

**Open Meeting - Key Policy Questions
December 11, 2012**

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1 THE COMMONWEALTH OF MASSACHUSETTS

2 MASSACHUSETTS GAMING COMMISSION

3
4 OPEN MEETING

5 KEY POLICY QUESTIONS

6
7 CHAIRMAN

8 Stephen P. Crosby

9
10 COMMISSIONERS

11 Gayle Cameron

12 James F. McHugh

13 Bruce W. Stebbins

14 Enrique Zuniga

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17
18 December 11, 2012, 9:00 a.m.

19 OFFICE OF THE DIVISION OF INSURANCE

20 First Floor, Hearing Room E

21 1000 Washington Street

22 Boston, Massachusetts

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

CHAIRMAN CROSBY: We are ready to call to order the 39th meeting of the Mass. Gaming Commission on Tuesday, December 11 bright and early in the morning. Thank you everybody for coming.

What we are here today to do is to begin a conversation about a host of what we refer to as key policy questions, some much more key than others as we've gone over them. But basically, issues that we need to resolve soon in order that we can get the regulations written properly but in a way more importantly so that the applicants and municipalities know what the rules of the road are going to be on a variety of different issues where we have an interpretive or an additive role to the legislation.

And we have sequenced these in priorities one, two and three. We probably will not get to the three's. A lot of the three's were issues that really aren't critical path questions we realized as we went over them.

But before the week is out, we definitely will get through all of the top priority,

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1 mid-priority questions. The questions have all been
2 assigned out to a Commissioner to take the lead on
3 reviewing and making a recommendation. The
4 recommendation is obviously just a recommendation.
5 It's for us to consider. But everybody had to -- We
6 had to start somewhere, so every Commissioner has
7 taken a chunk of them.

8 Any other introductory thoughts or
9 anything anybody wants to say? Anything you want to
10 say about Louisiana?

11 COMMISSIONER MCHUGH: Nothing I want
12 to say. The Chairman's reference is I spent some
13 time in Louisiana last week on personal matters, but
14 spent two days with the Louisiana Gaming Commission,
15 both in Baton Rouge and then in New Orleans, and
16 learned a great deal that will be detailed in a report
17 I'll circulate to the Commission later, both about
18 the way they approached the regulatory process, some
19 of the problems they've run into. And then how they
20 deal with a large urban casino.

21 The casino in New Orleans is 100,000
22 square feet of gaming space and is right in the center
23 of town and has been built over a number of years.
24 It started out much smaller built, and is the product

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1 of extensive negotiations between the City of New
2 Orleans and the casino operators. And that whole
3 process was interesting as well.

4 And some of the considerations that
5 they took into account in dealing with those
6 negotiations to insure that the casino operated in
7 a synergistic fashion with the surrounding
8 community. So, I'll detail all of that in a
9 memorandum that I will circulate later.

10 Not all of it's entirely applicable to
11 us. Every place has its own unique characteristics.
12 But they made great efforts to insure that the casino
13 built on and synergized, if that's a verb, with the
14 surrounding community, to the point of initially, at
15 least, not allowing a hotel until they were convinced
16 that the existing hotel capacity couldn't support the
17 demand that the casino was producing.

18 As I said, that's not necessarily
19 something that we need to take into account. But
20 it's the kind of approach and the kind of how is the
21 casino going to fit in with the environment that
22 permeated the thinking that they explored. So, it
23 was a very valuable two days.

24 CHAIRMAN CROSBY: Was it only the

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1 business environment or was it the cultural design
2 environment too?

3 COMMISSIONER MCHUGH: It's a little
4 hard for me to get a handle on the cultural design.
5 It's kind of freewheeling down there. But it was
6 primarily from the part at least that I understood
7 the business environment, restaurants, hotels,
8 performance venues and the like.

9 And they were very careful to ensure
10 that this would not have a deleterious effect on those
11 and in fact would enhance them. And therefore
12 allowed progressively, as I understand it, a
13 progression of restaurants in the casino, a
14 progression of satellite properties that the casino
15 could build and the like to make sure that it worked.
16 So, it was interesting.

17 And then their whole regulatory
18 structure is very different from the regulatory
19 structure that we have. And they have something down
20 there called, which I know our consultants are
21 thoroughly familiar with, video poker, which is a --
22 Well, you haven't seen anything quite like that.
23 It's video poker machines in restaurants as a second
24 category and truck stops.

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1 And the truck stops, as one
2 Commissioner explained to me before video poker there
3 were eight truck stops in Louisiana and with the
4 advent of video poker, the number rose to 282.
5 Coincidentally, there was quite an increase of truck
6 traffic I guess. But that too is an interesting
7 phenomenon.

8 It is basically electronic gaming in
9 these various facilities. And the way they approach
10 that in terms of how they control those basically slot
11 machines as opposed to the way they control the slot
12 machines in the casinos, and they have a different
13 way of doing that, is illustrative and interesting
14 as well. So, it was a very helpful two days.

15 CHAIRMAN CROSBY: Great. Well, we
16 look forward to hearing more about it. Okay. So,
17 as to process, I think we should just run through
18 these in sequence.

19 We did get quite a few comments from
20 various interested parties, which we'll try to allude
21 to. And they were very much part of our
22 consideration. We do have our consultant team here,
23 four members of our consultant team. We also have
24 Anderson and Kreiger is tracking this online.

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1 They're available for questions if we need one.

2 They're available by phone at a moment's notice.

3 I think the way to proceed is to just
4 for the relevant Commissioner to go ahead and talk
5 through this. And then we pick up the discussion
6 after the recommendation from the Commissioner.

7 So, we'll start out with key policy
8 question number 16. Should the Commission confirm
9 through a formal policy that no host community
10 agreement should be executed or referendums held
11 before the relevant applicant is qualified through
12 RFA-1?

13 This, as everybody remembers, was one
14 of the major issues we discussed in the situation with
15 Springfield. Springfield initially had felt and had
16 come up with a schedule that would have had them
17 selecting one or more -- or initially it was one
18 finalist in their community before, well before our
19 background checks, RFA-1, was done. And we felt that
20 there were some issues with that. We talked about
21 it with Springfield.

22 And Springfield and we agreed that they
23 would change their schedule. And they will not now
24 finally execute their host community agreement or

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1 agreements or have a referendum until after we have
2 completed our background check and until whichever
3 applicants they are dealing with have qualified.

4 But even though we had discussed this
5 quite a bit, there was some concern. Ombudsman
6 Ziemba in particular noted that there were people
7 that wanted to comment on this, and we decided to
8 wait.

9 We received 11 different submissions
10 on this. Sterling Suffolk said that they were
11 concerned about the delay of an execution. Once an
12 execution of a host community agreement is completed,
13 there needs to be a minimum of 60 days before the
14 referendum, which creates a time issue. Suffolk was
15 also very supportive of the general issue of local
16 control.

17 The Town of Lakeville weighed in
18 basically the same way saying that they did not think
19 we should have to approve the bidder prior to the HCA
20 or the referendum.

21 The City of Boston largely made the
22 same point again emphasizing their belief in the
23 principles of local control versus the use of the
24 Gaming Commission's authority.

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1 Three individuals Paul Vignoli, Philip
2 Cataldo and Martha Robinson all wrote in and were in
3 favor in both cases -- in all three cases that we
4 should wait for suitability. They said that the
5 communities need to know the legal and financial
6 histories of the proposers before the community
7 agreements and the referenda are written.

8 Springfield was basically silent.
9 Said that this is a decision, which is best left --
10 I'm sorry. This was MGM Springfield, the bidder, one
11 of the bidders in Springfield said that this was a
12 decision that's left up to the Commission and the
13 municipalities.

14 Shevsky and Froelich, the consultant
15 to the City of Springfield said yes, we should
16 standardize the rules. Other regions should have to
17 comply with the same rules that we agreed to with
18 Springfield.

19 Metropolitan Planning Council agreed
20 saying that we should however -- we should not permit
21 the execution of an HCA or referendum prior to the
22 suitability checks, but that we should encourage the
23 communities to go ahead and start negotiating just
24 don't get to the end of the game.

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1 Finally, the City of Revere weighed in
2 on the same side of the City of Boston, emphasizing
3 the principles of local control and asking that we
4 not require suitability for test before these two
5 things.

6 I got a bunch of letters yesterday and
7 they came in at the very end of the day and I didn't
8 have a chance to distribute them. They relate to
9 this issue but also a number of the other issues
10 having to do with the content of the host community
11 agreement, the content of the referendum, summary of
12 the host community agreement that would be voted on,
13 the definitions of supporting communities, the
14 surrounding communities, a number of the questions
15 that will be on our agenda tomorrow.

16 But since they relate to this one, I
17 just want to highlight some of them. It's basically
18 from the construction trades of one sort or another.
19 The IBEW wrote in and said Local 103 would also like
20 to voice its support of Mayor Thomas Menino and his
21 stance on the local process required by the Gaming
22 Act. The Commission should allow municipalities to
23 exercise the authority given to them in the Gaming
24 Act without delay or any interference.

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1 Local council, District Council 35 of
2 the Painters and Allied Trades urged the Commission
3 to begin the casino application and development
4 process immediately. The Greater Boston Labor
5 Council, the AFL-CIO said I'd like to express the
6 Council's support for Mayors Menino and Rizzo that
7 is the mayor of Revere who wrote in. The local
8 process should be left entirely up to the discretion
9 of the local governments as intended by the Gaming
10 Act.

11 This letter also gave some context.
12 Basically, from the construction trades and some of
13 the other labor organizations, the argument is we
14 need the jobs basically. And this legislation was
15 passed in substantial part because it's supposed to
16 be a job generator and an economic development tool.
17 And we want you all to get moving as fast as you
18 possibly can and not delay for any Mickey Mouse
19 process.

20 There is also a lot of misinformation
21 floating around. For example, this talks about how
22 New Hampshire could be laying the groundwork some
23 facilities within a year. I don't think there's any
24 possibility in the world that that could happen. But

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1 nevertheless, you get the point.

2 And it's a legitimate concern. We've
3 heard from Frank Callahan from the construction
4 trades a number of times. And that correspondence
5 all came to add to that sense.

6 So, after I thought about all of this,
7 and I talked at length with Ombudsman Ziemba, I came
8 to the conclusion that notwithstanding the concerns
9 expressed that it is very important that we -- Well,
10 first of all, that the principle that we established
11 with Springfield was a very important one and is
12 absolutely critical if we think it's an important one
13 that it be standardized across all regions. And it
14 would make no sense to have one standard in one
15 community and one in not.

16 The issue that we have talked about a
17 lot is that particularly if there were a referendum
18 on a proposal, on at least a host community agreement,
19 on a particular proposal and that proposal ends up
20 not being approved by us. That proposer ends up not
21 being approved by us, it is a colossal waste of time
22 and money by the community, by the developer,
23 although that's their problem if they wanted to
24 participate, but particularly I think for opponents

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1 who are likely to have fewer resources to try to get
2 geared up to fight a fight that they then have to fight
3 all over again because that company did not get
4 approved.

5 So, I think the HCA is a little bit --
6 the word that we used in the question was execute the
7 host community agreement. I wrote that what I meant
8 by execute was absolutely finalize.

9 And I think the most critical issue is
10 the referendum. I mean the host community agreement
11 can be re-opened and negotiated pretty much at any
12 time. But as a practical matter, since the host
13 community agreement will be what the referendum is
14 on, the two kind of fit inherently together.

15 So, the one issue that I was troubled
16 by, and I hadn't really thought about before the
17 commentary was in from Suffolk is this issue about
18 the window of time between the final execution,
19 signing of the host community agreement and the
20 referendum. And there has to be no less than 60 days,
21 no more than 90 days between -- it's actually between
22 the request for a referendum, which effectively is
23 the signing of the HCA and the referendum.

24 So, if we finish the suitability check,

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1 background test in June, you can't have the
2 referendum at the earliest until 60 days thereafter.
3 And that's a legitimate concern, given everybody's
4 concerned about moving quickly. But you can't
5 expect people to join the issue in advance of knowing
6 whether or not the party is going to be approved or
7 not.

8 And there has to be time to have the
9 debate. So, I think we're stuck with the 60- day.
10 There may be some way to create some kind of wiggle
11 room there. I'm not sure. That's what we're
12 talking about.

13 Is there any way we could not -- Are we
14 concerned about that 60-day timeframe? And if we
15 are, is there some way to wiggle room around so that
16 we might shorten it? I'm not sure that I think we
17 should, but I would be open to think about it.

18 But when all is said and done, I think
19 we came to the right conclusion with Springfield.
20 It's absolutely critically important that the
21 communities not make final agreements with people who
22 have not passed the background checks. There is
23 nothing more fundamental in our licensing and
24 regulatory process than to make sure that the people

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1 who are in the game are people that we want in the
2 game and who have passed the most rigorous standards.

3 So, my conclusion is that -- My
4 recommendation is that we should stick with this
5 proposal, stick with this standard. I think it's
6 entirely appropriate to encourage the communities
7 and the vendors to be negotiating. And we are
8 supportive of that. We are helpful with that. It
9 can be right on the cusp of final completion or final
10 execution, but I don't think it should be finally
11 signed and you certainly should not have a referendum
12 until the applicant in question has passed the
13 suitability test. So, that's where I come down on
14 this one. Anybody else?

15 COMMISSIONER ZUNIGA: Yes. For all
16 of the reasons that you state, Mr. Chairman, I would
17 agree with that, answer this question in the
18 affirmative.

19 I believe that the principle of local
20 control is well preserved throughout the process.
21 And it's really a question about timing, but an
22 important one. One that has, as you state, important
23 repercussions for everybody if somebody wants to
24 payout a suitability test.

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1 I believe people could get creative
2 with the timing and the wiggle room that you mentioned
3 to the extent that we can issue decisions on passing
4 the suitability test on a rolling basis, let's say.
5 We are giving ourselves a whatever, a six-month
6 period in our timeframe, but we all have talked a
7 little bit about how some of those decisions,
8 depending on who is being analyzed and the complexity
9 of those organizations, could be on a rolling basis.

10 So, I don't want to concede yet
11 necessarily that everybody has to wait until the end
12 of that and then begin a 60-day period.

13 CHAIRMAN CROSBY: Right.

14 COMMISSIONER ZUNIGA: There are ways
15 in my mind at least possibly that some of that could
16 be gained in terms of preliminary decisions or
17 rolling decisions.

18 CHAIRMAN CROSBY: Yes. I don't think
19 there's any question that we're not planning on
20 holding everybody back until everybody's approved.

21 COMMISSIONER ZUNIGA: Right.

22 CHAIRMAN CROSBY: Other thoughts?

23 COMMISSIONER MCHUGH: I had a couple
24 of thoughts. Number one, I would just like to

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1 comment on the let's go now and stop the delay theme
2 of the letters and other things that we are hearing.
3 I think every one of us is committed to proceeding
4 as quickly as we possibly can. And I know we've
5 emphasized that in a number of contexts before.

6 At the same time, these two recent
7 trips that I took or visits that I had in connection
8 with personal trips in both Mississippi and in
9 Louisiana emphasize for me, if any additional
10 emphasis was needed, the importance of this
11 qualification process that we're embarked on right
12 now. It is critically important.

13 And the opportunities for mischief, to
14 use the most benign word, that exist and that have
15 been documented in other jurisdictions are really far
16 too numerous for the public safety and the public
17 integrity of this process on which we are embarked
18 to be sacrificed by a rush to the end we all desire
19 to achieve. And if further emphasis on that score
20 is needed, one only needs to read the report of the
21 Pennsylvania grand jury that took a look at the way
22 Pennsylvania went about it.

23 So, I am committed, as I know all of us
24 are, Mr. Chairman, to moving as quickly as we

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1 responsibly can. But the word responsibly is a huge
2 component of the task that we've been given and that
3 the public and the people who appointed us and the
4 Legislature, I am convinced, want us to follow.

5 So, I understand the emphasis. I
6 understand the need. I understand the desire. But
7 I also understand the need for responsible progress.

8 I think that insofar as the specific
9 topic that insofar as the vote is concerned, I am in
10 full agreement. I think that it would not be a good
11 use of the public's energies, considering all of the
12 opponents and the proponents, to have an election
13 before the qualification process were done.

14 The qualification process may not
15 absolutely rule out an applicant, but there might be
16 things that turn up in the qualification process with
17 respect to particular qualifiers that the public
18 would like to know before they had the vote. And so
19 I think it's really important for the integrity of
20 the process for the vote not take place until after
21 that is done. And that is what Springfield has
22 certainly agreed to do.

23 I'd like to hear more though about the
24 execution piece. The execution piece is the product

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1 of a negotiation between the town, city leaders and
2 the applicant. I assume that it can be revised at
3 any time. And maybe that's the point to which you
4 were referring.

5 The required vote under the statute
6 comes not 60 or 90 -- not less than 60 or more than
7 90 days after the execution but after the request for
8 an election. And the request has to come after the
9 execution.

10 So, there is a way to deal with the
11 timing there by when you make the request. And
12 there's nothing in the statute that says you can't
13 have serial requests if the time expires.

14 So, there are ways, as you say, to do
15 it. But I wonder why we would want to put restraints
16 on when the agreement could be executed, so long as
17 it was clear that the agreement -- so long as it was
18 clear that the agreement could be revised at any time
19 before the request for a vote was made. In other
20 words, once the request for a vote is made, the
21 agreement ought to be locked down so that the process
22 of informing the public as to its content can begin.

23 But until that time, it seems to me that
24 the request can be -- I mean that the agreement can

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1 be somewhat fluid and doesn't have to be locked down
2 to that degree.

3 And I'm thinking of the 60 to 90 days
4 that would have to start at the end of our
5 investigation. If our investigation took us until
6 the end of June, you're talking about at least
7 September before you can have the vote.

8 CHAIRMAN CROSBY: Right.

9 COMMISSIONER ZUNIGA: Well, to that
10 point of execution, I guess it's all considerable,
11 and that's the way I always was approaching this
12 question, that communities and applicants will
13 conduct negotiations and may have full agreement in
14 principle without the execution. Which could be
15 done for all intents and purposes before that
16 so-called signing, if you will, or ultimate
17 execution. I think nobody is suggesting that all of
18 those negotiations should wait. And I guess they
19 haven't and that's good.

20 COMMISSIONER MCHUGH: Why then do we
21 put an emphasis on execution as opposed to some other
22 term that says you have to -- that you can't take a
23 vote -- I'm sorry. Why do place the emphasis on
24 execution?

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1 CHAIRMAN CROSBY: First of all, the
2 emphasis is not on execution. The emphasis is on the
3 referendum. And I think this is what you're talking
4 about is a fair point.

5 But it is a little weird to have a
6 community execute, sign, finalize, done, announce,
7 go to the public, put in the paper the final execution
8 of an agreement with a company that a month later we
9 might say is not going to be an applicant. So, it's
10 not likely but it's possible and it happens all of
11 the time across the country.

12 So, I think the community would feel a
13 little silly and everybody would just sort of -- I
14 don't guess it doesn't really matter as a substantive
15 matter to us, as long as the referendum doesn't start.
16 That's one issue.

17 The second issue would be there is a
18 possibility that there could be something in a host
19 community agreement that we might end up precluding.
20 I'm just totally making this up. But say we do the
21 investigation. We find that in some other
22 jurisdiction there was some kind of an inappropriate
23 relationship with a hotel supplier or something.

24 And we feel that we have to go into

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1 their proposal and say look, you can't do business
2 with that hotel company. That hotel company is in
3 the host community agreement. So, there are some
4 things that could happen. The most significant one
5 being our denial of suitability that would make the
6 execution of the HCA have been silly.

7 COMMISSIONER CAMERON: First of all, I
8 agree with your assessment of the issues. Secondly,
9 I think the issue here is timing. Is this going to
10 hold up the process? I think that's where all of
11 these comments stem from. And this 60-day period
12 would be running at the same time as our Phase II,
13 correct? It wouldn't hold up the Phase II process
14 that we'd be undertaking.

15 CHAIRMAN CROSBY: No. Our Phase II
16 wouldn't start until after the referendum. So, it
17 is a --

18 COMMISSIONER CAMERON: -- a timing
19 issue.

20 CHAIRMAN CROSBY: There is a 60- to
21 90-day window, which will be time that will be
22 extended if this did not occur. I could certainly
23 drop the HCA. If a community wants to execute the
24 host community agreement with somebody that they

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1 don't know whether or not we're going to approve, you
2 could take the position and I guess it's what Boston
3 and Revere are saying, if we want to do that it's our
4 business.

5 And it doesn't really -- It might cause
6 them some embarrassment, but it doesn't do anything
7 to us. The issue from our standpoint is the
8 referendum. So, we could make that the point here.
9 Drop the HCA, let the community do what it wants to
10 do on the HCA. Do you see any reasons, consultants,
11 why that wouldn't --

12 MR. POLLOCK: No, Mr. Chair. Mike
13 Pollock.

14 CHAIRMAN CROSBY: Mike Pollock from
15 Spectrum Gaming consultant.

16 MR. POLLOCK: Good morning. One
17 additional point, I guess, from our experience is
18 that --

19 CHAIRMAN CROSBY: Mike, can you come
20 up?

21 MR. POLLOCK: Good morning. One
22 additional issue from our experience, I guess this
23 ties into your comment that the critical issue is the
24 referendum as opposed to the host community

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1 agreement.

2 One of the issues that we wanted to
3 bring to your attention is that by putting the
4 suitability investigation first as opposed to having
5 it after the process, would in effect relieve
6 pressure on the Commission, which would be
7 significant. And we have seen this in other states
8 that if there is a host community agreement in place
9 and more importantly, a referendum that's already
10 been approved, and you're conducting the suitability
11 investigation or rendering a decision on suitability
12 after that point, it will raise issues or put pressure
13 on the Commission essentially.

14 CHAIRMAN CROSBY: To both move quickly
15 and to approve?

16 MR. POLLOCK: Yes. The public
17 pressure to approve in those instances is very real.
18 And you would not necessarily be making the same
19 decision in the same context as you would absent that
20 pressure. And that was just wanted to bring that up
21 to your attention.

22 CHAIRMAN CROSBY: That's a fair point.

23 COMMISSIONER ZUNIGA: Not only that,
24 we could be facing two applicants with very distinct

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1 timing. If there was a community that has passed a
2 referendum and one that for whatever reasons are
3 still conducting a negotiation let's say while we're
4 doing both investigations.

5 CHAIRMAN CROSBY: And there's another
6 factor obviously. Take Western Mass. which is the
7 easiest case, it looks like there will clearly be more
8 than one proposal. So, we can't get moving, I guess,
9 until the last one comes in. That doesn't keep the
10 individual applicant from moving forward with their
11 own Phase II. So, there's some cost there.

12 I'm going to ask -- This is an important
13 enough issue that I'm going to invite any of the
14 representatives of the applicants who want to say
15 something on this. I'm going to have to cut it off
16 if it becomes just speechifying. If you've got
17 anything substantive to add to what we're wrestling
18 with, please do.

19 MR. STEFANINI: Thank you, Mr.
20 Chairman. John Stefanini, I represent Sterling
21 Racecourse, LLC operating as Suffolk Downs in East
22 Boston and Revere and I appreciate Commissioners and
23 Mr. Chairman the opportunity to testify.

24 I won't go over the testimony we have.

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1 It's on pages six to nine in our testimony. I'd make
2 a couple of observations from -- that are not opinion
3 based, but we tried to keep our focus on the statutory
4 construction, the legislative history and how it
5 relates to other statutes and independent authority
6 that exists.

7 And there is a concept -- There are
8 several concepts and principles that I think are
9 being confused. The first is New England and
10 Massachusetts has a strong tradition of local and
11 self-governance, which permeates through all of our
12 State statutes and permeates through this statute in
13 particular.

14 That's in stark contrast to the
15 consultants and behavior of gaming commissions in
16 other places. So, for example in Pennsylvania, the
17 Gaming Commission can decide where to place it in a
18 community without the community say-so. The
19 community can fight it on zoning and regulatory
20 pieces.

21 In Massachusetts because of our local
22 self-governance, there was a belief by the
23 Legislature, and the statute I believe is very clear
24 on this point that in condition precedent to you

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1 seeing an application is that the person would have
2 to go through a local process. Not subsequent, not
3 simultaneous but in fact it's before. And if you
4 read the statute, it says before filing an
5 application the applicant shall submit to the
6 Commission.

7 So, the first piece is, I think that
8 there is a sense that everything that the Commission
9 needs to do that. In fact, the statute was very
10 intentional in saying we want our local
11 representatives to have the first voice in this. So,
12 that in fact the Commission cannot by its insistence
13 force a community to consider something that it
14 doesn't otherwise want to consider.

15 The second point is there is some
16 confusion I see in your advisories, which have been
17 different on this. Your early advisory was to
18 proceed and then post-Springfield it was to not
19 proceed. The host community agreement and the
20 referenda are two separate concepts in the bill. And
21 they are not related.

22 The referendum is not a referendum on
23 the host community agreement. It is in fact, if you
24 look at Chapters 53, 54 and the election laws in the

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1 Commonwealth and similar statutes, it's a very
2 specific question. And it's a specific unique land
3 use question that's being asked yes or no for the
4 community.

5 They're not asking the question do you
6 approve this applicant. They're not asking do you
7 approve this proposal. They're not asking if you
8 agree with this host community agreement.

9 They are asking do you allow for the use
10 of gaming on this specific site. It's a very
11 specific question.

12 CHAIRMAN CROSBY: What's the
13 relevance of the summary in that case?

14 MR. STEFANINI: The summary prepared
15 by the local Counsel as determined in Section 15 is
16 for them to summarize what it means. So, they would
17 have to say the community voting in favor of this
18 would in fact be voting to allow gaming as a use on
19 this site in this community. A vote against it would
20 be to not allow.

21 CHAIRMAN CROSBY: Which would
22 describe essentially what's in the host community
23 agreement.

24 MR. STEFANINI: It would not. That's

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1 not the question.

2 COMMISSIONER MCHUGH: No. The
3 question isn't that way. But that the ballot
4 question the statute says shall be accompanied by a
5 concise summary as determined by the city solicitor
6 of the host community agreement.

7 But you can't simply, and it seems to
8 me in a matter of statutory construction, disassemble
9 the question from the surroundings with which the
10 question has to be presented to the public.

11 This whole process of having the
12 summary available for a certain number of days,
13 having the ballot question accompanied by the summary
14 means that the question is designed by the
15 Legislature to be considered in the context of the
16 summary, which is a summary of the proposals.

17 So, I hear what you're saying. The
18 precise question is a land use question, but it's
19 accompanied by a summary of what the city and the
20 developer have negotiated.

21 MR. STEFANINI: So, Judge, what I
22 would say to that is if you look at the legislative
23 history --

24 COMMISSIONER MCHUGH: I have.

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1 MR. STEFANINI: -- there were all
2 kinds of proposals in the legislative process to have
3 the referendum mean more things. And in fact, the
4 Legislature in drafting that section -- you recited
5 it almost word for word and then you added at the end
6 of that and host community agreement.

7 The section that you're referring to
8 does not say a summary of the host community
9 agreement. It says prepared with a summary and it's
10 referring to the question. And so if you look at
11 Chapters 53 and 54 --

12 COMMISSIONER MCHUGH: Can we just stop
13 there, because I am confused now. The language is
14 provided further that at such election the question
15 submitted to the voters shall be worded as follows:
16 "Shall city or town of X permit the operation of a
17 gaming establishment licensed by the Massachusetts
18 Gaming Commission to be located at, description of
19 site, yes or no. Provided further that the ballot
20 question shall be accompanied by a concise summary
21 as determined by the city solicitor or town council."

22 Now are you saying that the summary is
23 a summary of the 15-word question?

24 MR. STEFANINI: That's correct.

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1 That's the way ballot questions have worked.

2 COMMISSIONER MCHUGH: Well, I hear
3 you.

4 MR. STEFANINI: I think I would make an
5 observation having had the opportunity to serve in
6 government and to work for governmental bodies on
7 both sides. I think you make very clear policy
8 arguments for what you're talking about.

9 And Mr. Chairman, I would say you make
10 very clear policy arguments as to why you should look
11 at things. What I would suggest to you is that the
12 Legislature in deciding its policy considerations
13 considered many of these things and they made a
14 decision that they didn't want to follow the
15 jurisdictions of other states and to have local
16 control of upfront.

17 So, there may be a reason why the
18 Commission should have control upfront. The
19 Legislature decided it didn't want to do that. There
20 may be a reason why you want the host community
21 agreement, the suitability of the developer as part
22 of the referenda, but in the legislative history and
23 in the statute's clear language that's not what the
24 legislation says.

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1 It says that the local community has
2 the ability to decide in its sole discretion a host
3 community because they're the people best positioned
4 to determine the impacts.

5 Now the Commission has complete
6 authority to deny someone -- deny or not issue a
7 license. The Commission clearly has the ability to
8 evaluate impacts on a local community, be it design,
9 be it business impacts, the entertainment venues, be
10 it jobs, be it --

11 CHAIRMAN CROSBY: We know all of this.
12 We know all of this part. We're talking --

13 MR. STEFANINI: But your role in that
14 process the way it's defined is to take all of the
15 policy considerations that you have and deal with
16 them in the context of your decision-making, your
17 deliberation. Not in terms of upfront dictating the
18 timing, the content of what the referendum should or
19 shouldn't mean. That was not envisioned.

20 In fact, there were amendments in the
21 Senate to make the referendum a land-use vote as part
22 of the right use. And it was adopted in the Senate
23 and rejected by the Conference Committee in part
24 because they did not want the other independent

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1 processes to invade that process.

2 COMMISSIONER ZUNIGA: Mr. Stefanini,
3 I'm just looking at a section a little bit before the
4 one that you talk about on the actual vote. And it
5 reads that 90 days after the request for the
6 referendum has been received and the signing of the
7 host community agreement are going to be made public
8 with a concise summary approved by the city solicitor
9 or town council, it has to be posted on the website.

10 So, that concise summary --

11 MR. STEFANINI: Within seven days.

12 COMMISSIONER ZUNIGA: Right. That
13 concise summary is what Commissioner McHugh is saying
14 has to be summarized in the host community agreement,
15 which is also going to be subject of the election
16 later on, which leads me to believe and conclude that
17 the summary is not on the question, but on the host
18 community agreement.

19 MR. STEFANINI: What I would say to
20 that is that you're looking at two different sections
21 in terms of statutory construction.

22 COMMISSIONER ZUNIGA: No, it's the
23 same section. It's just a little bit --

24 MR. STEFANINI: Subsection.

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1 COMMISSIONER ZUNIGA: Well, it's the
2 same subsection. At the beginning of Section 13,
3 which is the one that articulates the vote, but --

4 MR. STEFANINI: You're reading the top
5 of this. Okay, I'm sorry it says --

6 COMMISSIONER ZUNIGA: This concise
7 summary is also approved by the city solicitor. So,
8 those two pieces lead me to conclude that the concise
9 summary at the time of the vote has to be in both the
10 question as posted and a summary of the host community
11 agreement.

12 MR. STEFANINI: But the concise
13 summary in that instance -- They're using the same
14 terms, but the concise summary there is of the host
15 community agreement, which will be posted no later
16 than seven days after the agreement was signed.

17 COMMISSIONER ZUNIGA: Right.

18 MR. STEFANINI: So, it's a condition
19 precedent to proceeding with the question, but it
20 doesn't change the specific ballot question, nor does
21 it change the concise agreement within the context
22 of the question is the question.

23 CHAIRMAN CROSBY: Let met head off,
24 because we're going to talk about the summary and the

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1 host community agreement. And I think I have more
2 concern about whether we should approve the language
3 of the summary now than I did before. I'm concerned
4 about the way you are parsing this that I'm not sure
5 is consistent with what would really serve
6 public-interest here and what was intended, just to
7 be clear on that point.

8 But that's not the topic on the table.
9 The earlier part of your point was should we exercise
10 -- The question was should we exercise the authority
11 to or do we have and should we exercise the authority
12 to preclude a referendum prior to the approval in
13 RFA-1, the suitability in RFA-1.

14 And you, I think, make a legitimate and
15 important point about the legislative intent of local
16 control and the power of that. And we have made, to
17 be candid, we have said in other environments that
18 our job is not to protect the communities from making
19 bad decisions. They might make bad decisions, but
20 it's their business.

21 The question is whether or not giving
22 them the ability to make what we would deem to be a
23 bad decision ultimately hurts the overall process
24 where we do have the authority to assert ourselves.

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1 And I don't think it's a trivial point. I think your
2 defense of the local control intent is really
3 interesting and legit.

4 But I also think that the offset and
5 consideration is if a community goes off and executes
6 an agreement and has a referendum and we then say that
7 the applicant is not suitable, that feels to me like
8 it was utterly unnecessary to go forward. And there
9 was no need to go forward.

10 And the cost to the whole process is
11 huge. It slows everything down enormously. The
12 public is going to say what the hell is going on here?
13 That seems to me to be a macro issue where asserting
14 our net constructive authority over the
15 preferredness of the local control is the greater
16 consideration.

17 COMMISSIONER MCHUGH: There's
18 something else that I could add, and I'd welcome your
19 comment on this too. I could add to that. And there
20 is no question that the statute is designed and
21 written to give a great deal of authority to the host
22 community at the outset I thought in a basically
23 hands-off mode at least at the beginning. But that's
24 not all there is.

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1 It seems to me that that statutory
2 framework if one steps back and just looks at the
3 scheme has three components in terms of the
4 Commission's role vis-a-vis communities and others.
5 The host community really has an opportunity to deal
6 with the developer in the way that the host deems
7 best. And the Commission has a restrained role as
8 a consequence.

9 Insofar as surrounding communities are
10 concerned, however, the Commission has a greater
11 role, because they don't have a seat at the table.
12 And the statute makes it clear that unless they can
13 on their own negotiate a satisfactory agreement with
14 the developer, the Commission has a role in
15 facilitating creation of that agreement.

16 So, the Commission has an increasingly
17 greater role in the relationship between the
18 developer and the surrounding community than it does
19 with the host community.

20 And then there's the region, which
21 doesn't get any seat at the table and doesn't have
22 any opportunity, statutory opportunity to deal with
23 the developer, putting to one side now affected
24 businesses --

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1 COMMISSIONER ZUNIGA: Entertainment
2 venues?

3 COMMISSIONER MCHUGH: -- municipal
4 venues, performance venues, putting to one side them,
5 it doesn't have any opportunity. But the interests
6 of the region permeate the statutory scheme and the
7 considerations that the Commission has to have. And
8 in that regard the Commission has, it seems to me,
9 and must assume a more greatly protective role.

10 Now how does that all interact here?
11 It seems to me that a hands-off role with respect to
12 the content of the host community agreement is a
13 starting point, at least for the Commission's
14 approach to the host community agreement process.

15 The timing though affects the region as
16 well as the surrounding communities, because there
17 is going to be a great deal of energy focused both
18 pro and con on whatever proposal emerges. And it
19 seems to me that the Commission has to assure that
20 the surrounding communities and the people in the
21 region who are interested in this have an opportunity
22 to see both concretely what the host community
23 agreement consists of and an opportunity to marshal
24 the forces pro and con. And work on therefore

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1 like-minded associates in the host community so that
2 the vote truly represents a full and informed
3 plebiscite.

4 That's kind of a windy dissertation as
5 to how I look at this. But it does seem to me that
6 there is therefore a role for the Commission from
7 carrying out those responsibilities both in --
8 certainly in the timing of the election. And I've
9 already expressed earlier my -- and have to come to
10 a conclusion about the execution but certainly as to
11 the timing of the election.

12 MR. STEFANINI: Judge, I would agree
13 completely with your structure. I think you well
14 articulated that.

15 I would say that if you look further at
16 the statutory scheme, you note that the surrounding
17 community authority and the regional authority to the
18 Commission is greater in each instance.

19 So, in a surrounding community, you've
20 got to figure out the factors. You've got to act as
21 quasi judicial body to determine whether or not
22 someone is. The applicants then have 30 days to cure
23 it. And then if not, you have the ability to step
24 in.

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1 On a regional basis, there are a series
2 of studies and criteria that are required, which are
3 part of your evaluative criteria.

4 But in the instance of the host
5 community, none of that statutory language exists,
6 none of the kind of discretions. In fact, if you look
7 at the \$400,000 and the amount it's given to the --
8 \$50,000 is given to the host community for them to
9 determine the impacts, for them to determine the
10 content.

11 And I would say to you that content and
12 timing are different, but they all relate to the
13 authority of a municipality, the independent
14 authority to be able to do that.

15 Mr. Chairman, I'd just like to make two
16 comments and then I will conclude unless you have
17 additional questions. The first is Pennsylvania.
18 The grand jury commission in their 21 recommendations
19 were front and center as part of the legislative
20 process and were incorporated in each and every
21 instance relative to the process.

22 Commissioner, you early in this
23 process adopted the administrative regulations for
24 procurement, etc., which was the one that the

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1 Legislature did not do. So, I would say in terms of
2 that process with the exception of the Commissioners
3 and the circumstances that were unique to that place,
4 the legislation, the statute and the Commission have
5 adopted every single one of the recommendations to
6 avoid any circumstances that exist like that.

7 And it was not because of timing. It's
8 because of the nature of their political system. And
9 in part because of that, the Legislature wanted to
10 ensure that the authority for vesting and making the
11 decisions of citing was split up and not driven by
12 one entity but by multiple entities.

13 And to the extent you invade timing or
14 content of a municipality, you start to regulate the
15 entire process when in fact the division of the
16 process is in part part of the statutory scheme.

17 The last point I would make is
18 Springfield. Springfield, you and Springfield, and
19 I watched those conversations, came to agreement and
20 deal, if you will, that worked for them and their
21 circumstances. As a practical matter, you're
22 looking at fewer than a dozen communities that are
23 host communities, and fewer than a dozen applicants.
24 This is not 351 cities and towns.

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1 There is opportunity on a case-by-case
2 basis to figure out how municipalities want. And I
3 was intrigued to read not only your comments, the
4 comments submitted, but others. And some
5 municipalities want the assistance of the
6 Commission, because they feel like they need that
7 level of technical assistance, that level of comfort.

8 And some communities are so
9 sophisticated in terms of how they deal with things,
10 they're going to think of things and consider things
11 that the Commission couldn't begin to address because
12 you have other matters before you.

13 And a one-size-fits-all seems to me to
14 be a way to avoid the creativity and independence that
15 was designed to set up the way you -- the statute the
16 way you just articulated it.

17 Thank you for your time, Mr. Chairman.
18 If there are any other questions, I'm glad to answer
19 them.

20 CHAIRMAN CROSBY: I think that's
21 great. Thank you.

22 COMMISSIONER MCHUGH: Thank you.

23 MR. STEFANINI: Thank you for your
24 time.

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1 CHAIRMAN CROSBY: To be fair, if
2 anybody has anything to add, you're welcome. If not,
3 let's go ahead. So, really interesting, important
4 complicated stuff. Anybody have -- First, do any of
5 our consultants want to say anything if it's really
6 to the point?

7 MR. INGIS: Just briefly with respect
8 to the timing issue, I think that the discussions --
9 If the Legislature had contemplated that the
10 Commission consider as part of one proceeding the
11 suitability and the entire license application, then
12 there might be some merit to the argument as far as
13 the control of the host agreement.

14 However, just the opposite has
15 occurred. In Section 12C, the Legislature made it
16 quite clear that suitability is to come first. And
17 only if an applicant is determined to be suitable will
18 the application then go forward in its entirety.

19 And I think the legislative intent is
20 that that is part and parcel of when the host
21 agreement and the referendum would be considered.

22 CHAIRMAN CROSBY: Okay. That's an
23 interesting point. Any others? Other thoughts?

24 COMMISSIONER MCHUGH: I would just add

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1 that insofar as timing is concerned, Section 434
2 gives us the power to establish the parameters for
3 elections under clause 13 of Section 15. And
4 certainly timing is a parameter, whatever else the
5 parameters may be. And I think we have to respect
6 the context, but certainly timing is a parameter.
7 So, I think there's a power, we can do that.

8 CHAIRMAN CROSBY: That's a good
9 reference. Thank you. Let me ask this question. I
10 think we all think that if we were in a host community,
11 we would not even want to have a referendum until we
12 knew for sure that our partner was going to be a
13 qualified partner. That's our judgment.

14 But if a community makes a different
15 decision, does that rise to the level of impeding our
16 work? That's the standard that we used, I think, at
17 least in language. That it's the local control
18 element stops when it impedes -- This is not a legal
19 thing. This is a policy matter. -- when it impedes
20 our critical process.

21 And what I said to Mr. Stefanini is that
22 this would be -- to have a referendum precede somebody
23 being disqualified would be so disruptive to the
24 community, to the region, to our process that it's

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1 appropriate for us under the authority in that
2 section you mentioned, Commissioner McHugh, to
3 intercede.

4 To me, that is from a policy standpoint
5 that is the essence of the question.

6 COMMISSIONER ZUNIGA: I would make an
7 argument that when any applicant receives a thumbs-up
8 from the Bureau that they have passed financial and
9 background investigation that makes a stronger case,
10 if you will, for a referendum because they have been
11 deemed suitable. So, I think it is also a benefit
12 to communities saying they --

13 CHAIRMAN CROSBY: That's an
14 interesting point. You could impose the vote
15 because how can we vote for this? We don't even know
16 if they're going to be approved suitable. I hadn't
17 thought about that.

18 COMMISSIONER ZUNIGA: As opposed to
19 then here's a great rationale. These people have
20 already been --

21 CHAIRMAN CROSBY: So, we're actually
22 on Mr. Stefanini's team here. That's a very
23 interesting point.

24 Again, but the question really is if

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1 the community wanted to have there be a referendum,
2 giving the opponents to say, wait a minute, folks.
3 You're voting on something that the Gaming Commission
4 hasn't even considered to be financially and
5 ethically suitable, you might think that's a bad
6 idea. But does it rise to the level that we should
7 prohibit it?

8 COMMISSIONER ZUNIGA: Fair enough.

9 CHAIRMAN CROSBY: That's the
10 question.

11 COMMISSIONER ZUNIGA: That's the
12 question.

13 COMMISSIONER MCHUGH: And I think that
14 the Legislature clearly had something in mind when
15 it gave us the responsibility or the power to
16 establish parameters for the election. And I think
17 that you asked the right question. Does it impede
18 our work?

19 Our work is to protect the public
20 interest broadly in the implementation of this gaming
21 legislation. And to allow elections to go forward
22 with some kind of a potentially unqualified candidate
23 is to create the possibility at least of an election
24 process that is both illusory and a huge waste of

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1 public time money and energy. And it seems to me
2 therefore that insofar as the requirement that no
3 election take place until the qualification has been
4 established is something that is squarely in our
5 wheelhouse.

6 Again, the relationship to the timing
7 of the signing of the agreement, what the agreement
8 contains, that's a different question for me at
9 least. But insofar as the timing vis-à-vis the
10 qualification process, I think it's right on. I
11 think we should do it.

12 CHAIRMAN CROSBY: Let's, if you will,
13 call question on the referendum issue. If someone
14 would move to answer the question in the affirmative
15 with respect to the referendum. And then let's talk
16 briefly about the host community agreement, because
17 I think they are separate.

18 COMMISSIONER MCHUGH: So, I'll move
19 that the Commission establish a policy. I also think
20 it's really important -- This is not a 200-page
21 motion.

22 COMMISSIONER ZUNIGA: Like the last
23 time?

24 COMMISSIONER MCHUGH: Yes, like the

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1 last time. Let me just precede that by saying that
2 what we're reminding ourselves and everybody else
3 what we're doing today is establishing a policy that
4 is then going to be embodied in regulations. And
5 during the process of publishing the regulations as
6 part of that process, the public, everybody who's
7 interested is going to have an opportunity to comment
8 on the content of the regulation.

9 So, although we're creating a policy to
10 help us and the public and the applicants know where
11 we're going, it's not final until we have the
12 regulations. So, I think that's an important
13 caveat. But with that caveat --

14 CHAIRMAN CROSBY: Can I just say,
15 would it be accurate to say then that these decisions
16 that we're making during these series of questions
17 are advisory? And that they will -- until such time
18 as they are put into regs. and then approved? Is that
19 language accurate?

20 COMMISSIONER MCHUGH: It's advisory,
21 yes.

22 COMMISSIONER ZUNIGA: Gives us
23 direction as to how to write the regulation.

24 CHAIRMAN CROSBY: Right. It gives

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1 our best judgment as of the moment to applicants to
2 say this is pretty sure where we're going to come
3 down, but there is a prescribed process yet to come
4 where people have an opportunity to comment, and
5 where we could conceivably change our minds.

6 COMMISSIONER MCHUGH: Right. And the
7 process is so we can have a consensus as to how we
8 craft the regulation. And also because the
9 regulation crafting process is going to take some
10 time to give people, communities, developers, others
11 who are interested some guidance in the planning
12 process that's going on right now. So, those are the
13 two.

14 Anyway, with that in mind, I would move
15 that the Commission adopt as a policy that a vote on
16 a host community agreement pursuant to General Laws
17 23K Section 15(13) may not take place before the
18 Commission has made a decision on the qualifications
19 of the applicant.

20 COMMISSIONER CAMERON: Second the
21 motion.

22 CHAIRMAN CROSBY: Any further
23 discussion? All in favor, say aye.

24 COMMISSIONER STEBBINS: Aye.

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1 COMMISSIONER ZUNIGA: Aye.

2 COMMISSIONER MCHUGH: Aye.

3 COMMISSIONER CAMERON: Aye.

4 CHAIRMAN CROSBY: Opposed, nay?

5 Okay, the motion passes.

6 Now let's think about the issue of do
7 we want to extend that same policy to the host
8 community agreement?

9 COMMISSIONER ZUNIGA: The execution
10 of the host community agreement?

11 CHAIRMAN CROSBY: By execution, we
12 mean the final signing, I'm not sure what the right
13 legal language is, but the final signing and
14 therefore announcement of the final signing of a
15 completed, done agreement, whatever the proper
16 language is for that.

17 So what do we think? My thought is to
18 that, again, if I were a community in here, I would
19 want to be waiting to hear what's happening, see if
20 there's anything significant that comes out of the
21 woodwork in the background checks. That's what the
22 whole point of the background checks are about.

23 I'd get as far down the road as I could,
24 if I'm pretty sure these people were going to come

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1 out okay. But I wouldn't want to announce to my
2 constituents that I had executed an agreement, final
3 agreement not knowing for sure that my contracting
4 party, my agreeing party was going to pass financial
5 and ethical muster. To me, that's pretty
6 straightforward.

7 But is that an issue that we should
8 impose our judgments on? Does a breaching of that
9 judgment impede our work?

10 COMMISSIONER MCHUGH: From my
11 standpoint it doesn't, because inevitably the host
12 community through the process of public meetings and
13 the like that are going on right now is going to begin
14 to hint at what the agreement is going to look like.

15 And it has a package, essentially,
16 wrapped up and ready to go and wants to take the risk
17 of doing that, it gives both the opponents and the
18 proponents even more time than the statute requires
19 to marshal their forces and begin to have a thorough
20 public discussion. And to require, and perhaps
21 we're looking for ways to shorten the time, and
22 perhaps depending on the level of confidence that
23 they have, have that host community vote shortly
24 after the qualification decision is made, rather than

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1 signing the agreement after the host community
2 decision is made and then having to wait 60 days
3 before they can have an election.

4 CHAIRMAN CROSBY: I didn't follow
5 that. How was that again?

6 COMMISSIONER MCHUGH: Let's put in
7 concrete terms. Suppose you were pretty confident
8 that you were going to pass. And suppose you signed
9 an agreement with some kind of an escape clause, which
10 I think any of these would have. Until it's actually
11 done that if something unexpected happens, we can
12 revise it.

13 And suppose you had an idea as to when
14 this Commission's self-imposed deadline for making
15 these qualification determinations was made, you
16 could sign the agreement 60 days before that, make
17 the request.

18 The decision comes and you can have an
19 election in two weeks or three weeks because you would
20 have been going through the process.

21 CHAIRMAN CROSBY: If it got delayed,
22 you'd have to then --

23 COMMISSIONER MCHUGH: You'd have to
24 postpone.

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1 CHAIRMAN CROSBY: You run the risk
2 of --

3 COMMISSIONER MCHUGH: That's right.
4 You have to run the risk. And our requirement, and
5 everybody's aware of that requirement. So, the
6 opponents can say, wait a minute. This is too early
7 to be talking about this, because we don't who is
8 qualified.

9 It gives everybody an opportunity to
10 discuss the issues they want to discuss. But it
11 gives the cities and towns maximum flexibility to
12 schedule the election within the constraint that it
13 has to happen after the qualification process is
14 finished.

15 So, I would favor giving them that
16 flexibility.

17 CHAIRMAN CROSBY: Anybody else?

18 COMMISSIONER ZUNIGA: For all the
19 reasons stated, Mike Pollock's, your others
20 discussed here, I am of the mind that the execution
21 of the agreement should wait until the suitability
22 determination.

23 There could be any number of draft
24 circulated for the public to inform. There could be

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1 any number of requests for referendum in anticipation
2 to a suitability determination, even if it hasn't
3 happened. And that maybe communities and applicants
4 prerogative.

5 But I would be in favor of having the
6 same type of restriction relative to the execution
7 of a host community agreement, not until there has
8 been a determination of suitability by the Bureau.
9 And there can be any number of things.

10 CHAIRMAN CROSBY: If we don't have
11 that, Commissioner McHugh, if we adopt your approach,
12 does it give the community -- does it give the
13 leadership of the community and the applicant who are
14 in favor of making this happen a sort of a
15 railroading? Does it give them the tools to try to
16 rush this through? Does it give some kind of an
17 advantage to the proponents?

18 COMMISSIONER MCHUGH: I don't see how
19 it would.

20 CHAIRMAN CROSBY: And then it goes the
21 other way?

22 COMMISSIONER MCHUGH: Yes. I would
23 see it going the other way. It gives everybody a time
24 to discuss this starting tomorrow, if they wanted to.

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1 If they sign a host community agreement tomorrow,
2 which they're not going to do, but they have from now
3 until whenever we finish to both sides to
4 investigate, to think about, to talk about, to go to
5 other jurisdictions and look at.

6 The earlier that is joined the better
7 it seems to me. So long as everybody understands
8 that this crucial step is not going to come until
9 after the suitability determination has been made.
10 So, it seems to me that --

11 COMMISSIONER CAMERON: I'd like to
12 hear from Mr. Carroll and Mr. Gushin about the
13 interactive nature of the investigative process and
14 how clear we can make it that we are coming to a
15 conclusion of that investigation.

16 MR. GUSHIN: It is an interactive
17 process. There will be steps taken locally in the
18 Commonwealth of Massachusetts but there will also be
19 a process perspective. And as we suggested, the IEB
20 will be part of that process. The State Police will
21 be part of that process. There will be biweekly
22 reports.

23 So, I think the most important point
24 that I want to make is there should be no surprises

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1 during the course of the investigation. The IEB will
2 be intimately and intricately involved in all aspects
3 of it.

4 So, it's pretty clear as the
5 investigation proceeds what the issues are and how
6 they weigh on the statutory parameters for integrity
7 and how the investigation is proceeding. So,
8 there's no surprises is what I'm saying.

9 But that's not something that is
10 released during the course of an investigation. But
11 the key law enforcement and regulatory enforcement
12 constituencies will be aware of what's happening.
13 The host community may not necessarily be aware of
14 that.

15 COMMISSIONER CAMERON: Maybe not the
16 details of the investigation. Certainly, I
17 understand that. And that's appropriate. But as
18 far as the timing as Commissioner McHugh has
19 proposed, is there a way to have some interaction?
20 Look, we're coming close to the conclusion so that
21 that may trigger next steps for the community in order
22 to save some time in the process?

23 MR. CARROLL: Yes, I believe there are
24 ways. It's our intention from the outset to have a

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1 very close working relationship and continue the flow
2 of information as Fred has indicated. This isn't a
3 situation where all of the information is accumulated
4 and then it's later on presented as a package.

5 We've spent a good deal of time
6 discussing the qualifiers and rounding out the scope
7 of the identification of the parties that we believe
8 have to be subject to the full-blown backgrounds.
9 And if there are any exceptions statutorily allowed
10 exceptions that there is clear justifications for
11 those exceptions.

12 So, we believe that having the
13 investigative plan at least taking shape right now
14 that we'll be able to move very quickly to implement
15 that. And at the same time, keep the information
16 flow coming directly to you as the acting head of the
17 IEB and you in turn, obviously, to the Commission.

18 If there are problems that are
19 identified that we see and we expect to identify those
20 early, they would be made known to you. And then
21 further action that may impact on the overall process
22 could be implemented.

23 MR. GUSHIN: I think the IEB has some
24 broad discretion as does the Commission as these

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1 things proceed. Just as in our prior experiences,
2 there are always uncertain things or things that you
3 least expect that pop up during these investigations
4 both it could be in Massachusetts or it could be
5 elsewhere. Again, you'll be aware of those things
6 individually and collectively.

7 COMMISSIONER CAMERON: But there
8 could be a way of possibly communicating to a host
9 community without obviously revealing details but
10 just that the investigation was proceeding and we
11 anticipate so that if in fact they wanted to try to
12 cut some time from that 60-day period, there would
13 be a possibility of doing that.

14 MR. GUSHIN: Yes, I think that's
15 clear. And I think when -- Again, the six months is
16 essentially a maximum time as we've said many times.
17 If that can be expedited, we collectively as
18 investigators will make every effort to do so.

19 But there is a period time once the
20 report is filed and then the Commission will have the
21 deliberative period to look at it and hold a hearing.
22 But if there are theoretically no issues and the
23 company is absolutely clean, I personally don't see
24 any reason why that process could not be expedited

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1 at that point in time, recognizing that the
2 Commission may look at the report differently than
3 we do. I always want to preserve your ability to
4 question and add conditions and look at things
5 independently.

6 CHAIRMAN CROSBY: Right. I get where
7 you're going and I think we clearly will be trying.
8 We hear everybody's concern. We will do everything
9 we possibly can. And if we can figure out a way to
10 give an informal word that speeds up the process, we
11 will clearly do that.

12 The one thing that concerns me a little
13 bit is that the tone of the conversation, for
14 understandable reasons, is creating the background
15 check as either A - sort of SOP, nothing's going to
16 come out of it, just get it out of the way as soon
17 as possible. Or a pain in the neck, it shouldn't be
18 done. This thing is unnecessary. It's really
19 slowing everything down. Neither of those is right.
20 And obviously you as an investigator appreciate that.

21 These are for real reasons. Things
22 are going to come up. Our friends out there,
23 communities and applicants think they know their
24 teams and think they know everything about their

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1 teams, guess what, they don't. And we've all gone
2 through that.

3 I've nominated for people to serve with
4 me in public positions and their background checks
5 blew me away and they couldn't serve. And we've all
6 gone through that. This is not just a pain, feigned
7 bureaucratic process that's slowing things down.
8 This is really substantive.

9 And any governing body that treated it
10 as just a pain and tried to figure out how to shortcut
11 the process and executed an agreement with a party
12 that they did not know had been found suitable, in
13 my view would be making a serious mistake. But I
14 think I do come down thinking that it's their mistake
15 to make if they want to.

16 MR. CARROLL: I would just like to add,
17 if I could, one other thing, and I think getting to
18 Commissioner Cameron's idea. The applicants
19 themselves will be acutely aware of any areas of
20 problem, because the investigators will be taking
21 additional steps.

22 CHAIRMAN CROSBY: Good point.

23 MR. CARROLL: They'll be asked to
24 provide additional information. They'll be asked

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1 occasionally if it's appropriate, a deposition. And
2 they in turn will be in touch with their host
3 community.

4 So, they're going to know if there's
5 delays. And they're not going to go to the town and
6 say they're taking too long when they know there's
7 an issue that has to be resolved.

8 So, I think in a way that will assist
9 in the information exchange without anything being
10 done prematurely.

11 COMMISSIONER CAMERON: Thank you.
12 That answers my question.

13 CHAIRMAN CROSBY: Okay. Ombudsman
14 Ziemba, do you want to weigh in on this? Do you have
15 anything to add that hasn't -- You don't have, but
16 if you've got anything else you want to say?

17 MR. ZIEMBA: The only thought that I
18 have on this matter is that the Commission will be
19 reviewing a lot of other policy questions over the
20 next couple of days that are impacted by the timing
21 of this question.

22 For example, it will be considering
23 whether or not there should be minimum required
24 criteria for those host community agreements. To

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1 the extent that we're really talking about a matter
2 of timing and it's the timing of the first phase of
3 the applications in that review, the same timing
4 issues are implicated by some of these other
5 questions.

6 For example, if the Commission did
7 determine that it did want to move forward with
8 minimum required content of a host community
9 agreement and that had to be done through
10 regulations, there is almost no way that we could get
11 those regulations out and on the books prior to very
12 shortly around the timing of the first phase of the
13 application.

14 So, to the degree that the Commission
15 hasn't discussed some of those other issues, it may
16 want to table a final vote on this until after some
17 of those questions are resolved, questions regarding
18 permitting, etc. They are all baked almost into the
19 same answer.

20 So, we have a couple days of
21 deliberations. You may want to consider looking at
22 it in the totality before having a final vote on that.

23 CHAIRMAN CROSBY: Doesn't it cut the
24 other way? If we say we will not make the requirement

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1 that would not prohibit and HCA execution, how does
2 that impinge on any of the other discussions?

3 MR. ZIEMBA: So, for example, if you
4 determine now that you don't want to wait until after
5 Phase I for the HCA and that you want to allow
6 municipalities through the very good arguments that
7 we've heard to move forward right away on that
8 determination on that agreement, then some of the
9 other questions that we would consider such as
10 whether or not we promulgate minimum required content
11 basically go by the wayside, because there would not
12 be the ability to promulgate those regulations.

13 CHAIRMAN CROSBY: Oh, I see.

14 MR. ZIEMBA: You could separate it
15 out, but I think there's probably a lot stronger of
16 an argument that you should wait for the first phase
17 to be completed rather than you should wait for this
18 regulatory process to unfold.

19 So in many ways, the decision on this
20 matter may impact the decisions on some of those other
21 matters. I'm just saying this in the abstract given
22 some of the comments of the Commissioners on this
23 matter that the second question may reach an
24 inevitable conclusion, but you may preclude that

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1 conversation.

2 CHAIRMAN CROSBY: That's an
3 interesting point. I hadn't thought of that. I
4 think just because we're in it, I think my preference
5 would be to go ahead and make a decision realizing
6 it's going to be contingent when we get to these
7 others that may cause us to revisit. But I'm open
8 either way.

9 COMMISSIONER MCHUGH: I think it's an
10 important point. But I also think that if say we were
11 to decide that certain permitting considerations had
12 to be in the host community agreement, that the fact
13 that we tie the execution of the host community
14 agreement to the completion of the Phase I
15 qualification examination would be to use that as a
16 proxy -- that date as a proxy for something else. And
17 it's better to deal with the something else head-on.

18 And the fact that you couldn't
19 realistically sign the host community agreement
20 until you had the licensing piece done, would itself
21 determine when the host community agreement was ripe
22 for signing.

23 MR. ZIEMBA: I guess I'm making a
24 valued judgment.

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1 COMMISSIONER MCHUGH: No, no, no. I
2 understand.

3 MR. ZIEMBA: This is really the
4 critical question.

5 COMMISSIONER MCHUGH: Right, right,
6 right.

7 CHAIRMAN CROSBY: Okay. So, any
8 further thoughts? Do you want to postpone this
9 until we talk about the other issues or do we want
10 to make a decision now?

11 COMMISSIONER MCHUGH: So far as I'm
12 concerned -- If we need to vote on that, I hope not.
13 -- but I think this is a stand-alone piece and I just
14 as soon now recognizing that again this is tentative.
15 This is our best judgment at the moment. It could
16 change five weeks in.

17 COMMISSIONER ZUNIGA: This is a busy
18 week, so I would move to get going.

19 CHAIRMAN CROSBY: Does someone want to
20 frame the question on the second piece of this?
21 Commissioner McHugh, you did the first.

22 COMMISSIONER MCHUGH: Surely. I
23 would move that the Commission adopt as a policy that
24 the host community and the prospective and the

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1 applicant, prospective applicant need not wait until
2 the completion of the RFA-1 process before signing
3 a host community agreement if they choose to do so.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER CAMERON: Second that
6 motion.

7 CHAIRMAN CROSBY: Any further
8 discussion? I think I'm going to vote in favor. I
9 just think it would be incredibly dumb to do but
10 reluctantly I think I'll vote in favor. Any other
11 comments? Okay. All in favor of in effect not
12 precluding the signing of the HCA say aye, aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER MCHUGH: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER ZUNIGA: Nay.

17 CHAIRMAN CROSBY: Say nay?

18 COMMISSIONER ZUNIGA: Nay.

19 CHAIRMAN CROSBY: Commissioner
20 Stebbins?

21 COMMISSIONER STEBBINS: Aye.

22 CHAIRMAN CROSBY: So, four and
23 Commissioner Zuniga is nay. The motion passes.
24 Okay.

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1 COMMISSIONER ZUNIGA: Can we take a
2 break?

3 CHAIRMAN CROSBY: Yes, we'll have a
4 real quick break. We'll be back in five minutes.

5
6 (A recess was taken)

7
8 CHAIRMAN CROSBY: Let's resume public
9 meeting number 39. Next on the agenda are a couple
10 of more questions of mine.

11 I am combining key policy question
12 number eight, which is should the Commission make
13 casino licensing decisions region by region or
14 simultaneously with all regions? With policy
15 question number 19, how will the Commission consider
16 the strategic implications of when, how and where to
17 issue licenses including the slots license in the
18 context of other license issuing decisions so as to
19 maximize the benefits to the Commonwealth as a whole.

20 This was basically a matter of how much
21 do we think about the location of these and the
22 sequencing of these relative to maximizing the
23 financial benefits.

24 And we added a second question, a

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1 second part to policy question 19. Should the slots
2 license applicants be investigated first and to what
3 degree should resources both investigations and
4 drafting regulations be allocated for the slots
5 license in anticipation of or after January 15 in
6 order to expedite the slots license award.

7 I put the two together since the
8 submissions frequently related and the two questions
9 are very much interrelated. We had seven written
10 submissions on these questions. The Sterling
11 Suffolk Racecourse said that there was no legislative
12 intent to sequence the category two with the casino
13 licenses.

14 Shevsky and Froelich for the City of
15 Springfield said speed -- the priority is speed to
16 spur the benefits. So, sequencing in that sense is
17 not a good idea. But it was important to consider
18 the locations of the license in order to minimize
19 cannibalization.

20 BrownRudnick with MGM Springfield say
21 sequencing decisions -- if you were to sequence in
22 a row as opposed to simultaneously would allow an
23 industry head start to whoever was licensed first and
24 delay the flow of revenue to the Commonwealth from

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1 later licensees.

2 Martha Robinson said that sequencing
3 would be a good idea because it would give the
4 Commission time to focus its resources on each case
5 in a row, each license in a row.

6 Philip Cataldo said sequence because
7 different regions have different needs.

8 Paul Vignoli said to license the slots
9 last permitting the losing casino bidders to compete
10 for the slots license.

11 And the City of Boston similar to
12 Suffolk said that the intent of the law was to
13 maximize the benefits to the Commonwealth and
14 therefore we should move ASAP and not sequence.

15 We also talked at great length with our
16 consultants about this. They really made two
17 different points. One is that there is a clear
18 intent in the law that we can both see in the words
19 and also impute from its drafting that speed is
20 important. And that sequence would delay the
21 process. And whether you would gain competition by
22 delaying the process in that way or not is totally
23 speculative.

24 On the other hand, they did point out

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1 that citing two of these facilities close to each
2 other will degrade the value of both. And they will
3 cannibalize one another for their own -- each of their
4 cash flows.

5 So, that if there is a way to manage the
6 citing so as to keep them strategically located
7 around the Commonwealth there's a benefit to that,
8 but not at the cost of timing basically.

9 They also said to try to be really
10 informed about locating these things is an illusory
11 aspiration because there's so many variables, some
12 internal in the Commonwealth and a lot external that
13 paying a high price for location perfection probably
14 doesn't make a lot of sense because there are so many
15 variables we can't control.

16 They also suggested there's a
17 considerable possibility that once we know by January
18 15 everybody who is in the game that we will know where
19 at least all of the prospective applicants are. And
20 we may have a pretty good idea of locations anyway.

21 So, after thinking about this quite a
22 bit, my sense is that although locating two licenses
23 close together is suboptimal and it is a possible
24 consequence of what we're doing -- what I'm going to

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1 recommend that the legislative intent to move as
2 quickly as possible to generate jobs, other economic
3 benefits is the greater good.

4 Therefore, we should make the license
5 decision on Regions A and B at approximately the same
6 time, not sequence them consciously, mitigated only
7 by delays beyond our control such as the receipt of
8 the applications, obviously.

9 B - we should consider to the extent
10 possible the benefits to spreading the licenses
11 rationally around the Commonwealth in order to
12 maximize economic return to the applicants and to the
13 Commonwealth and to service the most people
14 conveniently since convenience is the clear priority
15 in how people choose their casinos.

16 But we should not hold the slots
17 license artificially in abeyance to wait until after
18 the casino decisions are made in order to consider
19 its impact on the casino licensees.

20 And C, and this is the one I wrestled
21 with the most, I think there's something to be said
22 in a jurisdiction like Massachusetts where there is
23 still a tremendous amount of controversy about the
24 expanded gaming business. And the Legislature went

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1 out of its way and the Governor went out of his way
2 to talk about destination casinos, destination
3 resorts, to talk about all of the additional benefits
4 to try to discourage in effect the simple convenience
5 casinos that are kind of down and dirty. And to
6 maximize the broader benefits.

7 There is something to be said for
8 having an opportunity to license the grandest of
9 whatever it is we're going to license first to kind
10 of create the best impression and get the
11 Commonwealth ready for what some people still find
12 troublesome. And maybe to license the category one
13 license first is sort of less than desirable from that
14 standpoint.

15 But having said that, I do recommend
16 that we attempt to license the slots parlor first,
17 in order to generate the jobs and economic
18 development benefits and revenue flow. Obviously,
19 that's going to be mitigated by when the applications
20 come in. But to the extent that we can allocate
21 resources to move the slots parlor along more
22 quickly, I think there is a net benefit in that.

23 We're going to have to walk a line
24 making sure that we don't compromise the casino

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1 licenses, but if we can constructively move the
2 category one license forward, I think we should.

3 COMMISSIONER CAMERON: If I could
4 speak to that. I agree with your conclusions. I'd
5 also like to say that I have seen many facilities that
6 are slots only and they are not unattractive or
7 something less than. They may have fewer amenities
8 and the area in which to gamble would be considerably
9 smaller, but they can be a very, very nice facility.

10 Secondly, to speak to the
11 investigative piece, certainly I am working
12 first-hand with that. And we have the investigative
13 resources we need to put a team on each applicant.

14 So, we will not slow down the process
15 with the emphasis on focusing on slots first. That
16 will not slow down. As we receive an application,
17 we are reviewing it and at that point assigning an
18 investigative team so there will be no slowdown.

19 But I do agree with your assessment
20 that we should consider, and I think it is the
21 legislative intent, the slots first, which would mean
22 segregating regulations and putting an emphasis
23 there. But many of those regulations we need to do
24 for both facilities. So, it would be some fewer

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1 regulations but we in speaking to our consultants,
2 there is a way to do that efficiently, effectively.
3 So, I agree with your assessment that this is the
4 direction we should proceed in.

5 CHAIRMAN CROSBY: Just to be clear, I
6 don't want to give the wrong impression. I am
7 confident that our bidders will create quality
8 facilities and will be attentive to all of the design
9 and quality considerations that we care about. So,
10 I take your point. So, I think that's an important
11 point. Other thoughts?

12 COMMISSIONER MCHUGH: Just to add to
13 that the investment floor there is \$125 million.
14 This is not going to be a shoe offs.

15 CHAIRMAN CROSBY: Good point.

16 COMMISSIONER MCHUGH: I had a
17 question, Mr. Chairman, perhaps for our consultants
18 and that is about the cannibalization piece.

19 I raise the question for this reason,
20 and I apologize to my colleagues because I haven't
21 given the report on my two recent trips recently.
22 But we know that there is a congregation of casinos
23 in Las Vegas and Atlantic City, those places. But
24 when I looked at them in Mississippi, I found a

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1 similar kind of thing.

2 You've got a pod of casinos in close
3 proximity to each other in Tunica. You've got
4 another pod in Vicksburg. And even within those
5 pods, you come to areas, where, although there's
6 plenty of land for these things to be spread out,
7 there will be two or three of them cheek by jowl, be
8 part of the same complex.

9 And then you drive another half mile or
10 three-quarters of a mile, you come to another group
11 of them together. So, I wonder about the dynamic and
12 the cannibalization affect that seems logical but
13 doesn't seem to be fit with the facts.

14 MR. POLLOCK: With respect to
15 destination resorts, they will more likely perform
16 better when they are in very close proximity to other
17 destination resorts, particularly if they are
18 walking distance. Because most people when they go
19 to an Atlantic City or a Las Vegas or a Gulf Coast
20 of Mississippi will visit two to three properties per
21 visit.

22 So, you obviously want to be the first
23 but it doesn't hurt to be the second or third. So,
24 they would actually perform better than if you had

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1 to get in a car and drive some distance. That doesn't
2 necessarily address the issue of cannibalization
3 with respect to a slots license versus a destination
4 resort that may serve in the same market. It's not
5 necessarily be more likely to be cannibalize perhaps,
6 depending on the distance, depending on what's built
7 and what their business models are.

8 And there is no way to that you'll be
9 able to answer this definitively in any instance, but
10 at least if you do cite and issue the slots license
11 first, one added benefit is that it does lend a higher
12 degree of certainty to those category one applicants.
13 So, they'll know what the competition is. They'll
14 be able to more precisely and accurately project
15 their own revenues and develop their own business
16 model and determine how much they intend to invest
17 in their properties as a result, which would -- and
18 support the argument of citing the slots license
19 first.

20 As opposed to the other way around
21 where they may not know and they may be running a risk
22 of developing a plan, projecting revenues and then
23 learning at a late date that they will be facing
24 competition which they may not have anticipated.

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1 COMMISSIONER MCHUGH: Okay. Thank
2 you. That's helpful.

3 COMMISSIONER ZUNIGA: I am in full
4 agreement with all of the points that you make here
5 Mr. Chairman. I think the intent of the legislation
6 and some of the economic benefits as well as the
7 intent in the licensing to the extent possible
8 because there are other moving pieces as you
9 correctly point out. To license the slots parlor
10 license first would the way to go. So, I would concur
11 with all of the arguments made here.

12 CHAIRMAN CROSBY: Let me ask a
13 question, again in policymaker language not in legal
14 language.

15 But the objective is to maximize the
16 benefits to the Commonwealth. If we knew where the
17 casinos were going to go and then particularly if we
18 could place the slots in a region which is unserved
19 or if there isn't at least a place that's not going
20 to be near one of the casinos, I think you can imagine
21 a case that by proactively locating the category one
22 license in an unserved noncompetitive part of the
23 State that in the long run --

24 COMMISSIONER MCHUGH: Category two

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1 license.

2 CHAIRMAN CROSBY: No, the slots.

3 COMMISSIONER MCHUGH: Category two.

4 CHAIRMAN CROSBY: Sorry, okay,
5 category two license, that you could maximize the
6 benefits. In the long run, it would cost you some
7 time, but you would have a regional access,
8 convenient access for more people. You would not
9 cannibalize and thus degrade to a limited extent any
10 of the casino licenses.

11 So, it seems to me like if we were king
12 that would be the long-term better way to go
13 financially. At least at this moment, we don't know
14 what we have for options. We can only locate a
15 category two license somewhere where there is an
16 applicant. We can't pick the location.

17 But we might know, by January 15 we will
18 know all the people who are in and there may be that
19 are more compatible with the approach that I'm
20 taking.

21 I just want to frame the question that
22 makes the tradeoff the clearest. So, yes, there's
23 an intent for speed. Yes, but there is also an intent
24 for maximum job generation, maximum economic

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1 development, maximum revenue generation. In that
2 trade-off is it the right way to go to slots -- license
3 slots first?

4 COMMISSIONER CAMERON: I don't think
5 your argument is a strong one, Mr. Chair, and I'll
6 tell you why. I think that there are so many other
7 factors. You gave a bunch of hypotheticals, so many
8 other factors, other amenities.

9 For example, if you look at the
10 Pennsylvania model, there are several nearby with
11 different themes, different amenities that are doing
12 very, very well. And there's one I know of in a
13 region without any other competition and it's the
14 poorest performer.

15 So, I don't think region alone can be
16 cite this here because there's nothing else near
17 that. That to me does not -- If you look at models
18 around the country that is not always the best
19 indicator, just region and citing them in a place
20 where something else isn't there. So, I don't think
21 that argument is persuasive for me anyway as far as
22 thinking of holding off for that reason.

23 COMMISSIONER ZUNIGA: Yes. There are
24 many other factors, not of the least of which may be

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1 local control, by the way. That would be very
2 difficult for us to assess in advance.

3 I think relative to the question about
4 citing, I believe at the point of receipt of all
5 request for applications Phase II, we could, like
6 Missouri did, run a number of scenarios as to what
7 the presence of casinos in different places could do
8 to each other. And they could be one of the many
9 criterion in determining the value. It would be only
10 an expected value, because it's a function of the
11 scenarios that we would be running.

12 But there's a case to be made that we
13 could do an analysis just to determine the value,
14 which then determines inherently jobs and economic
15 benefit on a number of permutations but at that time.

16 So, I would say that that's not
17 necessarily something that we are precluded from
18 doing if we bid everything at the same time. So, we
19 could always do that analysis later on.

20 CHAIRMAN CROSBY: I was only speaking
21 relative to the slots specifically.

22 COMMISSIONER ZUNIGA: It's just
23 another component.

24 COMMISSIONER MCHUGH: I think

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1 Commissioner Zuniga's point though illustrates
2 something that I think we ought to consider. And
3 that is a functional approach to this as many others.
4 A functional approach rather than trying to create
5 a bright line policy.

6 By that I mean, if we get to January 15
7 and we only have one applicant for a slots parlor or
8 we have two applicants but they're both in the same
9 general area that presents one set of circumstances.

10 If we have three or four or five, which
11 would be the ideal, and they're spread around the
12 Commonwealth, then we have that to consider.

13 Insofar as sequencing or not
14 sequencing, it seems to me that's not really the
15 question. The question is do we have a policy to take
16 region X and then region Y and then region Z or do
17 we not do that. But if we choose not to do that that
18 doesn't mean we have to wait and do all three regions
19 potentially, but at least two, A and B together. If
20 Region A is ready much before Region B, then there's
21 no reason not to go ahead and issue the Region A
22 license before we go to Region B. That's the
23 determinant function.

24 CHAIRMAN CROSBY: That's what I was

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1 trying to say.

2 COMMISSIONER MCHUGH: Okay. Maybe I
3 misunderstood yes.

4 CHAIRMAN CROSBY: For the moment C is
5 out of the picture. A and B we would not decide to
6 do in sequence, unless the circumstances -- So, we'll
7 do it just as the circumstances permit, but we won't
8 make a conscious decision to either A or B first than
9 the other one.

10 COMMISSIONER MCHUGH: Okay.

11 CHAIRMAN CROSBY: But similarly on the
12 other sequencing question I'm saying that we should
13 decide consciously to move the slots license up to
14 the extent we can.

15 COMMISSIONER MCHUGH: Yes. And with
16 the caveats I've just described, I agree with that
17 for a whole host of reasons. I think it's important.
18 That's the one where it looks like we can get the jobs
19 and the revenue generation going more quickly and for
20 a whole host of reasons consistent with a responsible
21 approach to our investigation of others, I think that
22 would be a good idea.

23 CHAIRMAN CROSBY: The only other thing
24 I would say is just this is for the record and it's

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1 restating what you said before that this is our best
2 judgment today. This is our best advice to
3 applicants and municipalities.

4 A - we will have a regulations writing
5 process. And B - we could change our judgment as
6 circumstances unfold. Okay. Somebody ready to put
7 that into a motion, maybe to accept the
8 recommendations as written?

9 COMMISSIONER CAMERON: I'll make the
10 motion that we accept the recommendations as written
11 by the Chair.

12 CHAIRMAN CROSBY: Second?

13 COMMISSIONER ZUNIGA: Second.

14 CHAIRMAN CROSBY: Does that look all
15 right? Do you want to edit that?

16 COMMISSIONER MCHUGH: No.

17 CHAIRMAN CROSBY: Any further
18 discussion on questions 8 and 19? All in favor of
19 the motion to accept as written, say aye. Aye.

20 COMMISSIONER STEBBINS: Aye.

21 COMMISSIONER ZUNIGA: Aye.

22 COMMISSIONER MCHUGH: Aye.

23 COMMISSIONER CAMERON: Aye.

24 CHAIRMAN CROSBY: Opposed? Okay,

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1 five, zero. Three down. Position paper regarding
2 policy question number four that would be
3 Commissioners Zuniga and Stebbins.

4 COMMISSIONER ZUNIGA: Mr. Chairman,
5 let me take a first crack at it. Question number four
6 poses the question of what if any additional
7 information to that stipulated in Chapter 23K,
8 Subsection 9 should the Commission require Phase II
9 applicants to provide as part of the Phase II
10 application.

11 CHAIRMAN CROSBY: Excuse me one
12 second, when you framed this question, you said
13 attached is a comparison of the sections. I didn't
14 get that. Does that exist?

15 COMMISSIONER ZUNIGA: It's not
16 attached. I'm sorry, did we not --

17 COMMISSIONER STEBBINS: No.

18 CHAIRMAN CROSBY: You don't have it?

19 COMMISSIONER ZUNIGA: No, I could
20 explain the background to that.

21 COMMISSIONER STEBBINS: We attempted
22 to do a couple Adobe spreadsheets.

23 CHAIRMAN CROSBY: Okay, because I'm
24 not quite sure what is nine versus 15.

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1 COMMISSIONER ZUNIGA: Part of the
2 recommendation here -- There isn't a recommendation
3 per se, largely in part because, due to the fact that
4 many of the questions that we'll talking about during
5 this week have a little bit of inference here as to
6 what ultimately will be a form of response, I suppose.

7 If I could articulate the relevant
8 sections. Section 9 would appear to me as being the
9 form of response at the discretion of the Commission
10 because we make that determination.

11 Section 15, I would like to term
12 perhaps prerequisites. The preamble to that section
13 says that the Commission shall not award a license
14 unless the applicant has met a whole host of criteria.

15 And Section 18 is what I would perhaps
16 term evaluation criteria, because it has the preamble
17 that the Commission shall issue a statement of
18 findings relative to the criteria that then goes onto
19 explain.

20 What we attempted to do and did not do
21 it's on time was to try to have a matrix of all of
22 those sections with the relevant section at the top
23 of the columns and then the legislative goals in the
24 other axis to figure out that each intent was always

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1 covered. And for the most part, they all are one way
2 or another.

3 It is also difficult at times to try to
4 follow that framework because legislative intent,
5 it's covered in different places in the form of
6 response and in the evaluation criteria, etc.

7 But the point here was also perhaps to
8 overlay one other section, which is paramount, which
9 is Section 1, which states a number of the corrections
10 from the general court that articulate broad goals
11 and many of them are further refined in the subsequent
12 sections.

13 And another which we articulate here is
14 relevant to what may be unique that is not necessarily
15 prescribed in a particular subsection, but what could
16 make -- what has been a clear documented goal of the
17 legislation in terms of creating destination
18 resorts. And what questions could form part of a
19 form of response that could perhaps tease out the
20 things like leveraging the current assets of the
21 Commonwealth, the cultural assets, just to pick one.

22 So, I have articulated certain of the
23 sections that we should think about framing detailed
24 questions or to a great degree, they could be left

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1 in the broad form that the legislation prescribes.

2 And I can just pick one, promoting local small
3 business and the tourism industry could end there.
4 What are your plans to do that?

5 Or we could decide to take the
6 directive of or the approach rather of asking
7 specific questions that tease out information, if you
8 will, that could get to that.

9 Do you want to expound on that a little
10 bit?

11 COMMISSIONER STEBBINS: Sure. As
12 Commissioner Zuniga pointed out, this was somewhat
13 of a tough question to tackle because again we both
14 looked at Section 9 as prescriptive as to what should
15 be in an application. Sections 15 and 18 really
16 detailing more information about criteria for
17 selection.

18 And we were trying to create a
19 spreadsheet, which showed Section 9, and whether
20 Section 9 adequately addressed 15 and 18 and whether
21 it actually asked for the right information as
22 prescribed in the priorities in the statute in
23 Section 1.

24 In finessing the spreadsheets, we kind

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1 of realized our spreadsheets even though different
2 would probably come up with the same resolution in
3 the same question. And I think going forward as we
4 do lay out the regulations relative to what should
5 be in the application, I think we're just mindful of
6 don't just look at what's requested in Section 9.
7 Make sure it's compatible with the information in
8 Section 15. Make sure it's compatible with the
9 information in Section 18 to the extent that we can.
10 And hopefully it all feeds back to the priorities.

11 But you know we wanted to take the
12 opportunity, I think, and you see in the three
13 questions that we suggested to somewhat allow an
14 applicant to expound beyond what is a statute
15 requirement in terms of give us an idea of how this
16 facility is going to meet the goals and objectives
17 of the statute.

18 Section 18 talks about a high-caliber
19 facility. Well, my definition of high-caliber
20 facility may differ for the next person. So, you may
21 want to allow some flexibility in the application,
22 clearly state what is going to make your facility
23 high-caliber, truly a destination. Again, maximize
24 the jobs, maximize the revenue in fact that we hope

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1 these facilities will have.

2 So, we thought about some broad
3 questions. Again, allowing as we've talked about
4 all along, allowing an applicant to somewhat think
5 outside the box, talk about how their project is going
6 to be different.

7 I think we've seen in some similar
8 applications where we've actually had an applicant
9 tell why their facility was going to be better than
10 the facility that might also be competing in the same
11 region. But again, opening the application to be
12 somewhat more flexible to the applicant but more to
13 our benefit in the end goal of assessing a license
14 determination.

15 CHAIRMAN CROSBY: Is 18 the section
16 that -- 18 is the one that lists a bunch of evaluation
17 criteria but then it directs the Commission to
18 further develop its own criteria?

19 COMMISSIONER ZUNIGA: Correct.

20 CHAIRMAN CROSBY: So, really what
21 you're talking about here is really pursuant to
22 Section 18?

23 COMMISSIONER ZUNIGA: Yes.

24 CHAIRMAN CROSBY: Direction for the

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1 Commission to broaden the evaluation criteria as it
2 sees fit?

3 COMMISSIONER ZUNIGA: Correct.

4 COMMISSIONER STEBBINS: Yes.

5 CHAIRMAN CROSBY: Okay. Just for the
6 record could you read me a little bit of Section 9?
7 Is that just the technical stuff?

8 COMMISSIONER ZUNIGA: No. It starts
9 with there is detailed information. They need to
10 provide the name and place of business. But it
11 starts with the Commission shall prescribe the form
12 of the application for gaming licenses and shall
13 require but not limit it to a number of things, the
14 name, documentation, independent audit.

15 CHAIRMAN CROSBY: It's kind of like a
16 technical procurement, right?

17 COMMISSIONER ZUNIGA: Yes, it's like
18 the form, the response form, let's call it. They
19 have to describe their entertainment services, the
20 design, the conceptual.

21 CHAIRMAN CROSBY: It sounds like your
22 conclusion relatives to the question specifically is
23 no, there's no need to add any other requirements to
24 Section 9.

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1 COMMISSIONER ZUNIGA: There's
2 information that would be needed in terms of
3 evaluating criteria in Section 18 and 15, yes. The
4 additional questions that we pose here are more in
5 the general realm of what would be unique on the one
6 hand.

7 Another one that we posted here, it's
8 in the second paragraph up at page two, second to last
9 paragraph is to the extent that we wanted to identify
10 potential socioeconomic impacts that we will later
11 study as part of the research agenda, we could
12 consider asking information of applicants that could
13 serve that purpose. But that's a little bit in
14 parallel here and may be difficult to ascertain.

15 And lastly, we suggest, and I don't
16 know how feasible this would be or practical,
17 information relative to the process that happens
18 locally. We will clearly have a host and surrounding
19 community document, let's say, and a vote by
20 referendum in the affirmative, hopefully.

21 But any information that we may be able
22 to obtain, and I don't know that it's necessarily a
23 foregone conclusion that we should, relative to that
24 process. Whether there were ever community concerns

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1 that went unaddressed or compromised, if you will,
2 may be one particular data that may be relevant to
3 us or it may not. That's the only other point that
4 I make.

5 COMMISSIONER CAMERON: So, I think
6 what you're saying is the law is well written,
7 comprehensive and we have to make sure that each
8 section is addressed and complements one another.

9 COMMISSIONER ZUNIGA: Yes, that's
10 well summarized.

11 CHAIRMAN CROSBY: Clearly, the way
12 you've answered this question feed right into
13 Commissioner McHugh's next question, which is on 15
14 and 18.

15 COMMISSIONER ZUNIGA: Yes, right.

16 COMMISSIONER MCHUGH: And I'm not
17 surprised that there was a difficulty in creating a
18 spreadsheet, because there are really four
19 interrelated sections. There's nine, which is the
20 form of the application. And that's got a lot of as
21 you've described, technical details, what's your
22 name and address. But it's also got some broader
23 things like studies that you've done and the like.

24 Then there is Section 15, which are the

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1 minimum criteria. You can't get a license unless you
2 meet these criteria. Some of them are not
3 self-explanatory, some of them are. Then there's
4 Section 18, which is as you said, contains things the
5 Commission has to evaluate when considering the
6 application.

7 And then there's Section 21, which is
8 the license conditions. And not all of those match
9 up exactly in the same way. So, the trick is to cover
10 the regulations, the statutory waterfront while at
11 the same time not being so prescriptive that one
12 undermines the creativity that we anticipate and hope
13 everybody will bring to this process. And that's
14 what we're trying to do.

15 COMMISSIONER STEBBINS: And we'll see
16 some changes to nine, because some of questions we've
17 already knocked out in the RFA-1 process.

18 COMMISSIONER ZUNIGA: That's correct.
19 We've already asked certain questions, subsection
20 one through eight on RFA Phase I.

21 COMMISSIONER MCHUGH: Yes, they are
22 part of the same application.

23 COMMISSIONER ZUNIGA: Right

24 CHAIRMAN CROSBY: I don't know that we

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1 really need to do anything to this. Is there a need
2 to take any specific action, other than to follow this
3 right up with 15 and 18, which is coming up next?

4 COMMISSIONER ZUNIGA: I don't think
5 there is. I think the question as posted or as posed
6 was one of are we missing anything to Commissioner
7 -- at the review that we have done and subject to a
8 number of questions that we still have to answer
9 between now and the end of this week, but later, it
10 wouldn't appear to me that there's a big call.

11 So, all of those relevant sections will
12 be addressed one way or another in the form of
13 regulation and the form of response. But I don't
14 think there is major things.

15 CHAIRMAN CROSBY: I like the three
16 evaluative criteria you've raised. But I think they
17 go right to the next question too. So, we'll just
18 move on. Commissioner McHugh, question five.

19 COMMISSIONER MCHUGH: So, I've
20 divided question five into two parts. Question
21 five says what if any criteria in addition to those
22 listed in 23K Sections 15 and 18 should the Commission
23 use in the RFA-2 licensing determination in order to
24 ensure the license awarded will provide the highest

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1 and best value to the Commonwealth in the region in
2 which the gaming establishment is located?

3 Part two of that, which also ties into
4 another question that's going to be dealt with later.
5 How should any criteria in addition to those listed
6 in 23K 15 and 18 be weighted, ranked or scored? So,
7 there's a scoring question and a content question.

8 And insofar as the content question is
9 concerned, we had a number of comments from various
10 respondents. The Mass. Audubon Society said that
11 there should be some contents to Section 18. That's
12 the evaluation section that focused on green,
13 building green.

14 Mrs. Bernstein, Fisher and Levin
15 weighed in and talked about the impact on
16 recreational and other values of the site to nearby
17 communities. I.e., we should think about putting a
18 casino on top of a national monument. That wouldn't
19 in Correspondent Bernstein's would be a good idea,
20 that kind of thing. Community impact issue we should
21 take into account. Transportation impacts should be
22 taken into account.

23 The Metropolitan Area Planning
24 Commission said that we should add conditions to both

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1 15 and 18 that focused on transportation impacts.

2 That was their primary concern.

3 MGM suggested that the applicant's
4 track record elsewhere was something that we should
5 consider in evaluating the applications that we
6 receive. What they've done elsewhere, what kinds of
7 facilities, what kinds of success that they've had.

8 And Shevsky and Froelich on behalf of
9 Springfield said everything is crystal clear. You
10 shouldn't ask anything. It's all right there.

11 Insofar as Section 15 is concerned
12 that's the minimum criteria. We may want to issue
13 clarifying regulations for ambiguous parts of that.
14 Some of the terms are broad. But basically that is
15 a unless you meet these criteria, you can't get a
16 license.

17 I don't think we can add to that in
18 terms of a statutory authority. And even if we
19 could, I am not sure that's something we should do.
20 I think it's something we should not do -- Let me
21 put it affirmatively. -- because those are go/no-go
22 criteria. And I don't think we should add to the
23 go/no-go criteria that the Legislature has already
24 determined.

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1 Insofar as Section 18 is concerned, the
2 evaluation criteria, I think we certainly can add to
3 those criteria. And we should think about doing
4 that. Many of those criteria, as I said in the
5 memorandum though are so broad that one is going to
6 have to think of what we're really trying to achieve
7 in the evaluation process in interpreting and
8 applying those criteria.

9 For example, Section 18(13) requires
10 the Commissioning to consider how the applicant
11 proposes to offer the highest and best value to create
12 a secure and robust gaming market in the region and
13 the Commonwealth. One can simply ask that question
14 and say tell us how you propose to do that. And I
15 think we should do that.

16 On the other hand, it would be helpful
17 if we have some ideas to put the things that we'll
18 be looking for. To lay those ideas out and say these
19 are things that we will be looking for in particular
20 in an application. They are determinative. The
21 failure to meet one of these qualifications or the
22 failure to deliver this thing does not necessarily
23 mean you won't get the application, but it's
24 something we'll be interested in hearing you talk

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1 about.

2 Likewise, Section 18(11) requires an
3 applicant to demonstrate how it proposes to maximize
4 revenues received by the Commonwealth. There too,
5 we could be talking about things that we'd be
6 interested in hearing them discuss at some point in
7 the application process without prescribing
8 something that they have to discuss or a value they
9 have to achieve in order to achieve and obtain a
10 license.

11 It seemed to me, and this comes into
12 play in the next section about the evaluation, it
13 seems to me that it would be helpful if we have ideas
14 along those front, and I think we should have ideas
15 along that front, to prescribe what they are, to lay
16 them out. And then draft regulations that embody
17 them.

18 I didn't start down that path now for
19 laying out particularly in Section 18 criteria --
20 Section 18 values that we'd be looking for because
21 I wanted to see whether the Commission would agree
22 with that approach before doing it.

23 But it seems to me that we could come
24 up with a series of values be they economic or other

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1 and lay them out in fairly short order if that's what
2 we decided to do.

3 Alternatively, we could simply say
4 that these statutory criteria speak for themselves.
5 They're very broad, so they speak about a broad range
6 of things that applicants can propose. And then see
7 what the applications turn up.

8 I think that would be unfair in some
9 ways both to the public and to the applicants because
10 it's so broad that the Commission could decide that
11 something was embodied in one of these broad
12 statutory terms that nobody really thought about.
13 And they would be blindsided.

14 So, the question really is how do we
15 articulate a fashion in which we are going to exercise
16 our undoubtedly broad discretion in a way that helps
17 us and the public and the applicants understand our
18 thinking, but at the same time doesn't stifle the
19 creativity we hope will be brought to the process.

20 And that is the kind of broad thematic
21 way I've chosen to make the recommendation as to an
22 answer to this question. As I say, it ties into the
23 next question of when we get to the evaluation
24 criteria. So, I use that as a starting point.

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1 COMMISSIONER ZUNIGA: I would be in
2 favor of being prescriptive in terms of the criteria.
3 Sort of whenever anybody goes to take an exam and you
4 like to figure out just how much -- This perhaps gets
5 to the second part of the question. What is the
6 relative weight? What matters between my written
7 response and my math section, just to stay with the
8 exam analogy.

9 And I think that's an important policy
10 statement that I believe that has the tendency of
11 leveling the playing field, if nothing else, the
12 understanding of the applicants. So, I would be in
13 favor in trying to prescribe that criteria, with the
14 understanding that there is quite a bit that is
15 qualitative in nature and we'll have to make
16 qualitative determinations.

17 But to allow applicants the ability to
18 say we thought we met the intention and responded and
19 we were responsive. Therefore, we have a shot and
20 a fair shot.

21 I would even go to the second part of
22 the question.

23 CHAIRMAN CROSBY: Let's get to that in
24 a second. On the first part, you're suggesting that

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1 we should issue some kind of clarifying either
2 regulations or advisories, I guess either or both,
3 to help flesh out the criteria that we will use under
4 the prescribed criteria, particularly in Section 18
5 it sounds like?

6 COMMISSIONER MCHUGH: Right.

7 CHAIRMAN CROSBY: And my reaction to
8 that is I'd be interested in seeing it. It's hard
9 for me to quite figure out. I kind of lean towards
10 leaving them vague, but I'd be very much open to
11 taking a shot at some of them and seeing if we think
12 we can make the process a better process by that
13 clarifying.

14 But there's a second part of 18, which
15 goes to the three questions that Commissioners
16 Stebbins and Zuniga raised, which is what
17 additional criteria will we bring to the table? And
18 how do we articulate those criteria?

19 Are you speaking to that as well or have
20 you spoken to that?

21 COMMISSIONER MCHUGH: I am. Section
22 18 is a, unlike Section 15, does not -- unlike Section
23 15 as I'm recommending, allows us certainly to add
24 additional criteria. When you read that in the

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1 context of Section 5(a)(3), which broadly empowers
2 the Commission to prescribe criteria for evaluation
3 of the application for a gaming license. That's what
4 Section 5(a)(3) allows us to do.

5 So, you've got Section 18, which sets
6 things we must consider. Section 5(a)(3) allows us
7 to prescribe more things. I guess my point is that
8 it's not entirely clear that you have to prescribe
9 additional things, because some of those categories
10 are so broad that almost anything you can think of
11 fits within them. But to the extent we need to go
12 beyond it, we have the power to do it.

13 And my recommendation is that we do it.
14 That we lay out criteria for at least things that we
15 are looking to have the applicant address, things
16 that are important to us. And we'll get to the
17 weighting thing in a second because that's a separate
18 piece of this.

19 But I go back to one of the forums that
20 we heard and held early on when we heard from Jeffrey
21 Simon. That was the forum we had in Holyoke, I
22 believe, who has done a lot of these large planning
23 processes from the standpoint of the developer.

24 And his articulation, his careful

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1 articulation of the desirability for developers of
2 knowing what the permit granting authority, which in
3 the last analysis is us, are going to be looking for.
4 Not the exclusive things, but things that are of
5 interest and importance to the permit granting
6 authority.

7 And it seems to me that's essential to
8 a sound development. It's essential for the public
9 to understand. It's essential for the people to
10 comment on in terms of developing these criteria.

11 But some of these categories are so
12 broad that, as I say, it would be unfair I think to
13 the public and to the applicant not to try and clarify
14 them, because we could think of things during the
15 evaluation process that nobody else had addressed,
16 thought of or considered as being part of what it was
17 that was there.

18 COMMISSIONER STEBBINS: To simply
19 encapsulate, you're suggesting looking at all of the
20 criteria, setting aside 18. But I would also suggest
21 that we take what's in 18 and see how it matches up
22 back to Section 1.

23 COMMISSIONER MCHUGH: I fully agree
24 with that.

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1 COMMISSIONER STEBBINS: And just see
2 what criteria or what measurements might be missing
3 that we don't feel are captured well.

4 COMMISSIONER MCHUGH: Yes. But I
5 would not leave it as comply with 1, 18, 19. I would
6 try to define this more precisely as to what we think,
7 as to what we're looking for when we're trying to find
8 out what offers the highest and best value to the
9 secure and robust gaming market in the region. Is
10 that jobs? Is that a balance sheet? Is that a
11 really attractive marketing package? Is that
12 combinations with others? At least what are your
13 ideas as to how you're going to do this and then other.

14 So that we have a mechanism for
15 comparing apples to apples and at the same time
16 allowing applicants to be creative with things that
17 perhaps others need to think about.

18 COMMISSIONER STEBBINS: Right.

19 CHAIRMAN CROSBY: As long as we --
20 You're describing a really good line. If we want to
21 give everybody in the game as clear an articulation
22 of what we will be using as criteria as we can, but
23 also we want to encourage people to be innovative and
24 creative.

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1 We don't want to run the risk of setting
2 out some criteria that we then can't go beyond.
3 That's one thing that I wrestle with. How do we give
4 everybody a heads-up when we don't know for sure all
5 of the things that we're going to think about.

6 And that if we purport to have said
7 these are all of the things that we're going to think
8 about, then we run the risk of prescribing our ability
9 to come up with another criteria later on. So, we
10 have to draft it carefully. But I agree.

11 COMMISSIONER MCHUGH: I'd welcome
12 hearing from our consultants. The Section 10, which
13 of the strategic plan talks about the evaluation
14 scheme. And I commend their thinking on that and I'm
15 going to refer to it when we get to the next question.
16 But as to the prescribing piece, I'd welcome to
17 hearing from them about how to walk that line.

18 MR. MICHAEL: I just have a couple of
19 thoughts. I would agree with Commissioner McHugh in
20 the sense that the breadth of the criteria that are
21 there now are really not instructive in the large
22 sense to the applicants in terms of what is really
23 important to you. And to the extent that the
24 Commission can as a body determine what you really

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1 are looking for, what do you want this casino to be
2 like or what do you want it to look and be able to
3 articulate in some way some of that kind of standard
4 would be very instructive and very helpful to any
5 applicant. And also provide you with the
6 information you would need to make an informed
7 decision.

8 In terms of some examples, possibly of
9 what is not present in Section 18 that might be
10 something that could be further articulated. Or for
11 example, although it cuts around the edges of this,
12 there's no real request for a business plan or a real
13 kind of a business philosophy.

14 Is this going to be a casino that could
15 otherwise in the industry deemed a grind joint? Are
16 you going after high-level players? Are you not
17 going to emphasize high-level play? Are you going
18 to emphasize your gaming as opposed to your
19 non-gaming amenities? Are you going to emphasize
20 your non-gaming amenities?

21 What is the operation of this casino
22 going to look like when it's finally up and going?
23 So, you can almost get a mental picture of what it
24 is that is anticipated when you are evaluating the

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1 applications. Those are just a couple of thoughts
2 I had sitting here.

3 MR. POLLOCK: I would add and make some
4 comments that I think are very supportive of what
5 Commissioner McHugh and Commissioner Stebbins said
6 with respect to encouraging creativity and
7 flexibility in the process.

8 In any gaming statute anywhere there's
9 going to be inherent conflicts between some of the
10 goals. It's almost unavoidable. The most obvious
11 would be do you want to maximize revenue and capital
12 investment? Do you want to protect local
13 businesses? They on paper can be largely
14 incompatible.

15 Commissioner McHugh, you talked
16 earlier about the experience in New Orleans. And
17 that was an example early on of I think a misguided
18 statute in the sense that they wanted an operator to
19 come in and specifically not be able to build hotel
20 rooms and restaurants and so forth.

21 So, obviously they ran into problems.
22 And obviously, they did not maximize capital
23 investment as a result. And there was no creativity
24 in the process. There was very strict guidelines

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1 that they had to adhere to.

2 So, with that being said, I think it's
3 going to be very difficult to specifically quantify
4 and specifically enumerate all of the criteria as to
5 the priorities. But be that as it may, there are some
6 that clearly rise to the top. Chief among them would
7 be the generation of revenue.

8 And I would respectfully suggest that
9 revenue be looked at in its broadest possible sense
10 and not strictly in terms of the gaming revenue to
11 be generated on site. Or certainly not in terms of
12 the value of what may be placed on the license fee.

13 But just in its broadest sense in terms
14 of employment, in terms of ancillary businesses and
15 the indirect and induced impact of what you're
16 planning to do. What are you plans with respect to
17 tourism generation and how does that translate into
18 revenue, again, in its broadest possible sense?

19 But putting the burden on the
20 applicants, which arguably is where the statute
21 intended, putting the burden on the applicants to be
22 as creative as possible in terms of coming up with
23 a plan that is as comprehensive as they can muster
24 in terms of agreements with local businesses,

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1 agreements with employment and training centers and
2 within their respective regions. And putting the
3 burden on them and then having all of that translate
4 and having them again with the burden on them to
5 demonstrate as to how that would translate into
6 overall revenue maximization.

7 COMMISSIONER MCHUGH: How do you deal
8 with the question, the concern, legitimate as always
9 concern that Chairman Crosby raised about the fact
10 that you articulate a variety of criteria in which
11 you're interested in. And then you get into the
12 process. And you by virtue of the applications
13 you're receiving, the learning curve is increased,
14 the other things that change in the economy or
15 otherwise, you are beginning to think about some
16 criterion that you never mentioned before. And it
17 begins to assume an importance that probably nobody
18 thought about when this process started? Hopefully
19 the process won't go on that long. There will be a
20 complete surprise but things change. How do you deal
21 with that kind of thing?

22 MR. MICHAEL: I'll start. I think
23 there are two ways to deal. One would be, and as Mike
24 has said, even though you might be being more specific

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1 than the statute is, you're not being so specific that
2 it can be interpreted as if you're excluding other
3 factors. Even the guidance that you're providing
4 would still be general enough to include a number of
5 other things.

6 Second though, and there are always, as
7 you say, unanticipated issues that might arise. And
8 there is nothing from preventing you from
9 supplementing your request for information to say at
10 a later time this additional question has arisen.
11 We'd like your view on it. And have all of the
12 applicants submit some response to that.

13 COMMISSIONER MCHUGH: The regulatory
14 scheme can simply provide for that.

15 MR. MICHAEL: Right.

16 COMMISSIONER ZUNIGA: I suppose
17 there's always the questions that could be framed in,
18 as Mike suggests, other. If we're talking about some
19 criteria and we're defining revenue as broad as
20 possible but also solicit your views and ideas from
21 applicants as to --

22 MR. MICHAEL: These applications,
23 both Phase I and Phase II are not the be-all,
24 end-all of the inquiry. It really is the start of

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1 the inquiry.

2 They'll be submitting their Phase II
3 applications. But you'll be meeting, there'll be
4 meetings held and discussions held and evaluations
5 made that will be in addition to and they'll be
6 supplying information to you supplemental to that
7 application form. It won't be the only material
8 you'll be evaluating.

9 COMMISSIONER MCHUGH: I am really
10 thinking about the evaluation piece. And I think
11 you've answered the question. But you get four
12 applications. And somebody says something that
13 nobody else has thought about. It's just a different
14 kind of idea. And it isn't listed in the kinds of
15 things you're thinking about using as an evaluation
16 criteria, but it's really interesting.

17 At that point, I take it, you could go
18 back and say what are all of you going to do about
19 X?

20 MR. MICHAEL: Right.

21 COMMISSIONER STEBBINS: He asked the
22 question perfectly. You could see yourself instead
23 of this Commission may be agonizing over all of these
24 criteria in trying to think of our own benchmarks or

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1 our own information that we'd be looking for, leave
2 this as, I don't want to say too general, but leave
3 this as general as possible.

4 And to the point of we get something
5 from an applicant that wow, really defines high
6 number of quality jobs. Well, my definition is
7 probably different than his and everybody else. But
8 setting aside some time to go back to the other three
9 or four applicants in a certain region and say how
10 do you plan to address this?

11 MR. POLLOCK: I'll just say that I
12 could conceive of a situation in which two
13 applications in the same region or arguably perhaps
14 even in the same community, one may be more creative
15 than the other in part because it's in a specific
16 location where there are specific attributes related
17 to that application. Or the others simply cannot
18 match or not in a position to address. The maximum
19 flexibility in being able to allow applications to
20 include such factors is important.

21 COMMISSIONER CAMERON: I was
22 thinking, Mr. Chair, about Singapore, and how they
23 clearly articulated a vision for what they wanted.
24 And they talked about the beauty of people coming from

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1 around the world because it was aesthetically
2 pleasing.

3 Amenities, gaming was a small part of
4 what they envisioned. And all of the other amenities
5 that would draw people that were not typical to the
6 region.

7 So, they left it open-ended, but they
8 clearly articulated a vision and who best could fit
9 that vision. And they had different evaluation
10 teams evaluating portions of it. And I thought it
11 was interesting. It laid out what they were looking
12 for, but left it broad enough.

13 MR. GUSHIN: And that was part of the
14 benefit of Singapore. They had like you have in some
15 of these regions, competitive licenses where
16 different companies were competing for the same
17 license, which essentially raised the bar of what
18 they got.

19 In the case of Marina Bay Sands, as you
20 saw, they thought outside the box. They did
21 something totally different and they were rewarded
22 for that through the selection criteria. The fact
23 the competition there, and at least from our
24 experience, drove the process to get better quality

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1 designs, better quality applicants. Those
2 companies that just tried to reproduce a Las Vegas
3 casino, while they might have been suitable, they
4 didn't make it through the process.

5 CHAIRMAN CROSBY: Ironically, I was
6 sitting here thinking the exact same thing that
7 what's in Singapore is referred to as well -- is not
8 referred to as casinos. It's referred to as
9 integrated resorts. And they got much more money
10 invested in amenities, whether it's hotels, art
11 museums, aquariums, convention centers, MGM
12 Universal theme parks.

13 Those were much more valuable
14 licenses. Those were \$6 billion deals. But is
15 there anybody in the US that's done a particularly
16 good job of inviting -- of creating a document that
17 invites and rewards stuff beyond a casino, the
18 amenities, the leveraging, the extra stuff? Is
19 there anybody that's done a particularly good job as
20 that like Singapore did in spades?

21 MR. GUSHIN: I think you're going to be
22 -- I mean, Mike can talk about. But the same approach
23 hasn't been utilized in other American jurisdictions
24 yet, but there, I think, is an increasing recognition

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1 that while the gaming may drive these resorts, the
2 non-gaming and amenities are really the wave of the
3 future.

4 MR. MICHAEL: It depends on where you
5 are. There's specific examples in both cases.
6 Revel, for example, in New Jersey envisioned itself
7 as the new wave of non-gaming and emphasizing the
8 restaurants and the clubs and the pools, they got
9 about 16 pools. I don't know what they've got there.
10 But so far it hasn't worked.

11 So, there are different environments
12 and there are different philosophies for each
13 environment. That's what makes it so hard for you
14 as a Commission to try to, and I'm sure you're not
15 intending to, superimpose any more specific trying
16 to say this what we want a more non-gaming amenity
17 focused facility, when it's really the applicant's
18 job to evaluate what they think is necessary and yours
19 to evaluate their evaluation.

20 The other part of the creativity, as
21 Fred points out, and again I'm sure you didn't mean
22 this in terms of someone coming up with a good idea
23 after you've started the evaluation. You don't want
24 to stifle creativity that way. And if one applicant

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1 comes up with a real good idea for something and then
2 go all of the other applicants and say applicant A
3 is proposing this. Can you do that too? That really
4 isn't the function of the competitive process.

5 COMMISSIONER MCHUGH: I wasn't
6 thinking about that. I was thinking about some
7 issue, some generic issue that was addressed in one
8 application that wasn't addressed in another. Not
9 an innovative way of marketing the product, but some
10 issue that somehow we had overlooked in the process.

11 Specifically, I was thinking about
12 again go back to that grand jury report where they
13 had not prescribed in the application process or in
14 the criteria they said they were going to use for
15 evaluation the possibility that an applicant was
16 going to use its license in Pennsylvania to drive
17 customers into New Jersey, I think it was. And then
18 they used that as a criterion without giving anybody
19 any notice that they were going to do that.

20 MR. POLLOCK: That's a great example.
21 We were intimately involved in that. In fact at the
22 time worked for one of the applicants. And it was
23 the Commission in that case did make or made it clear
24 at the end of the process that it's licensing

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1 decisions were going to be guided in no small measure
2 by whether or not they had a property in New Jersey.

3 And it was not one of them measurable
4 criteria. It was clearly not part of the process.
5 And we took great pains to point that out to you that
6 as much as possible that applicants should know to
7 whatever extent they can be really what they're going
8 to be evaluated on.

9 COMMISSIONER MCHUGH: Right, right.
10 That's the kind of thing.

11 MR. POLLOCK: In answer to your point
12 also, Mr. Chairman, in that in the US where there has
13 been a competitive bidding process, it has largely
14 been in jurisdictions where there is a very high tax
15 rate of 50 percent plus in certain instances. And
16 that Pennsylvania was being a good example. And
17 those don't lend themselves to either creativity or
18 anything like what you would see in Singapore.

19 CHAIRMAN CROSBY: Right, right. Is
20 that by way of saying that at our tax rate and our
21 environment, you think our aspiration to that is
22 reasonable?

23 MR. POLLOCK: Yes. I think in the
24 current investment climate in the gaming industry

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1 that the tax rate in Massachusetts is generally
2 viewed as attractive, sufficiently attractive that
3 you can encourage that level, not the Singapore
4 level, but that you can incur some significant
5 creativity among applications.

6 CHAIRMAN CROSBY: Before we carry on
7 on this, I think we'll take a break. So, let's come
8 back and hopefully we can finish up Commissioner
9 McHugh's two questions before we break for lunch.

10
11 (A recess was taken)

12
13 CHAIRMAN CROSBY: Let's reconvene.
14 Thank you. So, Commissioner McHugh, I think we had
15 a lot of useful conversation. I think it seems like
16 there is a consensus that we would like to take a shot
17 at what you refer to as clarifying regulations or at
18 least clarifying advisories. Where we are thinking
19 about additional criteria pursuant to 18, it sounds
20 like there is a consensus that we would like to
21 articulate those as you have for example relative to
22 question four.

23 How would you see us preceding at this
24 point?

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1 COMMISSIONER MCHUGH: I don't think we
2 need a vote at this point, Mr. Chairman, if we have
3 a consensus that we ought to proceed this way. But
4 I would like us to within -- set a target for a
5 relatively short period of time in which we lay out
6 the criteria that we are contemplating using in the
7 evaluation process. Come up with a list, talk about
8 it, get some feedback on it, and then use it as the
9 basis for regulations.

10 And I think we've got good models
11 around. I'll get to some of that in the next piece.
12 I think we can do that very expeditiously within the
13 next four to six weeks. And have something by the
14 end of that that we consider useful and helpful and
15 still not creativity stifling.

16 And I propose to take a crack at coming
17 up with a first list and circulating it, having people
18 add on. And then talking about it in seriatim if
19 necessary until we get it done and say now we are ready
20 for public comment.

21 CHAIRMAN CROSBY: Yes.

22 COMMISSIONER MCHUGH: It may not be a
23 long list.

24 CHAIRMAN CROSBY: All right, I know.

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1 This conversation is an example of why those
2 community agreements would be well-advised not to be
3 completed early on. We've had a conversation, for
4 example, about the role of amenities here, which is
5 not a conversation we've ever had before. And
6 clearly, it's going to take us someplace relative to
7 what we're looking for in the proposals.

8 So, I agree with you. I think the
9 Commission gleefully accepts your offer. And let's
10 proceed that way and take a stab at a draft.

11 COMMISSIONER MCHUGH: Okay. This
12 will be collaborative, additive.

13 CHAIRMAN CROSBY: Let's go back to
14 part two of question five?

15 COMMISSIONER MCHUGH: Yes. The part
16 two is where part one really where the rubber in part
17 one meets the road because the question becomes now
18 we've got the criteria, what we do about evaluating
19 it?

20 And there are a number of comments from
21 correspondents. The Metropolitan Area Planning
22 Commission said that we ought to have a
23 comprehensive, fair, transparent evaluation system
24 based on best practices elsewhere.

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1 MGM said a scoring system, again,
2 should take account of past experience with other
3 facilities that were built at the same cost and by
4 the same applicant.

5 Springfield says we shouldn't use a
6 scoring system but we should consider the application
7 as a whole.

8 Sterling Suffolk said that the
9 decision should be based -- made on the basis of the
10 Commission's informed exercise of judgment and
11 discretion.

12 One can't disagree with that. The
13 question is how do we channel our discretion so that
14 people have an idea of how we're going to exercise
15 it. Absolute discretion unchanneled and
16 unexplained has at least the tinge of arbitrariness.
17 And in my view, it's impossible for us to make a
18 reasoned decision in a way that serves public policy
19 given these broad criteria without attempting to do
20 it.

21 There basically are two models that I
22 thought about. One is embodied in the Missouri
23 approach, which basically identified six -- four, I
24 think it was, four to six economic criteria --

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1 Actually there are three, four to six economic
2 criteria, because that was a competitive process,
3 three applicants for a single license. Then it
4 graded those responses of the applicants as good,
5 better, best or some verbally in that fashion. And
6 then looked at who emerged at the top.

7 And it was pretty clear in that
8 situation that one applicant was the best all of the
9 way through. So, it wasn't close. So, that's one
10 way to proceed.

11 The other way, and the presentation I
12 thought was terrific was done by the Pittsburgh
13 planning department, the City of Pittsburgh planning
14 department. Now, I should add as a caveat that their
15 recommendations -- although the study was great,
16 their recommendations weren't followed and
17 disaster ensued. But that doesn't detract from the
18 thoroughness with which they -- approached the study.

19 And they basically took six factors
20 that dealt with a whole variety of things, location,
21 economics, aesthetics, tourism, a whole bunch of
22 things. Six categories and then subcategories in
23 each of those that they weighted in a different way.

24 And then because they had a number of

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1 people who were voting in the planning department,
2 they had a number of points -- It was a hugely
3 elaborate system. -- that created weighted average
4 votes times the weight to be given to the criteria.

5 And they ultimately came up with a
6 score at the end that had a variety of numbers on it.
7 And the applicants were ranked, the three applicants
8 again were ranked according to those numbers. And
9 there turned out to be a wide disparity between the
10 three applicants that showed up.

11 And I'm not sure good, better, best
12 wouldn't have produced the same result, in fact, I
13 think it would have. But in any event, that's the
14 way they approached it. The utility of that approach
15 was not so much it seemed to me the scoring system,
16 but there rigor with which they considered the
17 various criteria. It seems to me that we ought to
18 think about some kind of --

19 Then there is also as the consultants
20 thoughtfully laid out in Section 10, pages 83 to 85
21 of the strategic plan, the Kansas Lottery Gaming
22 Facility Review Board model in which they did
23 something similar by listing the criteria, creating
24 a matrix and then using a ranking system to allow them

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1 to see the contestants side-by-side and compare
2 apples to apples. So, they did it that way.

3 It seems to me that without tying our
4 hands to a single approach, that in an area where
5 there is competition, it would be preferable to have
6 some kind of a verbal assessment rather than a
7 numerical ranking.

8 I'm concerned that numerical rankings
9 tend to give the illusion of certainty to what's
10 really a subjective process. You just assign a
11 number that really is as subjective as any phrase you
12 could use. And it may not be as helpful therefore.

13 So, I would in a competitive area
14 perhaps, recommend a verbal process. A fairly
15 rigorous listing of things that we were looking for
16 plus allowing for the creativity and ingenuity of the
17 applicant. And then in a competitive process rank
18 them good, better or best.

19 In an area where we have no
20 competition, simply go through the same criterion
21 setting process and simply assign some kind of a
22 verbal. This is great. This is good. This is not
23 so good. And use that as a guide to deciding A -
24 whether we issue a license at all. And B - if there

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1 are some not so good or terrible responses, think
2 about including some remediation in the license
3 conditions once the license is issued.

4 CHAIRMAN CROSBY: Or going back and
5 negotiating.

6 COMMISSIONER MCHUGH: Or going back
7 and negotiating. But that we proceed in that fashion
8 with a combination of a rigorous listing,
9 nonexclusive listing of the things we're going to be
10 interested in and then some verbal assessment rather
11 than numerical assessment of our impressions.

12 COMMISSIONER ZUNIGA: I have one
13 general comment. I would agree of course with the
14 notion of having a scoring. Whether we're talking
15 about the nuances behind a number and a verbal
16 assessment that's, if you will, what I want to comment
17 on.

18 Perhaps it's my mathematical
19 background, but I would even assign a number to a
20 good, better and best ranking of either one, two and
21 three or zero, five and 10 if the scale is 10.

22 So, I think at issue here is the
23 relative importance between one criteria and
24 another. We would not want to be in a position where

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1 let's just say we have three criteria and three
2 applicants. And one applicant is good in criterion
3 number one, better in criterion number two and best
4 in criterion number three. And the others are at the
5 same place but in different criterion.

6 So, I would want to encourage ourselves
7 and with help of our consultants and other
8 jurisdictions like the Missouri or like the
9 Pittsburgh experience to think about relative
10 weight. It occurs to me that the economic benefits,
11 everybody would agree, are chief among them. But
12 there's like the statute says that it's not just
13 maximizing the good but also minimizing the bad. And
14 how we weigh those things against each other is going
15 to be I think important for us to articulate.

16 COMMISSIONER MCHUGH: I agree fully
17 that we ought to weight them. They are not all equal.
18 But I am also really concerned about the illusion of
19 certainty that goes with numbers.

20 And I'm equally concerned about the
21 possibility that you get a situation in which you've
22 got an applicant, particularly in competitive area
23 -- and not in a competitive area maybe you've got a
24 pass/fail system. -- but in a competitive area you

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1 have one applicant gets and 89 and the other applicant
2 gets an 88. And we make a decision based on that.
3 We make a decision that we're going to go with the
4 88 and have the explaining to do about why we didn't
5 go with the 89. That's the concern that ultimately
6 that worries me about a purely numerical score and
7 I'd like to stay away from that.

8 COMMISSIONER ZUNIGA: And I believe
9 that the way to address that is to be as candid and
10 as honest as we can relative to really comparing one
11 against another. Not give everybody good when
12 there's a clear difference. Or rather not give two
13 applicants an excellent if clearly one is better than
14 the other in a particular criteria.

15 And thus we could in the scenario that
16 you pose, we could by virtue of the different criteria
17 end up in a very similarly or very tight result. But
18 I think there's ways to address that by virtue of
19 deliberation among us.

20 COMMISSIONER MCHUGH: I would like to,
21 if we could Mr. Chairman, hear from our consultants
22 as to any thoughts they have about it.

23 MR. POLLOCK: My first thought is I
24 certainly don't envy you having to make these

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1 decisions, because you're dealing with issues that
2 are going to by definition defy the rankings. And
3 it strikes me that while I hadn't thought of it in
4 those terms, it makes a lot of sense to prioritize
5 the criteria. I'm just going to pick two examples,
6 revenue generation and being green are not going to
7 be of equal merit.

8 COMMISSIONER STEBBINS: Depending on
9 who you talk to.

10 MR. POLLOCK: Exactly. But the
11 answer is going to come down to essentially, and there
12 are states that have done this or jurisdictions that
13 have done this better than others. And some have not
14 done it well. But really what it comes down to is
15 the ability to effectively and fully articulate the
16 criteria on which this particular application was
17 developed.

18 I think it's safe to say that in
19 Pennsylvania, for example, the regulators did not
20 meet that threshold. That they did not adequately
21 to the extent of all parties involved fully and
22 clearly articulate the criteria on which their
23 licensing decisions were based.

24 That maybe an elusive goal in itself.

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1 You may never be able to fully satisfy them all but
2 I think that's really is what it's going to come down
3 to is the ability to be it qualitative or quantitative
4 or some combination thereof to be able to fully
5 articulate the basis for that decision.

6 COMMISSIONER MCHUGH: Thank you.

7 CHAIRMAN CROSBY: Thank you, Mike.

8 Putting the two sections together, we're now
9 talking about clarifying regs., clarifying criteria
10 or the evaluation criteria in the law as well as
11 whatever criteria else we may come up with. Would
12 you then talk about in effect sort of collapsing those
13 back into just a handful? Like you said, like
14 Pittsburgh has like six or whatever and having some
15 kind of -- How would you do this now?

16 COMMISSIONER MCHUGH: The approach
17 that I would take and this is subject to change, but
18 the approach that I would take would be to try to take
19 the Pittsburgh type approach, which has six
20 categories with a number of subcategories, and assign
21 some weight to each of those. Do we consider this
22 very important? Do we consider this important? Do
23 we consider this desirable and say it? And list all
24 of the criteria.

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1 And then use that as the basis for
2 carrying out the evaluation. Whether we assign a
3 number to each of those, and I would not be this
4 viscerally inclined to do that, or whether we assign
5 some verbal score really depends on how you could get
6 -- what the results you could get from both
7 approaches, numerical and non-numerical.

8 And I think depending on whether you're
9 dealing with a competitive region or one in which
10 noncompetitive, I think you would be able to come up
11 with a verbal assessment of each of the criteria that
12 would help you guide the outcome. At least I'd like
13 to try that.

14 I don't think it's going to be that
15 difficult to list the criteria that we're interested
16 in hearing about. I just don't think it's going to
17 be that hard. I don't think it's going to be that
18 hard in the last analysis to assign a weight. How
19 important do you think these things are?

20 Whether we use a verbal or a numerical
21 criteria may be a little bit more difficult. But I
22 don't think that's insuperable -- would pose any
23 insuperable obstacles. That's the vision, Mr.
24 Chairman, that I have the way it would work.

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1 Just to put a final point on it, you
2 have to, which Pittsburgh didn't do, you'd have to
3 leave some space for ingenuity and individuality.

4 CHAIRMAN CROSBY: So, we don't have to
5 button this up for a while. So, we really are talking
6 about doing the first stage first. We now are going
7 to expand the criteria first. And then we are going
8 to collapse them back up into the Pittsburgh like six
9 with sub-criteria and think about how to weight
10 those. That's sort of the sequence of activities.

11 COMMISSIONER MCHUGH: I think the
12 first two parts that are simultaneous. I think you
13 have categories and subparts to the categories.

14 COMMISSIONER CAMERON: I actually
15 think it might be important though that we move this
16 process along because I think the applicants would
17 want to know as soon as possible how we're scoring,
18 why, what we value.

19 CHAIRMAN CROSBY: Yes, I agree. I
20 agree with that. The details of whether we're going
21 to use verbal or letters, but the fundamental
22 criteria and the weighting of those criteria is very
23 important. And I think and Commissioner McHugh is
24 saying four- to six-week timeframe, maybe by the end

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1 of end January. So, we can -- have been as clear and
2 articulate as we can about those criteria and their
3 weighting which we now understand. Okay.

4 COMMISSIONER MCHUGH: Right.

5 COMMISSIONER ZUNIGA: I don't want to
6 belabor the point but I think let's see what happens
7 within the next -- as we start putting together the
8 formal response and the criteria. But I don't see
9 any other way but an assignment of points.

10 And we may be talking about the same
11 thing when everything is said and done. But in order
12 to really differentiate -- and I'm thinking of the
13 following. Economic benefits could even be in the
14 form of short-term and long-term in different
15 proposals.

16 We started thinking a little bit about
17 readiness to proceed as perhaps a real factor into
18 when the Commonwealth and therefore everyone else,
19 the jobs are created and the revenues are realized.

20 So, I think articulating what is
21 important against whether we're really thinking
22 about a short-term or long-term or because we are
23 indifferent about it weighing those equally is the
24 only way to address it.

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1 COMMISSIONER MCHUGH: I hear you, but
2 there is no reason that an individual Commissioner
3 can't -- In other words, we couldn't create some broad
4 general agreed-upon way of doing things in the terms
5 of trying to do one's own assessment. One could use
6 a variety of different ways so long as we are all clear
7 as to the collective weight we place on things.

8 CHAIRMAN CROSBY: We can also look at
9 alternative systems as we're going through this.
10 You may be developing one. You might want to take
11 a stab at it, come up with a different kind of ranking
12 and we can talk about it.

13 Are you willing to sort of add this on
14 to the task? The two kind of merge together, sort
15 of take that on as the same task?

16 COMMISSIONER MCHUGH: Yes. I think
17 they fit together. And that's what I would hope to
18 start getting some drafts out fairly quickly.

19 CHAIRMAN CROSBY: Which I think also
20 means if any of us have thoughts about other
21 evaluation criteria or ways to articulate the
22 existing evaluation criteria that we want to get on
23 the table, now is the time to do it. We've all been
24 having conversations about different kinds of

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1 organizations, about ways to manifest the values in
2 the legislation. Now is the time to put those on a
3 piece of paper and get them to Commissioner McHugh.

4 COMMISSIONER MCHUGH: And then we'll
5 combine them and talk about them. Talk about them
6 in these meetings, in a series of these meetings.
7 Come up with a plan at the end and have public comment
8 on it.

9 CHAIRMAN CROSBY: Just one last
10 question occurred to me on this. Have you thought
11 about or has anybody thought about once we go through
12 this kind of analysis and rating process whether we
13 would want to have sort of a best and final situation
14 where we would be going back to the applicants and
15 saying okay, here's where you stand. Do we want this
16 -- If we have no competition, I think we clearly would
17 likely have some kind an iterative process. Do we
18 want an iterative bidding process in a competitive
19 situation?

20 COMMISSIONER ZUNIGA: That's
21 certainly within the procurement regulations that we
22 have when we purchase goods and services. It's
23 always reserved as an option depending on -- We could
24 be in a scenario as Commissioner McHugh was

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1 describing. If there's a very tight in the end let's
2 say scoring, that is a clear example of when a best
3 and final is more suitable.

4 It's important say that the best and
5 final should always be made as an option, because if
6 you signal that you will do it then the applicant has
7 the incentive to reserve the best and final for later,
8 so, the dynamics of which just need to be considered.
9 I would reserve it as an option of the Commission.

10 CHAIRMAN CROSBY: Yes. Jim, a
11 thought on that?

12 COMMISSIONER MCHUGH: I would not take
13 it off the table. But I would be very careful about
14 doing that.

15 CHAIRMAN CROSBY: I think you're both
16 saying the same thing. I think I agree with that.
17 For one thing, I sort of don't like the idea of a
18 bidder knowing that once they put their great idea
19 on the table that everybody else has a chance to match
20 their great idea, which defeats the incentive to
21 really be innovative.

22 COMMISSIONER ZUNIGA: By the way, the
23 best and final is usually reserved to the monetary
24 piece when doing a procurement. We'd have to think

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1 about what exactly that means for a license here.

2 When we are doing goods and services,
3 you qualify and you're deemed that you would be able
4 to carry this out. That's one thing. And it's only
5 the best and final that has a component on the cost.

6 COMMISSIONER STEBBINS: In thinking
7 through this scenario and some of the discussion here
8 about the scoring, are we not putting ourselves in
9 a position of maybe going back and having an impact
10 on the local process, the local approval, the local
11 project, the local referendum by suddenly -- not
12 switching gears, but the focus of the project becomes
13 something that maybe the local community in the end
14 would not have voted to approve?

15 CHAIRMAN CROSBY: Didn't vote on, yes.
16 I think there is some -- I was thinking the same thing.
17 I think there is some potential risk of that. As a
18 practical matter, the developers are going to have
19 be talking about what they're going to do in pretty
20 broad detail because that's what the community is
21 going to vote on. And they're going to want to put
22 their best foot forward.

23 But they might want to hold back some
24 kind of a noncontroversial amenity or something. I

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1 don't know. I think we want to structure this
2 somehow in a way, particularly in the competitive
3 environment, we want to structure this in a way that
4 incents the operators to bid as aggressively as
5 creatively and innovative as they possibly can
6 without feeling like we're sort of stealing their
7 good ideas and marketing them around everybody else.
8 There's some line to be walked here.

9 COMMISSIONER MCHUGH: And I agree with
10 that. And I don't know whether I can say much more.
11 But in typical procurement, you are trying to get the
12 highest value at the lowest cost. And that's pretty
13 quantifiable. That's not what we are trying to do
14 here.

15 And therefore that model has, it seems
16 to me, a limited utility, not a nonexistent utility.
17 But it is not a tight fit with what we're doing here.
18 And that was the basis for my saying I would be very
19 reluctant to go in that direction.

20 CHAIRMAN CROSBY: Right.

21 COMMISSIONER ZUNIGA: I would agree
22 with that.

23 CHAIRMAN CROSBY: Okay. So, I think
24 we don't need to vote. The question actually was

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1 what if any criteria in addition to those listed in
2 15 and 18 and how should those criteria be weighted,
3 ranked or scored.

4 I think we're taking a partial step
5 towards that, but a big one. In the next four to six
6 weeks, we will have come up with all of the detailed
7 answers to those questions it sounds like.

8 That is all of the topics that are on
9 the agenda today. And I think since we've got a
10 meeting at one, we should call it a day.

11 Does anybody want to move to adjourn?

12 COMMISSIONER ZUNIGA: So moved.

13 CHAIRMAN CROSBY: Or say anything else
14 first of all?

15 COMMISSIONER MCHUGH: No, let's
16 adjourn.

17 CHAIRMAN CROSBY: All right.

18
19 (Meeting adjourned at 12:09 p.m.)
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22
23
24

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ATTACHMENTS:

1. Agenda
2. Key Policy Question #16
3. Key Policy Question #8 and #19
4. Key Policy Question #4
5. Key Policy Question #5 (Part 1)
6. Key Policy Question #5 (Part 2)

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 13th day of December, 2012.



LAURIE J. JORDAN

My Commission expires:

Notary Public

May 11, 2018



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