thank you.

2 Your point is well taken.

3 MS. THOMAS: I'll refer Catherine to
4 the section of the provision that says that the
5 Commission can ask for information at any time
6 throughout the application process and that
7 includes both Phase 1 and Phase 2.

8 COMMISSIONER ZUNIGA: Understood.

9 CHAIRMAN CROSBY: Anybody else? To
10 reinforce the point that Commissioner McHugh
11 and I were making before, this is a very
12 legitimate conversation. This is genuinely
13 confusing. And this is the sine qua non of the
14 topic.

15 When you insist on bringing in the
16 impacts issue you muddy the water. I am now
17 beginning to see what's going on here and
18 people who aren't very aligned talking
19 routinely with one another you are starting to
20 stand on these points of principle that really
21 are getting in the way.

22 I perfectly appreciate that this is
23 confusing. And I hope we will get this
24 clarified, but to continue to insist on the

1 impacts conversation is a distraction. And I
2 can understand how when there are tensions, it
3 makes communications difficult. Okay.

4 MS. THOMAS: Thank you.

5 COMMISSIONER ZUNIGA: Thank you.

6 MR. ZIEMBA: Mr. Chairman, now we
7 invite members from the Wynn development team
8 to come brief the Commission. I invite Kim
9 Sinatra. She is the senior vice president and
10 general counsel of Wynn Resorts. And she will
11 introduce the rest of the Wynn team.

12 MS. SINATRA: Good morning, Chairman
13 Crosby and members of the Commission. My name
14 is Kim Sinatra and I am the general counsel at
15 Wynn Resorts. I am very happy to be here
16 today. This is our first sort of
17 formal/informal appearance before the
18 Commission. And we hope that we have many
19 fruitful discussions as we move forward.

20 The issue before us is frankly not
21 one that I thought that I would be here about.
22 For us, we are not confused at all but we're
23 hoping that we can dispel any confusion that
24 other parties may have with respect to this

1 issue. I appreciate the Commission's knowledge
2 and study as well as staff with respect to the
3 issues and the definitions.

4 We approach this project as we do
5 all projects with a great degree of intention
6 and deliberation. So, we're hoping that we
7 without any big red circles can sort out the
8 cut and dry definitions as well as the
9 configuration of the real estate upon which we
10 propose to invest over a billion dollars in the
11 Commonwealth of Massachusetts.

12 So, I am accompanied by my
13 magnificent team from Mintz Levin today as well
14 as Mayor DeMaria. First we have a person who
15 probably doesn't need much introduction here
16 which is Mr. Weld. He is accompanied by his
17 partner at Mintz Levin, Peter Biagetti, and Dan
18 Gaquin who is a real estate partner at Mintz
19 Levin.

20 And I think after an introduction by
21 Mr. Weld, we'll provide you with some maps and
22 a site plan that hopefully dispel the confusion
23 that we have reigning today. With that I am
24 going to turn it over to the team.

1 MR. WELD: Thank you very much, Mr.
2 Chairman and Commissioners. My name is William
3 Weld. I am a member of the law firm Mintz
4 Levin and the Mass. Bar. My Bar registration
5 number is 522280.

6 I'm very happy to be here, happy to
7 further, as the Chairman indicated part of the
8 purpose here is to assist the parties in
9 reaching an understanding. That's what I do,
10 as they say. And I'm hopeful that we can see a
11 path today whereby the parties can advance an
12 understanding.

13 The applicant, Wynn Mass, LLC, has
14 proposed, as you know, a \$1.2 billion
15 development located in the city of Everett.
16 It's registered land. It's on the Mystic
17 River. You can look it up in the Middlesex
18 County Registry of the land court. It is
19 parcel B on land court plan 18691A filed with
20 the Middlesex South Registry district of the
21 land court in plan book 485 page 177. The
22 parcel does not contain any land or structure
23 in Boston or in Suffolk County.

24 There was a referendum on the Wynn

1 proposal which received an 86 percent
2 affirmative vote on June 22, 2013. There is no
3 other city that is going to be proposed as a
4 host for the Wynn proposal, I can you assure
5 you of that. All of the land is located within
6 Everett as appears from the official filings.

7 COMMISSIONER MCHUGH: Is all of the
8 land, Mr. Weld, part of that registered land
9 that you just referred to?

10 MR. WELD: The land I am referring
11 to -- The parcel I referred to in the Middlesex
12 South Registry, that is going to be the parcel
13 that will be the subject of the application
14 filed on December 31. And it doesn't contain
15 anything in Boston or Suffolk County.

16 COMMISSIONER MCHUGH: So, that all
17 of the gaming establishment it's your position
18 is on that piece of registered land?

19 MR. WELD: That's right.

20 MR. GAQUIN: Just to clarify, there
21 is a small piece of recorded land in the middle
22 of that parcel. But primarily the parcel is a
23 registered parcel.

24 MR. WELD: That's why we have real

1 estate lawyers to clean up after us.

2 So, under the definition of host
3 community, which you have before you anyway,
4 but it's up on that chart, it's the
5 municipality in which a gaming establishment is
6 located. Well, there's no establishment there
7 yet. So, the operative part is in which an
8 applicant has proposed locating a gaming
9 establishment. That's going to be Everett.

10 It is true that the city of Boston
11 is in close proximity to the site, in fact an
12 abutter. And it's also true that there are
13 going to be impacts particularly on
14 Charlestown, which is part of the city of
15 Boston. And there are going to be traffic
16 impacts. And I've walked the site and I've
17 driven around the site. There is a good bit of
18 work that could be done in renovations to
19 Sullivan Square, maybe the Alford Street
20 bridge. And that's going to be in the city of
21 Boston.

22 So, the implication of this is that
23 Boston is likely or very likely a surrounding
24 community within the meaning of the statutory

1 definition, which again just very briefly,
2 surrounding communities are municipalities in
3 proximity to a host community, which the
4 Commission finds are likely to experience
5 impacts from the development or operation of
6 the gaming establishment including, and this
7 applies to Boston, including municipalities
8 from which the transportation infrastructure
9 provides ready access to an existing or
10 proposed gaming establishment.

11 That's a perfect definition of the
12 city of Boston as it applies to the Everett
13 proposed project.

14 As Counsel Blue indicated,
15 surrounding communities don't vote on these
16 projects. And that was raised when the
17 Legislature was considering this statute. And
18 they very expressly made a determination not to
19 give surrounding communities a voice or a vote
20 as to whether the thing goes forward. I
21 remember Senator Stephen Brewer said no, no,
22 no. We can't have that. That will be a poison
23 pill. Nothing would ever get built.

24 So, the Legislature defines

1 surrounding community and gave it the rights
2 that it has very expressly. So, there's a big
3 distinction, obviously, from being a host
4 community and a surrounding community.

5 Mr. Chairman, members, the feelings
6 that you referred to Mr. Chairman, there is
7 nothing personal here. We love Tom Menino. We
8 love the city of Boston. We want the city of
9 Boston, which is right there, right next door
10 to receive fair compensation for any and all
11 impacts on the city of Boston including, I
12 would think most particularly, on the
13 Charlestown part of Boston including traffic.

14 We are not here to ask for any
15 variance or special treatment or favor. We
16 just want to make sure that the Commission and
17 the selection process follows the law in a
18 matter where the law is pretty clear, in fact
19 it is completely clear. So, that's all we're
20 really looking at.

21 Finally, and I'll yield to my
22 betters here, a word as to the practical impact
23 of a decision here on this host community
24 point. If anybody, the Commission or anyone

1 else went through a process and decided that
2 although the site and the registered land and
3 the recorded land is 100 percent within the
4 city of Everett, nonetheless the proposal is
5 "located" within the city of Boston because
6 Boston is just so close it might as well be
7 there, might as well be considered a host, the
8 practical impact of that would be to
9 effectively eliminate one of the major
10 competitors for the Eastern Mass. license
11 because that would give Boston the vote.

12 And that is the power it's really up
13 or down pwer because the city would have the
14 power to delay engaging on a host community
15 agreement. So, it effectively could kill the
16 project by not exercising and not having a
17 referendum. And it would be an unlawful
18 granting of that power to the city of Boston
19 but nonetheless it would mean that there
20 wouldn't be much point in the Wynn Company's
21 continuing to spend money in pursuit of this
22 goal here.

23 The second thing I would suggest
24 this is more political than something I can

1 prove, but you might well end up with no
2 Eastern Mass. casino. And the reason I say
3 that is that although Wynn has had the
4 referendum, the Suffolk Downs proposal still
5 faces two referendums.

6 And I am sure that the proposal put
7 forward by my good friend Joe O'Donnell who is
8 the principle behind Suffolk Downs, and he is
9 my good friend, has many, many meritorious
10 features, but we are into election season.

11 There is going to be an election for
12 a new mayor on November 5, new mayor of the
13 city of Boston. I read in the papers today
14 that the Revere City Council just approved
15 their agreement last night. So, the 60- to 90-
16 day period starts running today, which means
17 the earliest that Revere could have its
18 referendum would be November 4, which is the
19 day before the vote for mayor in the city of
20 Boston.

21 And the Suffolk Downs proposal in
22 fairness has become at least a minor issue in
23 the Boston mayoral campaign already and could
24 become a major issue if it's being decided on

1 the same day. All I am saying is no outcomes
2 are certain in a hotly contested election
3 season.

4 COMMISSIONER MCHUGH: That may
5 increase and probably focus on the consequences
6 of the decision. But as one Commissioner, I
7 think it is terribly important to me to make it
8 clear that the decision that the Commission is
9 making today is a decision based on the
10 application of law to fact. That's what we are
11 doing. And that's all we're doing.

12 We are trying to look at the
13 statute. We are trying to figure out what the
14 facts are and apply the law to the fact. And
15 the consequences are what the consequences are.
16 And as one Commissioner, I want that clearly
17 understood notwithstanding the consequences
18 that may flow from that exercise.

19 CHAIRMAN CROSBY: It has been a
20 suggestion that there was something other than
21 what Commissioner McHugh said that's been
22 troubling to us and part of the reason we are
23 here today.

24 MR. WELD: That's right. And I

1 think Counsel Blue laid it out pretty crisply
2 the applicable law. So, if there was no
3 Eastern Mass. casino, and I realize this is not
4 at the heart of the matter but that obviously
5 would have some fiscal impact since my
6 understanding is that money has been pretty
7 well spent.

8 CHAIRMAN CROSBY: There is another
9 proposal by the way. There is a third proposal,
10 by the way, in Eastern Mass.

11 MR. WELD: Yes, that for another
12 day. That's really all I've got, Mr. Chairman.
13 I will yield to Mr. Biagetti for perhaps a
14 slight further mention on the law. And then
15 Dan Gaquin, our real estate man here has the
16 site plan and can answer technical real estate
17 questions.

18 MR. BIAGETTI: Thank you, Mr. Weld.
19 Peter Biagetti, as my colleagues have said, I
20 am here to help to the extent the Commission
21 needs it on questions, as Commissioner McHugh
22 just said, the application of law to the facts
23 here.

24 But I think in the spirit,

1 Commissioner Crosby, that you mentioned at the
2 outset of trying to facilitate resolution here
3 that what I heard in the city's presentation at
4 least on the law was quite heartening. We have
5 consensus, I think, on the two key questions or
6 applications of law here.

7 Counsel Blue, of course, is exactly
8 right that there are key differences between
9 the definition of host community and the
10 definition of surrounding community, which in
11 turn implicate differences in the roles that
12 the Legislature intended that this Commission
13 would play with regard to each. And let me
14 explain on each of those.

15 Counsel for the city mentioned we
16 are not here to talk about impacts. We
17 completely agree. Impacts are relevant per the
18 definition of surrounding communities only to a
19 determination, the statute's words, by the
20 Commission of whether or not such impacts or
21 likely impacts are enough to constitute
22 surrounding community status.

23 And the Commission quite properly
24 has regulations which talk about what those

1 sorts of impacts are to be on the environment,
2 on traffic, on businesses. But we're not here
3 to talk about those impacts today because this
4 is not a determination today of that
5 surrounding community status.

6 Those impacts are relevant only to
7 that issue. And Wynn Resorts stands ready to
8 answer any question the Commission has or the
9 city has with regard to those impacts, which
10 are relevant to that determination of
11 surrounding community status and only
12 surrounding community status.

13 That brings us to the second point
14 of what I heard as consensus. Commissioner
15 McHugh, when you asked whether host community
16 status would be determined only by the site
17 plan and its boundaries, Counsel for the city
18 quite properly agreed.

19 Nowhere in the definition of host
20 community is there any mention of impacts, and
21 for good reason. The Legislature did not
22 intend for this Commission to have to weigh
23 impacts in its decision or in its approval of a
24 license from an applicant with regard to the

1 premises that will constitute the location then
2 of the host community.

3 The question of host community
4 status is driven by, per the definition of
5 gaming establishment, the premises in the
6 application. That's a question of pure
7 geography. It begins and ends with
8 Commissioner McHugh what you rightly call the
9 boundaries of the site plan. And that's what
10 we are here to discuss today.

11 And I am going to yield to my
12 partner, Mr. Gaquin, because he's going to show
13 you the documented site plan, not a brochure,
14 not a photo, which begins and ends the inquiry
15 into host community status.

16 MR. GAQUIN: Thank you, Peter. Good
17 morning, Mr. Commissioner and members of the
18 Commission. My name is Dan Gaquin. I too am a
19 partner at Mintz Levin. And I am here on
20 behalf of Wynn Resorts and the project
21 applicant, Wynn Mass, LLC. I am a real estate
22 lawyer. And I've been working on this project
23 really since Wynn has been involved. I'm very
24 familiar with the project site.

1 What I'd like to do is walk you
2 through some land surveys and project plans to
3 provide you with the facts relevant to the
4 question of host community status. That is
5 specifically the location of Wynn's proposed
6 gaming establishment.

7 The plan to the right here is a land
8 survey that shows the principle project site.
9 It is an approximately 30-acre parcel located
10 off of Horizon Way in Everett. It is
11 controlled by the proposed applicant under an
12 option agreement. The parcel consists of the
13 project with 22 acres of upland and eight acres
14 of submerged land or land under water.

15 As you can see this subtlety
16 boundary and I have outlined this in blue, is
17 also the Everett/Boston property boundary as
18 well as the boundary of Suffolk and Middlesex
19 County.

20 CHAIRMAN CROSBY: I'm sorry. I'm
21 not getting this. Is it that?

22 MR. GAQUIN: I am referring to the
23 plan to my right.

24 CHAIRMAN CROSBY: Where is the site?

1 I don't see the site.

2 MR. GAQUIN: It should be --

3 CHAIRMAN CROSBY: This doesn't look
4 at all like the site to me. Where's 99, for
5 example?

6 MR. GAQUIN: It should be the second
7 plan in your package. The first plan, the
8 first sheet is the definitions.

9 CHAIRMAN CROSBY: So, Alford Street
10 is 99?

11 MR. GAQUIN: Alford Street is Route
12 99. Horizon Way comes off of Alford Street and
13 leads to the project site, the gaming
14 establishment premises.

15 CHAIRMAN CROSBY: so, this is
16 analogous to this.

17 MS. SINATRA: Chairman Crosby, would
18 it be acceptable if Dan stood up there and --

19 CHAIRMAN CROSBY: Sure, not only
20 acceptable, it would be appreciated.

21 MR. GAQUIN: This is Alford Street
22 coming in from Boston to Everett. This is the
23 line, the Boston/Everett line and also the
24 Middlesex/Suffolk County line. Horizon Way is

1 the current access to the site. Again, this is
2 the parcel.

3 CHAIRMAN CROSBY: Usually, north is
4 at the top. That threw me for starters. Okay.

5 MR. GAQUIN: Put in the context of
6 the Gaming Act definitions, this is the
7 premises where Wynn proposes to establish the
8 gaming establishment. That is the gaming area
9 and the nongaming structures related to the
10 gaming are. This is where they would be
11 located.

12 CHAIRMAN CROSBY: The line which is
13 red and blue, is the border of Boston and
14 Everett?

15 MR. GAQUIN: Correct.

16 CHAIRMAN CROSBY: But the parcel of
17 land -- This is not the Monsanto plant.

18 MR. GAQUIN: It's a part of the
19 Monsanto. And I am going to get to the Boston
20 parcel.

21 CHAIRMAN CROSBY: It's only the
22 portion that you're using supposedly for the
23 facility for the gaming establishment.

24 MR. GAQUIN: That's right.

1 CHAIRMAN CROSBY: This is not the
2 Monsanto parcel. This is the parcel east of
3 that, which is being used for the facility.

4 MR. GAQUIN: Yes, that is correct.
5 The second plan to the left is a roof plan or a
6 site plan, which shows the structures
7 comprising the gaming establishment premises
8 and the roadway access as proposed by Wynn.
9 Again, the boundary of Everett and Boston is
10 outlined in red. And as you can see, the
11 project lies entirely within the city of
12 Everett.

13 Let me dwell on access to the -- the
14 current access to the premises for a moment,
15 because I think that appears to be a source of
16 at least some of the confusion regarding
17 Boston's status. The site is currently
18 accessed via Horizon Way, which is a private
19 way. The private way provides access via
20 easement rights.

21 CHAIRMAN CROSBY: Horizon Way is
22 where?

23 MR. GAQUIN: Horizon Way is here.

24 COMMISSIONER ZUNIGA: It's not

1 within the site plan, in other words.

2 MR. GAQUIN: Right. This is access.
3 It's a private way that provides access to the
4 site. It is not part of the site. This is
5 Horizon Way, not Alford. This is the proposed
6 access. This is right here. Our proposed
7 access is over here.

8 CHAIRMAN CROSBY: Horizon Way is --

9 COMMISSIONER ZUNIGA: Horizon Way is
10 further to the left. It's to the left, isn't
11 it?

12 MR. GAQUIN: No, it's right here.

13 CHAIRMAN CROSBY: So, the site runs
14 right through Horizon Way?

15 MR. GAQUIN: The access uses a
16 portion of Horizon Way. And then we come down
17 here. We've got the rights over this parcel
18 here that extends out.

19 CHAIRMAN CROSBY: The vertical site
20 line there runs through Horizon Way.

21 MR. GAQUIN: So, it ends here and
22 Horizon Way comes down.

23 COMMISSIONER MCHUGH: Your access is
24 to the east of Horizon Way.

1 MR. GAQUIN: Proposed access is all
2 in Everett. So, regarding the current access
3 to the site, again it's a private way. It
4 provides access via easement rights inherent to
5 all of the abutters to the Way.

6 A small portion of Horizon Way at
7 the intersection of 99 is located in Boston.
8 So, what does this mean to Boston in relation
9 to the Wynn project? As noted earlier by my
10 colleague Mr. Weld, it means that Boston fits
11 squarely within the definition of a surrounding
12 community. I'll repeat. That is a
13 municipality in proximity to the proposed
14 gaming establishment whose transportation
15 infrastructure provides ready access the
16 proposed gaming establishment.

17 CHAIRMAN CROSBY: I've just got to
18 clarify this. The gaming establishment site
19 terminates here?

20 MR. GAQUIN: Correct.

21 CHAIRMAN CROSBY: And Horizon Way is
22 precisely where?

23 MR. GAQUIN: Runs here.

24 CHAIRMAN CROSBY: If it's here, some

1 of Horizon Way is in Boston. Some of Horizon
2 Way is in Everett?

3 MR. GAQUIN: That's right.

4 CHAIRMAN CROSBY: The portion of it
5 which is in Boston is not included in any way
6 in the gaming establishment premises?

7 MR. GAQUIN: That's correct. These
8 are the gaming establishment premises.

9 CHAIRMAN CROSBY: Okay.

10 COMMISSIONER MCHUGH: Before you put
11 that one away, where is the north-south line
12 from that diagram on this diagram?

13 MR. GAQUIN: The north-south line is
14 here.

15 COMMISSIONER ZUNIGA: It's the same
16 orientation.

17 COMMISSIONER MCHUGH: So, a part of
18 this diagram showing the buildings is to the
19 east of that north-south line?

20 MR. GAQUIN: Yes, this portion right
21 here. We are in discussions with the abutter
22 regarding that land.

23 COMMISSIONER MCHUGH: But that is
24 all in Everett anyway?

1 MR. GAQUIN: It may or may not be
2 included in the project, but it's all in
3 Everett, yes.

4 COMMISSIONER MCHUGH: Thank you.

5 MR. GAQUIN: This plan shows the
6 project site, the site being the gaming
7 establishment is parcel C, which was referred
8 to in the Boston presentation. It was also
9 alluded to in Mr. Weld's remarks. Parcel C is
10 a separate registered parcel of land and has
11 been since at least 1942.

12 That land, as you can see from the
13 pictures, mostly land under water in a mud flat
14 and a small sliver that extends out to Horizon
15 Way. The land is currently owned by the owner
16 of the red parcel, which is the owner of the
17 30-acre proposed gaming establishment site.

18 COMMISSIONER MCHUGH: That's FBT?

19 MR. GAQUIN: FBT, and it is under
20 option to a Wynn affiliate that is not the
21 proposed applicant, but anticipating that this
22 may be a source of confusion, we will discuss
23 it today. Some important points about this
24 parcel. One, as I mentioned, this is a

1 separate parcel of registered land, has been
2 since at least 1942. Mr. Weld had a plan up
3 before, which showed that land court plan.

4 The option is not held, as I
5 mentioned, by the proposed applicant. And the
6 land, if acquired, will not be part of the
7 gaming establishment premises. No structures
8 or amenities, gaming or nongaming are planned
9 for that area.

10 CHAIRMAN CROSBY: Will not and never
11 will be?

12 MR. GAQUIN: Will not and never will
13 be.

14 CHAIRMAN CROSBY: And is that
15 something to which you are prepared to
16 stipulate enforceable?

17 MR. GAQUIN: Yes.

18 CHAIRMAN CROSBY: Okay.

19 MR. GAQUIN: The land is
20 specifically excluded from the option agreement
21 that is held by the proposed applicant.
22 Because the land is owned by the owner and
23 seller of the Everett parcel, it gave Wynn the
24 opportunity to control this adjacent site. And

1 we believe it is prudent to do so to protect
2 against conflicting or adverse uses and
3 possibly used for landscaping or to enhance the
4 view from the site. And we think that would be
5 an appropriate topic for the surrounding
6 community discussions.

7 The site is controlled through a
8 separate entity in order to maintain control of
9 the land but also and importantly to ensure
10 that the land is kept separate distinct from
11 the gaming establishment premises and to ensure
12 that Everest is the sole host community.

13 There have been some earlier concept
14 plans, renderings like the ones that were shown
15 in the Boston presentation that show that area
16 with landscaping, dotted with landscaping or
17 shaded in green. These were conceptual plans,
18 very preliminary sketches and renderings and
19 should not be taken for anything more than
20 that.

21 Under no circumstances will this
22 area be part of the Wynn gaming establishment
23 or project premises. The land is not used by
24 or needed for Wynn for the project in any way,

1 not for zoning or other regulatory compliance.
2 And it is not intended for any particular use.
3 Wynn has no current plans for the land.

4 As I mentioned, we think it would be
5 appropriate to have that landscaped. It would
6 be to Wynn's benefit to have it landscaped.
7 And there could be other uses for that land,
8 but we think that's an appropriate topic for
9 the surrounding community discussions with
10 Boston.

11 One final point on that land, for
12 environmental remediation purposes, lot C is a
13 part of the defined disposal site which is a
14 defined term under the Massachusetts
15 contingency plan, but this has no bearing on
16 its status as a separate parcel or relevance to
17 the Wynn project.

18 If Wynn elects to acquire lot C, it
19 may assume those remediation obligations, but
20 that has yet to be determined. If it does not
21 acquire lot C, those obligations will remain
22 with the existing owner. To conclude on that
23 it is not controlled by the proposed license
24 application. It may never be acquired.

1 CHAIRMAN CROSBY: It's not
2 controlled by?

3 MR. GAQUIN: It's not controlled by
4 the applicant. It's controlled by an
5 affiliate, a different affiliate of Wynn. Wynn
6 Mass, LLC is the --

7 CHAIRMAN CROSBY: That's a
8 technicality, but okay.

9 MR. GAQUIN: It's not part of the
10 gaming establishment premise or the project
11 site. And as I said, under no circumstances
12 will it be included in the application by Wynn
13 as part of the gaming establishment premises.

14 That's all I have. I think these
15 surveys bear out quite clearly that the gaming
16 establishment premises as proposed by Wynn is
17 located entirely within the city of Everett.
18 And I'll be glad to answer any questions you
19 have.

20 CHAIRMAN CROSBY: Has the city been
21 given these plans?

22 MR. GAQUIN: The city has -- I think
23 the bottom plan is part of the -- What the city
24 has been given is the publicly available

1 documentation, the expanded environmental
2 notification form.

3 CHAIRMAN CROSBY: Has the city given
4 these plans?

5 MR. GAQUIN: Not these plants.

6 CHAIRMAN CROSBY: Why?

7 MR. GAQUIN: This is a discussion
8 about parcel C and the Boston land, which is
9 not a part of the applicant's -- Wynn Mass, LLC
10 is not proposing to make that part of the
11 gaming establishment.

12 CHAIRMAN CROSBY: This package,
13 you're saying that these are the sine qua non
14 documents that demonstrate that in your view
15 Boston is not a host community. That seems to
16 me a pretty reasonable set of documents that
17 you would give to the city. And I'm asking if
18 you have given them to the city. And why have
19 you not?

20 MS. SINATRA: Chairman Crosby, I
21 think everything is publicly available with the
22 exception of this site plan at the bottom. I
23 think actually that although it is sitting at
24 the bottom of that easel, it is probably the

1 most relevant document because it actually
2 shows the building and the proposed gaming
3 establishment.

4 We are happy to share that
5 information with the city. Notwithstanding the
6 implication of our being a bit obstreperous, I
7 am going to have to confess that several
8 meetings have been had between our advisors and
9 Ms. Dello Russo. We have exchanged
10 correspondence, and we are happy to be as open,
11 transparent and fair as is possible.

12 So, we are happy to share the
13 information. We actually even had a public
14 traffic meeting in Charlestown to try to get
15 this moving. So, we're hoping that we are not
16 before you on a repeated basis on issues like
17 this. We are happy to take your guidance. But
18 we would like to put this issue of host versus
19 not host behind us.

20 COMMISSIONER MCHUGH: To the
21 Chairman's point, just to follow up on that,
22 Ms. Sinatra, is a relevant one. This makes the
23 discussion -- These documents make the
24 discussion possible. These are not renderings.

1 These are metes and bounds descriptions.

2 We didn't get, Counsel, to the last
3 two, which look like they are the actual plot
4 plans for the registered land that divide the
5 parcels, show that there are three parcels. I
6 take it each of which is registered land A, B
7 and C separately registered.

8 MR. GAQUIN: I didn't go into those
9 again because they had already been discussed,
10 but yes.

11 COMMISSIONER MCHUGH: This, it seems
12 to me is a starting point for an informed
13 discussion.

14 So, it seems to me that open sharing
15 of this kind of information earlier might have
16 gone a long way toward resolving the problem at
17 hand.

18 MS. SINATRA: To be clear though,
19 the only slide that the city did not have
20 access to was this one that has the building on
21 it.

22 MR. WELD: I've handed copies of the
23 packet to counsel, Mr. Chairman and Judge
24 McHugh. And the packet was assembled for

1 today's hearing. So, we beat it out of
2 everybody to get prepared for this hearing.
3 So, I think the Commission has done both sides
4 a service by bringing us together here.

5 CHAIRMAN CROSBY: On the Horizon
6 Way, I assume although it's not very clear you
7 can figure out one way or another to make sure
8 that the site plan does not include any of
9 Horizon Way. I can't exactly see it because
10 you don't have Horizon Way on a lot of these
11 plots. But I assume you can figure that out.

12 You've apposited an alternative
13 access point, which is this rounded road coming
14 in from Broadway, I guess. That is in Everett,
15 which is good. But who owns that or is that
16 under the
17 control --

18 MR. GAQUIN: Yes. This is a 2.4
19 acre parcel of land that falls under the option
20 that this parcel right here. So, the access
21 would swing down through here.

22 CHAIRMAN CROSBY: So, that access
23 road is one that you do control the ability to
24 institute?

1 MR. GAQUIN: Yes or will control.

2 CHAIRMAN CROSBY: Will control,
3 okay.

4 MS. SINATRA: And Chairman Crosby
5 and members of the Commission, access is
6 something that we continue to work on. Traffic
7 is probably our biggest impact. So, we are
8 working assiduously with our traffic advisors
9 and our architects and planners to make sure
10 that we get the access to be as good as
11 possible.

12 So, the geometry of that access
13 continues to be a point of discussion. As
14 someone raised earlier, of course, our
15 application is due at the end of the year. And
16 we continue to work and refine the traffic
17 analysis and the geometry of the access. One
18 of the things that we keep top of mind however
19 is that that will be in Everett.

20 CHAIRMAN CROSBY: There was a
21 question or the attorneys for the city said
22 something about the municipal harbor plan. And
23 Commissioner McHugh suggested that was in
24 effect a subset of the site plan.

1 MS. SINATRA: Remember that the
2 municipal harbor plan is a plan of the city of
3 Everett and is not anything that we control.
4 Although we've been in discussions with the
5 city of Everett because it will affect our
6 project, it is not a Wynn document. It is not
7 a Wynn product.

8 MR. TOCCO: The municipal harbor
9 plan is a process driven by the city.

10 CHAIRMAN CROSBY: By which city?

11 MR. TOCCO: By the city of Everett.
12 And the city of Boston has a representative
13 that sits on that committee and is involved in
14 that process. It was our assumption that they
15 would be reporting back to the city of what was
16 going on since they were a city appointee. But
17 that's a process that is not finished yet. The
18 traffic is not complete yet.

19 It is ongoing studies. In the
20 environmental process, they've asked us to look
21 at 20 more intersections. So, it isn't like we
22 have a set of complete documents that we could
23 then turn over to someone. These are all work
24 in process. They will be completed by the time

1 we get our application. Certainly, we'll be
2 willing to share with them. I've had two
3 meetings and phone calls with the Boston
4 officials. We actually again carried in the
5 environmental impact report so they could have
6 it. We didn't wait to mail it to them. And we
7 suggested we should meet on traffic issues.

8 And then this issue of host
9 community reared its head. And quite frankly,
10 everybody went into their foxholes. But there
11 were meetings and ongoing discussions to share
12 information until that specific issue reared
13 its head.

14 CHAIRMAN CROSBY: Okay. Anything
15 Ombudsmen Ziemba?

16 MR. ZIEMBA: I just had a specific
17 question. When it comes to the access road,
18 you mentioned that the access road you have
19 control of that site or soon will have control
20 of that site?

21 MR. GAQUIN: Right. As Ms. Sinatra
22 pointed out, the geometry is not yet exact
23 perhaps because it may move up or down. And
24 either we'll use a portion of Horizon Way,

1 which we have a right to use as an abutter or
2 we'll use the land that we acquire.

3 MR. ZIEMBA: And you are in
4 conversations for the acquisition of that
5 additional land?

6 MR. GAQUIN: That's correct.

7 CHAIRMAN CROSBY: But if that didn't
8 happen, you would use Horizon Way?

9 MR. GAQUIN: It would just shift the
10 access further down.

11 CHAIRMAN CROSBY: It would shift it
12 to Horizon Way?

13 MR. GAQUIN: A portion of it, but we
14 have rights to use Horizon Way as an abutter.

15 CHAIRMAN CROSBY: I understand that.
16 If Horizon Way were the access point to the
17 property, to the site, I guess we're saying, to
18 the gaming establishment site, does that alter
19 in any way this conversation about host
20 community or otherwise?

21 MR. GAQUIN: No, Mr. Chairman. It
22 would mean all the more that Boston has claim
23 to surrounding community status because the
24 definition of surrounding community means a

1 community in proximity whose transportation
2 infrastructure provides ready access to the
3 premises. And that hits that nail on the head.

4 CHAIRMAN CROSBY: Okay. Anybody
5 else? Our objective here was to try to
6 facilitate a conversation. It's very easy to
7 understand here what went off track. Mr. Weld
8 you articulated the right approach. I don't
9 think everybody has been going by the right
10 approach. We don't really need to have this
11 meeting. But it looks to me like the facts are
12 pretty clear.

13 And I would hope that everybody
14 could sit down around the table and come to a
15 conclusion and quickly. If that can't happen
16 -- And by quickly, I mean like within hours,
17 days, the time really is short. If Boston were
18 a host community, there would be a host of
19 problems -- yes, if Boston were a host
20 community. If it isn't and it's a surrounding
21 community it is nevertheless going to be a
22 complicated process. So, time is really of the
23 essence never mind the confusion problem.

24 So, I would like to suggest if the

1 Commissioners are okay with it that we urge you
2 - We've all been there. We understand that
3 things happens but it is time to get this one
4 solved. I would like to urge you to get
5 together and fix it before the week is out.

6 I'd like to ask Ombudsmen Ziemba to
7 work with you and let us know on a daily basis
8 is this going to happen or do we need to do
9 this? If we do, we will immediately act to do
10 it. But we shouldn't have to. If you could
11 advise us that this is going to get done before
12 the week is out, then I think all to the good
13 and we're off to the races, so to speak. Is
14 that acceptable to you folks?

15 COMMISSIONER MCHUGH: I would just
16 like to sharpen that a little bit and perhaps
17 the sharpening is unnecessary. But we now have
18 a plot plan. We now have metes and bounds. We
19 now have a pledge that on parcel C there will
20 be no construction.

21 So, it seems to me that going
22 forward with Mr. Ziemba's good offices, the
23 focus can be on if all of this is so, what are
24 the precise questions about surrounding

1 community, host community that are left, if
2 any? That it seems to me not only would
3 facilitate the discussion but also would
4 sharpen the issues in the event that we are
5 called upon to solve them.

6 The other thing that I would like to
7 know if a resolution isn't possible by say the
8 end of the week on this issue, whether either
9 side has an objection to us resolving this by
10 an adjudicatory process in which we create a
11 record that actually incorporates a lot of what
12 we heard today. And makes a legal judgment
13 based on the law and our exercise of discretion
14 and puts an end to it. And if there is an
15 objection to us doing that what is the basis
16 for the objection?

17 So, it seems to me that those three
18 ingredients of that discussion would be helpful
19 both to the Commission and I hope to the
20 parties.

21 MR. WELD: Sounds just right to us,
22 Your Honor.

23 CHAIRMAN CROSBY: Those objections,
24 if any, would be to us by the end of the week

1 also if it turns out that the thing doesn't
2 resolve by the end of the week.

3 COMMISSIONER MCHUGH: Right.

4 COMMISSIONER ZUNIGA: Very good.

5 CHAIRMAN CROSBY: Counsel for the
6 city, are you all okay with this way to
7 proceed?

8 MS. DELLO RUSSO: We are. Thank you
9 for the opportunity.

10 CHAIRMAN CROSBY: Thank you
11 everybody. I appreciate everybody's coming in.
12 I'm going to suggest that we take about a 10-
13 minute break.

14
15 (A recess was taken)

16
17 CHAIRMAN CROSBY: It is 11:15 and
18 we'll reconvene Mass, Gaming Commission public
19 meeting number 76. We will return to Ombudsman
20 Ziemba and General Counsel Blue.

21 MR. ZIEMBA: Thank you, Mr.
22 Chairman, and members of the Commission, the
23 second item we are here to discuss today is a
24 transaction involving the Plainridge Racing

1 facility and a the citizens notice that relates
2 to an election that is planned for the town of
3 Plainville for September 10.

4 We have some documents that are
5 included in your packets. As of last night, we
6 received some additional documents from the
7 town of Plainville. I've also given you a copy
8 of those. We'll include those as part of the
9 Commissioner's packets that are placed online.

10 So, there are a number of different
11 documents that are included here. I will ask
12 the Penn representatives to give you a little
13 bit more detail about those documents but let
14 me just give you a general overview of some
15 items that we can discuss today.

16 One of the primary documents and is
17 noticed on the agenda is a citizens
18 notification. Similar to other communities,
19 the town of Plainville when it first adopted
20 the host community agreement voted to take
21 advantage of the exception in our regulations
22 which would allow the town to move forward with
23 a referendum in advance of a determination of
24 suitability by an applicant. The election for

1 the application is scheduled for September 10.
2 And the notice that is put in your packets
3 relates to September 10 election.

4 Obviously, the Commission had an
5 adjudicatory proceeding last month -- Excuse
6 me, at the end of July that related to this
7 project where the Commission determined that
8 the Ourway Realty applicant was not qualified
9 to move forward to the stage two of our
10 licensing process.

11 So, the citizens notification form,
12 it is albeit very much like most of the forms
13 that the Commission has approved to date, but
14 it does include a number of different
15 information points that relate specifically to
16 the aspects of this project which are unique.
17 Notably that we had one applicant that was
18 disqualified for the purposes of our IEB
19 reviews.

20 If it's okay with the Commission, I
21 would recommend that we discuss the actual
22 aspects of the citizen notification form until
23 after we learn more about the transaction that
24 occurred as of yesterday. A number of those

1 documents are included in your packet, redacted
2 documents that have been provided by the Penn
3 National team.

4 We have not done our own review of
5 whether or not those redactions in keeping with
6 our standards, whether or not they are overly
7 redacted or, I guess, under retracted. But we
8 are relying on the applicant that they probably
9 did not under redact their own documents.

10 CHAIRMAN CROSBY: We will release
11 the presently redacted version but making it
12 plain to the applicant and the press and the
13 public that there may be other unredactions
14 after we've had a chance to look at it.

15 MS. BLUE: That is correct.

16 MR. ZIEMBA: Yes. So, there are a
17 couple of key documents that are part of the
18 Commissioner's packets. One is an option
19 agreement between Penn National and Ourway
20 Realty regarding the option to purchase some of
21 the assets of the existing Plainridge racing
22 facility.

23 One is a document that relates to
24 the assignment and assumption of the host

1 community agreement whereby the Penn National
2 team would assume responsibility for the host
3 community agreement that had been executed
4 between the town of Plainville and the Ourway
5 Realty team.

6 I report that as of last night, the
7 town of Plainville voted pursuant to a
8 provision included in the host community
9 agreement to allow for the assignment of the
10 host community agreement to the Penn National
11 application.

12 COMMISSIONER ZUNIGA: Was that the
13 town or the board of selectmen?

14 MR. ZIEMBA: That was the board of
15 selectmen, and it was a unanimous vote. So
16 with that, I'd like to introduce Mr. Steve
17 Snyder. He's the senior vice president for
18 corporate development for Penn National. He'll
19 introduce the rest of his team.

20 We are also joined here by
21 representatives from the town of Plainville and
22 representatives from Ourway Realty to the
23 extent that the Commission has any further
24 questions. But I think that there is a general

1 realization that we can take a look at two
2 different sets of documents which are the
3 transaction related documents. And then the
4 citizens notice is a separate and distinct
5 item.

6 The Penn National team has asked the
7 Commission to take a look at the transfer of
8 the host community agreement from Ourway to
9 Penn National and to consider that. They made
10 a request for the Commission to consider that.
11 We also have a separate letter of request that
12 the Commission approve of citizens notification
13 form. With that, I will ask Mr. Snyder to
14 provide us a briefing.

15 MR. SNYDER: Thank you, Mr. Ziemba.
16 Good morning, Chairman Crosby, members of the
17 Commission. I'm Steve Snyder from Penn
18 National Gaming. To my right is Jay Snowden,
19 who is our senior vice president of operations.
20 To his right is Eric Schippers, our senior vice
21 president of government affairs. Going down
22 the line is Frank Donaghue who is our vice
23 president of compliance and regulatory matters.
24 He has worked extensively with your staff on

1 our Phase 1 application. Next to him is Walt
2 Sullivan from PretiFlaherty, our legal
3 representative. Behind me is Alex Stolia, our
4 vice president of development.

5 We very much appreciate the
6 opportunity to be here before you. We
7 apologize, quite frankly, for the short notice.
8 This has been truly a work in progress. And in
9 terms of transparency, I don't think anyone has
10 been quite as timely with an issue as we are
11 with this.

12 As Mr. Ziemba mentioned, we just
13 yesterday entered into an option agreement.
14 That option entitles us to purchase all of the
15 real property and assets, personal and real
16 property of the current operation at Plainridge
17 Raceway.

18 We also just last evening as was
19 mentioned did receive the approval of the
20 selectmen of the town of Plainville for an
21 assignment of the obligations and the rights
22 under the host community agreement for the
23 operation of a gaming facility at the
24 Plainridge Raceway.

1 So, we are here as quickly as we
2 could. We've been in negotiations with the
3 principles on this option agreement over the
4 course of the last really seven calendar days.
5 And only as of yesterday afternoon entered into
6 the definitive option agreement. As was
7 mentioned in his comments, Mr. Ziemba, we have
8 provided to the Commission that option
9 agreement in redacted form. And will ask as
10 part of our suitability review, which we hope
11 to have a hearing in the near future, for the
12 approval of that option agreement.

13 For purposes of today's discussions,
14 our specific request relates to the approval of
15 the assignment of the host community agreement
16 from Ourway to the Massachusetts subsidiary of
17 Penn National Gaming as well as an approval of
18 the notice to the voters of Plainville relating
19 to the special election which has been
20 scheduled and is currently anticipated to be
21 held next Tuesday, September 10.

22 By way of background we have filed
23 our Phase 1 suitability application back in
24 January. I know your consultants have done all

1 of their work in respect of our background
2 investigations. We hope to be before you in a
3 matter of weeks for the final determination of
4 suitability.

5 Since that is expected to occur
6 after the election in the community of
7 Plainville on September 10, we are following
8 through in the same fashion that the previous
9 principles of Plainridge had undertaken, which
10 was to make the approval of the election and
11 acknowledge that the suitability would be a
12 forthcoming matter, something that would come
13 after the fact.

14 We have as a company, been heavily
15 involved in pari-mutuel racing. We started, in
16 fact we draw our name from our legacy
17 racecourse, Penn National Racetrack in
18 Pennsylvania. As of today, we operate through
19 either wholly-owned subsidiaries or joint
20 ventures 11 pari-mutuel racing, pari-mutuel
21 wagering and racing facilities throughout the
22 United States. The closest would be our
23 harness racetrack up in Bangor, Maine. Of
24 those facilities four of them are standardbred

1 racetracks, harness racetracks.

2 It is our attempt through the option
3 agreement that we will close upon the
4 acquisition of all of the assets of Plainville.
5 We will proceed with the submission of an
6 application by the October 4 deadline, the
7 Phase 2 application relating to our previously
8 submitted suitability finding, and this new
9 piece of real estate which we, as I mentioned,
10 have entered into an option as of yesterday.

11 We would anticipate closing on that
12 option and actually becoming the fee owner. We
13 are currently the beneficial owner through that
14 option agreement, if and when we are found or
15 selected by this process to be the Category 2
16 licensee.

17 In the meantime, it is our intent to
18 continue to operate harness racing at
19 Plainfield Racecourse. We will be applying and
20 have sought the ability to operate the facility
21 for 2014 from the existing property owners
22 prior to exercising the option to acquire the
23 land. So that we can actually operate harness
24 racing, apply for a license, apply for a

1 continuity of that enterprise, in the form of
2 both live racing as well as simulcast wagering
3 for calendar 2014. So that there will be no
4 disruption to the ongoing operations of that
5 enterprise in 2014.

6 We appreciate the chance to be here
7 this morning. We've got a full team that is
8 prepared to answer any and all questions that
9 you might have. But really the only action
10 that we seek as of today relates to the host
11 community agreement and the vote currently
12 scheduled for September 10.

13 With that, I'll answer any questions
14 if there are any areas of either the notice or
15 of the assignment of that host community
16 agreement that we can address, I'd welcome the
17 opportunity. As Mr. Ziemba mentioned, the town
18 manager is here as well if there are any
19 questions of the town.

20 CHAIRMAN CROSBY: Does anybody want
21 to start? You said that we are here to talk
22 about the notice which we are clearly aware.
23 And we are here to talk about the host
24 community agreement and the issue being the

1 assignment thereof.

2 But it seems to me that that raises
3 a third question, which is if there is this
4 assignment which I'm not a real lawyer, but it
5 looks to me like contract law that that's a
6 perfectly legitimate transaction, what happens
7 to the applicant and the requirement that there
8 have been a host community agreement signed by
9 the community and the applicant prior to the
10 application ever becoming selected, etc.?

11 We've had several communications
12 from folks in Plainville who are opponents who
13 are saying this isn't the applicant anymore.
14 Yes, you can take the HCA but you don't qualify
15 as an applicant.

16 So, I think there is a third issue
17 which arises from the assignment. First of
18 all, disagree with me if anybody disagrees with
19 me up here but I would like to know how you fit
20 within -- how you fit this assigned
21 relationship or this new relationship into the
22 definition of an applicant.

23 MR. SNYDER: We are Phase 1
24 applicant. That application was filed back in

1 January. We continue to be a Phase 1
2 applicant. We have not withdrawn or been found
3 to be unsuitable. We are coming to you now
4 with an option on a piece of land that was the
5 beneficiary of a host community agreement
6 through a previous applicant who has
7 subsequently withdrawn that application, and
8 seeking that we continue to be the beneficiary
9 of that host community agreement as it relates
10 to that site. And it is the site and it is the
11 operations of racing at that site that are
12 referenced in the ballot question.

13 COMMISSIONER MCHUGH: But Chairman
14 Crosby's question, I think, and of course he
15 can speak for himself better than I can,
16 focuses on specifically on section 15.13 of the
17 statute which repeatedly talks about a request
18 - the whole host community voting process is
19 triggered by a request for an election that
20 occurs after the signing of an agreement
21 between the host community and the applicant.
22 And then that refrain, host community and
23 applicant, host community and applicant is
24 repeated throughout section 15.13, and is the

1 governing matrix for the host community
2 election.

3 And the question is you are the
4 assignee of the applicant that signed the host
5 community agreement. But you're not the
6 applicant.

7 MR. SNYDER: To your point,
8 Commissioner McHugh, we are clearly the
9 successor under the host community agreement of
10 that previous applicant. There's no question.

11 COMMISSIONER MCHUGH: Right. So,
12 how does your status as a successor comport
13 with the requirements of section 15.13 if
14 there's to be an election?

15 MR. SNYDER: I'll ask - Pass the mic
16 down to Walt or switch seats. Whenever I start
17 to talk about legal things, I start to get
18 myself into trouble.

19 COMMISSIONER MCHUGH: So do I.

20 MR. SULLIVAN: Section 15.13 does
21 talk about the applicant in that the applicant
22 enters into a host community agreement and so
23 forth in the election the filing. The original
24 intent of the legislation really wasn't

1 breaking them in two phases. So, what we're
2 looking at we are the applicant for purposes of
3 Phase 1. There's no question Penn filed Phase
4 1 application.

5 CHAIRMAN CROSBY: You are an
6 applicant, not the applicant.

7 MR. SULLIVAN: Applicant, excuse me,
8 thank you, Mr. Chairman. And that the rights
9 of that host community agreement by contract
10 has been assigned to Penn. The Commission in
11 forming Phase 2 had great discussions about the
12 issue of what their involvement should be in
13 the host community agreement itself. And the
14 end result, I believe, was the Commission made
15 a determination that they don't get involved in
16 the contract, however they do get involved in
17 the Phase 2 application when it's submitted.

18 The host community agreement as
19 entered into between the town--

20 CHAIRMAN CROSBY: Excuse me, but
21 that's not what we said. What we said is we
22 don't get involved in what the Legislature saw
23 as a local control issue unless either (A)
24 something in that process is impeding or the

1 integrity of the overall process or impeding
2 our process itself.

3 MR. SULLIVAN: In the host community
4 agreement, there is a section that allows for
5 assignment upon the approval of the town. That
6 assignment as exercised between both Ourway and
7 Penn subsidiary of Massachusetts and consented
8 to.

9 So, we have before us a host
10 community agreement that is now between
11 Plainville and the subsidiary of Penn. And
12 that is what we are moving forward with.

13 You are looking at a system today
14 that as to Cordish, they've been in three
15 towns, trying to accomplish the best for the
16 Commonwealth and moving forward to generate the
17 most revenues. Every operator is trying to
18 find a location. We are a Phase 1 applicant.
19 We have been looking for a place to develop.
20 We found a great location in Plainridge and
21 Plainville that truly meets what Penn's history
22 is. The town is on board with this. Ourway
23 has assigned its rights. We have an option in
24 place.

1 This not only benefits a Phase 1
2 applicant who is trying to find a home for
3 Phase 2, it benefits the town who worked
4 diligently to accomplish an incredible host
5 community agreement and did everything it can
6 to protect its citizens. It protects the
7 harness men to insure the track stays
8 open --

9 CHAIRMAN CROSBY: Excuse me, I
10 appreciate that. And I don't want to be rude
11 and cut you off. I appreciate those points,
12 but let me just tee up more specifically what I
13 am concerned with as a legitimate issue.

14 Section 15 says no applicant shall
15 be eligible to receive a gaming license unless
16 the applicant meets the following criteria and
17 clearly states as part of the application that
18 the applicant shall in this context I think we
19 guess the word applicant here refers to, you
20 hope, Penn National.

21 MR. SULLIVAN: Yes.

22 CHAIRMAN CROSBY: Then in section 13
23 it says one of those criteria is that the
24 applicant, Penn National, shall have received a

1 certified and binding vote on a ballot question
2 at an election in the host community in favor
3 of such license provided however that a request
4 for an election shall take place after the
5 signing of an agreement between the host
6 community and the applicant.

7 If the applicant is Penn National
8 that didn't happen. What is the legal
9 rationale for you all complying with that
10 criteria? How do you get Penn National to be
11 the applicant that meets this criteria?

12 MR. SULLIVAN: On the host community
13 or the election or both? On the host community
14 agreement or the election or both?

15 COMMISSIONER MCHUGH: Both.

16 MR. SULLIVAN: On the host community
17 agreement by contract by assignment. The
18 applicant for purposes of the process now we
19 have submitted Phase 1. At Phase 2 application
20 we are required to submit a number of things
21 plus a host community agreement that has been
22 executed and a binding vote of the citizens
23 approving it, the election, approving that the
24 facility be located at 301 Washington Street.

1 And that they approve the summary of the host
2 community agreement that has been entered into
3 between the board of selectmen and now in the
4 shoes of Ourway, Penn.

5 MR. SNYDER: I think, Chairman
6 Crosby, to your point, we do not view
7 yesterday's approval of the assignment of the
8 host community agreement as the, for lack of a
9 better term, the effective date of the host
10 community agreement.

11 COMMISSIONER MCHUGH: The issue for
12 me that comes out of this is whether the
13 identity of the applicant is a part of the
14 information that the legislation intended to be
15 before the voters for 60 days before the
16 election occurred.

17 It talks about the triggering event
18 is the signing of an agreement between the host
19 community and the applicant. Then you have
20 this minimum of 60-day waiting period. Is that
21 to familiarize the citizens or to permit the
22 citizens to familiarize themselves with the
23 terms of the agreement solely or with the terms
24 of the agreement including the identity of the

1 parties to the agreement?

2 In that regard, it seems to me that
3 as a matter of contract law the assignment is
4 valid and you stand in the shoes of Plainridge.
5 But this is a procedural device superimposed on
6 contract law designed to give the public a say
7 and an understanding of what's up. I suppose
8 there's a more precise way to express that.

9 So, the question is is the identity
10 of the signatories a part of what the
11 Legislature intended the citizenry to have 60
12 days to think about it?

13 MR. SCHIPPERS: Let me just add
14 something on that, sort of the public awareness
15 point. So, the ballot question itself talks
16 about Plainridge Racetrack. It doesn't talk
17 about the operators. It's very clear as it
18 relates to the racetrack.

19 The host community agreement has not
20 changed. What has been assigned to us are the
21 same terms that were agreed upon. And a great
22 deal of education efforts have already been
23 undertaken in the community on what those
24 benefits are to the community and what the

1 benefits of slot machines at Plainridge
2 Racecourse will mean to that operation.

3 So, then it comes to pass what about
4 Penn National and the awareness of this new
5 operator that would be coming in within seven
6 days of the election. We had an opportunity to
7 address the public last night during the
8 meeting Mr. Snyder referred to. We will hold a
9 public forum tomorrow night where we will be
10 taking questions from the public about Penn's
11 background and allowing them to ask all types
12 of questions about what our plans are, which
13 are very similar to plans that have already
14 been laid out to the community.

15 We will also be continuing to meet
16 with the neighbors. It's a very small
17 community. So, we have a very robust campaign
18 plan including print advertisements, phone
19 calls to residents, community forums to make
20 sure that by the time they go out on September
21 10, having already knowledge of the racetrack's
22 benefits, the saving of the jobs that Mr.
23 Sullivan referred to, knowledge of the host
24 community agreement, now they'll have that

1 added layer of knowledge with who Penn National
2 is and our background. So, we think they will
3 be in a position to make an informed decision
4 at that point.

5 MR. SNYDER: To Mr. Schippers'
6 point, as you read the language of the ballot
7 question, a yes vote would allow the owner of
8 Plainridge Racecourse to apply to the
9 Massachusetts Gaming Commission for a license
10 to operate a gaming facility in accordance with
11 the host community agreement executed between
12 the town and the Racecourse's owner. There is
13 no temporal concept there. It's not the
14 Racecourse's owner as of today or as of 60 days
15 ago. It is as you read it.

16 COMMISSIONER MCHUGH: But that
17 raises a separate question that we have, Mr.
18 Snyder, because under the terms of the option
19 agreement, as I understand it, Penn National is
20 not going to be the owner necessarily until 60
21 days after the award is made.

22 MR. SNYDER: No. The option
23 agreement is an executory contract. We've got
24 full rights of ownership of the property as of

1 the execution date of the option. In fact, we
2 are recording the option and filing a recording
3 instrument as it relates to the title and the
4 land as a result of that option. We are the
5 full beneficiary of that land, correct.

6 We haven't taken the title at this
7 point in time, but all decisions with respect
8 to that property are in our control. And we've
9 got the full benefit of an ownership interest.

10 COMMISSIONER MCHUGH: Unfortunately,
11 you may well be right. We haven't had a chance
12 to look at the option agreement, which we got
13 last night.

14 MR. SNYDER: I understand.

15 COMMISSIONER MCHUGH: So, the
16 essence of your suggestion is that although the
17 technical requirements of section 15.13 may not
18 have been met, the substance of voter
19 information and awareness, the ideal, the
20 underlying premise of the legislation has or
21 will be met. That's basically it, right?

22 MR. SSCHIPPERS: I can't argue about
23 the legal aspects of technical -- I'm talking
24 about the public awareness aspect of your

1 question. Will the public based on the
2 legislative intent have full knowledge of what
3 they're voting on? And I would argue that not
4 only has there been such a lead up to the issue
5 of what goes into the host community agreement
6 and how that has been communicated both through
7 a very strong citizens advisory board and
8 public forums that they've had, in addition to
9 other outreach efforts in terms of saving the
10 jobs and the open space.

11 So, the arguments have been made and
12 they've been a good corporate citizen. They've
13 been a racetrack there for 15 years. The only
14 changing dynamic, the HCA stays the same,
15 benefits to the racetrack stays the same. The
16 only changing dynamic -- is who is Penn
17 National. and what I submit to you is that we
18 will have ample time in a very small community
19 to make the community aware of Penn National?
20 And its track record, pardon the pun, by
21 September 10.

22 MR. SNYDER: Mr. Chairman, the
23 representatives from the town are here. And
24 they can of course, walk you through the notice

1 that they plan to send out with your approval.

2 MR. SILVERSTEIN: With your
3 permission, Mr. Chairman, and members of the
4 Commission, I am Jonathan Silverstein. I am
5 counsel for the town of Plainville.

6 If I might just take a few moments
7 to answer some of the questions that the
8 Commission members have asked. From the town's
9 perspective, I hear an overriding concern
10 regarding perhaps the potential for voter
11 confusion and what the role of the voter is.
12 And whether the voter has in some way been
13 inadequately informed or perhaps inadvertently
14 misled based on a host community agreement
15 being entered into with one applicant,
16 subsequently with that applicant to transfer
17 its rights and obligations under the host
18 community agreement to another applicant.

19 I guess I would turn that on its
20 head and I would note that the real danger of
21 voter well-being undermined here is if the
22 voters don't have the opportunity to vote on
23 this project, which is of great importance to
24 the town under a host community agreement that

1 will not be changed one iota.

2 And I think that would be
3 respectfully an absurd result given that post
4 licensing, there's no doubt that the assets and
5 the license could be transferred with the
6 permission of the Commission, with the
7 permission of the town both under the statute
8 and the regulations and under the host
9 community agreement itself.

10 So, the notion that that could not
11 happen prior to vote or prior to licensure I
12 don't think would serve any public purpose
13 under the gaming legislation. Really, I think
14 the legislation draws the line and your
15 regulations draw a line between what the chief
16 executive body of a municipality does, what the
17 voters of a municipality do and what the
18 Commission does.

19 The chief executive body decides do
20 we want to negotiate with this applicant and if
21 so what are the terms that we will agree to be?
22 In that case that is the board of selectmen
23 when it comes to a town such as the town of
24 Plainview.

1 The town decided yes, we want to
2 negotiate with the owners, the then owners of
3 Plainridge Racecourse, Ourway Realty Trust.

4 So, you could argue that to have
5 another applicant come in now could somehow
6 undermine what that chief executive body
7 thought it was undertaking when it negotiated
8 an agreement with Ourway Realty Trust. And
9 that would be a legitimate concern but for the
10 fact that last night unanimously the board of
11 selectmen pursuant to a specific provision in
12 the host community agreement agreed to approve
13 of the transfer.

14 And there is a consent to transfer
15 agreement that was negotiated last night by the
16 board of selectmen and the representatives both
17 of Penn and Ourway.

18 Then you look at what the intent of
19 the legislation is with respect to the voters.
20 And I think it's clear. You look at the form
21 of the ballot that is prescribed by the
22 statute. It requires a summary of the host
23 community agreement, the substantive principal
24 terms and it requires in the language of the

1 question itself that the location of the
2 proposed gaming facility be identified.

3 There is no reference in the gaming
4 statute requiring the particular applicant or
5 ownership structure of the applicant to be
6 referenced either in the ballot question or in
7 the summary. And I think it's clear that
8 questions about whether to negotiate with an
9 applicant, a particular applicant are left to
10 the chief executive body of the town.

11 Questions of whether to approve the
12 suitability of the applicant are left to the
13 Commission. And questions of whether the
14 project itself is more advantageous to the town
15 pursuant to the host community agreement are
16 left to the voters.

17 And that's what I think if you --
18 I'm not a pollster. I'm not in a position to
19 represent anything to the Commission that
20 there's been a poll taken, but I am quite
21 certain that if you polled the people of
22 Plainville, they would say that they want to
23 have the opportunity to vote on this very
24 important project for the town.

1 I think that neither your
2 regulations nor the statute quite frankly
3 contemplated this eventuality. That you would
4 have a Phase 1 applicant that was deemed
5 unsuitable and that another properly applied
6 Phase 1 applicant would attempt to step into
7 their shoes. So, I think where the legislation
8 and regulations are silent on those issues,
9 they should be interpreted to effectuate the
10 purposes of the legislation.

11 And the purposes of the legislation
12 as often stated by this Commission are to
13 further competition and certainly that purpose
14 will be effectuated, and to thus maximize the
15 benefits both to the host community and the
16 region and to the Commonwealth as a whole.

17 I think all of those purposes and
18 the purpose of letting the voters vote on an
19 agreement that's been very well-publicized,
20 very well discussed and will continue to be. I
21 don't think there is any risk of voter
22 confusion with respect to the terms of the
23 agreement as has been previously referenced.
24 It's a small town. Everyone in town is going

1 to know that there's been an assignment to a
2 new applicant.

3 If this could, as I think everyone
4 will agree, if this could easily happen post-
5 licensure and post-vote, where the legislation
6 I submit is silent on this unanticipated
7 eventuality, I would respectfully submit on
8 behalf of the town of Plainville that the
9 Commission allow that vote to take place and
10 approve the notice so that the people of
11 Plainville can vote on this project.

12 COMMISSIONER ZUNIGA: I think we've
13 had I recall a number of discussions in the
14 past amongst ourselves relative to asking the
15 applicants to designate a site. This was
16 during the Phase 1 suitability process. And we
17 never set a minimum of X days or you have to
18 designate your site, etc., because there was a
19 lot of discussion around that being paramount
20 to the purpose of the Phase 1 process.

21 But to the question of -- that
22 Commissioner McHugh poses relative to the
23 identity of the applicant, as per section 13,
24 it occurs to me that this is not a question for

1 our guest here. This is clearly a question for
2 us, unless somebody correct me about that
3 assumption.

4 And perhaps the most relevant factor
5 relative to the identity is one of suitability.
6 It is one thing to hear about a particular
7 company, but it is really the suitability that
8 will inform the public, first this Commission
9 and then the public as to whether the applicant
10 is suitable.

11 And we contemplated just what is
12 happening before us, which is that an exception
13 to our reg. that suitability may not be done
14 prior to the vote taking place. I submit to
15 all of you that this is within the confines of
16 our regulations.

17 It becomes a matter of that
18 assignment, if we are satisfied with that
19 assignment, I suppose, then that should be the
20 question to discuss.

21 CHAIRMAN CROSBY: I don't quite
22 agree with that. I agree with a lot of that
23 not all of it. I think the assignment I think
24 probably is fine. There seems not to be any

1 issue with the assignment.

2 There are two that have been vaguely
3 alluded to, there are two strong public policy
4 arguments in my view in favor of us going along
5 with this proposition. One is the local
6 control issue. And we have said to the maximum
7 extent possible what the Legislature wants is
8 to have these issues decided at the local
9 level. We've respected that. It's entirely
10 appropriate.

11 The five to nothing vote by the
12 board of selectmen is a pretty strong vote.
13 And people who are opposed to this may respond
14 by voting the selectmen out if they don't want
15 them. So, there's a strong argument in favor
16 of that (A).

17 (B), as some of you have said, we
18 have all along been trying to encourage
19 competition. It's good for the Commonwealth in
20 the long run if there's competition. So, I
21 think it's clear and I find those compelling.
22 And I think the assumption of the HCA is not a
23 problem as a matter of contract law or our
24 regs.

1 But it does raise this technical
2 problem, which is the literal words of our
3 statute and regs. don't quite work here. We
4 have a letter -- we have an email from a Mary-
5 Ann Greanier. And she writes as I read the
6 Gaming Act, it clearly states that the
7 applicant must sign the host community
8 agreement 60 days prior to the holding of a
9 voter referendum. If an applicant does not
10 sign the HCA 60 days prior to the referendum,
11 the application is incomplete regardless of the
12 vote. There is no subjective determination
13 needed as to whether the applicant signed the
14 agreement 60 days before the vote, either it
15 happened or it did not.

16 Similar to the point that I was
17 making, the word applicant in the law and in
18 our regs. applies to two different entities at
19 different stages of the process. And there is
20 nothing that says anywhere that that's okay.
21 The lawyer for the community I think makes an
22 articulate case that it is a mere technicality.
23 This was not anticipated. There are arguments
24 in favor of it.

1 But I do think that there is a fair
2 reading of the technical language that makes
3 this inapplicable. And it is not one -- This
4 letter goes on to say that we will contemplate
5 legal action on this point, which is the
6 people's right. So, I think we have to take
7 this pretty seriously.

8 I am going suggest, unless people
9 want to talk about it further now, I would like
10 to hear -- If there's anybody out there who
11 believes that this technical issue that we are
12 talking about is really substantive and should
13 be a bar, I would like to hear that argument.

14 We all are hearing right now, we are
15 only hearing from people who are in favor of
16 this going forward. I don't know if there is a
17 meaningful number of people or entities who
18 have another view but I think this is important
19 enough that if we are rendering judgment, we
20 want to hear the other side.

21 So, I'm going to suggest that we
22 don't adjourn this meeting when we get done
23 here. We just can temporarily adjourn it that
24 we reconvene on Friday. We will presumptively

1 have an adjudicatory process, a hearing at that
2 point we will reconsider these issues. That
3 will strengthen whatever decision we come up
4 with. We invite anybody who has an opposing
5 view to tell us about that opposing view. If
6 it seems appropriate, we will have an
7 opportunity to have them speak at that hearing.
8 And we would then deliberate on that and make a
9 decision hopefully before the day is out on
10 Friday.

11 COMMISSIONER MCHUGH: I would agree
12 that that's a sound process though I would not
13 commit ourselves to an adjudicatory hearing at
14 this point.

15 CHAIRMAN CROSBY: I said
16 presumptively.

17 COMMISSIONER MCHUGH: I just wanted
18 to emphasize that, Mr. Chairman. But I think
19 that hearing the other side, I came into this
20 thinking more strongly than I do now, quite
21 frankly then the applicant piece was a bar.
22 And for a variety of reasons I'll be happy to
23 articulate, unless something else comes up I'm
24 shifting my in views here. But I do think it's

1 important to hear others, the other side if the
2 other side wishes to be heard.

3 COMMISSIONER STEBBINS: I agree with
4 that. I do have one quick question. I want to
5 address the attorney. You mentioned a
6 provision in your host community agreement,
7 which right now we don't have a copy of, but
8 I'd appreciate seeing the provision you
9 referenced in the host community agreement that
10 is relative to a transfer.

11 MR. SILVERSTEIN: Certainly. It's
12 paragraph eight of the host community
13 agreement. I only have a marked up, unexecuted
14 copy with me. The town administrator has an
15 executed copy that we can provide to the
16 Commission.

17 CHAIRMAN CROSBY: Paragraph eight,
18 you mean section eight?

19 MR. SILVERSTEIN: Section eight on
20 page seven.

21 MR. ZIEMBA: Commissioners, I
22 believe I have extra copies of the host
23 community agreement.

24 CHAIRMAN CROSBY: I have it here,

1 but section eight is permitting fees.

2 MR. SILVERSTEIN: I'm sorry. That's
3 section eight under section three, I believe.
4 It's subsection eight that you're looking at.
5 On page seven of the agreement --

6 CHAIRMAN CROSBY: Do you see that
7 Bruce? Commissioner Stebbins, do you have
8 further?

9 COMMISSIONER STEBBINS: No, thank
10 you I just wanted to see this portion that
11 Counsel referenced.

12 COMMISSIONER ZUNIGA: Please go
13 ahead.

14 MR. SILVERSTEIN: Of course, if it's
15 the Commission's will, we'll all come back on
16 Friday. I guess the one point I do want to
17 note is that the election is Tuesday. So, I
18 would ask at a minimum that the voter notice be
19 approved so that we can get that out
20 sufficiently in advance of the election.

21 I guess the only other point I would
22 note, of course, we'll come back if that's what
23 the Commission deems appropriate, Ms. Greanier
24 who wrote that email is, as I understand it,

1 that's been confirmed the leader of the
2 opposition in town to the project. They have
3 spoken and of course the Commission has heard
4 their points. I don't know what else would
5 likely be articulated. But of course, that's a
6 matter for the Commission to decide.

7 COMMISSIONER MCHUGH: But opponents
8 sometimes have something valuable to say.

9 CHAIRMAN CROSBY: As strange as it
10 may seem.

11 MR. SILVERSTEIN: I think they have
12 and I understand she is here today.

13 CHAIRMAN CROSBY: But she makes a
14 point of saying she's not a lawyer. And
15 they're going to talk to lawyers. And I share
16 Commissioner McHugh's - I came in here thinking
17 this is really complicated. This is so
18 bizarre, this whole transaction. It doesn't
19 make any sense I think the more I talk about
20 the more I'm leaning towards the fact that net
21 net when you try to look at net policy
22 considerations, I lean towards going forward on
23 this.

24 But whatever decision we make

1 whether we go that way or not, we want this to
2 be bulletproof for good or ill whichever way it
3 is. And I've leaned one way one-time and I
4 might lean another way another time. And I am
5 open to trying to make a decision today if
6 others think we should. But I feel like
7 there's enough substance to the issue, albeit
8 possibly merely a technicality, that it would
9 be worth us taking two more days to figure this
10 out.

11 MR. SULLIVAN: Excuse me, Mr.
12 Chairman, if I may?

13 CHAIRMAN CROSBY: This is all a part
14 of our keep lawyers employed strategy, which is
15 a major part of our business in life.

16 MR. SULLIVAN: As Mr. Silverstein
17 pointed out that we are in a very unique
18 situation because of an applicant being
19 disqualified. Under your own regulations 131
20 you anticipated this happening if a licensee is
21 revoked. If a license is revoked you have the
22 ability to replace them with a new licensee.
23 And that new licensee assumes and is assigned
24 the obligations under the host community

1 agreement and there is no requirement for
2 another vote.

3 So, the voters are left with the
4 Commission picking someone new coming in. This
5 is within the town's -- the town has made a
6 decision as to who they want to do business
7 with, a host community agreement along with the
8 vote to the people is really the location and
9 what the host community agreement says.

10 CHAIRMAN CROSBY: I think that's
11 missing the point. We agree with that. We
12 understand that. We agree with that. But the
13 statute and the regs. set out the certain
14 conditions under which a license may be
15 granted. In a literal reading of this as I
16 read it, certain of those conditions may not be
17 met. Whether that matters or not, in the big
18 picture may be a debatable point. But in a
19 literal reading, it seems to me there's a
20 problem there.

21 MR. SULLIVAN: And I think in the
22 process in 131, they're required to fill out
23 the Phase 2 application again. Arguably, that
24 would mean that they were required to get

1 another host community agreement and another
2 vote but that's not what the Commission laid
3 out in its regulation.

4 COMMISSIONER ZUNIGA: I believe
5 they're required to go through the Phase 1
6 suitability.

7 MR. SULLIVAN: Yes, they have to.
8 But for purposes of location that they must be
9 located in the specific location that the prior
10 licensee was located at. And they must adopt
11 and fully be assigned the host community
12 agreement and any other surrounding community,
13 etc.

14 Your regs. although not this
15 particular situation anticipate potentially
16 down the road a licensee either walking away or
17 being revoked. And the Commission doesn't want
18 the place sitting there. They're going to
19 allow someone to step into their shoes.

20 COMMISSIONER MCHUGH: For everybody,
21 including you, this arose with a great deal of
22 speed. The issue is an important one. And I
23 share the Chairman's concern that we think it
24 through carefully, though I am leaning in the

1 same direction as to the outcome for a variety
2 of reasons.

3 It seems to me that we have two
4 issues. One is the text of the notice to the
5 town and the fact that the election is about on
6 us.

7 And second, whether we approve the
8 transfer and the underlying transfer under
9 these circumstances. It seems to me that we
10 could approve the language with the addition of
11 a sentence, to be worked out with Ombudsman
12 Ziemba, indicating that in addition to there
13 not being a Commission determination of
14 qualification --

15 COMMISSIONER ZUNIGA: Suitability.

16 COMMISSIONER MCHUGH: -- the
17 Commission as of the date of the letter hasn't
18 approved or disapproved of the transfer in the
19 letter.

20 CHAIRMAN CROSBY: But that it will
21 make that decision prior to the election.

22 COMMISSIONER MCHUGH: It will make
23 that decision on Friday. And then commit
24 ourselves to making the decision on Friday.

1 And let the letter go out so the townspeople
2 who read it will know that before the vote
3 they'll have a decision on that. And let that
4 go out. Then come back and see if there isn't
5 anything we haven't thought about in terms of
6 the approval of the underlying assignment.
7 Then make a decision on Friday.

8 CHAIRMAN CROSBY: If there is a real
9 strong argument, I'd much rather know it now
10 than after the election and after we're further
11 down the process. So, I agree with that.

12 COMMISSIONER ZUNIGA: I would agree
13 with that. I have looked at the notice and it
14 appears fine. With your suggestions, it
15 appears even more appropriate. If we can make
16 a decision by Friday it would be -- really time
17 is of the essence really.

18 COMMISSIONER MCHUGH: I think that's
19 a good way to go.

20 CHAIRMAN CROSBY: Yes. Any other
21 comments? We are pretty much ready to make a
22 motion on this. But if you have anything else
23 to say, please do.

24 MR. SILVERSTEIN: Mr. Chairman, I

1 suppose the only other point I'll make that was
2 just made to me is of course if the Commission
3 remains concerned about this issue, this won't
4 be the last opportunity for the Commission to
5 address it. You could always address it in the
6 context of the Phase 2 hearing process.
7 Perhaps that might be another resolution for
8 the Commission to consider.

9 COMMISSIONER MCHUGH: Yes. But if
10 we address it there, we will have consumed an
11 enormous amount of Commission energy, town
12 energy and perhaps other unexpected forces in
13 the interim. So, it's better to try to get it
14 right now as right as we can get it even though
15 -- I recognize that it would cause some
16 inconvenience and some concern and some need
17 for Tums or something.

18 MR. SCHIPPERS: One of the
19 challenges we have, we have heard that one of
20 the strongest tactics of the opposition has
21 been to sow seeds of doubt in the community and
22 try to give people a reason to stay home on
23 election day because of this uncertainty.

24 And it seems like to some extent

1 there is a conclusion in search of an argument
2 that the opposition needs to go and seek an
3 attorney and come back. In the meantime,
4 they'll have days of advantage on us to
5 continue to sow this uncertainty. I guess my
6 argument would be if you allow the election to
7 go forward, certainly both sides will have
8 ample opportunity for them to make their
9 arguments and for us to make our arguments.
10 Ultimately, this issue will be decided at the
11 ballot box.

12 MR. SILVERSTEIN: And I guess the
13 only -- I'm sorry to interrupt. But the only
14 other point I would make is there is no
15 question that the election will go forward.
16 The election under state election law, the
17 election has to go forward.

18 So, the question really is whether
19 the Commission is going to approve or accept of
20 the transfer that I don't think that is going
21 to affect -- I know it cannot affect whether
22 the election goes forward. We're required to
23 at this point. Absentee ballots have been
24 polled and returned.

1 MR. SNYDER: And if I may add,
2 members of the Commission, we still have many
3 other steps. This has already been noticed
4 that the applicant -- suitability finding on
5 the part of the applicant remains to be
6 determined. And as was pointed out earlier,
7 the Phase 2 process has not even commenced at
8 this point in time.

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: Are we all right
11 to go with --

12 COMMISSIONER ZUNIGA: Yes.

13 CHAIRMAN CROSBY: I think we need a
14 motion, but I know there's somebody else who
15 wanted to speak but I think we have decided to
16 have a further conversation. It looks like we
17 have a consensus which we will put into a vote
18 in a minute. I'm not going to invite other
19 people to speak. The opportunity will come, it
20 looks to me, like it will come on Friday. Do
21 you want to make a motion?

22 COMMISSIONER MCHUGH: I move that
23 the Commission approves the town of
24 Plainville's notice to voters with respect to

1 the September 10 election as presented by the
2 town to the Commission with the addition of a
3 sentence to be worked out with staff of the
4 Commission that informs the voters as of the
5 date the letter is sent, the Commission has not
6 yet approved the transfer of the obligations
7 and rights in the host community agreement from
8 Ourway to Penn National. But that it will make
9 a decision on that transfer on Friday, whatever
10 the date is.

11 COMMISSIONER ZUNIGA: September 6.

12 COMMISSIONER STEBBINS: Second.

13 Just to note not necessarily an amendment but
14 in the notice and I would implore obviously our
15 own team to do this, we identify the town's
16 website and the Mass Gaming Commission's
17 website. I would implore both our team and the
18 team in Plainville that your homepage, let's
19 make sure that information or a link to the
20 appropriate agreement is front and center so we
21 don't have to have voters scurrying through 50
22 menu items trying to find a copy of this. Time
23 is of the essence.

24 CHAIRMAN CROSBY: Any further

1 discussion on the motion? All in favor say,
2 aye. Aye.

3 COMMISSIONER STEBBINS: Aye.

4 COMMISSIONER ZUNIGA: Aye.

5 COMMISSIONER MCHUGH: Aye.

6 CHAIRMAN CROSBY: Opposed? The ayes
7 have it unanimously. We will be back to you
8 with details. I apologize for the
9 inconvenience sort of but it's what you guys
10 want. You're asking for this issue and we will
11 be back to you. It will be Friday afternoon.
12 We'll send details to everybody as soon as we
13 possibly can.

14 I suggest we adjourn for lunch.

15

16 (A recess was taken)

17

18 CHAIRMAN CROSBY: We will reconvene
19 the 76th meeting of the Massachusetts Gaming
20 Commission shortly after 1:00 on September 4.

21 We had not fully completed the
22 Ombudsman report. Although we got some good
23 stuff out of the way. Ombudsmen Ziemba, go
24 ahead.

1 MR. ZIEMBA: Thank you, Mr.
2 Chairman, members of the Commission. So, we
3 continue to work with all communities and
4 applicants. And we get numerous questions that
5 are posed to the Commission.

6 Some of these questions are posed by
7 groups that are opposing facilities in various
8 regions of the Commonwealth. We try to answer
9 those questions as best we can. I'll give you
10 a couple of examples of recent questions that
11 we received. For example, one group was
12 questioning whether or not the local ballot
13 summary should make room for opposing
14 viewpoints that have been offered by opposition
15 groups or others.

16 What we did is we responded to that
17 group by stating that the determination of what
18 is included on the ballot summary is a matter
19 for local authorities. Under the statute, that
20 decision is given to the city solicitor. And
21 the city solicitor is in charge of making sure
22 that they include what is included on the
23 ballot.

24 CHAIRMAN CROSBY: The statute

1 doesn't say anything about including negative
2 arguments, does it?

3 MR. ZIEMBA: It does not. It does
4 not.

5 COMMISSIONER ZUNIGA: To provide a
6 concise summary of the host community
7 agreement.

8 MR. ZIEMBA: I think in general, a
9 part of our answer for all of these groups, I
10 think, because they will be appropriately
11 reviewing the local process, appropriately
12 questioning the local process. To the degree
13 that they're getting answers from the locals,
14 we encourage that.

15 Again, there is a process with which
16 we envision that will occur, arguably, but it's
17 after the applications have been sent to the
18 Commission for many of these arguments and
19 questions and concerns to be raised to the
20 Commission as part of our review process. They
21 may or may not be as timely in the minds of a
22 potential opposition group as they may want
23 them, but that is an opportunity for groups to
24 weigh in.

1 For example, one of the other
2 questions that we received recently was whether
3 or not if a community receives a payment
4 pursuant to a host community agreement in
5 advance of the election is that appropriate or
6 is that not appropriate? I think that the
7 Commission has weighed in that the
8 determinations regarding the host community
9 agreement as timing and payments are a matter
10 of local concern, unless there is something
11 that is otherwise inappropriate under law or
12 under our regulations.

13 So, these are some of the questions
14 that we've received lately by some of these
15 groups that are weighing in on various
16 proposals. I just wanted to inform the
17 Commission of that.

18 CHAIRMAN CROSBY: I appreciate being
19 informed. Do err on the side of involving us
20 rather than not. If for no other reason than
21 we want to be deferential to minority views who
22 are probably going to be under represented,
23 underfinanced and so forth. So, we want to
24 make it clear to people that we really do hear

1 and think these things through. So, do keep us
2 informed. And, as I say, err on the side of
3 involving us rather than not.

4 MR. ZIEMBA: I will. One other
5 matter, at our previous meeting, there was a
6 question regarding the applicant in Tewksbury
7 and the scheduled election. We've reviewed
8 that matter and report that we don't believe
9 that any action by the Commission is necessary
10 today on that matter.

11 To the degree that any situation
12 changes, we can certainly advise the
13 Commission. But right after our meeting the
14 following day, the town voted to pull back on
15 the election and cancel the election. So, for
16 our purposes at this point we don't recommend
17 any action. That's the conclusion of my
18 report.

19 CHAIRMAN CROSBY: You will follow up
20 this afternoon or tomorrow with Boston and Wynn
21 and let us know. We now for other purposes
22 have a meeting Friday afternoon. And if it
23 looks like they're just not going to talk, then
24 we could move very quickly and decide this

1 Friday afternoon if we had to. We certainly
2 gave to the end of the week, and we will I
3 think unless you tell us it's just not
4 happening.

5 COMMISSIONER ZUNIGA: Decide on the
6 next steps, is that a fair statement? We could
7 decide on Friday about the next steps, not
8 necessarily decide on the issue.

9 CHAIRMAN CROSBY: We could just
10 decide it, if we wanted to.

11 COMMISSIONER MCHUGH: I'm not sure
12 we could, but we could certainly decide on the
13 next steps. And if the next steps include
14 deciding it, then so be it.

15 CHAIRMAN CROSBY: Thank you. I like
16 that. There's always somebody with some wisdom
17 in the group. Thank you very much. Next up is
18 Executive Director Day with a general
19 administrative update.

20 MR. DAY: Mr. Chairman and members
21 of the Commission, my administrative report
22 today actually just includes two items. One of
23 those is our recommendations on our final
24 advisors. And the second part is a review of

1 the evaluation process.

2 From the aspect under tab 4(1), I
3 guess it would be, there are two
4 recommendations from the procurement teams
5 about the evaluation advisors. One of those is
6 a recommendation for HLT Advisory as our
7 economic development consultant. And the
8 second one is McFarland and Johnson as our
9 building, site design and mitigation
10 consultant.

11 Both recommendations are individual.
12 There's different wording in both. My
13 suggestion would be and I'm hoping to defer to
14 Commissioner Stebbins for referral to each of
15 those specific recommendations for the
16 Commission to consider whether or not to
17 approve today. Commissioner?

18 COMMISSIONER STEBBINS: Thank you,
19 Executive Director. You have before you a
20 recommendation from the group that reviewed the
21 responses for the economic development
22 consultant. And we're recommending the Gaming
23 Commission accept the proposal submitted by HLT
24 Advisory, Inc., pursue contract negotiations

1 and detailed scoping of the services described
2 in the RFR dated August 7, 2013.

3 Furthermore, the PMT recommend that
4 the Commission prequalify the Center for Policy
5 Analysis and the team of REMI/Spectrum Gaming
6 to provide services to the Commission if
7 needed.

8 Finally, the PMT recommends the
9 Commission extend the prequalification of the
10 same firms to provide services to any host
11 and/or surrounding community that may so choose
12 as part of their efforts to negotiate and/or
13 evaluate agreements with applicants subject to
14 executing a letter of agreement with respect to
15 the applicant.

16 Just to note, obviously, HLT, we've
17 heard the name before. They have been selected
18 as our financial consultants. They made a very
19 interesting note about some of the crossover
20 between financial information that would be
21 submitted as part of the application as well as
22 the economic development information that will
23 be submitted as part of the RFA-2 application.

24 We were very impressed with all

1 three teams that came in for the oral
2 presentations. I do want to thank Gordon Carr,
3 who is an economic development consultant to
4 the Commission as well as Dr. Lynn Brown, a
5 former vice president and economic advisor of
6 the Federal Reserve Bank of Boston for
7 assisting me on the review team.

8 CHAIRMAN CROSBY: Great. I guess we
9 need a motion on this one, right?

10 MR. DAY: Correct.

11 CHAIRMAN CROSBY: Any discussion
12 before we move forward?

13 COMMISSIONER STEBBINS: I can offer
14 that motion as you see it printed in the
15 memorandum from Director Glovsky and myself.

16 CHAIRMAN CROSBY: Second?

17 COMMISSIONER ZUNIGA: Second.

18 COMMISSIONER MCHUGH: Second or
19 third.

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

22 COMMISSIONER STEBBINS: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER MCHUGH: Aye.

1 CHAIRMAN CROSBY: Opposed? The ayes
2 have it unanimously. Looking forward to
3 getting to know these folks. You have another
4 one, Commissioner Stebbins?

5 COMMISSIONER STEBBINS: Certainly.
6 You see in the packet a recommendation for the
7 building, site design and mitigation
8 consultant.

9 We had oral interviews with four of
10 the respondents. Commissioner McHugh, myself
11 and John Nunnari from AIA, the Boston Society
12 of Architects were on the review team. At this
13 point, we are recommending the proposal
14 submitted by the McFarland Johnson team for
15 advisory services for the Category 2
16 evaluations.

17 Furthermore the procurement team
18 recommends that as a condition of awarding the
19 contract to McFarland Johnson that members of
20 the team will cease work for Mohegan Sun until
21 the team has completed all the work for the
22 Commission or December 31, 2013, whichever
23 comes later.

24 The Commission will also be posting

1 a procurement to secure similar services for
2 the Category 1 evaluations. As we went through
3 this process, we were hoping to find a
4 consulting team. And we had a number of
5 submittals from various respondents who were
6 looking to tackle a piece of the evaluation,
7 but not the complete team approach that
8 McFarland Johnson presented.

9 So, what we would be doing is going
10 back out with an RFR to see if we can secure a
11 consultant to help us review the applications
12 for building, site design and mitigation for
13 the Category 1 applications, which are due at
14 the end of the year. We obviously have
15 sufficient amount of time to post this new RFR
16 and review the responses and hopefully make a
17 selection.

18 As with all of these RFRs, we've
19 certainly asked applicants or respondents to
20 identify any potential conflicts of interest
21 they have. And we found a couple that popped
22 up in this particular RFR that we decided
23 McFarland Johnson was well suited to do the
24 Category 2 evaluation. They have offered to do

1 that. It certainly would allow them the
2 opportunity to respond to the new RFR that we
3 are going to put out. But at this time, we're
4 just securing their services for the Category 2
5 evaluation.

6 CHAIRMAN CROSBY: Questions? You
7 were involved in this, right?

8 COMMISSIONER MCHUGH: This is a
9 full-service firm. It is fully equipped with
10 all of the competencies necessary to perform
11 the building, site design review including
12 civil engineers, architects and the like but
13 they are doing work for Mohegan Sun. So, that
14 led us to conclude that they couldn't have the
15 whole package.

16 CHAIRMAN CROSBY: Obviously, there
17 was nobody else that you thought was up to
18 snuff?

19 COMMISSIONER STEBBINS: The other
20 respondents, I would suggest didn't offer the
21 complete team of skills and experience that's
22 necessary. We had certainly drafted the
23 original RFR to try to be inclusive of any firm
24 that was interested in doing the work. And

1 certainly Comm-PASS allows us to identify
2 interested parties just looking to do one piece
3 of the work.

4 The RFR that we are going to reissue
5 will ask for a complete team proposal, similar
6 to what McFarland Johnson offered.

7 CHAIRMAN CROSBY: Basically, the
8 same thing over again, just for Category 1.

9 COMMISSIONER MCHUGH: No. It's
10 going to be different. There was some
11 confusion, as Commission Stebbins said, on the
12 part of some of the respondents as to whether
13 we wanted them to put together a team or we
14 would put together a team from the bidders who
15 bid for part of the work.

16 So, the new RFR will say we want a
17 team, come to us with a complete team. So,
18 hopefully we'll get some of the same people
19 back with a complete team because there was
20 some good ones.

21 COMMISSIONER STEBBINS: We were also
22 warned about trying to marry potential
23 applicants and parties together that may not
24 want to work together.

1 CHAIRMAN CROSBY: I don't quite
2 follow why do we say they can't work for
3 Mohegan? I don't know why December 31 is, but
4 what's the conflict? They're only working with
5 Category 2.

6 COMMISSIONER ZUNIGA: That was going
7 to be my question.

8 COMMISSIONER STEBBINS: Again, the
9 initial RFR was to do building, site design and
10 mitigation review for both Category 1 and
11 Category 2 applicants.

12 McFarland and Johnson identified a
13 current or an ongoing relationship with Mohegan
14 Sun. And we just thought it was expedient to
15 just select them to do the Category 2
16 evaluation, which they agreed to do, and again
17 would reissue the RFR for the Category 1
18 evaluations.

19 COMMISSIONER MCHUGH: But there
20 really isn't any conflict, but they were asked
21 not to do it and they agreed to do it. And
22 they are going to sign a contract saying that
23 they won't do it. There really isn't any
24 conflict.

1 CHAIRMAN CROSBY: So, they're
2 willing to do it.

3 COMMISSIONER ZUNIGA: Could they
4 respond to the next RFR if they were willing to
5 do only Region A for example?

6 COMMISSIONER MCHUGH: That's
7 something that we really have to think through
8 as to whether their past work and the
9 expectancy of future work, expectancy being a
10 loaded word there. And we have to figure that
11 out as to whether they could or whether they
12 would be conflicted out of the other one.

13 CHAIRMAN CROSBY: Commissioner
14 Zuniga said Eastern Mass.

15 COMMISSIONER ZUNIGA: Region A

16 CHAIRMAN CROSBY: Region A.

17 COMMISSIONER ZUNIGA: Where they
18 would not be evaluating anybody else besides
19 Mohegan's competitors.

20 COMMISSIONER MCHUGH: There's
21 somebody on their team who did work for
22 Foxwoods; isn't that right, Commissioner?

23 COMMISSIONER STEBBINS: Correct.

24 COMMISSIONER MCHUGH: So, there's

1 sort of a double whammy. That was less
2 troublesome. We will certainly pursue that, I
3 think, and see if we can't see if they can do
4 some more work for us.

5 COMMISSIONER ZUNIGA: This is where
6 I'm coming from, September 6 is the day after
7 tomorrow. It's good that we're going to
8 clarify that piece of the RFR about wanting
9 comprehensive teams, but it's usually very
10 helpful to do outreach prior to the issuance of
11 an RFR, to have informational meetings, to have
12 our consultants meet with other consultants.
13 Start spreading the word, if you will, about
14 what we want, which in my view ensures a better
15 response.

16 Just posting another RFR may
17 actually get us less responses because people
18 are not necessarily always -- they don't
19 necessarily get an immediate notification that
20 an RFR has been posted. All this means is
21 maybe we don't shoot for September 6, and try
22 to do a lot of what I just suggested in the
23 next coming days before posting the new RFR.

24 COMMISSIONER STEBBINS: I think

1 that's a very valid suggestion. I think we'll
2 obviously communicate the reissuance. As
3 Commissioner McHugh suggested, there are folks
4 that participated the first round and are
5 encouraged now to organize teams that they
6 have.

7 This obviously was issued prior to
8 us having an arrangement and contract with
9 Pinck and Associates and certainly talk to them
10 about how we can best promote this and put this
11 out.

12 COMMISSIONER ZUNIGA: Right.

13 COMMISSIONER MCHUGH: In addition to
14 that, we did do that before issuing this RFR.
15 AIA was very helpful to us in doing that. And
16 we did reach out to people. We're going to
17 reach out to the people, all the people who
18 responded to this one. There were two terrific
19 firms in their area. One of them said we
20 thought you didn't want us to put together a
21 team, but we would have done it had we
22 understood that. So, that kind of outreach
23 will certainly be undertaken.

24 The idea is to try and get these

1 people, get this process moving forward so that
2 we can get the team assembled and ready to go
3 when the new -- maybe act as observers for this
4 process and take away some information. But
5 those are all good ideas.

6 COMMISSIONER ZUNIGA: And I suggest
7 perhaps because I remember having seen this RFR
8 as having seen the versions before it, perhaps
9 we could be a little bit more explicit as to
10 what will constitute a conflict or even the
11 appearance of a conflict. Because that is a
12 very broadly misunderstood term sometimes by
13 the respondents.

14 CHAIRMAN CROSBY: Anything else?

15 COMMISSIONER STEBBINS: I will move
16 that the Gaming Commission accept the proposal
17 submitted by the McFarland Johnson team for
18 advisory services for Category 2 evaluations.

19 Furthermore, the procurement team
20 recommends that as a condition of awarding the
21 contract to McFarland Johnson that members of
22 the team will cease work for Mohegan until the
23 team has completed all work for the Commission
24 or December 31, 2013 whichever comes later.

1 The Commission will post a
2 procurement to secure similar services for
3 Category 1 evaluations by September 6, 2013 or
4 thereabouts.

5 COMMISSIONER ZUNIGA: Or later.

6 COMMISSIONER STEBBINS: Or later.

7 CHAIRMAN CROSBY: Second?

8 COMMISSIONER MCHUGH: Second.

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

11 COMMISSIONER STEBBINS: Aye.

12 COMMISSIONER ZUNIGA: Aye.

13 COMMISSIONER MCHUGH: Aye.

14 CHAIRMAN CROSBY: Opposed? The ayes
15 have it unanimously. It just occurs to me,
16 Commissioner Stebbins, that you have done --
17 taken a yeoman's amount of work on a lot of the
18 interviewing that we've done for people and for
19 consultants. And it's a very labor-intensive
20 process.

21 And we feel very good about the
22 people that we've hired. A lot of that has to
23 do with the work that you've done, because it
24 takes forever. The process is long and so

1 forth. But you've done really well. And
2 you've done the lion's share of the work. And
3 I think we just owe you appreciation for that.

4 COMMISSIONER STEBBINS: Happy to do
5 it. Thank you.

6 CHAIRMAN CROSBY: Okay. Back to
7 Director Day.

8 MR. DAY: Thank you, Mr. Chairman.
9 Our next item is a presentation from Pinck and
10 Company, our project coordinator for our
11 upcoming license application review process.
12 Jennifer Pinck is here today. And you will
13 find that under 4(ii) in your notebook.

14 Jennifer Pinck is here today to
15 review her team's thoughts regarding the
16 evaluation, timeline, process and a draft
17 agenda intended to support the planned training
18 for our evaluation teams on September 11. With
19 that I'll just turn it right over to Jennifer.

20 MS. PINCK: Thank you, Mr. Day.
21 Good afternoon, Chairman and Commissioners.
22 We've been hard at work now for just over two
23 weeks interpreting the paper that we've gotten,
24 the regulations, and all of the stuff that was

1 handed to us in the last couple of weeks to
2 come up with a time efficient and logical
3 approach to reviewing a lot of data in a short
4 period of time.

5 There's still many questions we have
6 to ask, some of which need to be answered
7 before September 11 and some which can be
8 deferred or at least we don't need to know
9 exactly what the answer is until October 4 when
10 the applications actually roll in.

11 But in the meantime, what I'd like
12 to do is share with you our thinking on how
13 we're going to approach the review process.
14 What I have laid out mostly here is really the
15 steps on the review process. There's still
16 some issues that I know everybody is very aware
17 of having to do with the ranking or scoring or
18 weighing of the responses to the questions.

19 We've got something in here which is
20 just a draft as is most of it. I wanted to
21 spend a few minutes leading you through how
22 we're thinking about getting you, the
23 Commission, the information you need to select
24 the slot parlor licensee.

1 If you look at the top page here,
2 which is called level one, we know that on the
3 meetings, I think it's currently scheduled for
4 December 27, you're projected to award the slot
5 parlor license after this process. And that we
6 expect three maybe four applications. And
7 they're going to be evaluated in these five
8 categories, the general, financial, economic
9 development, building and site design and
10 mitigation.

11 And we represented these
12 applications as cans or silos or whatever you
13 want to call them. So, applicant A will be
14 evaluated prior to your decision in each of
15 these five categories by the five teams.

16 The way the teams are going to work,
17 if you look at the next page, is that each of
18 the Commissioners has adopt a category and will
19 review each applicant -- all of the applicants
20 in that category. We've started some
21 discussions with each of you to understand your
22 thinking behind what the content should be
23 like. What are we looking for when we review
24 these applications?

1 We know what the legislation says
2 about what are the criteria. There's a lot of
3 information that we're going to get. And we
4 will need to really hone in on what makes for a
5 good application.

6 But we do know each of you has a
7 category. And I know, Mr. Chairman, you've got
8 the general category also known informally as
9 the wow. And there'll be a team of people,
10 staff and outside persons, someone from my
11 office probably myself on this category. And
12 likewise for each of these, we are going to
13 have a team of people reviewing.

14 So, that this group can review the
15 questions, review, rank, score, weigh the
16 responses and compare the subcategories between
17 the applicants. So, that the evaluation team
18 can then deliberate and make your final
19 findings and your assessment of each applicant,
20 which these teams will forward to you, the
21 Commissioners. That's the hierarchy of the
22 role as we see it now, as we understand it. And
23 I think it's subject to further refinement.

24 That the evaluation team is going to

1 score the categories. I don't want to say
2 score right now, deliberate and make final
3 findings from the teams, so that you as
4 Commissioners can make the final findings of
5 the applicant as a whole. That's the thinking.

6 On the next page, using economic
7 development as an example, the broad category
8 or criteria is of economic development. Within
9 that there are three broad subcategories, job
10 creation, supporting external business and job
11 growth, regional tourism and attractions. And
12 we see that the evaluation teams are going to
13 look at each one of those individually and the
14 economic development as a whole, comment and
15 make findings.

16 So that applicant A, applicant B,
17 applicant C and applicant D will have a summary
18 from the evaluation teams.

19 On the next page you'll see just
20 sort of deeper into this. This partly has been
21 set up to help us establish a filing
22 architecture so that when all of the reviewers
23 do their work, we've got a system for finding
24 them, assembling them and using them

1 productively. But you'll see that in each --
2 for suppose applicant A there are in a certain
3 subcriteria there or four questions.

4 The reviewers are going to comment
5 on the response. And we have a proposed system
6 of scoring the quality of the submission right
7 now. And that scoring of the quality of
8 submission is based on a preliminary proposal
9 that Commissioner Stebbins, I think, put forth
10 on August 7, which is in a memo that I have
11 with me. We can talk about it once I get
12 through explaining to you what our thinking is.

13 On the next page, you'll just see
14 more of the mechanics, which is each of the
15 subcategories will have a summary ranking --
16 I'm sorry, an individual ranking on each of the
17 questions. And going to the last page, this is
18 really where the heart of the work is, the last
19 page. These are the reviewers summaries for
20 each question, which will be color-coded as
21 will -- or number coded to match our
22 requirements in either the legislation or the
23 regulations, because we've got the matrix,
24 which breaks things out I think by yellow,

1 orange and green. We have three colors,
2 because there are some questions that go
3 directly to the legislation or the regulations.
4 And they're exactly worded that way. And then
5 there's others that you have added. So, we
6 want to distinguish it when we look at these
7 responses.

8 So, here's where the reviewers,
9 which will be the technical consultants, the
10 staff, yourselves, outside experts and advisors
11 are going to take the question. In box one,
12 they're going to describe the applicant
13 approach or response to the question. Then
14 they're going to come up with a statement of
15 findings.

16 We have some work to do to describe,
17 to give some more guidance to the reviewers on
18 what the statement of findings should consist
19 of. I can see that -- take a hypothetical
20 example of economic development where some
21 applicant would fund a major new program at a
22 community college, whereas other people would
23 do something not quite as expansive. So, a
24 statement of finding might consist of the

1 applicant has committed to a major initiative
2 at a local community college.

3 And that would be a statement of
4 finding that we would consider later when
5 making the comparisons between the applicants,
6 which leads to the recommendation that the
7 teams make or the assessments that the teams
8 make to you as the Commission. Then we've got
9 down here the quality of the submission.

10 So, this is really the mechanics of
11 it. I think what we say to the reviewers, what
12 we ask them to be looking for precisely, and
13 some of these questions is a lot more
14 complicated. Some is quite easy.

15 Number of jobs created, if one is
16 creating significantly more jobs than the
17 others, it might be easier to consider that a
18 better or a good submission than someone else.
19 But some of these are very subjective. This is
20 really where between now and next Wednesday
21 we're giving some thought and continuing to
22 speak with staff and with some of you about how
23 are we actually going to weight, rank, score,
24 judge, assess the responses. Then we have to

1 figure out how to compare them between the two
2 or three applicants.

3 So, that's where we're at on the
4 process. We've got a lot of work that we're
5 doing. We're going to be setting up a file
6 naming and architecture so that applicants will
7 -- I'm sorry. I keep saying applicants. -
8 what I mean is reviewers will know what system
9 to follow.

10 We're talking with staff about
11 SharePoint, using a section of that for just
12 the reviewer's comments. We're going to be
13 setting up meetings to have pre-application
14 team meetings with each of you and your teams.
15 We've got a long list of things that we're
16 working on to get ready for this.

17 We've also got a training outline,
18 which I'll go into a little bit later. And we
19 also have a schedule that I'd like to share
20 with you. I'd be happy to take a pause here
21 and hear your thoughts on this.

22 CHAIRMAN CROSBY: Thank you.

23 COMMISSIONER ZUNIGA: Sure. I have
24 a number of questions on this. Maybe I should

1 take them one at a time by order of pages. Do
2 you anticipate having a member of Pinck in each
3 of the five teams?

4 MS. PINCK: Yes.

5 COMMISSIONER ZUNIGA: So, you'd have
6 five staff or -- including yourself?

7 MS. PINCK: This is the way I'm
8 thinking of doing it right now, and I'd love
9 your feedback. I believe I will be the staff
10 person assigned to wow. Margaret Wood who
11 interviewed all of the building and site
12 persons will be assigned to building and site
13 with support from Nancy Stack who has extensive
14 expertise in the environmental permitting and I
15 know within that category so to support her and
16 to support the team.

17 And then for mitigation, which I
18 think you did a procurement for building, site
19 and mitigation, the mitigation component that I
20 see McFarland doing and concentrating on most
21 is the traffic mitigation because that is going
22 to likely be the greatest impact issue.

23 But there's a lot of other stuff in
24 that category which having spoken with

1 Commissioner Cameron, she's suggesting that we
2 may play a very useful role in helping assess
3 the mitigation. Which is a long way of saying
4 that will probably participate on that along
5 with Nancy.

6 And for financial and economic, I
7 think it's going to be Nancy. I think you're
8 going to have Nancy in the office full-time to
9 do this. I don't know if you need five staff.
10 I've got them.

11 COMMISSIONER ZUNIGA: The reason I'm
12 asking this partly is if that's a constraint,
13 then you become the resource constraint.

14 MS. PINCK: Right, don't want to do
15 that.

16 COMMISSIONER ZUNIGA: Because as you
17 know the schedule, there's going to be a lot of
18 work going on at the same time. That was
19 always my general concern about having --

20 MS. PINCK: I have also on my side
21 some junior staff to do some logistics, setting
22 up meetings, making sure the paper is going
23 where it's going. And having the more senior
24 staff like Nancy have the discussions that

1 integrate, for example, outside agency reviews.

2 That look for the intersection of
3 issues, for example, between financial and
4 economic development or economic development
5 and mitigation. I think that's going to be
6 very important as we proceed through the
7 process of evaluating the categories
8 independently of each other.

9 But I do understand your concern and
10 I don't want to end up being that bottleneck.
11 So, I would expect within the next couple of
12 weeks I will refine that and bring that back to
13 you, especially as we talk to and bring on
14 board some of the reviewers who I'm really
15 looking forward to getting some insights.

16 I know HLT has done this extensively
17 for the Canadian government and the provinces.
18 So, getting their insights on how to do this I
19 think will be very helpful.

20 COMMISSIONER ZUNIGA: As a follow-up
21 to that, I would encourage everybody to really
22 leverage, you especially, but us to leverage
23 the increased staff that we have. We started
24 by necessity very lean, but we have grown with

1 additional expertise that fit very well in some
2 of these categories.

3 CHAIRMAN CROSBY: And Rick will be
4 assigning a senior person, at least a senior
5 person to each one of the groups, right?

6 MR. DAY: I have done that, yes. I
7 think one thing as we continue the discussion
8 is when it comes to project coordinator, I
9 think the concept behind this is that from
10 Pinck and Company's perspective, that their
11 role is that ability to watch the product, so
12 to speak, keeping it moving to make sure that
13 when we get down to that 84th day or 74th day,
14 we've actually got a product that's going to
15 work for the Commission.

16 So, from my perspective that's the
17 primary focus of how does the process go
18 forward, keeping it going forward, keeping it
19 on track. And then I think what's handy now
20 because Pinck also has some expertise that as
21 the Commission is formulating it's various
22 teams that they have the ability to help fill
23 in, if the Commissioners feel that that would
24 be necessary as well.

1 And in that process, we've had some
2 discussions about the project coordinators and
3 to the extent they would actually need to
4 participate with the teams in order to make
5 sure that they provide kind of an independent
6 opinion too back to the Commissioners. Is
7 there something missing? How are we doing with
8 time processes and those kinds of things?

9 So, I think that's the struggle to
10 get to that level of participation but not go
11 over the edge and try to actually participate
12 full-time in all or in the team meetings
13 themselves.

14 CHAIRMAN CROSBY: Do you anticipate
15 your staff members filling out these forms?

16 MS. PINCK: I don't know. That's
17 one of my questions to you. I think in some
18 areas, yes.

19 CHAIRMAN CROSBY: It seems to me and
20 I'm wrestling with this role too. If the job
21 is to be a facilitator, which is the way I see
22 it, I wouldn't think you would. If we are
23 short substantive content review then we will
24 fill that gap and it maybe fill with a Pinck

1 person, so to speak, a flesh-colored person,
2 called Pinck.

3 COMMISSIONER ZUNIGA: Pinck
4 employee.

5 MS. PINCK: We call ourselves
6 Pincksters.

7 CHAIRMAN CROSBY: Your hesitance in
8 answering the question concerns me because what
9 I think you said clearly, Rick, that the role
10 is of a facilitator not as an additional
11 content reviewer unless and until we have a
12 content problem in which case we fill it in.
13 But that's kind of on the side. That's why I
14 asked the question.

15 MS. PINCK: The reason why I
16 hesitated is I do think we'll have plenty to do
17 without reviewing all of the questions and just
18 keeping the process moving.

19 But one of the things that I think
20 the RFR called for is for the project
21 coordinator to synthesize the findings, if you
22 will. I don't think -- I think we need to be
23 familiar with the contents. We don't
24 necessarily need to review or assess or mark or

1 score or rank. So, I guess that's the
2 distinction I would make.

3 CHAIRMAN CROSBY: Even on the
4 synthesizing, as I'm thinking about this,
5 individual members of these teams will go off
6 and do their assessment. Then the group, sort
7 of like the procurement process does, then the
8 group will get together. And I'll say it was
9 sufficient or I'll say it was insufficient or
10 I'll say extraordinary. We'll talk about it.
11 Why was it and then see how that it gets
12 synthesized by the group. And eventually the
13 group sort of pulls it in to on balance.

14 Again, I don't see you as the
15 synthesizer. I see you as the facilitator of
16 the synthesizing process and I think it's an
17 important distinction. You do need to be
18 somewhat familiar with the content, clearly, to
19 some extent. You probably are for the most
20 part already. But being able to keep your
21 hands out of the content and making sure that
22 you're up here making sure things are flowing.

23 We're asking people to do a lot of
24 work. If we go with these forms and maybe we

1 will, maybe we won't, but this is a lot of
2 work. Supporting the folks who do have to do
3 these forms and facilitating that process and
4 short-cutting that process and simplifying that
5 process will be tremendously helpful. And I
6 wouldn't want you to get caught up and be doing
7 it yourselves.

8 COMMISSIONER ZUNIGA: I was going to
9 ask a related question that is relative to
10 nomenclature. But I think it's important for
11 us to really to get some of this right, because
12 the statute speaks to some of this. I was
13 going to draw attention to findings and to
14 recommendations.

15 The statute does talk and give us,
16 the Commission the task, as I remember it, of
17 issuing the statement of findings overall. And
18 I realize that that could all be comprised of
19 aggregating all of those findings that happen
20 at each of the teams.

21 But it occurs to me that in the
22 example that you cite, for example the number
23 of jobs, where the rubber hits the road is
24 whether we believe that those numbers are too

1 aggressive or too conservative or just right
2 and the assumptions behind them.

3 MS. PINCK: Right.

4 COMMISSIONER ZUNIGA: And that is
5 the subjective piece you speak about because
6 it's all a projection.

7 MS. PINCK: Right.

8 COMMISSIONER ZUNIGA: It can be
9 corroborated in some math, but ultimately do we
10 trust that it's conservative or aggressive or
11 what.

12 So, that's a general thought
13 relative to if we get to that level of detail,
14 to the Chairman's point about the forms that
15 have to produce a finding at each one of those
16 subsets or in your example, the level three, it
17 may turn out to be a lot of work that we just
18 need to think about.

19 So, just couple that with
20 recommendations that the teams can clearly
21 produce. They can make assessments. This was
22 going to be my other question. They will look
23 at different proposals side-by-side and say
24 this appears to be better in this regard,

1 because I have the benefit of comparing them
2 one to the other side.

3 As opposed to trying to look at each
4 one in a vacuum and come up with a label for it
5 sufficient, outstanding or not without the
6 benefit of looking at the comparison.

7 MS. PINCK: And I think there's
8 micro-views that are going to be necessary and
9 then there's macro-views. And the question is
10 when do those occur and how do they occur so
11 that you aggregate the information. In some of
12 these subcategories, for example, you've asked
13 questions on a topic in three or four different
14 ways.

15 COMMISSIONER ZUNIGA: We have.

16 CHAIRMAN CROSBY: So, what was the
17 point of that?

18 MS. PINCK: When do we aggregate it?
19 When do we take the macro-view on an
20 applicant's response? We have to look at the
21 response to every question. And that is going
22 to be important information. The comparison is
23 really where the rubber meets the road in this
24 in terms of making a recommendation.

1 COMMISSIONER MCHUGH: This approach
2 that you've outlined strikes me as really
3 labor-intensive, but essential. And I don't
4 see how we can do it otherwise. But would it
5 make sense just to take a minute to walk
6 through this and talk about it in the context
7 in which things are going to happen? So, if we
8 start with the last page.

9 MS. PINCK: That is exactly where we
10 should start because that's where -- And I
11 think that would be very helpful, because that
12 will direct us to what are we trying to get out
13 of this review.

14 COMMISSIONER MCHUGH: Right. So,
15 with respect to the last page, this would be --
16 each individual reviewer would be -- as it's
17 presently constructed, each individual reviewer
18 would be doing this and assigning one of these
19 bullet colors, right?

20 What is the value of having each
21 reviewer create his/her own answer to question
22 one? Why isn't the response, the response and
23 the reviewer's statement of findings, however
24 you want to label that box, the response to

1 what the applicant has done?

2 My concern -- I raise that concern
3 because you could have five different reviewers
4 look at the same response and come up with five
5 different answers to question one.

6 MS. PINCK: And you could just cut-
7 and-paste the short narrative from the
8 respondent's, the applicant's.

9 CHAIRMAN CROSBY: I have the same
10 exact question. I don't see any value in that
11 at all. I agree with Commissioner McHugh.

12 MR. DAY: I might. There's one
13 question, and I may have missed it, is let's
14 say a reviewer and you've got a category and
15 we've been talking about number of jobs. As a
16 team process, it seems to me there's got to be
17 a way to bring in opinions in order to make
18 some kind of a collective judgment that is from
19 the team.

20 I almost think of these as work
21 papers. I would take a look at those. I would
22 take a look at the applications independently.
23 I would basically jot down what I thought each
24 of these were. And at that time, I would bring

1 those in along with everybody else on the team.
2 And we'd sit down and discuss those.

3 I guess it's not unlike sometimes
4 when we're doing an interview and a hiring, we
5 get done with the hiring. We sit down and we
6 actually talk about where do you rank that
7 person.

8 It seems like this is more of a
9 method to get that kind of structure, that kind
10 of discussion to the team itself, but
11 ultimately the product from the team then comes
12 from further down in the process where you
13 actually funnel those in.

14 COMMISSIONER MCHUGH: I don't
15 disagree with that. It seems to me this is
16 exactly what this does. My question is simply
17 what value in that process does the first box
18 on the last sheet play? The second box is
19 critical. What role does the first box play?
20 It seems to me that that is just make-work.

21 MS. PINCK: We don't want to do
22 make-work. There's not enough time.

23 MR. DAY: I agree with that.

24 COMMISSIONER ZUNIGA: Just to

1 further the agreement, perhaps what we may need
2 as a statement of findings is maybe that can be
3 subdivided say into what we thought is a
4 strength. They clearly demonstrate it.
5 Because you did allude to there are some
6 prerequisites of the statute and our regs., and
7 there's others that are not. They're over and
8 above their prerequisite.

9 So, perhaps something that has been
10 clearly demonstrated and that's been very
11 viable. And then may be something else that is
12 claimed. It's a promise. It's projection and
13 we trust it. We verified it. We think it's
14 just right. It's not conservative or
15 aggressive.

16 So, it's thinking about box two
17 maybe and how to parcel it whether we see
18 strengths and weaknesses within those findings
19 might be a better way. Or whether they clearly
20 demonstrate this aspect but not these others.

21 CHAIRMAN CROSBY: What I was
22 thinking is to make quality of submission
23 that's what you're calling it at the moment,
24 make that the first box. Basically, how do you

1 rate this? And the next question is why. And
2 you explain how you come to the decision that
3 it's outstanding, very good, sufficient or
4 insufficient. It seems pretty straightforward.

5 If the question is a very factual
6 one with no subjective measures of anything,
7 then you'll just say because this guy had 100
8 and the other guys had 22. But if there's I
9 don't believe their projection, you'll answer
10 the question depending on what the criteria is.
11 But it's very simple said of how do you rate
12 this and why. That seems to me to be simplest
13 way to pull this out.

14 COMMISSIONER MCHUGH: If we go to
15 the next one, then what is that?

16 MS. PINCK: The subcriteria
17 assessment - no, this is trying to think about
18 the comparison.

19 COMMISSIONER MCHUGH: Is that each
20 individual reviewer's --

21 MS. PINCK: That was intended to --

22 COMMISSIONER MCHUGH: -- a summary
23 of what's on these other sheets?

24 MS. PINCK: That can be either each

1 individual reviewer's or you can bring it back
2 to the team to do. This is my question to us
3 is how do we want to approach that? Because I
4 do think the team -- an individual reviewer
5 looking across four applicants should be able
6 to say this one clearly stands out for me.

7 COMMISSIONER MCHUGH: Is that sheet,
8 the one that's up on the board now and the next
9 one up are they two different variations of the
10 same thing?

11 MS. PINCK: Yes. I think they're a
12 little bit out of order too. The next one up.
13 This is just for one single applicant category
14 whereas the other one was reviewing across
15 applicants, comparing.

16 COMMISSIONER MCHUGH: It seemed to
17 me that this one then, the one that is the
18 review architecture for each applicant could be
19 the next logical step up if it were either the
20 team's process of aggregating the individual
21 response sheets or each reviewer's assessment
22 so that each reviewer would have a shorthand
23 thing in front of her when the team got
24 together.

1 MS. PINCK: Yes.

2 COMMISSIONER MCHUGH: At some point,
3 you're going to have a team discussion of the
4 individual responses. And the team discussion
5 is going to be somehow an aggregation and
6 coming to a point of commonality for the
7 individual scorings and rankings, right?

8 MS. PINCK: Right.

9 COMMISSIONER MCHUGH: So, this sheet
10 might be that the way to reflect that or it
11 might be each -- and maybe the next one down is
12 each individual reviewer's shorthand that
13 he/she goes into the meeting with with the
14 sheets as back up. I don't know.

15 COMMISSIONER ZUNIGA: I think back
16 to the workload. I believe what's valuable
17 clearly is the product of the team at the
18 lowest level of criteria and categories that
19 we've asked them. Whatever that level is, a
20 finding and a rating or an assessment and a
21 rating that's the consensus of the team in my
22 view is really the valuable record.

23 Before that each team member can
24 use, should be able to be free to use whatever

1 form they need. And they may be able to use
2 just one like this and come prepared to do
3 those discussions and say this is what I
4 liked.

5 MS. PINCK: Send the reviewers away
6 with instructions on how to review and/or rank
7 these responses. What is insufficient; what is
8 outstanding?

9 COMMISSIONER ZUNIGA: Actually, no.
10 I was actually heading in the other direction.
11 Each person makes their own judgment about each
12 subcategory and comes to discuss them in a
13 series of meetings. The first meeting they
14 just get through however many they get through
15 to have a collective weight and rating of each
16 of the categories. And that's the level of
17 record that we now have.

18 As an individual team member, I can
19 use this form, scribble my notes, go off memory
20 if I want.

21 MS. PINCK: But you need to bring to
22 the meetings, the team meetings --

23 COMMISSIONER ZUNIGA: But the record
24 begins in my view when the team has formed a

1 collective understanding or agreement as to why
2 this is better or outstanding or insufficient.

3 COMMISSIONER MCHUGH: That's
4 certainly a way to do it, and it's a good way
5 to do it. Is there any merit though to having
6 an intermediate step there in which the
7 individual scribblings on these sheets are
8 summarized on something that looks like the
9 second one from the bottom for each reviewer?
10 That could be a mechanical task that one of
11 your staff could even do, because it's just
12 copying it on those summary sheets.

13 And then before the meeting takes
14 place, having these summary sheets circulated
15 to all of the different team members so you
16 could begin to see very quickly where the
17 points of commonality were and where the points
18 of disagreement were. And focus the limited
19 time that we have on the places where we
20 disagree.

21 In other words, if everybody
22 responds to something as outstanding, why do we
23 need to take the time in the room to go through
24 the individual announcements that we all view

1 it as outstanding? We can see that on a piece
2 of paper. We all agree. We go onto the next
3 one.

4 I am thinking not that the
5 discussion isn't useful, but that we do have a
6 limited amount of time. And to the extent we
7 can spend the time together focusing on
8 differences and just putting aside points of
9 commonality.

10 COMMISSIONER ZUNIGA: That could
11 very well be a reason for that. But let me
12 mention this from this other angle. These
13 teams will be quite diverse in the sense that
14 it includes one Commissioner, one expert or
15 more on the particular subject matter, one
16 staff. By the way, I'm going to argue both
17 sides to this. That's probably really good for
18 the discussion.

19 But I would like to think that
20 recording all of this may result in a
21 divergence that is not necessarily that -- in
22 ratings that doesn't tell us much. I don't
23 know if I'm explaining myself well. I'm going
24 to put in an example. The review of a

1 projection on an Excel spreadsheet of a
2 financial model may be better with the
3 particular team member that has that expertise
4 and is in the thick of that model that
5 understands the model. And I don't think that
6 every team member is going to be at the same
7 level.

8 Of course everybody has to
9 understand what are the outcomes of that model,
10 but at some point they're going to have to
11 trust that the team member or members, this
12 could be more than one person, has made a
13 reasonable review of that model and is
14 comfortable with the projections and
15 assumptions behind it.

16 CHAIRMAN CROSBY: I think that's
17 going to happen. I think that's a really good
18 point. But I don't think that suggests
19 anything about what Jim said is a way to
20 proceed. In the process you might decide for a
21 certain category, like a very technical
22 category about downstream value projections or
23 something, you might say -- take your group, we
24 want our investment banker to tell the whole

1 group what they think it is.

2 We are going to take their
3 assessment and here's what they think of it.
4 Or each reviewer might say, I don't have the
5 data, I don't know how to answer this question,
6 you don't answer every question. Or when
7 you're sitting around talking about it, some
8 people have hazard guesses, but they weren't
9 very well informed about it and the group puts
10 more weight - Anyway, you could work this out
11 as you go through the process.

12 But as an organizing mechanism,
13 trying to figure out what's the simplest,
14 cleanest way to get our arms around this, I
15 think Commissioner McHugh is right, you start
16 with this one.

17 But I would suggest changing on this
18 level three -- It seemed to me that this
19 compilation should have -- You've got the
20 criteria and the applicant in the wrong boxes.
21 Where you have (A) you should have subcriteria
22 3.1. And then you'd have how did I rank A, how
23 did I rank B, how did I rank C, how did I rank
24 D. Then what's at B would be subcriteria 3.2.

1 How do I rank A, how do I rank B, how do I rank
2 C, how do I rank D.

3 That would give you a comparative
4 for each one against all categories and then
5 you circulate those. And where you have
6 consensus, you can set them aside and then go
7 on. But as for those steps structured that
8 way, I think we're on the right track. Does
9 that make sense?

10 MS. PINCK: Right.

11 COMMISSIONER MCHUGH: That makes
12 sense to me too. And then the next one would
13 get to Commissioner Zuniga's point, the one
14 below that.

15 MS. PINCK: I'm sorry. I should
16 have numbered these.

17 CHAIRMAN CROSBY: Review
18 architecture it says.

19 COMMISSIONER MCHUGH: Yes, review
20 architecture would maybe reflect the group's
21 assessment of each one. You wouldn't have to
22 have this whole --

23 CHAIRMAN CROSBY: If each reviewer
24 does the restructured version of level three

1 comparison of criteria across applicants. Yes,
2 actually the heading here is right. It's just
3 that the form is wrong. The heading is right,
4 but you didn't do it. You did applicants
5 across criteria.

6 So, each individual fills these out.
7 Then you come to the group meeting. You walk
8 through them one by one by one. Somebody is
9 recording a bottom line. So, six people say
10 bah, bah, bah, bah, bah. And we've now decided
11 that as a group we are saying sub criteria 3.01
12 is this for A, this for B, this for C, and this
13 for D. And you use the same form over again
14 but it's a compiled form.

15 COMMISSIONER MCHUGH: Right.

16 COMMISSIONER ZUNIGA: Just to be a
17 devil's advocate, you could have a situation
18 where four team members rate something
19 insufficient and for different reasons but
20 they're all recorded. And a fifth team member
21 says it's outstanding and the conclusion is
22 outstanding.

23 CHAIRMAN CROSBY: The conclusion is
24 what?

1 COMMISSIONER ZUNIGA: Then the
2 general consensus after the discussion maybe
3 outstanding because that fifth member picked up
4 on and was able to convince, picked up on the
5 assumptions behind the model in my theoretical
6 example, etc., etc. Is that okay?

7 COMMISSIONER MCHUGH: Sure.

8 CHAIRMAN CROSBY: That's all right.

9 COMMISSIONER ZUNIGA: And that would
10 be recorded.

11 CHAIRMAN CROSBY: In your example,
12 really only the fifth one really knew what they
13 were talking about and everybody agreed.

14 MS. PINCK: Yes.

15 COMMISSIONER ZUNIGA: The power of
16 persuasion.

17 COMMISSIONER MCHUGH: So, the
18 underlying things would look very different
19 than the consensus form. So, that would be
20 fine.

21 CHAIRMAN CROSBY: Right. So, once
22 you had compiled this same form the second time
23 on an aggregate basis as opposed to an
24 individual reviewer basis, now the question is

1 do you need to upstream one more time or does
2 it go to the Commission like that?

3 No, I guess there is one more step.
4 Then you get to then we get to the one that
5 says level three -- level three, comparison of
6 criteria across applicants.

7 COMMISSIONER MCHUGH: And you have
8 individual and consensus.

9 CHAIRMAN CROSBY: And it's going to
10 switch around. You've going to have the column
11 is going to be criteria and the rows are going
12 to be applicants, which is what the header
13 actually says.

14 MS. PINCK: Rows are applicants,
15 yes.

16 CHAIRMAN CROSBY: You are going to
17 use that for individuals and then you're going
18 to aggregate that to the consensus. And then
19 the task force will need look at all of those
20 consensus decisions on all of these points and
21 figure out an aggregate rating -

22 COMMISSIONER ZUNIGA: For each of
23 the mega categories.

24 CHAIRMAN CROSBY: -- for each of the

1 mega categories, right.

2 COMMISSIONER ZUNIGA: One through
3 five.

4 CHAIRMAN CROSBY: Right, which would
5 be basically your level one. Each team would
6 have that. And then this would eventually be
7 put together in this final form. So, this
8 would be winnowed down to three forms.

9 COMMISSIONER MCHUGH: Three forms,
10 one of which is used twice.

11 CHAIRMAN CROSBY: One of which is
12 used twice. Are you following that?

13 MS. PINCK: I think so, yes. I
14 understand what you are saying. Keep going on.

15 CHAIRMAN CROSBY: From my standpoint
16 that does it. The only remaining question in
17 my mind is when we go to what we now are
18 considering the first form the reviewers'
19 summaries, it's by item. How much do we want
20 written into the why?

21 We decided essentially we're using
22 colloquial language. We are going to start out
23 by saying how did you end up rating this data
24 point and why? What do we want in the why?

1 And how do we aggregate that? Do we expect
2 everybody to read everybody's whys? Is it
3 there just for the record? I'm not sure. But
4 that's the only open question in my mind.

5 COMMISSIONER ZUNIGA: In my view and
6 opinion, as much why as we can at the team
7 level is very important.

8 CHAIRMAN CROSBY: Sure. Yes, good
9 point.

10 COMMISSIONER ZUNIGA: The aggregated
11 level.

12 COMMISSIONER MCHUGH: I agree with
13 that, but I don't think we need to have
14 everybody read everybody's whys. I think that
15 will kill us.

16 We have the whys (A) as a record if
17 we ever have to go back and look at how did we
18 got there. And secondly, so that at the team
19 meeting the person who has ranked the thing can
20 remember why and say it. Because a lot of the
21 whys, we may never get to them if everybody
22 agrees that result's outstanding. We may have
23 different ways of getting there, but if
24 everybody agrees.

1 COMMISSIONER STEBBINS: But to the
2 degree we need the information in the whys to,
3 under section 18, kind of do the write-up of
4 findings. I think that's valuable information
5 to collect that data.

6 COMMISSIONER ZUNIGA: At the team
7 level.

8 COMMISSIONER STEBBINS: At the team
9 level, but the reason for having that why box
10 is criteria we have to --

11 COMMISSIONER MCHUGH: It's a good
12 resource for writing up for the findings.
13 That's right. That's another reason for it.

14 CHAIRMAN CROSBY: But that's a why
15 we don't actually have here. That would be a
16 why on an aggregated version of this. So, when
17 the team does the aggregated criteria across
18 applicants, there would need to be a why did we
19 conclude this.

20 COMMISSIONER ZUNIGA: That's the
21 work product.

22 MS. PINCK: Exactly. That's the
23 work product.

24 CHAIRMAN CROSBY: But back to the

1 other whys, the individual whys, I agree with
2 Commissioner McHugh.

3 That it will be helpful to review
4 why you did it, and we will have the record but
5 I think if you specify bullet points, we are
6 not trying to ask people to write tomes. We're
7 just saying one, it was pretty. Two, I like
8 the socks the guy was wearing. Just bullet
9 points, not prose. Something that enables
10 people to pare the volume down.

11 COMMISSIONER ZUNIGA: Actually,
12 nobody will be judged by the color of their
13 socks.

14 COMMISSIONER STEBBINS: Let's make
15 that clear.

16 COMMISSIONER MCHUGH: And in the
17 end, we get something that looks like the level
18 one -- The first two, one, presentation of
19 level 1 looks like different ways of doing the
20 same thing.

21 MS. PINCK: One is by category and
22 one is by applicant. And I do think that where
23 we started this is what is the work product
24 that you will want when you are making your

1 final decision?

2 COMMISSIONER ZUNIGA: I was actually
3 going to get to a question that may come just
4 before that question, if I may.

5 So, there's a meeting of the
6 Commission eventually to discuss the first set
7 of recommendations by the first team. And we
8 do this however many times to get through all
9 of the recommendations.

10 Considerably there will be an
11 applicant that is outstanding in the financial
12 piece, let's say, but it's not the same
13 applicant that is outstanding in another
14 category. So, the question now is at this
15 meeting do we go back to the prior levels in
16 order to get to the comparison?

17 CHAIRMAN CROSBY: If need be.

18 COMMISSIONER STEBBINS: Go back to
19 the aggregate findings.

20 COMMISSIONER ZUNIGA: Probably, it's
21 all there.

22 CHAIRMAN CROSBY: To the extent you
23 want it to be, yes. This could be re-
24 aggregated in a variety of different ways. The

1 thing I think we are going to care most about
2 is criteria across applicants. That's the real
3 issue. We are looking aggregated criteria by
4 applicant maybe there'll be a reason for it,
5 I'm not sure. It doesn't do much for anybody.

6 MS. PINCK: No, it doesn't. You
7 need to be able to do it across applicants so
8 you can make a judgment.

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: Whether it's
11 individual criteria or the summaries.

12 MS. PINCK: Or the subcategories,
13 there's categories and there's subcategories
14 and then there's questions. And I think there
15 may be four applicants, and in one subcategory
16 each of them has an outstanding in a completely
17 different question, but you are still going to
18 have to compare across that subcategory.

19 COMMISSIONER STEBBINS: But the
20 system also has to work so that it's not
21 necessarily just looking at aggregated scores
22 across applicants, if we find ourselves in a
23 situation where we have one applicant. That's
24 why we came up with sufficient, insufficient as

1 opposed to good, better, best where it's a
2 little bit too comparative.

3 Because we are allowed to license up
4 to one, we want the information to be
5 descriptive. And we're not just going to take
6 you because we're looking at you and you're all
7 insufficients but you're the only application.
8 So, just being mindful of keeping the scores
9 between the applicants, the score of an
10 applicant somewhat separated from the
11 aggregated score. I don't know how you do
12 that.

13 MS. PINCK: I have a question for
14 you. Do we on the scoring or the ranking we've
15 got insufficient, sufficient, very good and
16 outstanding and excellent. The basis of that
17 was a narrative that Commissioner Stebbins
18 prepared some time ago.

19 CHAIRMAN CROSBY: Did we see that?
20 Did you distribute that?

21 COMMISSIONER STEBBINS: No, I
22 didn't. I shared it with Commissioner McHugh
23 and got some thoughts and feedback from him and
24 then passed it along to Executive Director Day.

1 COMMISSIONER ZUNIGA: Thank you for
2 that question. I thought I was missing that.

3 MS. PINCK: When I was talking with
4 Rick the other day about scoring and ranking,
5 which you've had a lot more discussion about it
6 than certainly I have. And you've probably
7 thought about it a whole lot longer. I wasn't
8 sure or I don't think we were entirely sure
9 what we were scoring or ranking. And the
10 degree to which you as the Commission or you
11 individually as Commissioners would want to
12 retain the ability to make that final decision.

13 CHAIRMAN CROSBY: Which final
14 decision?

15 MS. PINCK: To rank and score.

16 CHAIRMAN CROSBY: We want to retain
17 that to the total extent possible.

18 MS. PINCK: You do.

19 CHAIRMAN CROSBY: Yes.

20 MS. PINCK: So, I guess what I'm
21 asking is you are going to receive the
22 assessments of the reviewers and the evaluation
23 teams where we had used a ranking where
24 outstanding and excellent, and I'd like to read

1 this to you if I may, it says provides
2 information and responses to the question and
3 overall application that is of uniformly high
4 quality, demonstrates experience, creative
5 thinking and a unique approach. Insufficient
6 is the other end where there is just not enough
7 information to assess that.

8 CHAIRMAN CROSBY: You just read the
9 description for outstanding?

10 MS. PINCK: Outstanding.

11 CHAIRMAN CROSBY: You said
12 excellent, but there is no excellent, it's
13 outstanding.

14 MS. PINCK: It was outstanding.

15 CHAIRMAN CROSBY: So, there's four
16 that would have language more or less like
17 that?

18 MS. PINCK: Yes.

19 CHAIRMAN CROSBY: That's fine.

20 MS. PINCK: I just wanted to make
21 sure.

22 CHAIRMAN CROSBY: My suggestion
23 would be that we use the word rating. We may
24 or may not be ranking these, but we certainly

1 are rating them. And I think that's as
2 unprejudicial a word as we can come up with.
3 So, the quality of submission would become
4 rating. And we would rate this outstanding,
5 very good, sufficient or insufficient. And
6 then we would explain why we came up with that
7 rating.

8 MS. PINCK: Right.

9 COMMISSIONER ZUNIGA: But we
10 understand though that we're going to be
11 looking at things comparatively.

12 CHAIRMAN CROSBY: Yes, absolutely.

13 COMMISSIONER ZUNIGA: In coming up
14 with that rating --

15 CHAIRMAN CROSBY: That is really
16 going to be us.

17 COMMISSIONER ZUNIGA: The team
18 members have the benefit of having seen side-
19 by-side the different proposals. Because
20 that's fundamentally how decisions can be made.

21 COMMISSIONER MCHUGH: Which means
22 that when you aggregate this all of the way up
23 and you fill in this last one that's a summary
24 of everything that's down below, you may find

1 one that's got more outstandings than other's
2 but in our discussion we reach the conclusion
3 that the financial stability factor is so far
4 and away better than everybody else's that the
5 Commonwealth would be best served, even though
6 it's a little less good in other categories.

7 CHAIRMAN CROSBY: I agree. This is
8 an interesting point. And this is almost what
9 I was thinking to have Catherine think about.

10 We don't want to inadvertently set
11 up a process that suggests an appeal to the
12 outcome that was unintended for precisely that
13 reason. We want to somehow make it absolutely
14 clear that no matter what this says, when it
15 comes to this body, we are unconstrained within
16 the limits of the absence of fraud and
17 reasonable whatever, we are unconstrained in
18 our ability to figure out what those ratings
19 actually in the end mean and ultimately pick a
20 licensee. So, just it's worth thinking through
21 to make sure we don't inadvertently somehow or
22 other set something up to come back to bite us.

23 MR. DAY: I may have missed
24 something, which has happened occasionally --

1 CHAIRMAN CROSBY: Welcome to the
2 crowd.

3 MR. DAY: -- as I was following
4 through, I was trying to come up with what's
5 the product that the Commissioners, how far do
6 the evaluation teams, how far should they go
7 and what product would the Commissioners be
8 looking for. And I'm not sure that I've found
9 that spot necessarily.

10 It seems like the reviewer's
11 summary, the first sheet, that seems pretty
12 clear. It provides that basis that foundation
13 for the teams to get together and work. The
14 second sheet it sounds like basically is a
15 process then we'll collate them to bring those
16 various rankings together in some comparison
17 format.

18 COMMISSIONER MCHUGH: No. The
19 second sheet is the individual reviewer's
20 summary. CHAIRMAN CROSBY: It's this one
21 only it's reorganized.

22 MR. DAY: And then it's reused again
23 as the team's summary; is that correct?

24 COMMISSIONER MCHUGH: Right.

1 CHAIRMAN CROSBY: Then the last one
2 is 1/5 of what is referred to as level one
3 category summary. Put level one up here on the
4 screen. Each group general, financial, etc.
5 will do an aggregation just like this. We will
6 rate each of the applicants by -- their
7 totality will be outstanding, sufficient,
8 insufficient, whatever. So, it'll be this page
9 but just one of the columns for each task
10 force.

11 MR. DAY: For each team.

12 CHAIRMAN CROSBY: And that's what
13 will then come to the Commission.

14 MS. PINCK: And there's two sheets
15 that look very similar behind it and then deep
16 in the files are the reviewers' summaries.

17 CHAIRMAN CROSBY: Right.

18 COMMISSIONER MCHUGH: So, the
19 Commission can ultimately be presented with
20 this all filled out by each of the teams so
21 that the Commission is looking at a color-coded
22 thing that tells it -- and that's the basis for
23 the Commission's discussion.

24 CHAIRMAN CROSBY: There actually

1 would be this literal page would be the final
2 thing that would come to us, but behind that
3 would be the other series of breakouts, right.

4 MR. DAY: I think that's part of my
5 question is does the Commission want the teams
6 to go that far or is that part of the process
7 that the Commissioners would actually do
8 themselves based on the comparisons from the
9 teams?

10 CHAIRMAN CROSBY: So, what you're
11 asking is do we want the task forces to do an
12 aggregated final rating of each?

13 MR. DAY: Yes.

14 CHAIRMAN CROSBY: Or do we want to
15 leave it as a category and subcategory?

16 MR. DAY: Or do you want the teams
17 to report out in that fashion and the
18 Commissioners would pick it up from there.

19 COMMISSIONER ZUNIGA: I would
20 probably err on the side of leaving it at the
21 multiple, not making one final - one
22 aggregating assessment. Maybe leaving the
23 however granular ratings -- We call them
24 ratings, right?

1 CHAIRMAN CROSBY: Ratings, yes.

2 COMMISSIONER ZUNIGA: Because I'm
3 wondering or thinking about this scenario in
4 which if we did that we could end up with one
5 team having two outstanding applicants,
6 correct, overall outstanding?

7 COMMISSIONER MCHUGH: Right, you
8 could have four.

9 COMMISSIONER ZUNIGA: We could have
10 all four be outstanding because you aggregate
11 four outstanding here. There is not a formula
12 but the team decides, cannot really decide on
13 an outstanding and it's also an outstanding
14 here. And by necessity, we all have to go back
15 to those levels in that scenario. It occurs to
16 me that it may better to have that discussion
17 at a Commission meeting at the level of those
18 multiple.

19 COMMISSIONER MCHUGH: Here's my
20 concern about that. I'm just taking building
21 and site design. That's got 47 or 48 questions
22 in it. And to have the Commission, unless it's
23 really necessary, compare 47 different
24 responses by four applicants is going to be a

1 discussion from, you fill in the blank - rather
2 than again for the same reason seeing where the
3 points of disagreement are because we have a
4 summary in front of us, and seeing how deeply
5 we need to go in each category to figure how to
6 unpack it. It seems to me that that's the only
7 realistic way to have a conversation.

8 COMMISSIONER ZUNIGA: That's a fair
9 concern.

10 CHAIRMAN CROSBY: I would agree with
11 that. My only concern would be the issue I
12 raised before, which is do we run any risk of
13 creating some kind of a paper trail that causes
14 a problem. If that is not an issue, then I
15 agree completely with Jim that we should come
16 up to this level.

17 If we have get outstandings, we get
18 four outstandings. It is our judgment as to
19 which is the most outstanding. I think that's
20 okay as long as the other problem doesn't
21 exist.

22 MR. DAY: The Commission would see
23 the rating and they would also see the
24 statement of findings behind the rating.

1 CHAIRMAN CROSBY: Way back behind,
2 there would be the task force assessment. That
3 would be the consensus. So, that might make
4 some distinctions among outstandings right
5 there. Right, good point.

6 MR. DAY: Plus the Commissioners
7 would be able to discuss whether or not they
8 concur with those statement of findings are
9 actually at that level. So, we've got four
10 steps.

11 CHAIRMAN CROSBY: Right.

12 MS. PINCK: I think I have four
13 steps now. I have reviewers are going to
14 review the assigned questions and provide a
15 rating to the applicant's response and the why
16 they rated it that way.

17 CHAIRMAN CROSBY: In bullet points.

18 MS. PINCK: Yes, in bullet points,
19 all bullets, yes. I have the individual team
20 members will review the questions and -- also
21 review the questions and compare the
22 subcategories across applicants, the individual
23 team members.

24 CHAIRMAN CROSBY: Yes.

1 MS. PINCK: The evaluation team is
2 going to deliberate and make their own final
3 findings and assessment of each applicant which
4 is the basis of the report to the
5 Commissioners.

6 CHAIRMAN CROSBY: Which will be in
7 the same form.

8 MS. PINCK: In the same form, yes.

9 MR. DAY: That was wherever possible
10 a consensus.

11 MS. PINCK: Then lastly, the
12 Commissioners receive and consolidate the
13 evaluation teams' reports and select the
14 winning proposal.

15 COMMISSIONER ZUNIGA: In between the
16 last one, the individual teams will also
17 present an aggregated rating and
18 recommendation.

19 MS. PINCK: Yes, the subcategories
20 and the category, yes.

21 COMMISSIONER MCHUGH: So, filling
22 out that level one thing is almost, not almost,
23 is a staff task from the consensus ratings.

24 MS. PINCK: Yes.

1 CHAIRMAN CROSBY: You can redraft
2 these things and send them around to us
3 quickly.

4 MS. PINCK: That would be great,
5 because we would like to be explaining this
6 next Wednesday, for sure.

7 COMMISSIONER MCHUGH: So, we have to
8 understand it first.

9 MS. PINCK: Yes, that's exactly
10 right.

11 MR. DAY: With that redraft we can
12 also include the definition of the ratings.

13 MS. PINCK: Under the definition of
14 the ratings, I've got the hierarchy of the
15 reviews, the reviewer, team member as I just
16 said to you the steps.

17 CHAIRMAN CROSBY: I have one
18 question. Again, it's somewhat for Catherine
19 as well everybody else. The individuals will
20 be contributing directly to a rating which will
21 be compiled into an aggregated rating which
22 will then come to the Commission. And each of
23 those individual person's ratings will end up
24 being a significant part of the decision-making

1 process.

2 We have a reg. that says we can use
3 experts and consultants and use of them doesn't
4 create public meetings. But is there any line
5 between an advisory role that would require
6 public meetings and an advisory role that
7 doesn't? Is there any gray area here that we
8 need to be concerned about? I think
9 particularly of my group, which is an
10 idiosyncratic group.

11 MS. BLUE: The question came up
12 under review of the open meeting law that I had
13 looked at. Under the Attorney General's
14 guidelines what they suggest is that any
15 official that puts together an advisory
16 committee who's going to provide advice on
17 something that that individual official could
18 otherwise decide on their own does not create
19 an advisory committee and then it is not
20 subject to the open meeting law.

21 I think in the situation we have
22 here, what we have is a group of consultants
23 and independent evaluators, which is covered by
24 our regulations. And they are acting as a

1 review in giving advice to the particular
2 Commissioner that heads that up or the
3 particular staff person if it's not a
4 Commissioner. So, I don't see there being an
5 open meeting law question.

6 CHAIRMAN CROSBY: Okay. You've been
7 concerned about the use of the word advisors
8 sometimes.

9 MS. BLUE: Yes.

10 CHAIRMAN CROSBY: Why is that a
11 concern?

12 MS. BLUE: Because there is also
13 language under the Attorney General's open
14 meeting law guidelines that advisory committees
15 are subject -- they are bodies that are subject
16 to the open meeting law.

17 The distinction in their guidance is
18 that if that advisory committee is advising an
19 official who could otherwise make the decision
20 on their own without their advice, it doesn't
21 become a public body that's subject to the open
22 meeting law.

23 So, I think in our situation, our
24 regulations are clear as to the kinds of advice

1 and counsel we can get in this process. And
2 our regulations call them independent
3 evaluators or consultants or professionals.
4 And that that's how we structure our review
5 teams here.

6 CHAIRMAN CROSBY: And you've seen
7 the correspondence that I've sent to people.
8 And you know the way it's been positioned and
9 you continue to be comfortable with that?

10 MS. BLUE: Yes, I am.

11 CHAIRMAN CROSBY: Okay.

12 COMMISSIONER ZUNIGA: With this
13 process in addition to that we are not creating
14 a subcommittee of the Commission.

15 MS. BLUE: That's correct.

16 COMMISSIONER ZUNIGA: Because that
17 subcommittee, we would be subject to the open
18 meeting law.

19 MS. BLUE: Yes, that's right.

20 COMMISSIONER MCHUGH: If fact, we
21 are just dividing up the work between the five
22 Commissioners. And the five Commissioners
23 are --

24 COMMISSIONER ZUNIGA: -- are going

1 to come back to report.

2 COMMISSIONER MCHUGH: -- are going
3 to come back to report.

4 CHAIRMAN CROSBY: Jennifer and
5 Catherine, I have a meeting of my group, as you
6 know, Friday morning. I don't know whether
7 you'll have this restructured format or not.
8 We can certainly talk it through. But it's a
9 little bit of a different -- horse of a
10 different, so to speak.

11 So, when we talk with the Commission
12 -- First of all, I don't have any paid
13 consultants. They're going to get a stipend,
14 but it's modest. I don't want to all of the
15 sudden have them start looking and say, holy
16 cow, what am I doing here? But I think you
17 appreciate -- So, we'll have to ad lib a little
18 bit at our meeting on Friday to adapt this for
19 my group.

20 MS. PINCK: I also think the nature
21 of the applicants' response to that category
22 could be so wildly different. It's so hard to
23 predict. So, I think to try to rigidly
24 approach it like you would number of jobs

1 created or how are you going to mitigate
2 impacts on local businesses is very different.

3 CHAIRMAN CROSBY: Okay.

4 MS. PINCK: We will not approach
5 that as quite so --

6 CHAIRMAN CROSBY: Right, okay. The
7 meeting that we're having on the 11th, you were
8 going to see whether we could have it at least
9 available telephonically and maybe stream it?
10 Will it be streamed? Have we decided that yet?

11 MR. DAY: We haven't that I know of
12 and Janice is behind me. We just had
13 preliminary discussions about telephonic and I
14 think obviously that would probably be
15 possible. We don't know if it's possible for
16 webcast or streaming.

17 CHAIRMAN CROSBY: So, we haven't
18 figured that out yet. Okay. Janice isn't here
19 I don't think.

20 COMMISSIONER ZUNIGA: The 11th?

21 MR. DAY: The 11th, yes.

22 CHAIRMAN CROSBY: That's the
23 evaluation training session.

24 COMMISSIONER ZUNIGA: It's not an

1 open meeting.

2 MR. DAY: There is a draft agenda in
3 your packets as well.

4 CHAIRMAN CROSBY: That's the
5 training session. It could be webcast if we
6 wanted to. That's what we're talking about
7 because I've got a lot of people and I didn't
8 know about this meeting until late. So, I'm
9 not sure how many of them can come. You want
10 to run through the agenda?

11 MS. PINCK: Sure. The welcome and
12 introduction is by you, Mr. Chairman. Then
13 Rick is going to talk about who are the key
14 staff in the evaluation team assignments and
15 the consulting professionals.

16 We also wanted this meeting to talk
17 about how to deal with press and how to deal
18 with confidentiality. So that team members
19 especially outside consultants or other experts
20 are going to behave and work in line with the
21 entire Gaming Commission's expectations about
22 the process and keeping it both transparent but
23 professional.

24 Catherine is going to introduce the

1 legal team. Then we'll get to really talking
2 about the review process, which we're working
3 on a detailed agenda for. But essentially what
4 we would like to do is go over the schedule.
5 Explain why the schedule is the way it is. How
6 we're going to take public input and what the
7 expectation is of the reviewers, particularly
8 between the time they get the packages and
9 before the Commissioner's hearings in each of
10 the host communities.

11 We're going to talk about the
12 framework for the review process, which is this
13 architecture that I talk about and expectations
14 for documentation.

15 CHAIRMAN CROSBY: That's what we've
16 just been discussing.

17 MS. PINCK: Exactly, and why the
18 rating system is. Some of what we will present
19 next week is still going to be in process,
20 obviously. I don't think we're going to have
21 -- We are going to work with your IT people
22 because we want to figure out some mechanics of
23 getting and storing information. So, that it's
24 both secure and accessible to people who need

1 it.

2 Then talk about the roles for
3 evaluation team members, which is just as we
4 went through. What is the expectation of the
5 reviewers, as reviewers, as team members, the
6 Commissioners as team leaders. Then your role
7 in making the process. We also would very much
8 like to start to confirm some dates for the
9 pre-application team meetings.

10 We are intending as we put in our
11 response to your RFR to issue what we're
12 calling an application review guide. I think
13 it will be particularly helpful for outside
14 consultants, but certainly for staff, which
15 really lays out all of this information so they
16 can consult it and we're all starting off on
17 the same foot, understanding how the process
18 will work. So, that is in process right now.

19 That will include something that I
20 just mentioned. For example, how to deal with
21 press inquiries if you get them. It will
22 include information, and again, particularly
23 relevant to outside consultants. If you wanted
24 to promote your participation in this selection

1 process, to please ask, seek the review of
2 Elaine Driscoll before you do that.

3 So, some of it is recordkeeping.
4 It's just a set of rules so that we all abide
5 by the same process. But the real heart of the
6 matter is the application review process and
7 describing what it will look like.

8 And I think taking questions and
9 hopefully getting some suggestions at this
10 meeting, because I know HLT has a lot of
11 experience and I really look forward to talking
12 with them and seeing what they've learned.

13 COMMISSIONER ZUNIGA: On that note,
14 I know that at least two of their principles
15 could not make September 11. Do you know if
16 others from their team members --

17 MR. DAY: We were advised at least
18 one of them will be able to make it.

19 MS. PINCK: I think Lyle Hall might
20 be able to, but Robert Scarpetti can't.

21 COMMISSIONER ZUNIGA: Just that one
22 week.

23 CHAIRMAN CROSBY: That sounds fine.

24 MS. PINCK: That's the agenda.

1 CHAIRMAN CROSBY: Do you want to
2 look at the schedule real quickly? That was
3 the front page here.

4 MS. PINCK: And then the schedule,
5 it's very hard to read up there. Fortunately,
6 you have it here. The room will just have to
7 trust us when say what it says.

8 Obviously, we start with the team
9 training on 9/11. And we're scheduling the
10 formal pre-application team meetings right now
11 between 9/23 and 10/4. I think there'll be
12 some -- We'll have some working meetings with
13 the technical experts ahead of time so that we
14 are well prepared. And we have thoughts on how
15 to really think about -- thoughts on each of
16 these questions.

17 The applications are due on the
18 fourth. Talking with Mr. Acosta, the
19 administrative review we expect to be complete
20 on October 11, five to six working days.
21 Applicants will have seven days to cure
22 material defects. And if the information went
23 to them as late as the 11th, they would have
24 until Friday the 18th to supply that

1 information back.

2 Curing the nonmaterial defects, they
3 have 14 days. We are assuming that that would
4 be done -- I'm sorry. There's a mistake in
5 this line item here. This should go out on
6 another week to the 25th, line six.

7 The discussion with staff, we are
8 showing here that the applications would be
9 released, in other words, available for the
10 public to review on the 11th if there were
11 material defects that had to be cured.

12 CHAIRMAN CROSBY: If there were not.

13 MS. PINCK: I'm sorry, if there were
14 not material defects that were to be --
15 Exactly. I do think we have a question about
16 whether if one had material defects, would you
17 let the other three out before the fourth,
18 let's say there were four? I think that's a
19 question we need to answer this month.

20 MR. DAY: I understood that the plan
21 from an administrative completeness standpoint
22 was to deal with the applications, of course,
23 simultaneously. Identify, as we were
24 identifying anything was missing to notify the

1 applicants and move forward.

2 The goal would be that as we got
3 them -- as we determined they were
4 administrative complete, to move those
5 particular sections to the evaluation teams so
6 they could begin work. We would not wait until
7 they were all complete, but as they were deemed
8 administratively complete, unless the
9 Commission has other thoughts on that.

10 COMMISSIONER ZUNIGA: There is a
11 period of cure of material defects?

12 MS. BLUE: Yes.

13 COMMISSIONER ZUNIGA: That's a
14 seven-day period?

15 MS. BLUE: That's the seven days.

16 COMMISSIONER ZUNIGA: The question
17 really applies only to the period of time
18 between the cure, the earliest release of the
19 others and the cure of the materially
20 deficient.

21 MS. BLUE: That's right.

22 COMMISSIONER ZUNIGA: Because if
23 they don't cure it, that's it.

24 CHAIRMAN CROSBY: They're out.

1 MS. BLUE: That's right.

2 CHAIRMAN CROSBY: I think it seems
3 right to me as a presumption that we would do
4 it the way you're saying. We don't have to
5 decide that cast in stone until the last
6 minute. It may turn out like we decided we
7 couldn't release certain background checks
8 because there were things that were being
9 debated and so forth. But presumptively I
10 think we do it the way you are talking about.

11 MS. PINCK: I think it's best to get
12 it out there as soon as possible, because we do
13 want to have public comment in time for some
14 hearings later on. I think the more it's
15 available the better. And this could be a lot
16 of information.

17 COMMISSIONER ZUNIGA: It is
18 conceivable that the material defect may be in
19 only one section, say, and the other four could
20 easily be released.

21 MS. PINCK: If somebody doesn't cure
22 it, people may have wasted their time looking
23 at something. But hopefully not very much
24 because it's really seven days for that. We

1 are showing the review commencing on October 4.

2 COMMISSIONER ZUNIGA: Jennifer, by
3 that you mean the technical review. The
4 administrative review or the team's already
5 started reviewing from day one even though
6 there may be some administrative review and
7 some cure to be done?

8 MS. PINCK: You see on the seventh
9 and eighth, you already have scheduled the
10 applicant presentations, which are 90 minutes
11 for each of the applicants to present their
12 ideas, their plans, their visions for their
13 slot parlors.

14 I think having this in the hand of
15 the reviewers a couple of days before just to
16 get familiar with what has been submitted. So
17 that when they see the presentations, they'll
18 have a sense of what am I going to focus my
19 interest on will be useful. I don't expect a
20 lot is going to happen. The applications are
21 due on a Friday, the fourth. I know there'll
22 be people who will go right to them and just
23 see how big they are.

24 MR. DAY: That I think our goal is

1 is to get those applications processed in that
2 first week. I think that was the goal we had
3 on the timelines.

4 CHAIRMAN CROSBY: I guess there's no
5 inconsistency with having the presentations
6 even while we're doing the administratively
7 complete review.

8 MR. DAY: There might be some
9 positives, actually, because the Commissioners,
10 you're not burdened down trying to sort through
11 applications or messing around with that and
12 focusing on what they've decided is important
13 for their review.

14 CHAIRMAN CROSBY: Right.

15 COMMISSIONER ZUNIGA: Coming from
16 when we do procurements, we do the Phase 1
17 review, which is the administrative parallel
18 here. Until it's been done and cured, it's
19 released to the review teams. Which I know on
20 the other end we're trying to achieve the goals
21 that you articulated as well as be expeditious
22 with a very short timeframe and a lot of
23 information.

24 MS. PINCK: Right. I think it's to

1 our advantage.

2 MR. DAY: Schedule availability was
3 also a practical issue.

4 CHAIRMAN CROSBY: Yes, details,
5 details.

6 MS. PINCK: The next three lines,
7 10, 11 and 12 were also on the master schedule
8 that I got from the Chief of Staff. And that's
9 October 21, 22 and 23. We understand these
10 meetings are meetings in the community for
11 public input. They're not your meetings. We
12 will be attending and we will be taking good
13 notes so that we can make sure the open issues
14 and the questions that may need to be answered
15 are captured at those meetings. Because on
16 October 12 you'll see that we are -- That is
17 when any outside agency and/or reviewers must
18 submit their information request.

19 CHAIRMAN CROSBY: November 12.

20 MS. PINCK: If there's additional
21 information that a reviewer needs just to
22 understand something or thinks a page is
23 missing or wants some clarification, we are
24 going to get all that. And we're going to

1 provide it to you prior to the Commission
2 meetings in the host communities. And those
3 are scheduled now for November 21, 22, 25 and
4 26. Those are on the calendar. Mid-review
5 team meetings are between the 27th and the
6 fifth. We're discussing, I think, closing
7 public comment on the third of December.

8 MR. DAY: I might add that of course
9 is up to the Commission whether to select when
10 that date would be. But the idea would be
11 making sure all of the answers that the
12 applicants are answering some of the questions
13 that you posed at the host community, maybe
14 there's public comment that all that be
15 submitted before the hearing was closed. At
16 that time that would put at least a stop on
17 that.

18 COMMISSIONER ZUNIGA: I have a
19 question. Is there a reason why this team
20 meetings cannot occur earlier? I guess I
21 always assumed that there would be a number of
22 them. And a good way to parcel them may just
23 be everybody review the first three questions,
24 because those are straightforward and we can

1 come to a meeting and regroup at a later time.

2 MR. DAY: I think Jennifer was
3 targeting at least a minimum. I've always
4 assumed that the Commissioners as chairs will
5 be calling their teams as they deem
6 appropriate.

7 MS. PINCK: I think there will be
8 plenty more. And we may very well work out and
9 should work out with each Commissioner a
10 schedule where we put these official meetings
11 in or formal team meetings.

12 There may be many informal ones, but
13 I do think we're going to need to convene a
14 time. Take the economic development, let's
15 tackle the job creation subcategory on
16 Thursday. And next Monday we're going to
17 tackle the workforce development category. So,
18 I think we can replicate this for each category
19 so that we can schedule meetings.

20 The reason this is showing, I think
21 this becomes a very critical time after the
22 host community meetings and the meetings where
23 you consider the reports. And it's actually
24 not that long either.

1 COMMISSIONER ZUNIGA: And it's right
2 after Thanksgiving.

3 MS. PINCK: It's right after
4 Thanksgiving. So, we do need to have a big
5 calendar of meetings scheduled I would say by
6 the end of September for all of October,
7 November and December with each of you and with
8 the reviewers. And then if we have some
9 informal ones, fine.

10 So, we want to cut off public
11 comment by a certain date which we, Rick and I,
12 put in the third. We can give the applicants
13 only so much time if we've asked for a little
14 bit more information. We also cut that off on
15 the third when the hearings will officially
16 close on each applicant.

17 More team meetings, draft reports I
18 think are due on the ninth. This would be the
19 draft report that each evaluation team is going
20 to send up to the Commission.

21 We have the final report on the 13th
22 with team meetings in between. And I think
23 this is really going to vary by question, by
24 category and by team. Yours may look very

1 different. But the critical next date really
2 is the meetings where the Commissioners
3 consider the report, which is currently on the
4 master schedule as 12/5. But in discussions
5 with Mr. Day, we thought December 13 was far
6 more realistic. Then the license is awarded on
7 the 27th.

8 What this assumes in this calendar
9 is that there are no surrounding communities or
10 impacted live entertainment venue disputes, if
11 you will, which if you map those out take you
12 into mid-January for awarding of a license.

13 CHAIRMAN CROSBY: I don't know
14 whether this really matters, but is it
15 realistic to issue the reports two days after
16 Christmas? We've been generalizing the end of
17 the month, but maybe we need now to hone in on
18 what day we would actually do it.

19 MS. PINCK: On the award of the
20 license you mean?

21 COMMISSIONER MCHUGH: Yes.

22 CHAIRMAN CROSBY: Yes. Do we know
23 what day of the month the 27th is?

24 MS. PINCK: It's a Friday.

1 CHAIRMAN CROSBY: So, Christmas is
2 Wednesday.

3 CHAIRMAN CROSBY: That was I thought
4 a legal determination on the issue of the final
5 decision. We were originally going to do
6 12/17, but that didn't provide enough time.

7 MS. BLUE: When we filled in all of
8 the periods that we needed in between, you come
9 out to about 12/27. It can be later.

10 MR. DAY: That doesn't mean it can't
11 be moved.

12 CHAIRMAN CROSBY: I know. We could
13 think about that. Maybe it's got to be 1/3 or
14 something or 12/24. I don't know but we might
15 as well not start continue to reiterate a date
16 which is really not realistic.

17 COMMISSIONER MCHUGH: We should
18 consider that but Commission considers report
19 on 12/13. What is that going to be?

20 CHAIRMAN CROSBY: That's reports
21 plural.

22 MR. DAY: That was intended to be
23 the report out by the evaluation team.

24 COMMISSIONER MCHUGH: So, then is it

1 contemplated on 12/27 the Commission would meet
2 again and then make the final decision and
3 license award? Or that would be done on the
4 13th and the statement of reasons and the
5 formal award would come on the 27th, the
6 findings and the formal award?

7 MR. DAY: Come on the 27th I think
8 was what was contemplated.

9 CHAIRMAN CROSBY: During those two
10 weeks we would be deliberating.

11 COMMISSIONER MCHUGH: We have to
12 deliberate in public.

13 CHAIRMAN CROSBY: Not deliberate, I
14 meant we'll be talking about it.

15 MS. BLUE: You'll have additional
16 meetings during that timeframe.

17 CHAIRMAN CROSBY: As long as it
18 takes us to make the decision.

19 COMMISSIONER MCHUGH: I understand.

20 CHAIRMAN CROSBY: And as soon as
21 we're done, then it's got to get written up.
22 And the theoretical endpoint is the 27th.

23 COMMISSIONER MCHUGH: I got it.

24 CHAIRMAN CROSBY: If it's really

1 only the announcement being written up, then
2 the Commissioners could be away and the staff
3 can do it on the 27th.

4 COMMISSIONER MCHUGH: That was the
5 point I was trying to get at.

6 CHAIRMAN CROSBY: All right. I
7 think we made a lot of progress. Somebody had
8 to take a first draft at this process.

9 COMMISSIONER MCHUGH: It's good.

10 CHAIRMAN CROSBY: And I think with
11 your draft and our iterations, we've sort of
12 broken the back of this thing.

13 MS. PINCK: This is great. I
14 appreciate it. We couldn't do it without your
15 collective thoughts.

16 CHAIRMAN CROSBY: Thank you, anybody
17 else questions? Anybody?

18 COMMISSIONER STEBBINS: It just
19 occurred to me as we looked at awarding the
20 license something that maybe contemplating,
21 figure back into the process is discussion or
22 debate, where we factor that in in terms of
23 license conditions. Maybe that comes out of
24 the score sheet, maybe it comes out of the

1 notes or the aggregate scoring. But kind of
2 factoring it in since that's going to be
3 probably a pretty formal piece of the final
4 license award. There may be some standard
5 stipulations or you agree to abide by
6 everything in your application, obviously some
7 will probably be a little more particular.

8 COMMISSIONER ZUNIGA: Yes. I
9 overlay in my mind this schedule with the
10 adjudicatory hearings and meetings that we will
11 have on the Category 1's. And it's going to be
12 a busy next three months. Thanks for all of
13 your help.

14 MS. PINCK: Thank you.

15 CHAIRMAN CROSBY: Thank you. I just
16 need to take a real short break and we'll come
17 right back.

18
19 (A recess was taken)

20
21 CHAIRMAN CROSBY: We are reconvening
22 about three o'clock public meeting number 76.
23 And we are introducing our director of
24 workforce, supplier and diversity development.

1 MS. GRIFFIN: Good afternoon
2 Chairman Crosby and members of the Commission.
3 I'm here as your newly hired director of
4 workforce supplier and diversity development to
5 get your input on a proposed vendor and
6 supplier task force as requested by Chairman
7 Crosby at the last Commission meeting.

8 The Mass Gaming Commission, next
9 slide, is charged by the Expanded Gaming Act
10 with creating regulations that establish vendor
11 and supplier business and employee credentials
12 for licensing. The Commission is also charged
13 with reviewing gaming license applications to
14 evaluate potential licensees proactive approach
15 to demonstrate their support and focus on small
16 business in the Commonwealth as we saw before
17 with the evaluation or the rating criteria.

18 The Mass Gaming Commission will work
19 to implement the Act's intent to provide the
20 greatest possible economic benefits and
21 revenues to the people of the Commonwealth.
22 Next slide. The statute repeatedly encourages
23 the use of Massachusetts vendors and suppliers
24 including local minority women and veteran-

1 owned businesses.

2 So, in order to meet the priorities
3 of the statute, the Mass Gaming Commission
4 staff is proactively planning to create and
5 coordinate a task force to ensure that
6 Massachusetts small business vendors become
7 capable and qualified suppliers -- that small
8 businesses become capable and qualified vendors
9 and suppliers to serve as potential gaming
10 licensees.

11 So, the proposed task force will
12 coordinate existing programs, next slide, draw
13 resources to local communities and businesses
14 and provide information to applicants to ensure
15 maximum impact on small businesses.

16 So, this diagram that you have in
17 front of you and in your slides demonstrates
18 how this proposed vendor and supplier task
19 force would work with local partners and also
20 directly with casino applicants.

21 So, to give you an example, local
22 partners are working directly with casino
23 applicants to provide information about
24 businesses. And oftentimes there are host

1 community agreements that have targeted local
2 businesses and suppliers that they need to work
3 with.

4 However, there may be a need for
5 this vendor and supplier task force, which is
6 composed mostly of statewide agencies,
7 representatives from the statewide agencies and
8 organizations to provide backup support should
9 there not be, for example, specific company
10 resources in the local communities. For
11 example, we heard about the scallops that are
12 predominant in New Bedford. There may be green
13 technology companies in other parts of the
14 state and not in a particular locality.

15 Next slide. The vendor and supplier
16 task force will focus on three categories,
17 business identification, technical assistance
18 and financing assistance. And we believe that
19 these resources and collaborative partnerships
20 may make just the difference between growing
21 local business and missing out on an
22 opportunity to provide a product and service to
23 a large anchor business like a casino.

24 We acknowledge that a casino license

1 applicants may have vendor support programs and
2 we welcome the chance to partner closely with
3 them to identify potential vendors who might
4 need financing or technical support to compete
5 for some of the key contracts.

6 We imagine that local partners such
7 as municipalities, banks and community
8 development corporations will also be involved
9 at a certain point and be able to provide
10 necessary financing to help small businesses
11 position themselves to serve a large anchor
12 business like a resort destination casino.

13 Next slide, this proposed list,
14 although not exhaustive includes individuals
15 and organizations, a group of stakeholders that
16 was assembled last fall by Chairman Crosby and
17 Commissioner Stebbins. And it's composed
18 mainly of representatives of state agencies or
19 statewide business groups.

20 So, we imagine that the task force
21 will be focused on providing statewide
22 resources to vendors and suppliers and
23 information to applicants. I am interested in
24 hearing from you or from others if there are

1 organizations that we may have missed or maybe
2 interested in helping the applicants meet the
3 requirements of the statute.

4 Next slide. So, we talked a little
5 bit about the local partners. Once casino and
6 slot parlor licenses have been awarded, the
7 task force could engage with these local
8 partners to foster programs and promote
9 services and help area businesses and potential
10 suppliers.

11 Next slide. So, we have tentatively
12 suggested that the first meeting could be as
13 early as September 12. We have tentatively
14 booked a few of your calendars. Any questions?

15 COMMISSIONER STEBBINS: Just a quick
16 note. Just to add to some of those task force
17 members. Some of the folks, prior to your
18 coming on board, made presentations to us about
19 the resources. You were kind enough to share
20 this list with me and I'm sorry I didn't look
21 and find these folks missing before, but our
22 State Department of Agriculture, the
23 representative from Economic Affairs who is
24 responsible for helping to manage the creative

1 economy industry sector.

2 CHAIRMAN CROSBY: It's Helena
3 Fruscio. I had the same thought.

4 COMMISSIONER STEBBINS: And unless
5 I'm missing it, Mass. Department of Energy
6 Resources also made a presentation known as the
7 Mass. Clean Energy Center. Like you said, it
8 wasn't an exhaustive and completely inclusive
9 list.

10 MS. GRIFFIN: Great. I'd be glad to
11 add those folks.

12 COMMISSIONER ZUNIGA: I have a
13 number of questions. I'm just curious about a
14 couple of items relative to your thought
15 process on this task force. How large, how
16 often -- do you envision it? How often do you
17 think it would meet for what period of time?
18 Maybe that's something that after you have some
19 of these conversations you can come back and
20 give us an update. I'm just generally curious
21 as to what maybe your thoughts.

22 MS. GRIFFIN: I think that will be a
23 point of discussion for the group. But I
24 imagine that before the -- I think until the

1 licenses are awarded, we may meet a couple of
2 times.

3 But I think there will be a need to
4 break down into some of the subcommittees. So,
5 business identification I imagine would meet
6 more regularly up until the applicants are
7 finalized. And I think it will be those
8 subcommittees that meet more regularly and
9 those would be much smaller. The group appears
10 quite large, but I think when we break it down
11 into those three different areas, it will be
12 much more manageable.

13 COMMISSIONER ZUNIGA: As you
14 suggest, some of these task forces are usually
15 -- they have to be managed. They have to be
16 reminded of the next meeting. They have to
17 bring material to be effective to come to the
18 meetings. I know there is a resource question.

19 MS. GRIFFIN: That's true.

20 COMMISSIONER ZUNIGA: I am also
21 curious as to what you identify here
22 conceptually as the local partners. From this
23 slide, the one where apparently each region has
24 and I suspect that they have been in

1 discussions with the locality first and
2 foremost. But it would appear that there may
3 be businesses that could call across even
4 regions, for example, but certainly true on the
5 slot parlor license say, which may end up
6 trying to be in either Region A or B for one.
7 So, I'm sure it's representation but it's not
8 intended to be siloed. Is that a fair
9 statement?

10 MS. GRIFFIN: That's very true. I
11 think the interest in having a statewide entity
12 that looked at some of these relationships or
13 opportunities that might not arise in a
14 particular region or a particular locality we
15 thought would be very helpful.

16 So for example, the Clean Energy
17 Center and the Department of Energy,
18 Commissioner Stebbins and I have had several
19 conversations with them. And they are
20 interested in potentially putting together
21 regional supplier fairs that focus on clean
22 energy technology.

23 That's an area where every locality
24 may not have all of the companies represented,

1 maybe not even in their region. So, looking at
2 what types of businesses are there for business
3 identification purposes and then maybe pulling
4 from other parts of the state.

5 But I think the bottom line is we
6 want to make sure that Massachusetts companies
7 are the ones selected for these opportunities
8 or considered first. And that the applicant
9 doesn't first look outside of Massachusetts to
10 our neighboring states.

11 COMMISSIONER ZUNIGA: On that note,
12 it occurs to me that the most critical
13 discipline to be thinking about now maybe the
14 trades or the construction companies and the
15 subcontractors or even designers say, that may
16 be able to provide service to the design and
17 construction of a casino not necessarily for
18 the operations.

19 MS. GRIFFIN: Yes. And we have
20 several meetings coming up actually next week,
21 I think, with various affinity groups for
22 different construction organizations. So, I
23 think you are right. And I think also outreach
24 to the applicants regarding them providing

1 information from the office of supplier
2 diversity and other entities will be critical.

3 COMMISSIONER ZUNIGA: Right.

4 CHAIRMAN CROSBY: That was something
5 I mentioned at whenever it was, last meeting
6 sometime was the need to get this out to folks.
7 And to make yourself available to the
8 applicants during this very intense next four-
9 month period when they are putting their
10 proposals together and giving them all of the
11 resources they can.

12 You referred a couple times to a
13 meeting Commissioner Stebbins and I had a while
14 back. That was a kind of a random selection of
15 folks who we thought might contribute to our
16 ability to make diversity in the workforce and
17 the supplier base a reality. It wasn't just
18 supplier. It was workforce and supplier. And
19 it was a focus on diversity not just generally.
20 So, this is maybe where you and I got off track
21 on the two different groups. This is focused
22 on the suppliers.

23 MS. GRIFFIN: Right.

24 CHAIRMAN CROSBY: It includes

1 diversity, but it's meant to be a diverse
2 effort but it is focused on local suppliers.
3 So, I don't know whether -- are you planning on
4 having another group or does that group morph
5 to this group?

6 MS. GRIFFIN: Well, I think this
7 will be an important task force. I do want to
8 talk to you. I think, tomorrow morning we are
9 scheduled to talk more. Because I think it
10 might be a good idea to have another meeting
11 just focused on diversity.

12 I'm not sure if that will be a task
13 force, but I welcome the opportunity to talk
14 with you further about that. So, I think it's
15 important that we infuse diversity into this
16 conversation.

17 CHAIRMAN CROSBY: Absolutely.

18 MS. GRIFFIN: I think we also may be
19 prudent to have another focused conversation on
20 workforce. And also, of course, diversity
21 should be infused into that conversation as
22 well. So, I think that some of the members
23 that maybe aren't represented in this group I
24 had planned potentially on inviting them to the

1 workforce conversation.

2 CHAIRMAN CROSBY: Okay. So, we can
3 follow up on that. Commissioner Stebbins if
4 you want to get together with us tomorrow, if
5 you are here, you are welcome obviously.

6 COMMISSIONER STEBBINS: Sure.

7 CHAIRMAN CROSBY: Do you know what
8 time it is offhand?

9 MS. GRIFFIN: 9:30.

10 CHAIRMAN CROSBY: Okay. So, we
11 better adjourn this pretty soon. What else was
12 I going to say about this? I forgot.

13 COMMISSIONER ZUNIGA: I have a
14 couple of other questions. This may not be
15 necessarily an area of focus for the task force
16 but I think it really should be a focus for us,
17 the Commission as an organization. That is
18 relative to measuring the outcomes of these
19 three key pieces.

20 It's great that there will be
21 business identification and assistance. Some
22 of it may end up being successful in terms of
23 providing a service to the casinos but some of
24 it may not, which is still a benefit. So, I

1 think two measures at least here. What
2 business may be benefiting from these efforts
3 and that of the collective efforts of other
4 agencies.

5 But also what is also a successful
6 outcome out of these efforts because somebody
7 ended up being a successful bidder or got a
8 number of purchase orders, or whatever may be
9 the case from our applicants or licensees.

10 CHAIRMAN CROSBY: That's a good
11 point. That was something I was going to say,
12 I forgot. One the reasons that's unfortunate
13 in our performance management process got hung
14 up because this is exactly one of the places
15 where we want to have measurements of how we're
16 doing.

17 A very important topic, whenever you
18 having this meeting, I don't know if you'll get
19 together by the 12th, but whenever you have
20 this meeting as you well know, it's very easy
21 to have these just blah, blah, blah sessions
22 and not very much happens.

23 What we really want to say to
24 knowledgeable people is how the hell do you

1 make this work well? How can you take this
2 from being just another bunch of hype saying
3 good things to programs that really have bite
4 and really have teeth and really have
5 effectiveness? What are the best practices?
6 What should we forget about? What's bunk?
7 Let's forget the bunk and do stuff that really
8 works. How do we measure success?

9 Rather than everybody just talking
10 about all their multitude of programs, if you
11 can really hone in on how do we do this in a
12 way that a makes it distinct. We want to have
13 the most successful programs in terms of local
14 and diverse workforce and supplier base that's
15 ever been done in this business at all. How do
16 we do that? That's your job. And how do you
17 get these people to give you and us the tools
18 to do that?

19 MS. GRIFFIN: Great.

20 COMMISSIONER ZUNIGA: I still have a
21 few others. But I agree with the Chairman that
22 we need to adjourn soon. I'm interested and
23 perhaps this is the subject of a follow-up
24 discussion, but I'm interested as to what the

1 financial assistance may mean. And I know you
2 had alluded to local banks and they could offer
3 any number of -- they probably already offer
4 financial support.

5 MS. GRIFFIN: I think number one
6 what we want to do is look at the existing
7 programs. For example, Mass. Grow Capital
8 Corporation, Mass. Development, the programs
9 already offer financing to small business in
10 the Commonwealth. And there are others.

11 So, let's look at the existing
12 programs. One potential discussion that I see
13 is this what we have to work with or could
14 there be others? Could we tailor specific
15 programs for potential vendors for the casinos?
16 It's possible.

17 So, that's what I'd like to see is
18 first assess to see what we are working with in
19 terms of statewide programs, and see if we
20 could come up with something specific.

21 COMMISSIONER STEBBINS: I think it
22 stems beyond that too. As Jill pointed out,
23 getting an inventory of what already exists
24 from the folks that we want to involve, as well

1 as to see if they'll be a little creative. But
2 again, it's to help that vendor who needs some
3 capacity building, and it may need more
4 equipment. It may need more working capital or
5 a line of credit to be able to step up and be
6 qualified vendor. So, the financing piece
7 falls into that.

8 COMMISSIONER ZUNIGA: Right. There
9 would appear to be a catch-22 often which is
10 as a banker I may be reluctant to lend to
11 somebody who doesn't yet have the purchase
12 order but it's actually the capital that would
13 make them available to respond to a purchase
14 order. So, how is that triangulation, if you
15 will? What gives you say the banker comfort
16 that providing a loan to this small business,
17 say, is going to result in filling out a big
18 purchase order because they are a local vendor
19 that a casino may want?

20 MS. GRIFFIN: Right. And I think
21 there are some best practices locally that we
22 could look at. I'm probably not prepared to
23 highlight them in detail today, but I think
24 there are best practices. And that a bank or a

1 financer may be more comfortable knowing that
2 they have potentially this piece of business
3 from a casino, all they need is a little
4 financing.

5 COMMISSIONER ZUNIGA: I was going to
6 suggest, and I'll talk to you offline about
7 this more, but the state Treasurer's office has
8 a small banking partnership which may be a
9 model that we may want to emulate or we may
10 want to think about emulating. Effectively
11 they say we will invest in your bank, small
12 bank, if you would in turn turnaround and offer
13 loans to small businesses. It's a model that
14 we may want to look at. I could pursue to take
15 those discussions.

16 MS. GRIFFIN: That would be great.
17 Perhaps we'll invite them to our task force.

18 COMMISSIONER ZUNIGA: They could be
19 other attendees of the task force as well.

20 CHAIRMAN CROSBY: Great. Associated
21 Municipalities of Massachusetts that maybe too
22 big. They may not be "small" but that's
23 somebody to think about including

24 MS. GRIFFIN: I think they are on

1 our list. I think I just checked my Blackberry
2 and they have just accepted.

3 CHAIRMAN CROSBY: AIM, oh, they are
4 on the list. I'm sorry. Commissioner Stebbins
5 mentioned the creative economy group at the
6 Department of Economic Development. Aren't
7 there regional development agencies?

8 COMMISSIONER ZUNIGA: RPAs?

9 CHAIRMAN CROSBY: Besides the RPAs,
10 isn't there something else?

11 COMMISSIONER STEBBINS: There are a
12 number of regional economic development groups.
13 I think when you look at Jill's diagram, I
14 would fit those folks in with the local
15 partners.

16 CHAIRMAN CROSBY: Okay. If you are
17 going to try do this on the 12th, unless you've
18 already invited - I guess you haven't invited
19 people, you better get the letters out
20 tomorrow.

21 MS. GRIFFIN: Before the Labor Day
22 holiday being a new staff person, I was toiling
23 away sending out emails. So, I have sent at
24 least initial save the dates to many of the

1 folks.

2 CHAIRMAN CROSBY: Okay, great.

3 Anything else?

4 COMMISSIONER MCHUGH: No, it looks
5 great. It's a great start. It will be a very
6 important contribution to people we are trying
7 to serve.

8 MS. GRIFFIN: I look forward to
9 keeping you updated.

10 COMMISSIONER MCHUGH: Thank you.

11 COMMISSIONER ZUNIGA: Thank you.

12 CHAIRMAN CROSBY: I have something
13 at 4:15, which I would like to go to if it
14 isn't going to get in the way of serious
15 business. I'm thinking about, we are going to
16 finish the conversation about Friday's plan.
17 Then I might leave and let you handle these
18 last two topics, if that's okay.

19 COMMISSIONER MCHUGH: Sure.
20 Friday's meeting is going to be a continuation
21 of Plainville/Plainridge/Penn National
22 conversation.

23 CHAIRMAN CROSBY: It will be a
24 continuation of this meeting too.

1 COMMISSIONER MCHUGH: That's right.
2 But there needs to be a supplementary posting
3 so that everybody is aware of what we are going
4 to do. We had talked about the possibility,
5 hinted at, I suppose the possibility of an
6 adjudicatory hearing to resolve the do we
7 approve the transfer of the deal issue.

8 Adjudicatory hearings give us a
9 concrete record and appellate rights that are
10 governed by the Administrative Procedures Act
11 rather than just a new lawsuit that has a
12 number of advantages for all participants in
13 it. But it is most useful when there are
14 contested issues of fact. Because in the
15 process of an adjudicatory hearing, we find the
16 facts. We have a record that supports our
17 findings and all that. There aren't any real
18 facts in dispute in the discussion that we
19 heard this morning.

20 It's a question of undisputed facts.
21 We have the document. We have the assignments.
22 We have the approvals. The question is how
23 does that comport with the statute? It's
24 really an exercise of our discretion in

1 application of law and discretion to undisputed
2 facts.

3 That being the case, a public
4 hearing of the type we typically have, non-
5 adjudicatory would allow us to make a policy
6 decision. Record the policy decision and move
7 on and have the legal challenges confined to
8 the area of basically reviewing the record on
9 which we made our decisions that would
10 approximate the kind of review we'd get if we
11 had -- if there is an appeal to a court and if
12 we had had the adjudicatory hearing.

13 General Counsel Blue and I have
14 talked about that. And I think I am accurately
15 reflecting your views that that would be the
16 preferable way to go. We don't have to
17 designate parties of interest. We don't have
18 to give specific notice as to meet with the
19 formality of the adjudicatory hearing, which
20 would be difficult to do between now and Friday
21 anyway.

22 And we achieve approximately the
23 same result in terms of having a court apply as
24 it would the law of our discretionary exercise

1 of power. I'd recommend that we think about a
2 public hearing not an adjudicatory hearing as
3 the posting you make for Friday with the sign-
4 up sheets and other kinds of things.

5 MS. BLUE: Yes, I agree with
6 Commissioner McHugh. We do have a situation
7 here where the facts are not in dispute. What
8 the Commission is being asked to do is apply
9 its enabling Act to the facts that are in this
10 case. So, it's totally it's discretion as to
11 how it does that.

12 So, I think any challenge to the
13 action that the Commission takes will be
14 limited to the record that we create on Friday,
15 today and Friday as part of those public
16 hearings.

17 So, it would be best for us to be
18 able to then put an amended notice out that
19 says it is a public hearing. We could advise
20 people of how many minutes they have per person
21 to speak. We could have a sign-up sheet. Let
22 anyone who wants to provide input provide
23 input. And then at the end of that process,
24 the Commission can review and they can make a

1 decision and we can move it forward.

2 CHAIRMAN CROSBY: I'm fine with
3 that. I defer to your collective judgment on
4 this. If that's what you think makes sense
5 then I'm fine with that.

6 I think the only other priority from
7 my standpoint is to make sure, and I think we
8 have, continue to make it clear that we are
9 inviting people to give us their opinions one
10 way or the other on this. So, that we do have
11 a chance to find out whether there's any
12 articulate opposition that we want to take into
13 consideration. As long as we do that -- If we
14 had a sign-up sheet and we had 80 people that
15 wanted to talk, I don't know that we'd want to
16 do that. But maybe we cross that bridge when
17 get to it. We probably won't have that happen.

18 Maybe we ought to encourage comments
19 to the website. In whatever we post, we
20 encourage comments to the website and a
21 representation of groups to speak. Like if
22 there's an organized opposition group, we get a
23 representative of that group. We don't get
24 every member of the group or something like

1 that. As long as we get that out there, I am
2 fine with that. I think we've already found we
3 can schedule it here. What did we say, one
4 o'clock?

5 MS. BLUE: 1:30.

6 CHAIRMAN CROSBY: I guess we should
7 probably just for the sake of discussion, we
8 should probably maybe hold open the Boston/Wynn
9 conversation too. We don't know what will be
10 happening. Hopefully, we'll have a decision by
11 then. We don't really know what's going to
12 happen. But should we put on there just for
13 the record that that topic is possibly on the
14 agenda as well?

15 COMMISSIONER MCHUGH: We certainly
16 could put in review of -- update report on
17 Wynn/Boston discussion. I'm not promising any
18 results or action.

19 COMMISSIONER STEBBINS: Just a quick
20 update from John.

21 MR. DAY: Mr. Chairman, a
22 continuation of the Ombudsman's report would
23 probably be appropriate with all three of the
24 issues and advise that we've had -- staff have

1 been briefing and exchanging information on the
2 pre-application meetings with potential
3 applicants -- with potential licensees. And
4 there may be some policy questions that we feel
5 the need to run by the Commission and check in
6 on the interpretation of if time permits
7 Friday.

8 CHAIRMAN CROSBY: Fine. So, maybe
9 put a little bit broader Ombudsman. Is there
10 anything else you need to put in this? You had
11 some other things John?

12 MR. ZIEMBA: I mentioned the pre-
13 application meeting.

14 CHAIRMAN CROSBY: Okay, so the same
15 topic.

16 COMMISSIONER STEBBINS: Is it fair
17 that we can ask or stipulate that people's
18 public comments be addressed to the topic and
19 not the general opposition or viewpoints of
20 anything else related to the proposed casino?

21 MS. BLUE: We definitely can do
22 that. I think it would make sense to ask them
23 to address specifically the issue of the
24 transfer between Penn National and Ourway.

1 Also to ask specifically if there is an
2 organization that one member speak on behalf of
3 each organization not each member. That they
4 are limited to potentially five minutes per
5 person. That they need to sign up in advance
6 the day of. All of that I think if we could do
7 a blog posting or something on our website to
8 get that out there that would be great.

9 COMMISSIONER ZUNIGA: I think that's
10 great.

11 CHAIRMAN CROSBY: Okay. This last
12 topic, I do have some things I'd like to talk
13 to Todd about, but I can do it -- key policy
14 questions, I have a couple of notes, but I can
15 talk to Todd about that tomorrow.

16 COMMISSIONER MCHUGH: Do you think
17 we ought to do that now or do you think we
18 ought to hold that until Friday so we don't do
19 something that will be undone tomorrow?

20 CHAIRMAN CROSBY: That I undo
21 tomorrow?

22 COMMISSIONER MCHUGH: Yes, that's a
23 better way to put it.

24 MR. DAY: From our perspective, we

1 could hold those policy questions off until
2 tomorrow. It might be prudent if we could deal
3 with the small business impact statement.

4 MS. BLUE: We actually currently
5 have that.

6 CHAIRMAN CROSBY: The chair passes
7 the chair to Commissioner McHugh.

8
9 (Chairman Crosby exits meeting room)

10
11 COMMISSIONER MCHUGH: And I'm going
12 to stay in the same chair. So, let me then ask
13 General Counsel Blue to talk about item 6(a)
14 small business impact statement relative to the
15 medications updated regulations.

16 MS. BLUE: As the Commission will
17 recall at our last meeting, we brought before
18 you the revised medication regulations along
19 with our local government advisory council
20 cover letter. We have since sent off those
21 regulations to the local government advisory
22 council. They are looking at them. And their
23 14-day review is complete on Thursday the fifth
24 which will be tomorrow. So, public comment

1 technically could start on the sixth.

2 But the small business impact
3 statement that goes along with those
4 regulations needs to go to the Secretary of
5 State by September 12. This is the meeting
6 most close to that day. So, we are asking you
7 to review today the small business impact
8 statement for those regulations.

9 It is a fairly basic small business
10 impact statement based upon the regulations.
11 We have identified the groups of small
12 businesses that may be impacted. And those are
13 trainers, owners, veterinarians. We spell out
14 the fact that we believe they don't require any
15 additional work by those parties.

16 The regulations that we are
17 proposing are regulations the basis of which
18 are already in place. There is no additional
19 paperwork necessarily. It just sets up
20 different penalties.

21 So, we would ask that you review the
22 small business impact statement and authorize
23 us to file it at the appropriate time.

24 COMMISSIONER MCHUGH: All right.

1 Any questions or discussion about that? It's
2 at tab 6(a).

3 COMMISSIONER STEBBINS: I just had a
4 question on five whether that needs to be
5 stipulated. As I understand it, we are adding
6 these regulations to create a more uniform
7 playing field across several jurisdictions. I
8 think that's what the reference is to.

9 MS. BLUE: We can certainly make
10 that change. That is what it is designed to
11 reference. So, we can add that it's across
12 multiple jurisdictions.

13 COMMISSIONER MCHUGH: Okay. Any
14 other questions? With that addition, is there
15 a motion to accept and authorize the filing
16 with the Secretary of State of the small
17 business impact statement?

18 COMMISSIONER STEBBINS: So moved.

19 COMMISSIONER MCHUGH: Second?

20 COMMISSIONER ZUNIGA: Second, yes.

21 COMMISSIONER MCHUGH: All in favor,
22 aye.

23 COMMISSIONER STEBBINS: Aye.

24 COMMISSIONER ZUNIGA: Aye.

1 COMMISSIONER MCHUGH: Carried
2 unanimously. That was slick.

3 COMMISSIONER STEBBINS: You get
4 bonus points for just moving stuff along.

5 COMMISSIONER MCHUGH: Director Day,
6 do we want to talk about the process piece of
7 the next item or leave the next item entirely
8 for Friday, Phase 3 regulation update has two
9 subparts, process and policy. The policy
10 questions we are going to hold until Friday.

11 MR. DAY: The process probably
12 should go together. Because the process, it
13 just to remind everybody how long it's going to
14 take as we move forward.

15 COMMISSIONER MCHUGH: Okay. So,
16 let's reserve that until Friday. We'll post in
17 our modified posting that we'll continue the
18 Ombudsman's report and we will take up item
19 6(b) on our current agenda. And that's the
20 Friday agenda; is that right?

21 MR. DAY: Sounds correct.

22 MS. BLUE: Yes.

23 COMMISSIONER MCHUGH: With that, I
24 would entertain a motion to adjourn.

1 COMMISSIONER ZUNIGA: Is there a
2 need to adjourn this meeting if we are not
3 adjourning?

4 MS. BLUE: You will continue it
5 until Friday.

6 COMMISSIONER MCHUGH: We will now
7 recess this meeting until Friday at 1:30 p.m.
8 We stand in recess until then.

9

10 (Public hearing suspended at 3:42 p.m.)

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1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission September
- 3 4, 2013 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission August 22,
- 5 2013 Meeting Minutes
- 6 3. Massachusetts Gaming Commission Host
- 7 Community and Gaming Establishment
- 8 Definitions, Surrounding Community
- 9 Definition, Excerpt MGL C.23K §15.13
- 10 4. August 23, 2013 email
- 11 5. Plainville Citizen Notification
- 12 6. September 3, 2013 PretiFlaherty letter
- 13 7. Option and Purchase Agreement and Exhibits
- 14 8. August 29, 2013 Massachusetts Gaming Commission
- 15 Memorandum Regarding Recommendation for Economic
- 16 Development Consultant
- 17 9. August 29, 2013 Massachusetts Gaming
- 18 Commission Memorandum Regarding
- 19 Recommendation for Building, Site Design
- 20 and Mitigation Consultant
- 21 10. Pinck and Company Summary of Review Process
- 22 11. Massachusetts Gaming Commission Workforce,
- 23 Supplier and Diversity Development Report
- 24 to Commissioners

1 ATTACHMENTS:

2 12. Massachusetts Gaming Commission Small
3 Impact Business Statement

4 13. August 30, 2013 Massachusetts Gaming
5 Commission Memorandum Regarding Policy
6 Questions Pertaining to Employee and
7 Vendor Licensing

8

9 GUEST SPEAKERS:

10 Peter Biagetti, Esq., Mintz Levin

11 Elizabeth Dello Russo, Esq. city of Boston

12 Frank Donaghue, Penn National

13 Daniel Gaquin, Esq., Mintz Levin

14 Lawrence Kaplan, Esq., Goodwin Proctor

15 Jennifer Pinck, Pinck and Company

16 Eric Schippers, Penn National

17 Jonathan Silverstein, Esq., Kopelman and Paige

18 Kim Sinatra, Esq., Wynn Development

19 Steve Snyder, Penn National

20 Walter J. Sullivan, Jr., PretiFlaherty

21 E. Albim Thomas, Esq., Goodwin Proctor

22 Stephen Tocco, ML Strategies

23 William Weld, Esq., Mintz Levin

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MASSACHUSETTS GAMING COMMISSION STAFF:

Catherine Blue, General Counsel

Richard Day, Executive Director

Jill Griffin, Director of Workforce, Supplier
and Diversity Development

John Ziemba, Ombudsman

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 10th day of September, 2013.



LAURIE J. JORDAN

My Commission expires:

Notary Public

May 11, 2018