

1 THE COMMONWEALTH OF MASSACHUSETTS

2 MASSACHUSETTS GAMING COMMISSION

3
4 PUBLIC MEETING #76

5 (VOLUME 2 of 2)

6
7 CHAIRMAN

8 Stephen P. Crosby

9
10 COMMISSIONERS

11 Gayle Cameron (not present)

12 James F. McHugh

13 Bruce W. Stebbins

14 Enrique Zuniga

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16
17
18 September 6, 2013, 1:30 p.m.

19 BOSTON CONVENTION AND EXHIBITION CENTER

20 415 Summer Street, Room 151-B

21 Boston, Massachusetts

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

CHAIRMAN CROSBY: We are ready to reconvene the public meeting number 76, which was temporarily adjourned on Wednesday. Today is September 6 at 1:30.

And we will pick up with the open-ended topics, several, from the Ombudsman report when our Ombudsman gets his paperwork ready.

MR. ZIEMBA: Thank you, Mr. Chairman. As you mentioned, we are going to continue discussion as the first matter the question related to the Penn National transfer of the host community agreement from Ourway Realty to Penn National.

We received a number of comments on our website that are included in the Commissioner's packet. I have a summary in this paperwork that I just lugged over, but one of the other matters was just pending. Sorry for my tardiness.

CHAIRMAN CROSBY: I know that. No problem, no problem. We understood. Take your

1 time John. It's no problem.

2 MR. ZIEMBA: I can do it from memory
3 while I'm looking for the paperwork. We
4 received a number of comments from citizens on
5 both sides -- well, actually on a number of
6 different sides of the issue related to the
7 potential transfer and the Commission's
8 consideration of that transfer.

9 It was essentially almost an even
10 breakdown of comments between -- comments that
11 we received in support of the transfer. And
12 then if one would group both a request to
13 disapprove of the transfer and a grouping of
14 comments that asked the Commission to delay the
15 60-day, delay the transfer, delay the election
16 for 60 days --

17 CHAIRMAN CROSBY: Delay the
18 referendum 60 days from the signing of the new
19 applicant.

20 MR. ZIEMBA: So, if you were to
21 group those two, it's essentially even. But on
22 the specific no's, it's much less than that. I
23 believe it was 13 citizens who wrote in
24 specifically stating that they do not support

1 the transfer. And then I believe it was
2 another 13 that indicated that they would like
3 to see a delay in the vote by the Commission.

4 CHAIRMAN CROSBY: And about the same
5 number were in favor of the transfer total?

6 MR. ZIEMBA: Correct. I believe
7 there were 26 that were in favor.

8 COMMISSIONER MCHUGH: There was a
9 significant number of opponents who were from
10 Foxboro, right?

11 MR. ZIEMBA: Correct. That is
12 absolutely true. So, among -- I'll give you a
13 flavor of some of the comments that we
14 received. On the no side, people said not an
15 applicant. They know very little about Penn.
16 Sixty days they've been unvetted. One citizen
17 referenced that the 60 days might be useful to
18 citizens groups that do not have the
19 wherewithal or the resources related to the
20 election.

21 People say that 60 days is too
22 brief. Only last night there was a forum with
23 Penn. As I noted, many said postpone the
24 election. Some said that this potentially

1 could undermine the Gaming Commission's rules.

2 Others had general concerns
3 regarding the facility. Traffic was a concern.
4 Others had noted that Plainridge was a very
5 known commodity, in the community for many,
6 many years. Others had simply said, hey, there
7 is no place for gambling in the community.

8 Others, as you noted, there are many
9 commenters from other communities, notably
10 Foxboro saying that there shouldn't be anything
11 near my town. Generally, people have said that
12 it's especially important to other towns to
13 understand impacts and that is the purpose of
14 the 60 days.

15 Some of the flavor of the yeses were
16 that it is important to support the town's
17 ability to vote. The Commission should support
18 a democratic system. Yes, allow this transfer
19 but vet them. People express the importance of
20 horseracing. People expressed that we should
21 trust the voters. People expressed that there
22 should be a lot of support for the local farms
23 and horse farms. People expressed that this
24 would have a significant impact upon the fiscal

1 budget of the town. One commenter said that
2 many businesses have closed in Plainville and
3 that this should not be one more.

4 People expressed that Penn, they're
5 experienced partners. People said that
6 millions go to other states in revenues and
7 that this should be brought back into
8 Massachusetts. People said if the Commission
9 could visit Plainville, they would see yes
10 signs everywhere. People have said please do
11 not let a small group to prevent a vote. Don't
12 let minority rule, allow the vote.

13 So, those were some. One citizen
14 wrote in even though this means a lot to a lot
15 of other people, what it means to that person
16 was that his or her job would be saved. So,
17 that's sort of the general flavor of the
18 comments that we received.

19 CHAIRMAN CROSBY: John, I want to
20 reiterate that every single one of the comments
21 that came in the website, we do have in our
22 books. We have all read all of them and we do
23 appreciate the fact that a lot of people took
24 the time to write in.

1 MR. ZIEMBA: Notably, we received
2 some additional briefs from the Penn side. We
3 received some additional briefs from the town
4 side.

5 And what I thought I would do is I
6 would give an opportunity for Penn to come up
7 and give a little bit more of an explanation of
8 the questions, their answers to the questions
9 that the Commission raised the other day.

10 So, Mr. Snyder, if you would join
11 us. Mr. Snyder is the vice president of
12 corporate development for Penn National.

13 MR. SNYDER: Thank you, Mr. Ziemba.
14 And thank you, Mr. Chairman and members of the
15 Commission. Again, my name is Steve Snyder
16 from Penn National Gaming. We very much
17 appreciate the deliberation and the
18 consideration that you have given and are
19 giving to this very critical matter.

20 I spent three hours last evening at
21 a community forum in Plainville. I can tell
22 you it was very well attended. It was also
23 televised locally through cable access.

24 And a vast majority of the folks who

1 were present spoke very favorably in response
2 to this project, in response to this location.

3 I've brought with me today our
4 outside counsel Jonathan Albano to my right
5 from the Bingham law firm who did draft and
6 submit the letter that you have in front of
7 you. Along with Jonathan, I have to his right
8 Mr. Joe Ferguson (SIC), the manager of the town
9 of Plainville. And further down the panel,
10 Jonathan Silverstein who wrote the letter on
11 behalf of the town.

12 So, I'm going to ask Mr. Albano to
13 address our letter. And then if you wouldn't
14 bear us the indulgence also ask the town to
15 address the matters addressed in their letter.
16 So, thank you very much.

17 COMMISSIONER MCHUGH: Before Mr.
18 Albano begins, just because the record ought to
19 be clear on this, Mr. Albano and I were
20 partners in a law firm 27 years ago. Actually,
21 longer than that.

22 CHAIRMAN CROSBY: You joined that
23 firm when you were seven?

24 COMMISSIONER MCHUGH: When I was

1 seven. It's a different law firm now than it
2 was then. Still a fine law firm. I've had no
3 contact or relationships with the firm since I
4 was appointed to the Superior Court.

5 CHAIRMAN CROSBY: What year was
6 that?

7 COMMISSIONER MCHUGH: That was in
8 1985 and severed all relationships with that
9 firm since then. I've had little contact
10 frankly with Mr. Albano since I left.

11 MR. SNYDER: If I may, before I turn
12 it over, I apologize. I misspoke. It's Mr.
13 Fernandes from the town who is with us today.

14 CHAIRMAN CROSBY: Let me just say on
15 thing, we do want to hear from you as well as
16 other folks who have signed up to speak. In
17 the interest of time but also just for what's
18 really going on here, the issue should be
19 targeted on the question of the transfer of the
20 applicant and the transfer of the HCA and the
21 switch from one applicant to another.

22 There are other issues, but those
23 are the ones that we really want to focus on.
24 I think you all heard what our questions were

1 last time. Let's try not to retread ground on
2 issues we already agree on, like for example,
3 whether you can transfer the HCA. We don't
4 disagree with that. No point in trying to
5 prove that point.

6 MR. ZIEMBA: Mr. Chairman, I found
7 my paperwork in my pants pocket. I could just
8 give you the final numbers. I'm sorry. So, it
9 was 36 in favor, 13 against. And there were 23
10 in favor of a delay.

11 CHAIRMAN CROSBY: Okay. Thank you.

12 MR. ALBANO: Good afternoon, Mr.
13 Chairman, Commissioners. If I could clarify
14 one issue. Actually, I was a little too young
15 to have been Mr. McHugh's partner back in 1982.

16 COMMISSIONER MCHUGH: You were
17 something. You were on the move. You were
18 there. We worked together.

19 MR. ALBANO: My plan and what I was
20 asked to do was to address briefly the legal
21 issues raised -- the legal issue raised by the
22 matter before the panel without unnecessarily
23 repeating anything that has been submitted in
24 writing to the Commission. There may be to the

1 extent other issues are raised in the course of
2 today's hearing, we have others here who are
3 I'm sure better qualified to address those.

4 In brief though, I think the summary
5 of Penn's position could be stated as in some
6 ways a defense of the Massachusetts State
7 Legislature. Because our position is that when
8 one looks at the statutory language, the
9 context, and the purpose of the statute, it is
10 actually quite clear that not only does the Act
11 contain no prohibition against the transfer of
12 an interest in an HCA, but that moreover, the
13 Act does not contain any requirement that the
14 electoral process be restarted upon such a
15 transfer.

16 And there does seem to be universal
17 agreement, as Mr. Chairman stated, that
18 interest in HCAs are transferable. There is
19 also universal agreement that what the statute
20 does is goes further actually by allowing
21 transfers even of licenses after they have been
22 issued, subject of course to Commission
23 approval.

24 But to me, one interesting point,

1 maybe not interesting but I think significant,
2 is that in the very subsection of the statute,
3 section 15 subsection 13 that some are citing
4 for the proposition that the term the word the
5 when put in front of the word applicant means
6 that the electoral process must be restarted.

7 In that very same section, the
8 Legislature demonstrated that when it wanted to
9 require the electoral process to be restarted,
10 it knew how to say so and said so explicitly.
11 Because it is in that very same subsection that
12 the Legislature said if there is a vote taken,
13 if the vote is not in favor of a gaming
14 establishment, and the applicant -- I think the
15 language that is used is the applicant must
16 submit a "new request" for an election that
17 can't be made more than 180 days after the last
18 election.

19 So, we do have clear evidence that
20 when the Legislature wanted to restart the
21 electoral process, it knew how to say so and
22 did say so unambiguously.

23 If one moves onto the specific
24 language of subsection 13 that is relied upon

1 for the argument that no, no, no, if an HCA is
2 transferred, the electoral process must start
3 all over again, there aren't many -- there's
4 not much language that's relied on but each of
5 them when you look at them has a clear and
6 different, very different purpose than
7 restarting the electoral process.

8 And I will just give you two
9 examples. The first time that you see the
10 language the applicant that is cited by the
11 opponents says: Provided however that a
12 request for an election shall take place after
13 the signing of an agreement between the host
14 community and the applicant.

15 Well, I would suggest that if you
16 step back and look at what is that section
17 trying to say, what is its purpose, its purpose
18 is clear. It's just saying there ought to be a
19 final agreement before the electoral process
20 begins because think of the havoc and the
21 uneven bargaining leverage that would occur if
22 the electoral process could begin before the
23 agreement was finalized. That is the clear
24 statutory purpose, I would submit, of that

1 language.

2 I'll give you one other example.
3 There is another proviso that says: Provided
4 further that upon receipt of a request for an
5 election, the governing body of the
6 municipality shall call for the election to be
7 held not less than 60 days but not more than 90
8 days from the date the request was received.

9 That I would say has quite a clear
10 purpose. And the purpose is that there must be
11 sufficient time, no less than 60 days, for the
12 community to consider the question that the
13 Legislature required be put on the ballot.

14 And that question, the language that
15 the Legislature required is whether to permit
16 the operation of a gaming establishment
17 licensed by the Commission located at X site.
18 That is the question that was put to every
19 community that holds this sort of election.
20 And that is the question for which the 60 days
21 is required. And that 60-day period has been
22 met here.

23 The last point I would make is that
24 it does seem to me that what is lined up

1 against the statutory language purpose and
2 context that I've spoken of now is simply the
3 use of the word the before the term applicant
4 in certain spots in section 15. But if you try
5 as I have done to substitute a different word
6 for the in those places, then you quickly see
7 that the statute would have become quite
8 confusing.

9 Should it be an applicant? Well,
10 which applicant? Could an applicant in the
11 Western Mass. make a request for an election
12 that's not -- it gets quite confusing.

13 Substitute an, any, I would suggest that it
14 becomes clear, again, when you think of what
15 the statute clearly does do in the context that
16 this was simply a means of identifying the
17 applicant in the process without conveying,
18 smuggling in to section 15 by use of the word
19 the, the kind of intent that has been suggested
20 here.

21 I started out saying I would in a
22 way by defending the Legislature because I do
23 think that viewed in the context it's clear
24 that they did not require the restart of an

1 election.

2 I think I should close by defending
3 that that little word, three-letter word the,
4 because it's asking too much of that little
5 word to convey a legislative intent to require
6 a restart of the electoral process given in
7 particular the very limited question, important
8 for sure, but limited question put to the
9 voters.

10 And finally, I would say to the
11 extent some of the arguments that have been
12 made spill over into issues beyond what did the
13 Legislature mean in the language it used in
14 section 15, policy arguments, I'm sure
15 heartfelt arguments.

16 Those arguments, I would suggest,
17 are really reasons to hold an election and not
18 reasons to cancel an election, especially in
19 the context of this particular statute. I'd be
20 happy to, if I could, address any questions now
21 or later. But otherwise, I would yield to Mr.
22 Silverstein.

23 CHAIRMAN CROSBY: Questions anybody?

24 MR. SILVERSTEIN: Thank you, Mr.

1 Chairman, members of the Commission. Again,
2 Jonathan Silverstein, town counsel to the town
3 of Plainville.

4 I would like briefly to address some
5 of the points I raised in my letter to the
6 Commission yesterday.

7 But first, I would like to address
8 one factual point which I think is important to
9 bear in mind and Commissioner McHugh alluded to
10 it. Ombudsman Ziembra noted that there were 36
11 letters in favor, 13 against in response to the
12 Commission's request for comments.

13 I would note that by our count,
14 seven of the submissions against, only seven
15 were from Plainville residents. Whereas nearly
16 all of the 36 comments in favor were Plainville
17 residents. And I think that's an important
18 distinction to bear in mind.

19 I would note -- And I'll get to the
20 issue of potential voter confusion or concerns
21 about voter awareness in a little while. And I
22 would note that while I am sure the residents
23 and voters of Plainville appreciate the
24 concerns of Foxboro residents about their

1 ability to knowledgeably vote on this matter, I
2 think that the Plainville residents should have
3 the final say on that.

4 CHAIRMAN CROSBY: Excuse me, Mr.
5 Silverstein. This monitor is not working. I
6 assume that doesn't mean it is not going out to
7 the web.

8 AUDIO/VISUAL TECHNICIAN: It is.

9 CHAIRMAN CROSBY: Thanks. I'm
10 sorry. Go ahead.

11 MR. SILVERSTEIN: I want to build,
12 if I might, on Mr. Albano's suggestion that the
13 reading that we urge the Commission to give the
14 statute is a defense of the Legislature's
15 intent in adopting the statute.

16 CHAIRMAN CROSBY: Don't tell us the
17 same thing again.

18 MR. SILVERSTEIN: I won't at all.
19 As I said, I want to build on it. I'm not
20 going to repeat any of Mr. Albano's comments.
21 I think that he spoke very well to those
22 comments.

23 But I do want to build on it by
24 noting that both the Legislature and this very

1 Commission built in substantial flexibility --
2 In the Legislature's instance into the statute,
3 and the Commission's instance into the
4 regulations that you adopted under the statute.
5 -- built in substantial flexibility to
6 accomplish the purposes of the statute.

7 And we all know and we've discussed
8 what some of the purposes of the statute are.
9 And I think for purposes of today's discussion,
10 notably one of the purposes of the statute is
11 to encourage competition for the purpose of
12 maximizing revenue and other benefits to the
13 Commonwealth and to potential host communities
14 and host regions.

15 And I would cite to the Commission
16 chapter 23K section 1.10, and the concomitant
17 provision of your regulations 205 CMR 102.032,
18 both of which say that the provisions of the
19 statute and of the regulations should be
20 liberally construed to accomplish the purposes
21 of the statute.

22 I submit to the Commission that
23 given the statute, the reading encouraged by
24 some residents of other municipalities and some

1 other applicants would not accomplish any of
2 the purposes of the statute, would not
3 accomplish any purpose at all except to
4 eliminate competition, and would have the
5 absurd results. And that would be both
6 inconsistent with your own regulations and the
7 statute but also inconsistent with generally
8 accepted methods of statutory construction.

9 What would the absurd result be?

10 The absurd result would be that a project would
11 be eliminated from the competition for the
12 Category 2 license solely because the entity
13 proposing to run the project will have changed.
14 And not because the entity proposing to have
15 run the project will have changed but because
16 of the specific timing of when that change will
17 have occurred.

18 There's no doubt that that change
19 could occur post-licensure, post-vote. And the
20 voters of the town of Plainville would have no
21 say over it. Only this Commission would have a
22 say over it. And what possible purpose would
23 be accomplished by saying, all right, now the
24 voters have a week or 10 days of notice and

1 that's not enough. But it would certainly be
2 enough when they had no notice and it took
3 place after their vote.

4 I submit respectively to the
5 Commission that that would make no sense at
6 all. It would be an absurd result. And it's
7 well settled that you should not read a statute
8 to have such an absurd result.

9 And I would note also that your
10 regulations at 205 CMR 102.06 specifically
11 contemplate hey, we cannot envision every
12 circumstance that may arise in the context of
13 this brand-new industry that this Commission is
14 laudably grappling to regulate and establish a
15 process for.

16 So, what you did was you
17 specifically built into your regulations a
18 provision that says matters not specifically
19 provided for in 205 CMR regarding the licensing
20 of a gaming establishment shall be determined
21 by the Commission in a manner consistent with
22 the principles of chapter 23K section 1, again,
23 going back to the purposes of the statute.

24 No purpose of the statute would be

1 served by eliminating this project from the
2 competition. And I would submit to you that
3 pursuant to your safety valve clause, if you
4 will, in your regulations, this is the poster
5 child for such an unforeseen circumstance. And
6 the only commonsense way to accomplish the
7 purposes of the statute would be to accept the
8 substitution of Penn for Ourway as the
9 applicant for this project.

10 I want to address the issue of voter
11 confusion. I addressed it the other day. I'm
12 not going to repeat those comments. I have
13 addressed it in my brief. So, I don't want to
14 repeat that either. By in Mr. Fernandes' own
15 submission on his own behalf to this
16 Commission, and I know you have received an
17 awful lot of comments and just last night. So,
18 you may not have had a chance to read his
19 submission.

20 MR. SILVERSTEIN: We have.

21 COMMISSIONER MCHUGH: We have.

22 COMMISSIONER ZUNIGA: We have.

23 MR. SILVERSTEIN: Fair enough. Then
24 for the benefit of everyone here, I'd like to

1 note one thing that I think Mr. Fernandes
2 really spoke to very well.

3 In Plainville, everybody knows what
4 Plainridge is. It's a place. It's a project.
5 It's an establishment. It's a brand. None of
6 that, the place isn't going to change. The
7 establishment that's being proposed is not
8 going to change. The brand is not going to
9 change.

10 The owner is going to change, has
11 changed. The owner has changed many times over
12 the course of the years. And Mr. Fernandes
13 noted some of the owners of that establishment.
14 No one in town has ever considered, geez, let's
15 go to Ourway's place. It's Plainridge. It's
16 the Plainridge Racetrack. None of that is
17 going to change.

18 If members of the Commission have
19 had an opportunity to look at the ballot that
20 is before the voters, here is what the
21 explanation says. As Mr. Albano indicated, the
22 ballot form, the question form is prescribed by
23 statute. And notably nothing in that
24 prescribed ballot question refers in any way to

1 the applicant or the owner of the
2 establishment.

3 And I think that demonstrates the
4 division of roles that I spoke to the other day
5 before the Commission. That the role of the
6 voters is not to determine suitability as some
7 of the comments to this Commission last night
8 have suggested.

9 The ballot says: Shall the town of
10 Plainville permit the operation of a gaming
11 establishment licensed by this Commission to be
12 located at the Plainridge Racecourse, 301
13 Washington Street, Plainville. No reference to
14 the applicant.

15 In the explanation, it says a yes
16 vote would permit, would allow the owner of
17 Plainridge Racetrack to apply to the
18 Massachusetts Gaming Commission. That's what
19 everyone in town is voting on. They're voting
20 on a project at a place that the owner of the
21 racetrack will be allowed if the vote is
22 successful to pursue before this Commission.

23 None of that is changing. No voter
24 in town is confused by that. There's been, I

1 would submit, more process subsequent to Penn
2 stepping into Plainville that has alerted the
3 voters and people of Plainville to the extent
4 that it even matters, for purposes of the
5 statute I submit it doesn't, but to the extent
6 it even matters, there's been more process in
7 that last week or 10 days regarding Penn to
8 inform the voters about Penn's role here, about
9 who Penn is.

10 I would note last night at the
11 public forum that Plainville held, the town's
12 independent gaming consultant, Will Cummings,
13 who is an industry acknowledged expert and his
14 associates, and Mr. Cummings is here if the
15 Commission has any questions of him, went into
16 great, great depth and detail regarding who
17 Penn is and what their background is. And
18 noting the fact that in fact Penn would be an
19 excellent applicant to pursue this project.

20 There's been more process, I would
21 submit, than in many of the other proposed host
22 communities over the course of the entire
23 election period. So, to the extent that there
24 is any concern there, I would submit there has

1 been more than ample process.

2 Finally, I would suggest that the
3 notion by some of the submitters of comments
4 that this Commission can or should delay the
5 election, I would submit is a matter of state
6 election law. That is not something that
7 anyone other than a court would have the
8 ability to do.

9 The notion that it would be delayed
10 beyond the 60 -- beyond 90 days allowed by the
11 statute I think would be blatantly inconsistent
12 with the statute. It would have one purpose
13 and only one purpose, which would be to prevent
14 Penn from filing an RFA-2 application to this
15 Commission by the deadline of October 4. I
16 will close with that.

17 Obviously, this is an issue of deep,
18 deep concern to the town of Plainville and its
19 voters. I'd be happy to answer any questions
20 the Commission has.

21 CHAIRMAN CROSBY: Anybody?

22 COMMISSIONER MCHUGH: No questions.

23 CHAIRMAN CROSBY: Anybody else?

24 MR. SNYDER: Mr. Chairman, I'll wrap

1 up. We appreciate again your consideration. I
2 will remind the members of the Commission, we
3 have paid \$400,000 as an applicant in January.
4 We've gone through this process. We have
5 conducted ourselves in as transparent a means
6 as possible by making this announcement before
7 the election rather than after the election or
8 subsequently.

9 And we are prepared to invest
10 several hundreds of millions of dollars here in
11 the Commonwealth. And we only hope that we'll
12 have the opportunity to do so or at least to be
13 considered to do so. So, thank you very much.

14 CHAIRMAN CROSBY: Thank you all.

15 COMMISSIONER ZUNIGA: I have a
16 question. Could you take us through the future
17 after say next Tuesday? Who runs Plainridge
18 Racecourse? What does the agreement provided
19 for?

20 MR. SNYDER: As we indicated, we
21 will apply for race dates and conduct racing
22 operations for 2014 through an operating
23 agreement. We will oversee the operations, but
24 don't envision any personnel changes with

1 respect to the day-to-day operations of the
2 racing activities for calendar 2014.

3 We will also, if able, submit an
4 application, a Phase 2 application on October
5 4. And continue to work with the design team
6 on the project that has been presented to the
7 community of Plainville to develop it as the
8 process before this Commission unfolds.

9 If we are fortunate enough to be
10 selected to do that, we would designate a
11 general manager who would oversee the
12 operations of that facility while the
13 construction development were overseen by our
14 corporate staff.

15 If I may, my counsel has pointed out
16 for purposes of consideration by this
17 Commission, none of the existing shareholders
18 of Ourway will have any role whatsoever either
19 in racing operations, any further development
20 of a gaming facility and clearly not in the
21 day-to-day operations of a slot facility at
22 that location, again, if we are fortunate
23 enough to be selected. Thank you.

24 CHAIRMAN CROSBY: Just for the

1 record on that, speaking as a racing
2 Commissioner, one of the problems in the
3 previous applicant was the complete absence and
4 failure of administrative systems of
5 accountability and transparency and
6 recordkeeping and so on and so forth.

7 In the existing operations, which
8 inspired little confidence in us going forward,
9 but if you're going to be responsible for
10 running this track for the foreseeable future
11 or for some period of time, we hope you will
12 pay attention to the mechanisms and the systems
13 in place.

14 Mr. Grogan, who I don't know whether
15 he's going to be involved or not, but he said
16 he had started to implement a whole bunch of
17 procedures. I hope such things will be
18 happening, because the racetrack as long as
19 it's operating as a racetrack needs to operate
20 in an appropriate way.

21 MR. SNYDER: Rest assured, Mr.
22 Chairman, it will. It will. We will have the
23 internal audit. We will have the compliance
24 functions. We will have the managerial and

1 financial oversights on the operating
2 performance of this facility from January 1
3 forward under any means, whether it's racing,
4 gaming or whatever.

5 CHAIRMAN CROSBY: And who is running
6 it between now and January 1?

7 MR. SNYDER: The existing operator
8 because I will remind the Commission this is an
9 option.

10 CHAIRMAN CROSBY: It's an option,
11 okay.

12 COMMISSIONER MCHUGH: I didn't have
13 any questions until you said that Ourway would
14 have no role in the operation of the track.
15 But Ourway does have an income stream under
16 this option agreement for a period of time
17 after the option is exercised; isn't that
18 right?

19 MR. SNYDER: There is an earn-out, a
20 payout overtime.

21 COMMISSIONER MCHUGH: Over four
22 quarters.

23 MR. SNYDER: Only to the existing
24 approved principles. Those principles that are

1 found suitable to realize that revenue stream.
2 And it is only for a finite period of time.
3 That is correct.

4 COMMISSIONER MCHUGH: So, there
5 would be part as part of the Penn suitability
6 process an examination of the suitability of
7 those individuals to receive the payments; is
8 that right?

9 MR. SNYDER: That's correct.

10 COMMISSIONER MCHUGH: And that is
11 part the package that the IEB is now exploring,
12 is it?

13 MR. SNYDER: That is my
14 understanding. That is correct, yes. That
15 would be part of the suitability review of us
16 as an applicant and certainly reviewed by this
17 Commission of our application including the
18 Phase 2 application. We did not believe that
19 that was an issue for today's discussion.

20 COMMISSIONER MCHUGH: No, I
21 understand that. But the operating piece was
22 something you injected. And I just wanted --

23 MR. SNYDER: Again, to be clear in
24 response to the day-to-day operations, no

1 involvement whatsoever by any of the existing
2 stakeholders.

3 COMMISSIONER MCHUGH: I understand
4 that.

5 COMMISSIONER ZUNIGA: Thank you.

6 CHAIRMAN CROSBY: Who is committed
7 to paying the town the cost of the election?

8 MR. SNYDER: That is included in the
9 host community agreement. And again, as this
10 Commission knows, we have accepted, we have
11 sought and have received the consent of the
12 community to be the assignee of that host
13 community agreement. So, we are the successor
14 in all ways to all of those responsibilities
15 under the host community agreement.

16 MR. FERNANDES: Can I speak to
17 that, only because I don't think Steve is
18 aware?

19 CHAIRMAN CROSBY: Introduce
20 yourself.

21 MR. FERNANDES: Joseph Fernandes,
22 town administrator for the town of Plainville.
23 Notwithstanding the fact that the legislation
24 anticipates that the applicant -- And I didn't

1 go to law school. So, I'm not sure how to
2 define the anymore than I was the term is when
3 it was used a few years ago what it meant.

4 Nevertheless, Ourway in a dispute
5 with -- This goes back three years ago. -- a
6 dispute with an abutter requested a number of
7 documents. And it would have required a great
8 deal of time and effort. They placed a \$10,000
9 deposit to pay for the costs. And I was
10 reminded a couple of weeks back they never got
11 their balance back.

12 So, there is \$7700 on account with
13 the town that will cover the cost of the
14 election even though they are obligated to pay
15 whoever the applicant may be.

16 CHAIRMAN CROSBY: Whatever. If
17 you're committed, you work it out.

18 MR. SNYDER: We have rights and we
19 have responsibilities under the host community
20 agreement. And the cost of the election is one
21 of those responsibilities.

22 CHAIRMAN CROSBY: All right. That's
23 fine. Anything else?

24 COMMISSIONER STEBBINS: Quick

1 question for either Mr. Fernandes or Mr.
2 Silverstein. Can you just kind of quickly walk
3 through the interaction that the board of
4 selectmen has had with Penn National?

5 One of the comments raised that we
6 received reflected on the issue of notice of
7 the hearings, notice of any discussions or
8 votes that the board of selectmen took. But if
9 you could just walk me through and make sure
10 that obviously all local and state laws were
11 abided by?

12 MR. FERNANDES: I'm not sure exactly
13 what the reference to in terms of notice is.
14 If we're talking about the very structured
15 notice requirements for public meeting, working
16 backwards, the board of selectmen voted to
17 assign -- excuse me, consent the assignment of
18 the host community this past Tuesday. That
19 meeting was posted the previous Thursday,
20 counting Friday and the balance of Tuesday as
21 the 48 hours.

22 So, if that is the question.
23 Obviously, the holiday didn't count and was not
24 anticipated to be counted. Is that your

1 question, Mr. Commissioner?

2 COMMISSIONER STEBBINS: I think that
3 adequately addresses the comment.

4 MR. FERNANDES: I could speak to the
5 amount of outreach there's been, the number of
6 public meetings and forums, if that was the
7 purpose of the question.

8 COMMISSIONER STEBBINS: No, thank
9 you.

10 CHAIRMAN CROSBY: Anything else?
11 Thank you folks. Do you have more before we
12 get to the other speakers?

13 MR. ZIEMBA: I do not.

14 CHAIRMAN CROSBY: Okay. What else
15 is on your agenda once we finish with Penn?

16 MR. ZIEMBA: To report back on the
17 matter between Boston and the Wynn development.

18 CHAIRMAN CROSBY: Is that it?

19 MR. ZIEMBA: Then we have some
20 questions related to the application that
21 resulted from our pre-application meetings with
22 Category 2 applicants.

23 CHAIRMAN CROSBY: So, we may hold
24 this meeting open until Saturday?

1 MR. ZIEMBA: I'll be brief, Mr.
2 Chairman.

3 CHAIRMAN CROSBY: Okay. We invited
4 people to speak. They did via the website,
5 which you've now heard about. We invited
6 people to speak in person. We said that we
7 would have only representatives of
8 organizations, because we couldn't have many,
9 many people. We'd be here all night.

10 We have four organizations
11 representative people, which I will invite up
12 to speak. We have four people who have
13 identified themselves as Plainville residents
14 not representing an organization.

15 I'm sort of half inclined given that
16 they've come a long ways and we don't have a
17 huge number of people to give them an
18 opportunity speak briefly, if they're going to
19 speak only to the point. But on the other
20 hand, we said we wouldn't have speakers. So, I
21 just wanted a sense from other people whether
22 we should invite these folks to speak or not.

23 COMMISSIONER MCHUGH: I'm perfectly
24 happy to have them speak. We're always

1 receptive to and do read thoroughly all written
2 comments that we receive too. So, if they've
3 sent us something in writing, we've already
4 read it. But if they haven't and there are
5 others who haven't have come because they
6 thought they couldn't speak and want to write
7 us, we'll read that too and take it into full
8 account as we proceed, regardless of what the
9 decision is today. There is much more to this
10 process than today.

11 CHAIRMAN CROSBY: Right. Anybody
12 else have --

13 COMMISSIONER ZUNIGA: I would be
14 fine with that too.

15 COMMISSIONER STEBBINS: No
16 objection.

17 CHAIRMAN CROSBY: Okay. So, let's
18 start out with the representative
19 organizations. I'm just going to take them on
20 the list in the order they appear in list.
21 Mary-Ann Greanier from the No Plainville Racino
22 organization.

23 We'll be flexible on the time. It's
24 meant to be five minutes or so. Remember that

1 your remarks are targeted at the specific issue
2 to the maximum extent as possible.

3 MS. GREANIER: Commissioners and
4 Chairman Crosby, thank you so much for allowing
5 these comments. Your actions actually inspire
6 confidence in the process. And I thank you for
7 that.

8 I'm here today representing an
9 organization called No Plainville Racino.
10 We're an organization of about 75 people, the
11 majority of whom are from Plainville, although
12 we also have folks from Wrentham, North
13 Attleboro and Foxboro who are active. Also we
14 are registered as a PAC with the town as a
15 disclosure.

16 We respectfully urge you to find
17 that Penn National Gaming is not and cannot be
18 the applicant referred to in host community
19 agreement being voted on in Plainville on
20 September 10. On the long journey toward
21 expanded gambling in Massachusetts we have been
22 assured that the law was written with certain
23 checks and balances to protect the public.

24 The requirement of a minimum of 60

1 days for the public to inspect and inquire
2 about the host community agreement, which we
3 have had the chance to do, and about the
4 parties who signed that agreement who might
5 well be licensed to run a gambling facility in
6 our town should be kept sacrosanct.

7 According to the August 29, 2013
8 applicant status report on your website,
9 Plainridge Racecourse Ourway Realty, LLC is
10 listed as the applicant for the Plainville host
11 community, signed the host community agreement.
12 And is listed under the host community
13 referendum, HCR. The applicant for the HCA
14 and HCR is clearly Plainridge Racecourse Ourway
15 Realty.

16 Penn National Gaming on the other
17 hand is listed as TBD for host community with
18 an N/A for host community agreement and an N/A
19 for host community referendum. I understand
20 that this is what was attempted to be changed
21 last Tuesday at the selectmen's meeting.
22 However, this is what appears right now.

23 As you discussed at your last
24 meeting, chapter 23K section 15 states, and I

1 don't need to read it. You know what it says.
2 I'll forgo that if that's okay. What it states
3 leads me to believe that Penn National Gaming,
4 while they would like to be an applicant that
5 they would need to enter into an HCA with
6 Plainville themselves. Another election would
7 have to be held in 60 to 90 days. This would
8 put the election after the October 4 Phase 2
9 deadline, however, and of course, not within
10 the timeframe to apply for a Class 2 license.

11 There is no way that we want the
12 election to be stopped or to in anyway impinge
13 on what the voters can vote. However, we do
14 believe that there currently is no eligible
15 applicant to carry forth with the host
16 community agreement.

17 From the host community agreement,
18 it is clear that Plainridge Ourway is the
19 applicant of record for the project. As I
20 listen to the arguments by Plainville town
21 council and Penn National's lawyer to allow
22 Penn to be considered the applicant, I was
23 reminded of an article I read recently about
24 Penn National's proposed spinoff in which the

1 casino regulators in Ohio called their
2 separation plan legal fiction.

3 The very idea that Penn could be the
4 applicant of Plainridge also borders on legal
5 fiction, I believe, not only because of the
6 requirement that the applicant sign the HCA 60
7 days before a vote but because many statements
8 written to refer to Plainridge in the HCA
9 clearly do not truthfully represent Penn
10 National as Plainridge.

11 One of these is that Plainridge has
12 run the racecourse for 15 years. I believe in
13 reading deeper in that it means that the people
14 who formerly ran the racecourse or formerly
15 were the applicant that's who Plainridge is
16 referring to. It's not referring to Penn
17 National.

18 So, rather than having what we know
19 to be truthful in the HCA represented, there
20 are ghostly impressions left in the wake of the
21 disqualified applicant. The HCA agreement as
22 written is no longer accurate and true.

23 At your meeting on Wednesday, Penn
24 National Gaming stated multiple times that the

1 HCA was transferred from Plainridge Ourway to
2 Penn National Gaming in a unanimous vote. The
3 reason this was unanimous was because the HCA
4 required the Plainville selectmen to do so with
5 the HCA stating Plainridge shall not transfer
6 or assign its rights or obligations under this
7 agreement without prior written authorization
8 of the town, which will not unreasonably be
9 withheld, delayed or conditioned.

10 While many of us would have had the
11 selectmen take more time to consider the
12 details of that proposition, they had only just
13 met the Penn National representatives at that
14 meeting. Perhaps even bringing the transfer to
15 the people of Plainville before their unanimous
16 vote, it's not surprising that they signed with
17 very few questions asked.

18 In the Gaming Act it states that a
19 Category 2 license and the host community
20 agreement it would inherit is only transferable
21 upon a change in ownership. I would maintain
22 that an option to purchase Plainridge Ourway is
23 not a change in ownership. And therefore
24 should not be considered as a reason to allow

1 the transfer of the HCA.

2 Penn National's risks in this deal
3 are minimal. While Plainridge spent over 15
4 years and millions of dollars building their
5 facility and being a part of the community,
6 Penn National Gaming has only invested \$100 in
7 their conditional relationship with Plainridge.
8 Penn National Gaming has not expended large
9 amounts of capital nor invested in the town of
10 Plainville. They are taking no chances and
11 minimizing their risk.

12 One of the selectman's perennial
13 selling points for slots at Plainridge was that
14 we knew the operators, had known them for 15
15 years, knew that they were devoted to the town
16 and that we could trust them. As it turned out
17 we couldn't.

18 Still to rush to partner with
19 another unknown developer from another state,
20 especially one working on their third attempt
21 for a license in Massachusetts, seems counter
22 to everything the selectmen have assured us
23 about accepting expanded gaming at Plainridge.

24 The selectmen met the

1 representatives from Penn National for the
2 first time on Tuesday night when they signed
3 the agreement to transfer the HCA. And now
4 they want to give us less than a week to decide
5 how we'll vote.

6 Finally, Penn National and the
7 selectmen seem to believe that a few days is
8 plenty of time for the people of Plainville to
9 discover and digest information about PNG and
10 to react and respond to the change.

11 While the various applicants for a
12 gaming license are flush with disposable income
13 for public relations, polls, signs, mailings,
14 etc., the residents in the towns where gambling
15 facilities are proposed are often forced to
16 scrape together private funds just to buy a few
17 signs and print a few flyers.

18 It's, I believe, a blind spot in the
19 legislation that leaves the public and in
20 particular any opposition at a distinct
21 disadvantage. So, by necessity we communicate
22 door to door, neighbor to neighbor. That takes
23 time. Certainly more time than a few days
24 immediately after Labor Day might provide with

1 people returning from their summer holiday and
2 school just beginning. One week between the
3 introduction of a new acting owner and a
4 referendum is simply unacceptable.

5 Not only do we deserve time to
6 contemplate a change of this magnitude, but the
7 Gaming Act of the Commonwealth, we believe,
8 gives us the right not to be rushed into a
9 decision.

10 I urge you most respectfully to
11 uphold those laws and deny Penn National's bid
12 to become the applicant for slots at
13 Plainridge. Thank you.

14 CHAIRMAN CROSBY: Thank you. Any
15 questions?

16 COMMISSIONER MCHUGH: I thought I
17 heard you refer to the provision of the host
18 community agreement that said that there
19 couldn't be a transfer unless there was a
20 change of ownership. Did I hear you correctly?

21 MS. GREANIER: No. What I was
22 referring to was the provision that the
23 selectmen would have to --

24 CHAIRMAN CROSBY: Approve the change

1 of ownership.

2 COMMISSIONER MCHUGH: Section 8, if
3 I misunderstood you, that's fine. I just was
4 confused. So, thank you very much.

5 CHAIRMAN CROSBY: You were referring
6 to the section that says that the HCA rights
7 and obligations can be transferred but only
8 with the approval of the town which cannot be
9 unreasonably withheld.

10 MS. GREANIER: Yes.

11 COMMISSIONER MCHUGH: Thank you.

12 MS. GREANIER: Thank you very much.

13 CHAIRMAN CROSBY: Thank you. Mr.
14 Abdelnour -- I couldn't read the handwriting,
15 sorry. -- from the NEAHDC. You'll introduce
16 yourself, thank you.

17 MR. ABDELNOUR: Thank you. My name
18 is Bill Abdelonour. I'm the president of the
19 New England Amateur Harness Drivers Club, thus
20 NEAHDC for short. We are located in
21 Plainville. We are a 501(c)(3) not-for-profit
22 recognized by the state and the federal
23 government. We race horses there at Plainridge
24 Racecourse. It's the only place we've ever

1 raced. And we participate quite often in
2 various events with Plainville and the town of
3 Plainville.

4 We donate money to certain things.
5 Being a nonprofit organization, as you well
6 know, we donate all of our money to charity and
7 the various events in the town of Plainville.
8 They're a terrific partner. They're wonderful
9 people. They're caring. They deserve to have
10 this vote. They deserve some strong
11 consideration on this application.

12 I'd like to just mention one other
13 thing about Penn National. We had a forum last
14 night, second time that I met this group behind
15 me. Wonderful people. First-class operation.
16 Traded publicly, NASDAQ, in 18 states, 28 or so
17 facilities gaming/racing. That's their
18 business.

19 They're not a rogue company that
20 just decided hey, let's apply, throw up 400,000
21 and try to get an application for a slot
22 parlor. This is a game changer. A game
23 changer for the town of Plainville who so
24 deserves it. A game changer for harness

1 racing.

2 Your own words, Mr. Chairman, you
3 promised that you were going to do everything
4 you could to help racing, thoroughbred, harness
5 racing in Massachusetts. This is a golden
6 opportunity. These people are first-class
7 people.

8 I'd like to just finished by telling
9 you -- I'd like to make somewhat of an analogy.
10 I thought about this a lot. I'm a big sports
11 fan. In sports, a player that comes in and
12 makes a difference, changes the whole
13 complexion of the team.

14 People like that makes them winners,
15 Larry Bird, Bobby Orr, Jim Rice, Freddie Lynn,
16 Bill Russell, they all came in and became
17 impact players. Our impact player and the town
18 of Plainville's impact player is Penn National.
19 They're going to change everything. The town
20 will become more prosperous. They will save
21 jobs as well create them. They'll save an
22 industry that has been in business for over 200
23 years that's not far from going the way of the
24 dinosaur.

1 They're an impact player and we need
2 them. Harness racing needs them. Plainville
3 the town needs them. The state of
4 Massachusetts needs them. So, I hope you
5 really consider this transfer and give them a
6 fair shot.

7 Let the people vote on Tuesday.
8 It's just Tuesday, several days away, and I can
9 promise you they'll be overwhelmingly in
10 support. They can't wait for this company to
11 come in and do their thing because they have a
12 proven track record. They're not rookies.
13 They're not coming off the bench.

14 This team knows what they're doing.
15 I've heard them speak. I've read a lot abbot
16 them, very impressive. I hope you really,
17 really consider this transfer and give them a
18 fair shot to save racing, to help Plainville,
19 to keep open space and save harness racing
20 that's been around forever. Thank you.

21 CHAIRMAN CROSBY: Thank you. Any
22 questions? Just for the record, this is not a
23 vote on whether they're quality people or not.

24 MR. ABDELNOUR: Right, I understand

1 that. But I had to --

2 CHAIRMAN CROSBY: I got it. You had
3 to use your sports analogy. I got it. We
4 appreciated it. Thank you. Next on the list
5 was Michael Perpall from the Horsemen's
6 Association. I'm sorry. I should know that by
7 now.

8 MR. PERPALL: Gentlemen, thank you
9 for letting me come before you. I am the
10 president of the Horsemen's Association. I
11 represent about 350 folks that earn most of
12 their income by participating in harness racing
13 at Plainridge.

14 One of the main functions of my job
15 in this environment is to make sure that
16 harness racing continues. And as I look at the
17 situation, I say that if Penn National was not
18 approved, we would end up with three candidates
19 for the slot parlor. Only one of those
20 candidates would have any interest whatsoever
21 in harness racing. That would be Mr. Carney.
22 There's nothing wrong with Mr. Carney,
23 delighted that he's interested. But that only
24 gives us one chance out of three.

1 If you approve Penn Natural, we now
2 have two chances out of four. Because these
3 people, they're going to do racing only if,
4 only if they end up with the slot parlor. If
5 they're not ending up with the slot parlor,
6 they will not perform under anything in 2014.

7 There will be no harness racing in
8 2014 if they are not awarded. So, that's why I
9 think it's very important to keep two players
10 in the game. And at least we have a 50 percent
11 shot that one of them would be awarded the
12 license.

13 CHAIRMAN CROSBY: Right.

14 COMMISSIONER MCHUGH: I
15 misunderstood what Mr. Snyder said then, I
16 think. Because I thought I heard him say that
17 Penn National was going to apply for the
18 license and if granted the license would --

19 MR. PERPALL: He was very specific
20 last night at the forum and stated he would
21 only perform if, if he was awarded the slot
22 license. We would not expect him to perform,
23 because the economics of the sport right now
24 are such that without expanded gaming,

1 particularly where we are competing with
2 expanded gaming all around us, it is virtually
3 impossible to run a successful operation
4 without the additional income from the expanded
5 gaming.

6 And if you've had an opportunity
7 over the last year or so to look at the
8 financial statements of Ourway, you see the
9 losses that they sustained. And it was
10 principally from the horseracing.

11 CHAIRMAN CROSBY: Would you clarify?

12 COMMISSIONER MCHUGH: I heard what
13 he said but --

14 CHAIRMAN CROSBY: Mr. Snyder, do you
15 want to clarify? Is there a misunderstanding
16 here? Do you want to, Jim, ask it again?

17 COMMISSIONER MCHUGH: Yes. Mr.
18 Snyder, if I might. I may have misunderstood
19 what you said, but I thought in response to one
20 of the questions that one of my colleagues
21 asked, you said that Penn National was going to
22 apply for the license for 2014.

23 MR. SNYDER: For the conduct of live
24 racing and simulcast and other racing

1 operations at the racetrack, yes, correct.

2 COMMISSIONER MCHUGH: And if awarded
3 that license --

4 CHAIRMAN CROSBY: The racing
5 license.

6 COMMISSIONER MCHUGH: The racing
7 license.

8 MR. SNYDER: No. I did say that we
9 would apply for it. I wasn't presumptuous that
10 we would be awarded.

11 COMMISSIONER MCHUGH: Then let me
12 ask you to be presumptuous. In a hypothetical
13 sense, if you are awarded the license --

14 CHAIRMAN CROSBY: The racing
15 license, not the gaming license.

16 COMMISSIONER MCHUGH: -- the racing
17 license, all of my remarks are directed solely
18 to the racing license. Is it Penn National's
19 intention to run live racing at Plainridge
20 whether or not they receive the gaming license,
21 if they are awarded the racing license?

22 MR. SNYDER: We have only made the
23 determination at this point in time that if we
24 are awarded the gaming license we would

1 continue 12 months of operations in 2014.

2 CHAIRMAN CROSBY: And if you're not
3 awarded the gaming license, have you made
4 representations one way or the other?

5 MR. SNYDER: We have not. The
6 representations that we have made is that we
7 will apply for the racing license for 2014 to
8 conduct operations consistent with the
9 historical fashions.

10 We've also made it clear that the
11 only long-term viability for this industry is
12 to have supplemental income in the form of
13 slots. We have not drawn a conclusion at this
14 point in time. We have not found a way quite
15 frankly based on our experience in many other
16 jurisdictions to make harness racing profitable
17 without the subsidies that do come from slots
18 operations at similar type facilities.

19 COMMISSIONER MCHUGH: Okay.

20 CHAIRMAN CROSBY: Thank you. Thank
21 you, Mr. Perpall.

22 MR. PERPALL: Your welcome.

23 CHAIRMAN CROSBY: And then Ms. Grace
24 Lee, Attorney Grace Lee on behalf of Raynham

1 Park, LLC.

2 MR. LEE: Good morning,
3 Commissioners. Good morning Chairman Crosby.

4 CHAIRMAN CROSBY: Actually, good
5 afternoon.

6 MS. LEE: It is afternoon. I'm here
7 on behalf of Raynham Park, LLC for people think
8 that I am entity in and of myself, although
9 sometimes I think I am or at least my husband
10 does.

11 I will try to be brief. I want to
12 thank you for the time. We are responding to
13 your quest for input on the transfer of the
14 host community agreement from Ourway over to
15 Penn National.

16 I think and I don't know if you've
17 had an opportunity to review my written
18 submission on behalf of Raynham Park, LLC. So,
19 I'll try not to be redundant.

20 COMMISSIONER MCHUGH: We have.

21 MS. LEE: Thank you. If I'm being
22 redundant, please feel free to tell me to stop.
23 There's a couple of things I wanted to point
24 out in kind of addressing why I am here before

1 you on behalf of Raynham Park, LLC.

2 Fundamentally, I come before you for
3 two reasons. I think the statute, the Expanded
4 Gaming statute Chapter 23K prohibits this. It
5 didn't contemplate it. These types of
6 transfers are frowned upon in this industry as
7 it relates to licensures. And more important
8 and fundamentally, this is a matter of fairness
9 and process.

10 As you know Raynham Park, LLC has
11 been very, very appreciative of this
12 Commission's process, the integrity and the
13 transparency in which this entire application
14 process is kind of organized. And the process
15 we've gone through has been very, very
16 comforting. And we all have enjoyed a great
17 deal of confidence.

18 At times, the process has been very
19 demanding, arduous and very fast-paced. But
20 we've always been comforted with the concept of
21 transparency and fairness, recognizing that
22 everyone had to play by the same rules.
23 Everyone is under the same amount and same
24 level of scrutiny, the same type of deadlines

1 and the same standards, and most importantly
2 the same legal requirements.

3 So, I submit to you those are the
4 factors that I would ask that you contemplate,
5 not just the isolated question of whether the
6 host community agreement is transferable.

7 Because nothing and most definitely the statute
8 does not operate in a vacuum. And I'll deal
9 with definition of the applicant.

10 There are some points that counsel
11 for Penn brought up as to the language of the
12 statute. And I believe it is quite
13 unambiguous. It's the applicant. The reason
14 why a process and procedures are in place is
15 because the statute anticipates there is one
16 applicant. There's one dance partner, so to
17 speak, because the process is to ensure that
18 the partnership of a community and the
19 applicant, not any applicant has the
20 appropriate amount of time.

21 And in looking at that, I think that
22 it is important to recognize throughout the
23 statute, as well as within the regulatory
24 scheme that this Commission has put out,

1 there's safeguards. There's consistent
2 safeguards. And I would submit to you as a
3 matter of law that this Commission should not
4 and cannot grant the authority for the transfer
5 because they cannot satisfy the statutory
6 requirements.

7 Case in point, under section 205 CMR
8 115.05, I believe it's 6, what we've been
9 referring to as the procedure for prior to this
10 Commission finding suitability, there is a
11 process for a community to go through before
12 they can hold a referendum. And significantly
13 in that, it also has language contained in
14 there, the applicant. And it specifically says
15 -- and I am not talking about the applicant
16 right now, I'm talking about the governing
17 body.

18 The governing body before the
19 applicant that has submitted its application to
20 the Commission and is courting that particular
21 community, before that applicant can go on the
22 referendum there needs to be a positive
23 determination of suitability. There's that.

24 However, this Commission in its

1 wisdom said, we're going to give you exceptions
2 to that. In the event that prior to any
3 determination the community wants to hold a
4 referendum, you all let everybody do that. And
5 you did that by saying the governing body, in
6 this particular case it would be Plainridge.
7 The board of selectmen --

8 CHAIRMAN CROSBY: Plainville.

9 MS. LEE: -- have to formally agree.
10 They need to vote that they are going to allow
11 a referendum on this issue to have a gaming
12 establishment in that community, right, prior
13 to that applicant being found to be suitable.
14 That is very specific.

15 And if you look at that, it is the
16 applicant. The reason why the applicant is
17 important is because before a determination is
18 made, there is a notice provision that is given
19 to the community.

20 The Commission hasn't vetted this
21 particular candidate. But you know what, we're
22 going to give you 60 days. You can do your due
23 diligence. You guys can look. I'm sure, as
24 you all know, there's a lot of campaigning

1 going on. But there's always that opportunity
2 for the voters to vet the candidate, the
3 applicant prior to that referendum.

4 And Plainville did that on July 18.
5 They voted. And I wasn't at the meeting. And
6 I don't have the transcripts, but I've got to
7 think that when they passed that vote to put
8 that referendum on the ballot this coming
9 Tuesday, it was one, with the expectation that
10 it was prior to a suitability determination.
11 And two, it was as it relates to Ourway, the
12 applicant.

13 Now, I'm sure Ourway wishes that the
14 suitability determination hadn't come out the
15 way it did, but the applicant they voted on to
16 allow to be on the ballot was Ourway. So,
17 satisfy that. Unfortunately, Ourway was found
18 unsuitable. I think at this point the analysis
19 ends. Because that is the entity that is the
20 applicant that the governing body put forth.

21 Now understanding above and beyond
22 that that we're talking about transferability,
23 notwithstanding the fact that Penn is saying
24 they're stepping in the shoes of Ourway, they

1 are not stepping in the shoes of Ourway.

2 This is something other than that.
3 There is some kind of financial ongoing
4 transaction. It's contained in 4.2, I believe,
5 of the purchase agreement as well as the
6 calculations contained in their Exhibit D. So,
7 as a matter of law if you have -- and under the
8 statute, and I won't bore you with reading it,
9 although I did provide it in my written
10 submissions. And I did intend to read it
11 actually, but I will save you from that. As
12 this Commission knows, if you have a financial
13 interest, you are a qualifier.

14 COMMISSIONER MCHUGH: Why isn't that
15 for the qualification piece?

16 MS. LEE: Because this Commission
17 has said Ourway is unsuitable and cannot go
18 forward to Phase 2 of the process.

19 COMMISSIONER MCHUGH: So, if Ourway
20 is included as a qualifier, and the
21 representation a minute ago was that Ourway is
22 not the recipient of the payments. That
23 certain individual participants in Ourway may
24 be.

1 But in either event, if Ourway or
2 the participants are found to be unsuitable,
3 why can't in the suitability piece of our work
4 the Commission say that? You can go forward
5 Penn, but you can't go forward if Ourway, other
6 people, any of your officers or directors are
7 found to be unsuitable.

8 So, you either have the choice of
9 being unsuitable and you can't go forward, or
10 you have a choice jettisoning those people and
11 go forward. Why isn't that the remedy for that
12 problem?

13 MS. LEE: Commissioner McHugh, I
14 would submit to you that we don't even get that
15 far in the analysis because they haven't
16 satisfied the statutory requirements.

17 COMMISSIONER MCHUGH: I understand
18 that. You've placed a little different weight
19 on the word the than your counterparts did.
20 But you did raise this piece. So, focusing on
21 this piece, why isn't an amputation of that
22 kind an alternative at the end of the
23 suitability process to deal with that problem?

24 MS. LEE: Because I would submit to

1 you, Commissioner McHugh that it is intertwined
2 with the notice provision. If we're going
3 beyond the black letter of the law, then we
4 should most definitely focus on the spirit and
5 intent of the statute.

6 And if we look at the statute and
7 the regulations as it relates to having the
8 referendum and giving the opportunity for the
9 community to review the suitability of the
10 applicant, and if you're going to review the
11 suitability of the applicant, it should be
12 transparent, especially when you're changing
13 partners like that.

14 One of qualifiers that the
15 Commission has already found to be unsuitable
16 is financially profiting, that has not been
17 disclosed in a letter to the citizens. That
18 has not been advertised in the summary of any
19 of the information that's been disseminated.

20 So, I submit to you on that level,
21 the suitability determination has its own legal
22 significance. But throughout this process, the
23 suitability integrity and character of all of
24 the applicants as well as the organization,

1 that aspect is intertwined through the entire
2 evaluation process. So much so that in the
3 event that the Commission has not made a
4 positive determination, the Commission wants
5 the voters to know that you have not made a
6 positive determination as to this particular
7 applicant.

8 And I would submit to you in this
9 particular case, it is so much more important
10 because it's not even the original applicant.
11 It's another applicant with the original
12 applicant.

13 COMMISSIONER MCHUGH: I really have
14 to challenge that premise. I don't think
15 there's anything before us that says that there
16 is a partnership between Penn National and
17 Ourway going forward. We heard representation
18 to the contrary.

19 In any event, if that is so, I come
20 back to my question why can't the Commission as
21 part of the suitability process say that
22 Ourway, if it is a qualifier as opposed to
23 individuals, that Ourway is unsuitable and you
24 can't go forward? And the letter that has been

1 sent to citizens says that we haven't finished
2 the qualification exam. I think we are
3 conflating two different pieces of this
4 process. Not we are, you are.

5 MS. LEE: Well, that didn't make me
6 feel so good.

7 COMMISSIONER MCHUGH: Sorry.

8 MS. LEE: I would submit to you,
9 Judge McHugh, that understandably if this
10 Commission allows and grants it, yes, that is
11 the appropriate procedure under the regulations
12 and the process.

13 But as I stand before you today,
14 what I am explaining in general terms is this
15 is goes beyond just the town of Plainville.
16 This goes beyond just the applicant Penn, the
17 former applicant Ourway. This goes to the
18 entire process. This talks about contorting
19 the procedures that have been consistent that
20 all of the other applicants have satisfied to
21 accommodate in the community because the
22 possibility of disappointment.

23 The bottom line is there are going
24 to be three disappointed communities and three

1 very disappointed applicants in the end of this
2 particular process. And the only thing that
3 anyone is going to be comforted by is that they
4 had faith in the process. And what I submit to
5 you today is when you deviate from any
6 standards that aren't consistently applied that
7 that indeed will inevitably result.

8 So, I understand that there are
9 many, many missions and agendas that this
10 Commission has to satisfy, the community
11 outreach, the economic development. But I
12 submit to you the most important is the
13 integrity of the process and the faithful
14 compliance with the standards that the Gaming
15 Act has established as well as the regulations,
16 and how they been applied in the past.

17 You heard a lot of testimony about
18 there's been a lot of education in the last few
19 days that's because they weren't the applicant.
20 The educational process was intended to begin
21 in the beginning of the process so there was a
22 genuine understanding of the two parties.

23 So, this kind of loops back to my
24 original premise that the suitability aspect of

1 it, the integrity and the characters of all of
2 the parties is a very important aspect of
3 disclosure when it comes to having someone else
4 step in the shoes, so to speak, which I submit
5 to you they are not stepping in their shoes.
6 And when that is not disclosed openly and very,
7 very transparently, it leaves a very bad taste
8 in your mouth.

9 So, I see that you've tired of me.
10 So, I will bid -- Thank you very much for your
11 time. And as you know, we submitted something
12 in writing. This would supplement that.
13 Again, thank you very much.

14 CHAIRMAN CROSBY: Any other
15 questions? Thank you. Okay. There are four
16 people who refer to themselves as Plainville
17 residents. I think the last name is Merrick,
18 Beroquin, Brem, Murphy, I think. If any of you
19 have not submitted written comments, go ahead
20 and identify yourself.

21 MR MERRICK: I haven't. For the
22 record, Mr. Chairman, my name is Ned Merrick.
23 I am a Plainville resident, former police chief
24 for the town and very interested in this.

1 CHAIRMAN CROSBY: You are welcome to
2 speak to the issue at hand.

3 MR. MERRICK: Yes, Sir. Thank you.
4 Having been a policeman for 40 odd years, I
5 admit to not being totally conversant on all of
6 the nuances of both the statute and the CMRs
7 involved in this, but I do understand what is
8 right and what is fair. And I think I
9 recognize that when I see it.

10 Obviously, the ability of the town
11 to vote on Tuesday on the host community
12 agreement that has been proffered, and frankly,
13 I don't care who proffers the agreement, that
14 the agreement that has been proffered to the
15 town, we should be allowed to vote on that. I
16 think that's a basic Constitutional right of
17 every citizen. And I know that this Commission
18 would be more than willing to uphold the
19 democratic process.

20 I admit to being somewhat
21 disappointed when the Commission found the
22 former owners of Plainridge to be unsuitable,
23 because I saw a very what I thought was a
24 pretty bright financial future for the town

1 potentially being flushed down the drain.

2 But since then, the savior has come
3 to Plainville and has changed the landscape.

4 CHAIRMAN CROSBY: The impact player
5 that would be.

6 MR. MERRICK: The impact player.
7 And I not being nearly the jock that Billy
8 Abdelnour is, I won't even get into that.

9 But it seems like at least from my
10 perspective, there has been a tremendous amount
11 of minutia being thrown back and forth to muddy
12 the waters, frankly.

13 My understanding of the way this
14 thing works is that our job in Plainville as
15 the residents of that town are to vote up or
16 down on the host community agreement and the
17 siting of a gaming facility in our community.
18 And frankly, I wouldn't care if it was Mickey
19 Mouse that was doing it. If he's going to
20 throw four million bucks at the town, I'm in.
21 It's very simple.

22 COMMISSIONER MCHUGH: I don't think
23 he's an applicant.

24 CHAIRMAN CROSBY: I'm not even sure

1 he's suitable. We never let a mouse get
2 through our background checks.

3 MR. MERRICK: I'm feeling the heat
4 behind me from Penn National calling them a
5 Mickey Mouse. And that's certainly not what I
6 infer.

7 As a matter of fact, I have met
8 several of the players from Penn National in
9 the last several days. And in my business, in
10 my former business before I retired, 40 years
11 as a cop, I made a lot of snap decisions, made
12 a lot of snap judgments. Some of them were
13 wrong, most of them were right.

14 And I looked these guys in the eye
15 and I see the same community commitment that I
16 saw with everybody at Plainridge since they
17 built the place. I was sitting chief when they
18 built that racetrack.

19 And I was a strong supporter of the
20 racetrack. I actually got slammed in the paper
21 the other day for being a supporter of the
22 racetrack. They called it a chilling effect,
23 whatever that means.

24 But the notion that this town can go

1 forward financially is what it's all about, as
2 far as I'm concerned. And I frankly am not
3 really surprised to see a competitive applicant
4 up here saying that you shouldn't allow this,
5 because frankly the host community agreement
6 that we have in Plainville kicks their butt and
7 not even close.

8 So, I would urge you to allow us to
9 continue the democratic process, to un muddy the
10 waters, if you will, and shake this thing down
11 to what it is. We are voting on a host
12 community agreement and the ability to site a
13 gaming facility in our community.

14 And if you guys want to sit around
15 an argue about the difference between a and the
16 you can have at it. That's fine. I think that
17 is frankly that is within the purview of this
18 Commission. As is the ability to determine
19 whoever the applicant is or whoever the owner
20 of the racetrack is as far as suitability goes.
21 We trust you guys with that. We have neither
22 the wherewithal nor the ability or in many
23 instances not even the willingness to be able
24 to do the kinds of due diligence that you guys

1 have done already.

2 Despite the fact that I was a little
3 disappointed at the decision, you actually did
4 us a favor because what we've ended up with is
5 even better than what we had before.

6 So, I would hope that you would vote
7 in favor of allowing the vote to go forward
8 just the way it is. And I stand for any
9 questions that you might have. Thank you very
10 much.

11 CHAIRMAN CROSBY: Questions? Thank
12 you, Mr. Merrick.

13 MR. MERRICK: Thank you.

14 CHAIRMAN CROSBY: Bill Beroquin, do
15 you have something to offer that has not been
16 in an email to us?

17 MR. BEROQUIN; I submitted and
18 email. So, thank you.

19 CHAIRMAN CROSBY: Thank you. We
20 appreciate it. Thank you for coming down here.
21 Chris Murphy?

22 MR. MURPHY: I too submitted an
23 email in writing a few days ago. So, you have
24 my thoughts and feelings recorded in writing.

1 CHAIRMAN CROSBY: Okay, great, thank
2 you. Thanks for coming. Mr. Brem?

3 MR. BREM: My name is Leo Brem. And
4 I am a resident of Plainville, father of two.
5 And I am raising my family in the cute little
6 town that we all know as Plainville. I live a
7 short distance from Plainridge. And I pass by
8 it every day on my way to work in the greater
9 Boston area. Like many of the folks who live
10 in Plainville, I commute to the greater Boston
11 area.

12 And I feel as though like many of
13 those folks who do have families and work that
14 10 days wasn't an adequate enough time to vet
15 the new applicant for the Plainridge racino, as
16 it has been named in the town. And I feel
17 under the circumstances that we had put our
18 trust in the previous owner. And when the
19 mismanagement had come to light, it brought a
20 lot of questions to my mind as to perhaps that
21 the racetrack was a little more profitable than
22 we all thought and could be more sustainable if
23 managed correctly.

24 I do want the best for Plainville.

1 And I echo all of the same hopes and dreams
2 that the previous speakers did for Plainville's
3 future. I will not argue the definition of the
4 applicant or a applicant. But I do feel that
5 knowing the applicant effectively and educating
6 the community wholly takes more than 10 days
7 over a holiday weekend, including yesterday's
8 Rosh Hashanah, and in this very new, as the
9 town counsel pointed out, new industry to the
10 state of Massachusetts, in particular the
11 little town of Plainville.

12 And I believe everything else that I
13 would say has been said. So, thank you for
14 your time and consideration. I know it's not
15 an easy job what you're doing. Thank you.

16 COMMISSIONER MCHUGH: Thank you.

17 CHAIRMAN CROSBY: Thank you.

18 Questions? Thank you very much. And thank you
19 for coming down. Okay. Do you have anything
20 else to add, Ombudsman?

21 MR. ZIEMBA: Not on the Plainridge
22 discussion, no.

23 CHAIRMAN CROSBY: So, I think we are
24 left to discuss amongst ourselves how we want

1 to go forward on this. And we've decided to do
2 it in the normal course of our regular meeting.
3 Does anybody want to start off on where your
4 head is at, where you see the issues?

5 I will happily jump into this. It
6 does seem to me that far and away the net of
7 the issue is the reference to the applicant.
8 It seems to me absolutely totally clear that
9 the legislation anticipated that the applicant
10 who signed HCA would also be the applicant who
11 went forward with the rest of the process. And
12 in that sense that is what the applicant meant.

13 In the most literal possible reading
14 of this law, what was supposed to happen didn't
15 happen. That is to say that the applicant who
16 is today the applicant had the HCA signed it at
17 an appropriate time.

18 I do also think that the 60 days was
19 principally designed to give the community an
20 opportunity to understand what the HCA was
21 about. But it also makes sense that that was
22 another 60 days to get to know the partner. It
23 doesn't make that explicit, but the applicant
24 not the new applicant.

1 And I think the one argument that
2 troubles me is that I think it is a legitimate
3 point that the new applicant is new to the
4 community. And although nobody anticipated
5 this kind of a situation, yes, the community is
6 being deprived of the opportunity to get to
7 know this applicant like they had gotten to
8 know the other and like it would ordinarily get
9 to know in the course of the at least 60- to
10 90-day period.

11 Having said all that, I think there
12 are a host of considerations on the other side.
13 And I think that the switch of applicants and
14 getting to know Penn, there are number of bites
15 at that apple that are going to be available to
16 the people of Plainville between now and the
17 time the licensing decisions are made.

18 There has been some degree of
19 consideration already. Elected selectmen voted
20 to transfer this ownership. Those people will
21 be up for election in due time. There is a
22 recourse if this was a bad judgment. There
23 will be background checks done by us. We found
24 the problem with the last applicant. And as

1 has been said, we are being relied on to make
2 the judgment about this applicant. There will
3 be a tremendous amount of information that will
4 be available to the people of Plainville about
5 the new applicant.

6 There will be public hearings, two
7 of them. One that was informal. One is
8 legislatively mandated, on the applications
9 where we will be inviting the people as well as
10 others to talk about what they think of this
11 application after they have had much more time
12 to get to know the new applicant.

13 So, there is an opportunity for a
14 remedy of this modest downside of the change.
15 And with that opportunity to remedy, it seems
16 to me that if we were to kick out this
17 applicant based on the technicality, but a
18 meaningful technicality that it was meant to be
19 the same applicant, would vastly -- the loss
20 would vastly outweigh the gain of that modest
21 remedy.

22 The loss of the competition, the
23 powerful statement, we have to ascribe, the
24 Legislature wants us to ascribe tremendous

1 consideration to the elected authorities in the
2 local town. They have clearly and emphatically
3 said how they want us to go on this. We are
4 deferential to those judgments. And the people
5 of Plainville have the opportunity to fix that
6 if they don't like it.

7 So, when all is said and done, I
8 think it is a fair point. I think it has been
9 articulately spoken to. I think Ms. Greanier
10 made the point. I think Ms. Lee made the
11 point. It is not an irrelevant point.

12 But our job is to net these things
13 out as the facts unfold as we understand the
14 intent of the law. And my predisposition at
15 this point would be therefore to go ahead and
16 grant the transfer.

17 COMMISSIONER MCHUGH: I've reached
18 essentially the same conclusion although taken
19 a slightly different route. At the outset I
20 think it is important to think about and
21 recognize the integrity of the process. Ms.
22 Lee's point in that regard was very well taken.

23 I think the part about the
24 qualifiers who we have found to be unqualified

1 will require careful examination during the
2 qualification process to see exactly what that
3 arrangement is. And the Commission will do
4 that.

5 But there are number of points that
6 lead me to the conclusion that's similar to the
7 one that the Chairman just stated. First of
8 all, this is an applicant which met the January
9 15 deadline. And in the exercise of our
10 discretion we did not require the applicants
11 for Phase 1 to signify a site. In fact, a
12 number of them didn't. At the time the
13 applications were filed, they had no site. So,
14 they met that requirement.

15 Ourway and Plainville executed the
16 host community agreement. That host community
17 agreement, the terms of it have been before the
18 town for more than 60 days or will have been by
19 the time of the election. And nothing in the
20 summary that's on the ballot and nothing about
21 the terms of the agreement has been challenged.
22 And those terms are not changing. One of those
23 terms was that the agreement could be assigned
24 if the select board agreed to allow it to be

1 assigned. And the select board has allowed it
2 to be assigned.

3 There's nothing wrong with that as a
4 matter of contract law. It may be a reason,
5 the assignment may be a reason to vote against
6 the host community agreement when it comes
7 before the voters, but there's nothing wrong
8 with the assignment as a matter of contract
9 law.

10 And chapter 23K is explicit about
11 the ability to transfer rights under the
12 license with the Commission's approval after a
13 license is awarded. And indeed after the vote
14 is taken without going back and having the
15 voters vote again.

16 So, in terms of the legislative
17 intent, that leads me to think that the
18 Legislature put greater weight on voter
19 approval of the terms of the agreement than it
20 did on the precise identity of the person who's
21 going to fulfill those terms and give benefits
22 to the town. It left that part to the
23 Commission and to those who were -- primarily
24 to those who were signing the agreement.

1 So, the question comes down to
2 whether or not there's a public policy that
3 overrides the contract law that otherwise would
4 make this a perfectly valid transfer. There is
5 a statutory vote is to decide whether there
6 should be a casino located at a specific
7 location. That's the specific terms of the
8 vote that's required by statute, not whether a
9 specific casino run by a specific person or
10 entity should be at a specific location, but
11 whether there should be a casino at a specific
12 location.

13 There's a requirement that the host
14 community agreement be summarized on the
15 ballot, not that the identity of the entity
16 that has signed the agreement be summarized or
17 its background be summarized on the ballot.

18 As I've said, the transfer could
19 occur immediately after vote were taken without
20 another vote. And it's logical that another
21 vote isn't required on suitability because the
22 Commission is charged with determining
23 suitability.

24 So, when I put together all of those

1 things, it seems to me that while change of
2 ownership may be a reason for a negative vote,
3 it's not a reason to prevent a vote. It
4 complies with the literal terms of the statute.
5 It complies as far as I can determine with the
6 intent of the statute. There is no public
7 policy that suggests that that shouldn't be
8 allowed.

9 COMMISSIONER ZUNIGA: I agree with
10 both of you for all of those reasons that you
11 articulate well. I think the only thing that I
12 will add is that in our past we have been
13 deferential to the general issue of local
14 control.

15 And this it occurs to me that is
16 fundamentally one of local control at this
17 particular juncture with the board of selectmen
18 having approved this assignment of the host
19 community agreement and of course, ultimately
20 the voters deciding on Tuesday.

21 So, I am also persuaded by the
22 arguments towards the assignability and
23 transferability of the gaming license once it's
24 awarded. And that the statute and our

1 regulations could not have contemplated and did
2 not contemplate the time before. But the fact
3 that they have not been explicit about that
4 should not be a point to prevent it, in my
5 opinion. But I think you articulated all the
6 points well and I am in agreement with this.

7 CHAIRMAN CROSBY: Commissioner?

8 COMMISSIONER STEBBINS: I echo what
9 the three of you have already said. And I'll
10 place a little bit more of an emphasis on our
11 experience and kind of tapping into areas where
12 the host community felt they should somewhat
13 prevail.

14 As you remember again, confronted
15 with a situation that the legislation did not
16 anticipate, we had -- I know the Penn National
17 people are familiar with the situation in
18 Springfield. But our interaction with the
19 community and feedback from members of the
20 Legislature, they really wanted to remind us
21 that this portion of the process is heavily
22 dictated by the community, and the community
23 leaders who have the authority to one,
24 negotiate such an agreement, two to put such an

1 issue on the ballot. And to make sure all of
2 the local standards and obligations are met.

3 As Commissioner McHugh pointed out,
4 they have been an applicant since our original
5 deadline back in January. Even since our
6 decision not to find Ourway suitable, the local
7 authorities did not ask that the day of the
8 vote be canceled. They did not ask that the
9 election not to go forward.

10 My guess or my expectation is that
11 they were hopefully expecting to be approached
12 by another suitor. In this case, they were.
13 Their host community agreement, and we have
14 always had, I feel a position of not trying to
15 even intrude on the components of the host
16 community agreement, the provision which
17 allowed for the transfer, which from everything
18 we know is appropriately requested and it was
19 appropriately approved, and transferred to Penn
20 National.

21 I don't see anything that would not
22 suggest that the election should not go
23 forward. As we've talked about there are other
24 bites at the apple. The public hearings that

1 we will be holding where Plainville residents,
2 obviously, and the other residents from
3 neighboring towns will have the opportunity to
4 convey to us whether they feel that Penn
5 National has stepped up, become potentially a
6 good community partner, as well as express any
7 other concerns or frustrations that they see
8 with the final detailed plans that Penn
9 National will plan to put forward.

10 But we still have our suitability
11 investigation. And ultimately the decision at
12 the end of the day will be ours with respect to
13 the award of the license. I would say that if
14 there's anything -- Penn National finds itself
15 in a tough position, because there may be
16 people out there who are residents of
17 Plainville that were willing to support this
18 that may not choose to only because they don't
19 know who the new applicant is.

20 In some respects, stepping in at
21 this late hour is a detriment to their moving
22 forward in the process. But I don't see any
23 reason that we couldn't allow this vote to go
24 forward and allow the approval of the transfer.

1 CHAIRMAN CROSBY: Okay. We will
2 vote on this, right? Do you want to frame a
3 motion?

4 COMMISSIONER MCHUGH: I move that
5 the Commission without prejudice to any of its
6 rights, responsibilities or obligations during
7 the course of the suitability investigation
8 approve the substitution of Penn National for
9 Ourway Racing as the responsible party under
10 the host community agreement, which is to be
11 voted on by the town of Plainville on September
12 10, 2013.

13 COMMISSIONER STEBBINS: Second.

14 CHAIRMAN CROSBY: Anymore
15 discussion? All in favor, aye

16 COMMISSIONER STEBBINS: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER MCHUGH: Aye.

19 CHAIRMAN CROSBY: Opposed? The ayes
20 have it unanimously. Let's take a very short
21 break.

22

23 (A recess was taken)

24 CHAIRMAN CROSBY: Ombudsman Ziembra,

1 you've got something for us?

2 MR. ZIEMBA: Yes, Mr. Chairman, I'm
3 very pleased to provide a report that has been
4 provided, a joint statement between both the
5 Wynn Development team and the city of Boston.

6 CHAIRMAN CROSBY: Thank you. The
7 Ombudsman just gave me this. This, as he said,
8 is a joint statement from both Boston and the
9 Wynn team.

10 Based on the new information
11 provided at Wednesday's public meeting, the
12 parties have agreed to begin discussions about
13 Boston's status as a surrounding community to
14 address the impacts that Wynn's proposed gaming
15 establishment would have on Boston generally
16 and on the Charlestown community specifically.
17 And therefore no adjudicatory hearing of the
18 Massachusetts Gaming Commission is necessary on
19 the question of whether Boston is a community.

20 That's great. I am delighted. I am
21 pleased that they were able to get together and
22 agree to this. As far as I'm concerned, we
23 move onto other topics.

24 COMMISSIONER MCHUGH: Yes. It's an

1 excellent resolution. I think we're all
2 delighted that that occurred.

3 COMMISSIONER ZUNIGA: We are. And I
4 want to commend John Ziemba for the hard work
5 and the rest of the team as well. Because
6 there's a lot of work that goes back and forth
7 up to this kind of situation. So, thank you.

8 MR. ZIEMBA: I think all of the
9 credit is due to the two parties that have
10 begun this very worthwhile discussions on
11 surrounding community status. And commend the
12 teams for together and having a very fruitful
13 discussion today.

14 COMMISSIONER STEBBINS: We may
15 change your title from ombudsman to ambassador.

16 CHAIRMAN CROSBY: Right. We got a
17 little problem over in Syria you might want to
18 try to help out with.

19 MR. ZIEMBA: Again, I take no
20 credit.

21 CHAIRMAN CROSBY: What else is on
22 your agenda?

23 MR. ZIEMBA: I am sorry for
24 belatedly bringing this to the Commission's

1 attention, but over the last couple of weeks
2 we've been having meetings with a number --
3 with all of the Category 2 applicants. These
4 are the pre-application meetings that the
5 Commission ordered some time ago where we went
6 over all the aspects of the application.

7 I went over what is expected of each
8 of the applicants, and fielded a number of
9 questions. So, in relation to that, there are
10 a number of questions that perhaps might rise
11 to a level of policy questions that could be
12 considered by the Commission.

13 In addition, in your packet what you
14 have is a review that was done by Pinck and Co.
15 of our application. What we did is we asked
16 them to take a look at our application and to
17 see if there is any need for refinement so that
18 the answers that we get to the questions on our
19 application can be evaluated on an apples to
20 apples basis.

21 So, over the course of a couple of
22 weeks, Pinck and Co. put together what we see
23 here. And there are a number of different
24 refinements that we can potentially consider.

1 So, I'm not asking that we go over each
2 individual item. Pinck and Co. is here to give
3 you a little bit of a flavor of what they
4 looked at if you would like them to do so.

5 What I'm asking for consideration
6 today is what should we do about these further
7 refinements now that we are basically one month
8 away from the application date for the Category
9 2 applicants?

10 As we see it, there are a couple of
11 different ways that we could take a look at
12 this report.

13 CHAIRMAN CROSBY: Do we have this
14 John?

15 MR. ZIEMBA: Yes, I put it in your
16 packet.

17 CHAIRMAN CROSBY: This is it. Just
18 a one page?

19 COMMISSIONER ZUNIGA: No, it's two
20 pages.

21 CHAIRMAN CROSBY: I only have one
22 page. Okay, sorry.

23 MR. ZIEMBA: So, there are a number
24 of questions in here where we could potentially

1 refine our application. So, essentially I
2 think that there are a couple of different
3 options or a few different options that we
4 could consider.

5 We could consider reviewing the
6 materials that have been recommended by Pinck
7 and Co. as a staff. And then issue an addendum
8 to our application or an add-on to our
9 application to provide further detail about the
10 specificity that we would like.

11 We could perhaps just as easily ask
12 these same questions after the applications
13 have been submitted to the degree that the
14 applicants have not provided the specificity
15 that we're looking for. We can go back to them
16 when we ask the further questions of each one
17 of the applications.

18 Or we could just as well -- we could
19 leave this, the application as it is and leave
20 this for consideration to the Category 1
21 application for December and any further
22 refinements.

23 You'll see from the flavor of what
24 Pinck and Co. put together there are a lot of

1 refinements that might make it a little bit
2 easier for the reviewers. Such as we ask in
3 general narrative form about the number of
4 employees that are projected. They recommend
5 things such as we should specify that each of
6 the applicants should tell us whether or not
7 those are FTEs or part-time employees.

8 Potentially, each one of these
9 applicants might already include a lot of that
10 detail in our applications. Especially after
11 they see the questions today in our packet,
12 they might just try to address these questions
13 on their own. So, maybe just by including this
14 as an item for consideration that they'll do
15 some further thinking when they're putting
16 together their narrative.

17 If you'd like, I could have the
18 representative from Pinck and Co. give you a
19 flavor of what their apples to apples
20 comparison looked like.

21 CHAIRMAN CROSBY: We haven't really
22 had a chance to read them. I haven't.

23 COMMISSIONER ZUNIGA: I did.

24 COMMISSIONER MCHUGH: Could I just

1 ask a structural question before we get into
2 substance?

3 MR. ZIEMBA: Yes.

4 COMMISSIONER MCHUGH: We have two
5 pages, a document entitled Comments on RFA-2
6 Application for Category 1 or 2 licenses.
7 That's in the format here.

8 MR. ZIEMBA: That's right.

9 COMMISSIONER MCHUGH: Then there's a
10 document that I have at least called Summary of
11 RFA-2 Application. And it has sections that
12 parallel the sections of the application, but
13 doesn't list every element of the sections.
14 What is that document?

15 MR. ZIEMBA: So, instead of
16 including in your packet the 239 pages of our
17 application, we just for summary form we meant
18 to just give you this summary document that was
19 compiled by --

20 MR. DAY: Licensing compiled that as
21 they're doing their work to get prepared for
22 the process. It's a summary document just to
23 provide a reference tool for the questions that
24 are asked by Pinck and Co.

1 COMMISSIONER MCHUGH: This document,
2 the summary of RFA-2 application is key to the
3 Pinck questions?

4 MR. ZIEMBA: So, the summary
5 document that you have in here is just for your
6 reference. We're making obviously no changes
7 whatsoever to the application questions.

8 But instead of including the 239
9 pages of the application in your packet, we
10 gave you the summary that was put together by
11 the licensing folks so that you could see the
12 actual questions that we have in our
13 application.

14 CHAIRMAN CROSBY: It is all of the
15 questions.

16 MR. DAY: All of the questions
17 without the boxes.

18 CHAIRMAN CROSBY: It's essentially
19 all of our criteria.

20 COMMISSIONER MCHUGH: Just slow on
21 the uptake. Thank you. That's very helpful.

22 COMMISSIONER ZUNIGA: I have another
23 slight structural comment. I'm ready to get
24 into at least couple of substance questions.

1 But I think that we should, to the extent that
2 we can, issue additional advisories to
3 communities or bulletins to applicants rather
4 than communities whenever we correct, refine,
5 edit any of the questions that are in our
6 applications.

7 CHAIRMAN CROSBY: I agree. If we've
8 agreed that we want to do this, as long as we
9 don't think it's inappropriate in any other way
10 to be modifying at a relatively late date our
11 evaluation form, which is a question. But if
12 we find it is not a problem to modify it at a
13 late date, then we absolutely I think should be
14 proactive and send them out.

15 But this is as far as I know just
16 Pinck and Company's reading of it. And we
17 spent months coming up with these questions.
18 Before I would want them to go out as
19 amendments as soon as we think we can send them
20 out as amendments I would want us to have the
21 time to think about them.

22 MR. ZIEMBA: And staff has not fully
23 reviewed all of the recommendations as well.
24 But given that the our next meeting isn't for a

1 couple weeks, I thought that we should at least
2 have the discussion of what do we do about
3 this.

4 CHAIRMAN CROSBY: But that leave the
5 Category 2 applicants with 14 days or whatever
6 to adjust their proposals to accommodate our
7 late in the game evaluation criteria, which
8 doesn't seem very fair to me.

9 COMMISSIONER MCHUGH: Structurally
10 could we do a straddle and that is leave the
11 Category 2 application as it is and if some of
12 these are particularly critical and we don't
13 get the answers, seek additional information as
14 we process their application in a transparent
15 and public way. And then issue for Category 1
16 licenses some kind of a supplementary or
17 supplement to the application.

18 MR. ZIEMBA: Yes, that is one of the
19 options.

20 CHAIRMAN CROSBY: Yes. That makes
21 sense to me. Relative to Category 2 we do this
22 orally or subsequent to the applications coming
23 in. I think we don't want -- I don't think we
24 should be asking people to amend now because we

1 don't know whether these are going to be
2 changes we want to make.

3 So, I don't think our bidders for
4 slots for the Category 2 should go off and
5 adjust to this, because we haven't decided
6 these adjustments are going to get made. If
7 relative to them we want to follow up pursuant
8 to this, we'll do it post-application.

9 But for the Category 1, we will have
10 had time to review these and we might come
11 October send out some evaluation modifications
12 for the Category 2 licenses. Does that
13 reiterate what you said?

14 COMMISSIONER MCHUGH: Yes.

15 CHAIRMAN CROSBY: Okay, good. I
16 actually just wanted to waste some more time.

17 COMMISSIONER ZUNIGA: Well, the most
18 substantive comment that I had --

19 CHAIRMAN CROSBY: Larry, could you
20 come up, because I would be interested in just
21 generically sort of a sense here what you guys
22 think you came up with. Excuse me, I didn't
23 mean to interrupt you.

24 COMMISSIONER ZUNIGA: That's all

1 right. I did want to mention the one
2 substantive comment that I have relative to one
3 of the recommendations here is to leave the
4 question as it stands. In other words, not to
5 take the recommended comment.

6 And I'm specifically talking about
7 -- Which conforms with what you just said, by
8 the way. There's a question relative to
9 revenue generation. And you're suggesting that
10 we assume a date, a start date.

11 CHAIRMAN CROSBY: Which question are
12 you talking about?

13 COMMISSIONER ZUNIGA: I'm talking
14 about 218. You're suggesting we assume start
15 date of January 1, 2016 with best, average and
16 worst-case scenarios. I expect for apples to
17 apples comparisons.

18 MR. BORINS: Right, that's the
19 motivation.

20 COMMISSIONER ZUNIGA: The thing is
21 it occurs to me that different applicants will
22 have a different projected start, which by
23 itself may have on a net present value a
24 financial benefit. So, I would be of the mind

1 of leaving it the way it is, in other words,
2 unspecified. And allow the applicants to tell
3 us when exactly they plan on generating
4 revenues because of how they're facing a
5 construction timeline, etc. they may have
6 because all of this is very site specific.

7 If we were to try to shoe horn
8 everybody on a start date, we may miss some of
9 that net present value differential. So, I
10 understand the purpose, but I think that given
11 that these projects are fundamentally different
12 that we just leave the question as it is. Tell
13 us when you expect to start generating
14 revenues. And when we analyze them and
15 discount them to today, we can get a financial
16 net present value.

17 MR. BORINS: So, my comment is
18 that's an excellent point, which speaks to what
19 I would say in summary which is that I agree
20 with what Commissioner McHugh and Commissioner
21 Crosby said.

22 That staff and the Commissioners
23 should respond to what we said with all of the
24 information that you have. And that by the

1 time that happens for the Category 2
2 applications, if any of these things do seem
3 like they have some substance to them, we can
4 do that after the application have been
5 submitted.

6 And we have plenty of time to make
7 this a formal amendment for the Category 1.
8 That makes sense to us as well. I would also
9 just say, I think, as a matter of record that
10 none of these really seemed that substantive.
11 Our review of the application is that it is a
12 terrific application. I think when you go
13 through that you're going to see that most of
14 these are pretty lightweight.

15 COMMISSIONER MCHUGH: They may be
16 valuable.

17 MR. BORINS: They would be valuable.
18 It really is exactly as it was described in the
19 beginning, it would make the reviewers' job
20 easier.

21 COMMISSIONER ZUNIGA: There are
22 other comments here that I completely agree.
23 Your recommendation over the schedule II level
24 is a term that is understood or should be

1 understood by the bidders. That would clearly
2 provide uniformity. And it would be unfair if
3 somebody didn't know about it, and is then
4 thought to be penalized, etc.

5 COMMISSIONER MCHUGH: Could I ask
6 another structural question? It's probably as
7 uninformed as the last one I asked. What is
8 the column marked order? Those numbers in that
9 column, what are they?

10 MR. BORINS: You know, I will
11 confess that I actually created this and I used
12 a spreadsheet that someone had given us. I'm
13 not sure what order is. So, I just simply used
14 it as a way of having the spreadsheet arrange
15 all of the questions.

16 COMMISSIONER MCHUGH: That's a good
17 question.

18 CHAIRMAN CROSBY: So, I think we
19 just suppress that column.

20 MR. BORINS: Right.

21 COMMISSIONER ZUNIGA: It does appear
22 to be in order though.

23 COMMISSIONER STEBBINS: I had a
24 quick question. One of my economic development

1 questions 317 doesn't have any PCI comment,
2 which either means the whole question is either
3 way off base or you just forgot to fill it in.

4 MR. BORINS: I'll actually check
5 that. It could be I had a spreadsheet that
6 every question. And I was simply trying to
7 leave in the ones that we had a comment on. I
8 may have just left it in. But I'll check and
9 make sure we didn't.

10 COMMISSIONER STEBBINS: Just even
11 looking at the first two, 302 and 315, I'm
12 certainly fine with those changes.

13 COMMISSIONER ZUNIGA: This also
14 starts to talk about I understand there's been
15 a couple of questions already posted by some of
16 the applicants that are applicant specific. I
17 recall something about audited financial
18 statements. If you are structured in a
19 certain, they may or may not provide some
20 relevance. So, we should think about how best
21 to respond to those in as expeditious manner as
22 we can to at least provide guidance.

23 MR. ZIEMBA: That's a great segue.
24 Thank you, Commissioner. So, there are a

1 couple of questions. We received a number of
2 questions from applicants in the pre-
3 application meetings. Many of those have
4 already been answered but we will issue a
5 summary sheet based on our conversations
6 further clarifying what was meant by the
7 questions.

8 There are a couple questions that
9 I'll bring before you that rise to a little bit
10 more of a policy matter. And the audited
11 statements question is that. So, we received a
12 question -- We were asked how applicants can
13 comply -- under item number 2-5 of our
14 application, under 2-5 we ask for an
15 independent audit report of financial
16 activities and interest for each of the last
17 five years including but not limited to the
18 disclosure of contributions, donations, loans
19 and other financial transactions and the like.

20 So, the question we received was how
21 can applicant comply with this requirement
22 given that they may be creating a separate
23 corporate structure for the Mass. Gaming
24 facility that will have no operator. Their

1 financial entity may not be a publicly traded
2 company. Do they need to request a waiver from
3 this requirement? I think that's a question
4 worthy of some consideration.

5 COMMISSIONER ZUNIGA: Yes. I don't
6 have a particular answer. It's something we
7 should try to answer expeditiously though. I
8 think the intent was to get a sense as to the
9 track record financially of the operator, of
10 the applicant.

11 But many of these applicants formed
12 a Massachusetts-based entity that has had
13 almost no activity except for the purposes of
14 submitting an application. So, then the
15 question becomes at what level from the parent
16 companies and it could be more than one, of
17 course, and that's where it starts getting
18 complicated do you want us to submit. And it's
19 something that we should try to answer soon.

20 MR. ZIEMBA: I guess what I would
21 say is if there are one or two or a couple of
22 items that applicants need to adjust their
23 applications before October 4 that is probably
24 something that they can do even if we discuss

1 this more fully at the next Commission meeting
2 if anyone wants more concrete response or
3 concrete recommendation from Pinck and Co. and
4 staff.

5 COMMISSIONER ZUNIGA: Right.

6 CHAIRMAN CROSBY: Go ahead.

7 MR. ZIEMBA: So, in addition to that
8 question, there is another question relative to
9 schematic design. Item number 4-5 of our
10 application states that please provide a
11 schematic design as defined and understood by
12 the AIA for each structure within the
13 boundaries of the site, etc., etc.

14 And the question that we received is
15 is schematic design per AIA specifications the
16 required level? Would advanced conceptual
17 design be more appropriate?

18 And I think what this gets at is
19 that the a number of these applicants are
20 trying to put together their final proposals in
21 a shortened period of time, and perhaps might
22 not be able to reach that level of design for
23 the application. And is that an absolute
24 requirement or not?

1 COMMISSIONER ZUNIGA: I can speak to
2 that because I believe I had some authorship of
3 that particular question especially when we
4 talked about that policy question.

5 At the time, schematic design is in
6 my opinion the earliest design phase that is
7 better understood by the design community to
8 have certain requirements. Anything before
9 that may be a little -- varies greatly. And by
10 no means, I believe, we meant that MEP,
11 mechanical, electrical, plumbing any kind of
12 those installations be defined or submitted as
13 part of this application.

14 COMMISSIONER MCHUGH: We did not?

15 COMMISSIONER ZUNIGA: We did not.

16 COMMISSIONER MCHUGH: Right.

17 COMMISSIONER ZUNIGA: However, we
18 didn't want just a rendering either. So, the
19 question becomes what is of most importance at
20 the time of application? And it occurs to me
21 that certain measures would be relevant,
22 certain measures as in dimensions that the
23 schematic design tends to have, particularly as
24 they may pertain to a host or surrounding

1 community issues.

2 I'm thinking of an example. If the
3 developer has made promises that the structure
4 is not going to be seen from a particular
5 place, the highway or certain residential
6 areas, the dimensions there are very important.
7 So, that then advisors can corroborate that and
8 then we can have some evaluation of that. But
9 if that is not the case, then a conceptual, an
10 advanced conceptual drawing may just suffice as
11 well.

12 MR. BORINS: May I?

13 COMMISSIONER ZUNIGA: Yes.

14 MR. BORINS: As an architect,
15 actually, I think you've actually articulated
16 that very well. And I would agree with you
17 completely. And I would say that the
18 clarification then in this case, which would
19 mean to say that it did not mean to include
20 MEP, but it did mean to in particular include
21 dimensional information that would have impact
22 on community agreements is a simple statement
23 that even if it was only two weeks left, the
24 Category 2 applicants could easily comply with.

1 COMMISSIONER ZUNIGA: Any objections
2 to that?

3 COMMISSIONER MCHUGH: No. I don't
4 see any reason why we shouldn't just do that
5 right now. Answer that question in that
6 fashion.

7 MR. ZIEMBA: Great, that's good.

8 CHAIRMAN CROSBY: Do you have that
9 answer? Do you have what you need?

10 MR. BORINS: I think I've got it.
11 That we're sticking with the definition and
12 adding those two clarifiers.

13 COMMISSIONER MCHUGH: Right.

14 COMMISSIONER ZUNIGA: And right
15 away, whether we make that part of -- I don't
16 want to create busywork, but whether it's
17 better just communicated by an advisory or
18 whatever the mechanism is which is most
19 effective.

20 CHAIRMAN CROSBY: Yes. It's just
21 got to be sure to get out to everybody to be
22 fair.

23 COMMISSIONER ZUNIGA: I know many
24 are following us, but I would hate that

1 somebody goes the extra mile to try to comply
2 and didn't catch onto this particular
3 conversation.

4 CHAIRMAN CROSBY: Right.

5 MR. ZIEMBA: We'll get that out
6 quickly. Just really quickly, two more. One's
7 not even a question. We received a question
8 regarding what are the goals that are set by
9 statute for MBE, WBE, veterans business
10 enterprises? There's specific guidance
11 provided in the statute regarding
12 Administrative Bulletin Number 14. It's right
13 included in the statute.

14 So, Jill and I have talked about
15 that perhaps we should make that a little bit
16 more widely available. I'm sure that everybody
17 is reading the same law, but to the degree that
18 this is an important matter, we should provide
19 further guidance about what that says. And we
20 can get that out quickly.

21 CHAIRMAN CROSBY: What is the
22 thumbnail of the guts of the issue here?

23 MS. GRIFFIN: Administrative
24 Bulletin 14 actually requires -- Chapter 23K

1 section 15 requires that construction labor
2 participation goals for women and minorities be
3 equal or greater than those defined in A & F
4 Administrative Bulletin 14. So, that would
5 15.3 percent for minorities and 6.9 percent for
6 women.

7 The legislation does not identify
8 specific goals for the participation of
9 minority business enterprises or women business
10 enterprises. But we should make, I guess,
11 clarify and make available Administrative
12 Bulletin 14.

13 CHAIRMAN CROSBY: Okay. Good.
14 That's helpful. Thank you.

15 COMMISSIONER MCHUGH: Is that
16 something we could post?

17 MS. GRIFFIN: Yes, I have a .pdf.

18 MR. ZIEMBA: And our final matter is
19 just a point of clarification. We've been
20 asked whether or not all of the applicants are
21 having conversations with the Lottery regarding
22 lottery mitigation. And we received a question
23 whether or not any lottery controlled machines
24 such as Keno would count against the 1250 slot

1 cap. What I recommend is that Catherine and I
2 will make -- we can make sure that we get
3 clarification on that item.

4 MS. BLUE: We'll review the statute
5 and take a look at it and have conversations
6 with the Lottery folks if necessary.

7 CHAIRMAN CROSBY: And come back to
8 us with something.

9 MS. BLUE: Yes.

10 MR. ZIEMBA: That's all I have.

11 CHAIRMAN CROSBY: Okay. Thank you.

12 COMMISSIONER MCHUGH: Good day's
13 work.

14 CHAIRMAN CROSBY: Yes, good day's
15 work. Our next item is legal report, General
16 Counsel Blue.

17 MS. BLUE: Executive Director Day
18 and I are before you today to talk about the
19 Phase 3 regulation process and where we are
20 headed with that.

21 I would just like to refresh for the
22 Commission the general process. We've been
23 through this with our Phase 1 and Phase 2 regs.
24 But as you recall, the process itself takes

1 roughly 60 days. And that's 60 days from about
2 the time that we provide the Commission with
3 the first set of draft regulations.

4 So, in the phase that we are
5 currently in -- And Artem, I think, if you can
6 move that to what's behind that memo, it might
7 be a little easier to see. This is the
8 schedule checklist. And we've used this
9 before.

10 Essentially, these are the steps
11 that we go through. Again, it's roughly 60
12 days from the time that we give the Commission
13 the first draft set of regulations for your
14 review. Which means that we would plan on
15 having something to you by the middle of
16 October in order to have certain sets of
17 regulations done by January 1, 2014.

18 The process is the same. We will
19 follow the process we have in the past.
20 Executive Director Day will talk a little bit
21 about the priorities, because I think that's
22 where the Commission's interest is and also
23 what we need to determine to move forward.

24 MR. DAY: Thank you, Catherine.

1 Just for reference, in case you didn't find it,
2 it was in yesterday's packet. It's behind
3 6(b)(ii) from yesterday -- excuse me, I lost a
4 whole day in that process, Wednesday.

5 Just as an introductory items, as we
6 talked about it briefly is we should note that
7 I'm aware, we're aware that the Commission has
8 requested and we plan a broader discussion with
9 the Commission regarding regulation development
10 and priorities and policy topics that relate
11 to those. And then, of course, with that
12 organizational topics that will relate to
13 policy issues as well.

14 So, our discussion here isn't
15 intended to address that more comprehensive
16 package. And with any luck at all, we'll have
17 that broader package for the Commission on the
18 19th at this point.

19 The approach we're looking at
20 taking, which is a little bit different than we
21 have is to bring the regulations kind of in a
22 package that informs our ability to get ready
23 when the casinos come online that we'll have a
24 set of regulations that will support each

1 section that might inform first for
2 construction but also when they come online our
3 ability to regulate that area.

4 An idea or a concept of a package
5 maybe something like the slot machine
6 standards. And how the Commission may or may
7 not approve those, and whether or not there's a
8 lab or what kind of an operation. We would
9 need to have something like that ready to go in
10 time that the applicants -- the vendors who
11 supply them, will be able to ship in particular
12 equipment for examination. And subsequently be
13 ordered by the licensee to be placed in the
14 case of the slot parlors.

15 So, we're trying to take a look at
16 that rather lengthy list of regulations that we
17 have before us, and segment them into those
18 kind of sections. Then bring that forward on
19 what the Commission would like to see going
20 first.

21 There are other areas that go along
22 with that. We know there's areas regarding
23 responsible gaming and workforce development
24 and some other miscellaneous areas that need to

1 be probably worked in there. And the
2 Commission may have different priorities in
3 that area as well. I think if we can work on
4 this package proposal, it will help us make
5 sure the regulations are completed for each
6 section that we need to develop the
7 organization and get ready for the operations.

8 What we have today is kind of in
9 that case. As Catherine said, we know that it
10 takes about two months. We are tentatively
11 looking at getting a draft set of regulations
12 for licensing to the Commission about October
13 17. So, my math isn't too strong, but that
14 tells me we've just about got enough time to
15 get that process done and have the regulations
16 in effect for us to begin licensing after the
17 first of the year.

18 With that, we've proposed here about
19 six policy questions. And I am aware that in
20 the past the Commission has listed policy
21 questions, thought of policy questions and then
22 assigned them out if you thought there was
23 additional research that needed to be done, and
24 returned for a white paper and recommendation,

1 from, I think, it was from the Commissioners
2 maybe staff in this case. Unless of course,
3 you're prepared to just march on with that
4 decision today, which works fine for us as well
5 just as long as we make sure we've got the
6 Commission informed and in the process about
7 these decisions.

8 I'm not going to read through each
9 one all of the way, but I'm going to give you a
10 flavor of them. And then kind of ask for your
11 pleasure as to how you would want to move. The
12 first one that's listed here really goes with
13 will the applications come in directly for
14 gaming licensees and registrants to the
15 Commission or do we want those applications
16 coming in from those who are either endorsed or
17 already have a job essentially at the casinos.
18 So, that's the question directly for everybody
19 who wants to apply or originate through the
20 gaming establishment.

21 The next one is key gaming employees
22 is that an area that the Commission -- are we
23 going to do suitability, are we looking at it
24 from the suitability perspective on whether a

1 license or a registration is issued, or would
2 we actually look at skills and education as
3 well?

4 Also what the Commission's direct
5 role is in the licensing process. Is there a
6 portion of it or a temporary part of it that is
7 delegated to staff or does the Commission want
8 to be specifically an approval level for all
9 levels of gaming license applications?

10 Gaming schools is another area. And
11 the concept of whether or not the Commission
12 would want to be involved in the licensing of
13 gaming schools or in some kind of regulation of
14 those schools as well.

15 The key question of course is
16 licensing registration fees, how we would
17 actually calculate those. I think we're pretty
18 close to a proposal on how that may be, but we
19 want to make sure we run that by the Commission
20 to see if you think that's a fair place to
21 start and how to start.

22 And of course the concept of whether
23 the Commission wants us to move forward with
24 both a database but an application that has its

1 priority in online applications and online
2 payments as opposed to a more manual process.

3 Then I just want to make sure we
4 check in. The Commission had decided already
5 that it wanted a three-year license and then a
6 renewal process. I just wanted to make sure
7 before we go down the road with the regulations
8 that that is still what the Commission is
9 thinking is the best way to go.

10 So, it's the real quick summary of
11 the issues that we -- the policy issues we
12 think are primarily involved in this upcoming
13 set of regulations that we hope to have a draft
14 to you by October 17.

15 CHAIRMAN CROSBY: Is what you hope
16 to have drafted by the middle of October just
17 the first phase of what we refer to as the
18 Phase 3 regs.? Is there a bunch of other stuff
19 coming hard on the heels of this?

20 MR. DAY: Yes.

21 CHAIRMAN CROSBY: So, there will be
22 other key policy questions. The one that I
23 keep referring to as example is whether we're
24 going to have a lab or not. This has been sort

1 of kicked around. It's clearly a key policy
2 question but it's not in here. So, is there
3 another set of key policy questions coming?

4 MR. DAY: Yes. This is the policy
5 questions that we thought were most important
6 to get before so we can get those regulations
7 to you by October. Actually, there will be a
8 much longer list. And part of it will be both
9 the organizational questions because there are
10 more than just a lab but also the priority on
11 which sets of regulations should go forth.

12 CHAIRMAN CROSBY: Good. Go ahead.

13 COMMISSIONER ZUNIGA: If there is
14 still time for our next meeting to come back to
15 these policy questions with a little bit more
16 time to digest and research, perhaps the
17 context of the pros and cons of how other
18 jurisdictions may have approached some of
19 these, I would be in favor of that. But if you
20 think that you really need direction on a
21 couple of these today, is that a question that
22 you are posing?

23 MR. DAY: I was posing in which
24 direction the Commission would like to go. I

1 think it is very possible for instance, if you
2 wanted me to I could proceed to sign these out
3 to a select group of lucky volunteers. And
4 then they could bring back that information to
5 frame the issue a little bit better at the next
6 meeting.

7 COMMISSIONER MCHUGH: Would that
8 still be timely?

9 MR. DAY: Yes, as long as we do it
10 by the next meeting.

11 COMMISSIONER MCHUGH: I would prefer
12 that as well.

13 CHAIRMAN CROSBY: So would I for
14 sure.

15 COMMISSIONER MCHUGH: Some of these
16 are really important questions.

17 CHAIRMAN CROSBY: And it's
18 delightful. The last time we did this, we
19 signed them out to the Commissioners. Now
20 we're signing them out to staff, which is much
21 better.

22 COMMISSIONER MCHUGH: Right, right.

23 COMMISSIONER ZUNIGA: Well, he was
24 referring to the lucky volunteers.

1 MR. DAY: It went without
2 specification, heavy on the volunteer.

3 COMMISSIONER STEBBINS: You might
4 get more thoughtful answers.

5 CHAIRMAN CROSBY: I think that is
6 definitely the way to go.

7 MR. DAY: We will move forward like
8 that. Thank you.

9 CHAIRMAN CROSBY: Where are we now?
10 Is that it for the legal report?

11 MS. BLUE: Yes, it is.

12 CHAIRMAN CROSBY: Rick, you've been
13 thinking about this a lot. As you're thinking
14 about our schedule, we've switched from weekly
15 meetings to biweekly meetings and said we can
16 always switch back if we're starting to get
17 cramped. Do we need to switch to more
18 meetings?

19 In my mind's eye, I am thinking that
20 the 18th is becoming an awfully long meeting.
21 Do we need to go back to weekly or is the two-
22 weekly schedule still working for what you see
23 in the pipeline for us to be dealing with?

24 MR. DAY: I would suggest that we

1 stick with the two scheduled, pre-scheduled
2 Commission meetings so we can count on those
3 and dates and plan accordingly. But, then what
4 we have is we've had to supplement those
5 depending on when the adjudicatory actions or
6 other hearings. It seems like to me that's
7 probably what we'll have to continue doing for
8 the Penn suitability is actually scheduled on
9 the 18th and then --

10 CHAIRMAN CROSBY: And our meeting is
11 on the 19th.

12 MR. DAY: Our meeting is on the
13 19th. That's what we've tried to do with each
14 one of the upcoming hearings is to schedule at
15 least two days and then some period for
16 deliberation as well.

17 CHAIRMAN CROSBY: Okay. I'm just
18 going to say this sort of for record. Today, I
19 had a morning meeting. And I felt there was an
20 awful lot of stuff going on. And all of us
21 have an awful lot of stuff going on. I talked
22 about this with Karen who is up to her eyeballs
23 with hundreds of pages of background checks.
24 The legal department drafting regs.

1 And we don't want to be so beholdling
2 to our schedule that we can't do these things
3 properly and thoroughly. And I can feel it. I
4 can feel it in myself that the rush to stick to
5 the schedule is causing corners to be cut. I'm
6 talking about myself. And I just want to make
7 sure that everybody feels -- I don't want to
8 slip schedules if we don't have to. They're
9 important.

10 But if you feel like we're pushing
11 too hard and are not going to have the time to
12 do the things we have to do in the way we want
13 to do them, then we'll talk about the schedule.
14 I don't want people to be afraid of bringing
15 that up.

16 MR. DAY: Thank you, Mr. Chairman.
17 That's one thing when we start talking about
18 the packages of regulations that we've got.
19 For instance, table games for example, that
20 probably doesn't have to come actually until
21 very close to the opening of the casinos.

22 So, I think it's really important to
23 space that out so we spread the time instead of
24 trying to do it all at once. And let everybody

1 relax and work on a given area that we have to
2 get a lot sooner. I think that will help.

3 CHAIRMAN CROSBY: Good. It's not
4 just the regs. It's everything. It's the
5 whole kit and caboodle of stuff that we're
6 working on.

7 COMMISSIONER MCHUGH: Right.

8 CHAIRMAN CROSBY: Okay. Anything
9 else on this topic first? Or any other
10 business? Do we have a motion to adjourn?

11 COMMISSIONER ZUNIGA: So moved.

12 CHAIRMAN CROSBY: Second?

13 COMMISSIONER MCHUGH: Second.

14 CHAIRMAN CROSBY: All in favor, aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER STEBBINS: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 CHAIRMAN CROSBY: Unanimous. Thank
19 you all.

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21 (Meeting adjourned at 4:04 p.m.)

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ATTACHMENTS:

1. Pinck and Co. Inc. Comments on RFA-2
Application for a Category 1 or Category 2
Gaming License - Draft
2. Summary of RFA-2 Application
3. Comments Regarding Penn National Gaming
Option and Host Community Agreement

1 GUEST SPEAKERS:

2

3 Bill Abdelnour, NEAHDC

4 Jonathan Albano, Esq., Bingham McCutchen

5 Larry Borins, Pinck and Company

6 Leo Brem, Plainville

7 Joseph Fernandes, Plainville

8 Mary-Ann Greanier, No Plainville Racino

9 Grace H. Lee, Esq., Eckert Seamans

10 Ned Merrick, Plainville

11 Michael Perpall, Plainville

12 Jonathan Silverstein, Esq., Kopelman and Paige

13 Steve Snyder, Penn National

14

15

16

17 MASSACHUSETTS GAMING COMMISSION STAFF:

18 Catherine Blue, General Counsel

19 Richard Day, Executive Director

20 Jill Griffin, Director of Workforce, Supplier

21 and Diversity Development

22 John Ziemba, Ombudsman

23

24

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 9th day of September, 2013.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018