

**Meeting - Key Policy Questions  
December 12, 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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16  
17  
18 December 12, 2012, 1:00 p.m.

19 OFFICE OF THE DIVISION OF INSURANCE

20 First Floor, Hearing Room G

21 1000 Washington Street

22 Boston, Massachusetts

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1                   CHAIRMAN CROSBY: I will be calling to  
2                   order public meeting number 41 on December 12, 2012  
3                   for the purpose of reviewing another set of key  
4                   policy questions if time permits.

5                   Before I start, any comments?  
6                   Anybody, any suggestions, ideas, questions about  
7                   how we proceed?

8                   COMMISSIONER MCHUGH: No, the way we  
9                   did yesterday or however you chose.

10                  CHAIRMAN CROSBY: All right. Then  
11                  let's just jump right into it. First on the agenda  
12                  is key policy question number three, which was  
13                  assigned to me.

14                  The key policy question was what  
15                  criteria will we use to decide which  
16                  "not-for-profit or municipally-owned performance  
17                  venues" are "impacted live entertainment venues"  
18                  within the statute's meaning?

19                  As I said in the memo, there is a lot  
20                  of discussion about this issue in the statute.  
21                  It's a fairly specific and complicated process in  
22                  determining how a live entertainment venue that's  
23                  covered becomes an impacted live entertainment  
24                  venue.

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1           And I lifted the statutes, the relevant  
2       statutes from two of the submissions from SSR  
3       Suffolk, Sterling Suffolk and from Mass. Cultural  
4       Council. But basically, it seems to me that what  
5       it boiled down to is this and I'll use my language  
6       and if anybody thinks I've misrepresented it,  
7       please say so.

8           One part of the legislation precludes  
9       the possibility of a licensee having a facility,  
10      which basically seats between 1000 and 3500. So,  
11      this is fundamentally designed to protect regional  
12      theaters, regional entertainment venues that  
13      would hold about 1000 to 3500 people. That's  
14      number one.

15          Number two, the process that is  
16      specified is that the applicant should reach out  
17      to any live entertainment area in what they  
18      perceive as their area, their region and discuss  
19      with those entertainment venues whether or not  
20      they can mutually agree that they are in fact an  
21      impacted live entertainment venue. And then  
22      negotiate with that party.

23          And if they do not successfully  
24      negotiate with that party and there is a venue that

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1 feels like it should be an impacted live  
2 entertainment venue but which is not coming to an  
3 agreement with the applicant, we can then direct  
4 them to negotiate the 30 days after we have  
5 reviewed their whole license.

6 We can determine whether we think --  
7 whether or not we think a live entertainment venue  
8 in fact should be considered impacted live  
9 entertainment venue and direct the applicant to  
10 negotiate with them for 30 days.

11 If they can't agree after 30 days, then  
12 we are directed to develop "protocols and  
13 procedures" that will insure the conclusion of a  
14 "fair and reasonable agreement between the  
15 parties". I've listed the comments.

16 Sterling Suffolk basically said we  
17 should focus on the protocols and procedures,  
18 which is we are mandated to do, and leave the idea  
19 of specific criteria, which is the question we are  
20 addressing now, to the parties because such  
21 determinations are as Sterling Suffolk said very  
22 fact intensive, it's hard to talk to generalize  
23 principles.

24 Paul Vignoli said we should use the

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1 mileage from the casino as the standard.

2 BrownRudnick representing MGM

3 Springfield said the key issue is a reasonable  
4 proximity to a casino with a "like-sized venue"  
5 which shouldn't be the case because like-sized  
6 venues tend to be prohibited. But it went on to  
7 say specifically that in terms of what is  
8 reasonable proximity that if a casino in  
9 Springfield should not have to consider any live  
10 entertainment venue in Greater Boston, for  
11 example, as proximate.

12 Martha Robinson said we should use tax  
13 status to determine nonprofit and municipal. I  
14 think she misunderstood the question.

15 Alex Feinstein said anything within  
16 20 miles.

17 Shevsky and Froelich and the City of  
18 Springfield said that the thing to do would be for  
19 the developers to consult with the host  
20 communities who would have the best knowledge  
21 about impacted venues.

22 MAPC said that the venues should be  
23 within "reasonable market area" with more than  
24 "minimal impact" especially of similar size and

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1 type to the venue and the casino.

2 And Mass. Cultural Council and Mass.  
3 Performing Arts Coalition were very prescriptive  
4 specifically said yes, we should say that if you  
5 have more than 1000 seats, if you have an operation  
6 with a radius of 100 miles from a gaming  
7 establishment and if you have performances of live  
8 music, concerts, comedy, variety shows or touring  
9 Broadway theatrical shows, those would be the  
10 criteria that we would use to identify a "impacted  
11 live entertainment venue".

12 As I understand it, having talked to  
13 people and having read all of the comments and the  
14 submissions going back prior to this because  
15 Commissioner Stebbins and I met with the Mass.  
16 Performing Arts Coalition and Mass. Cultural  
17 Council way back, basically the issue is not -- the  
18 intuitive issue is that you think they'd be afraid  
19 that the casinos' entertainment venues will steal  
20 their audience. That's not the problem. That's  
21 an issue, but it's really not the issue.

22 The issue is afraid that the casinos  
23 will negotiate performance deals with major draws,  
24 major performers, be able to pay them more money

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1 because they don't live on the ticket revenue, they  
2 live on the gambling revenue. And negotiate  
3 exclusivity agreements in effect that says this  
4 particular entity, entertainment entity will not  
5 perform within a prescribed area for a long period  
6 of time. And we have been told, and I have no  
7 independent data on this that it tends to be 100  
8 miles or so, tends to be a pretty wide range.

9 So, the issue is not so much losing the  
10 audience, it's losing the prime entertainment  
11 draws that they would like to sign up.

12 I said here that I look forward to  
13 further comment on this from everybody involved.  
14 It's a complicated - it's not so much complicated,  
15 just very nuanced issue, very much a function of  
16 people who really understand the entertainment  
17 business.

18 But that on a tentative basis I  
19 recommend the following: One, that we do not  
20 enumerate specific criteria for determining which  
21 live entertainment venues are impacted live  
22 entertainment venues. I think that it probably  
23 will need to be a pretty careful case-by-case  
24 analysis.

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1           But I also recommend item two that we  
2       issue an advisory that we will consider certain  
3       criteria in the event that we need to determine  
4       which venues are impacted. The most important one  
5       that we would consider is the relationship between  
6       the location of the venue in question and the  
7       geographic scope of the exclusivity clauses that  
8       the applicant uses, whether oral or written, when  
9       they book performances. So, we would say up front  
10      that this is something we would consider in the  
11      event that we have to make a determination.

12           And secondly, and this is more obvious  
13      whether the venue presents performances of live  
14      music, comedy or variety performers or touring  
15      Broadway or theatrical shows. So, we would use a  
16      pretty broad brush of the kind of entertainment  
17      vehicles.

18           I think the advisory should further  
19      encourage our applicants proactively from us to be  
20      sure they reach out and try to negotiate  
21      arrangements with impacted live entertainment  
22      venues because the loss of time if they don't and  
23      we identify an impacted live entertainment venue  
24      and compel them to have at least a one-stage and



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1 possibly a two-stage process will be deleterious  
2 to the speed of the licensing process. So, it's  
3 in their interest to resolve these issues up front  
4 if they can.

5 Then I'm taking a flyer on the third  
6 one, recommending what protocols and procedures  
7 are for forcing a reconciliation in the event that  
8 they can't negotiate an agreement after the first  
9 30 days. It seemed to me -- At first, I was  
10 starting to think, you know, some kind of elaborate  
11 metrics about performance or something or other.

12 But it seemed to me that the easiest way  
13 to go here would just be to come up with a standard  
14 arbitration process. Each side appoints an  
15 arbitrator. The two arbitrators appoint a third.  
16 And the three arbitrators together come up with a  
17 binding agreement. The cost of the arbitration  
18 would be paid by the applicant.

19 So, that's my considered opinion until  
20 I get contradicted with a better one.

21 COMMISSIONER CAMERON: Do we know if  
22 anyone else uses that arbitration method?

23 CHAIRMAN CROSBY: Lots of people use  
24 that arbitration for all kinds of arbitration.

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1                   COMMISSIONER CAMERON: In the casino  
2 industry?

3                   CHAIRMAN CROSBY: I don't know. One  
4 of the documents I think referred -- One of the  
5 comments somewhere referred to that there may be  
6 some kind of dispute resolution process in the  
7 legislation that would weigh here. I didn't get  
8 that. I didn't find that, but somebody else may  
9 have better view. I don't know whether other  
10 people have that or not -- if other people use that.  
11 Do you guys know? Does anybody use that kind of  
12 a process for this kind of a similar dispute?

13                  MR. CARROLL: ADR is sometimes used.  
14 Alternative dispute resolution has a means of  
15 expedited arbitration mediation type.

16                  CHAIRMAN CROSBY: ADR can be just one  
17 person comes in or it could this you appoint one,  
18 we appoint one. It can be any kind of a structure.

19                  MR. CARROLL: Right, it's very  
20 flexible.

21                  CHAIRMAN CROSBY: It just means not  
22 going to court, basically.

23                  MR. MICHAEL: Anything the parties  
24 agree to.

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1                   COMMISSIONER MCHUGH: This, Mr.  
2           Chairman, has the approach of being a functional  
3           approach. The only thing that I was thinking  
4           about as I read this is the desirability of having  
5           the applicant and the impacted -- and the  
6           entertainment venue determine upfront who was  
7           impacted live entertainment venue.

8                   And if we limit ourselves simply to a  
9           case-by-case approach, then it's going to be  
10          difficult for the applicant to figure out upfront,  
11          and for the entertainment venue I suppose, to  
12          figure out upfront whether they're an impacted  
13          venue.

14                   What about if we took the basic  
15          functional approach that you've taken, but just  
16          say -- but just add a criterion something along the  
17          lines of if you the applicant plan to use an  
18          exclusivity agreement then any entertainment  
19          venue within the exclusivity area, the Commission  
20          will consider an impacted live entertainment  
21          venue?

22                   Because it's the exclusivity  
23          agreements that really lie, as you point out in  
24          this, that lie at heart of this or that the

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1 Commission will presumptively consider any  
2 entertainment venue within the exclusivity area to  
3 be an impacted live entertainment venue.

4 CHAIRMAN CROSBY: So, you're talking  
5 about making that a rule as opposed to an advisory.

6 COMMISSIONER MCHUGH: Yes.

7 CHAIRMAN CROSBY: And stating that  
8 little more affirmatively.

9 COMMISSIONER MCHUGH: And stating it  
10 more affirmatively to give everybody clear notice  
11 that that's what we believe is at the heart of this.  
12 And as a practical matter that's going to be our  
13 starting point. Maybe it could be overcome but  
14 that's at least going to be the starting point.

15 CHAIRMAN CROSBY: I would be pretty  
16 much fine with that. There's a question that was  
17 raised in some of the comments I think if I'm  
18 remembering this right that -- And the law is  
19 pretty clear. We don't make the impacted decision  
20 until after we have assessed the entire  
21 application.

22 So, it suggests that the law imagined  
23 that we need the context before we weigh in. So,  
24 I was thinking rather than run the risk of running

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1       afoul of that intent, I think if we stated it's  
2       maybe we even state it more clearly advisory would  
3       be we are presuming somehow. I was trying to get  
4       the message out there that this is clearly going  
5       to be critical without potentially running afoul  
6       of speaking too soon in the process. I don't have  
7       a strong enough opinion or knowledge about whether  
8       we really would be precluded from making the  
9       statement as strong as you're suggesting.

10               COMMISSIONER MCHUGH: I'm a little  
11       troubled and we could an opinion as to whether we  
12       could issue an advisory as opposed to a regulation  
13       and then act on it, because you have to go through  
14       that public process for a regulation. But we can  
15       figure that out.

16               The point is that if the exclusivity  
17       provision lies at the heart of the problem as it  
18       does, then it seems to me worthwhile to tell  
19       everybody that we see this at the heart of the  
20       problem. And that that's going to be a key focus  
21       of our inquiry if you don't figure out what your  
22       agreement is. That allows them to make an  
23       agreement.

24               The other alternative I had was more

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1       Draconian and that is to issue a regulation banning  
2       exclusivity agreements. I'm not sure we have the  
3       power to do that.

4               CHAIRMAN CROSBY: The other thing is  
5       that there's probably an argument on the other  
6       side. If I were running the casino entertainment  
7       venue, I'm sure they would have some rebuttal to  
8       what -- I would think they would have a rebuttal.  
9       All I really know is one side of the story. Nobody  
10      testified on this particular point from the other  
11      side.

12             COMMISSIONER MCHUGH: Yes, I  
13      understand that. But it doesn't necessarily  
14      dictate what the result is. It simply says that  
15      you've got to figure out.

16             CHAIRMAN CROSBY: If they're within  
17      that then they are impacted --

18             COMMISSIONER MCHUGH: They are  
19      impacted. They may be impacted greatly. They  
20      may be impacted not very much. But at least you've  
21      got to get together and have a mitigation  
22      agreement. It may not be all that onerous. There  
23      are a variety of things. But at least this is a  
24      heads-up that you need to consider these people or

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1       these entities.

2                   If we could make a strong statement  
3       that that's what we consider -- that that's a key  
4       consideration in determining who a live -- an  
5       impacted live entertainment venue is then I'd be  
6       happy with that. And we could get an opinion on  
7       that.

8                   CHAIRMAN CROSBY: I'm sorry. Say  
9       again.

10                  COMMISSIONER MCHUGH: In other words,  
11       if we could issue an advisory, a policy which is  
12       what it basically would be, and then act on it  
13       without formally making a recommendation, I'd be  
14       prepared to go that way. I'm not sure we could do  
15       that.

16                  CHAIRMAN CROSBY: What about the other  
17       advisories that we're issuing? How does it  
18       differ?

19                  COMMISSIONER MCHUGH: I don't know  
20       that we've issued other advisories of this type  
21       that bear on something that we're going to act on  
22       in the licensing process. We have an opinion from  
23       Counsel now that talks about -- it's not really an  
24       opinion. It's a white paper that talks about the

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1 difference between policies, what we can do by  
2 policy and what we have to do by regulations.

3 Massachusetts decisions are pretty  
4 heavily on the side of policies being restricted  
5 to internal operating procedures as opposed to  
6 procedures that affect the outside world. I just  
7 don't know where this falls in that.

8 COMMISSIONER ZUNIGA: I have a  
9 question. Whether we issued a policy, an advisory  
10 or a regulation, the determination of impacted  
11 venue could and likely will come in the future not  
12 at that time; is that correct?

13 The idea that we're pondering right now  
14 is that there would be a rule for us to at any time  
15 after that rule promulgation to determine based on  
16 whatever evidence we see, to determine whether a  
17 municipality or a owned venue has been impacted.

18 COMMISSIONER MCHUGH: Yes. As  
19 Chairman Crosby described, we if necessary  
20 determine what is an impacted live entertainment  
21 venue after we get the application and look at all  
22 of the facts.

23 The issue here is how do we incentivize  
24 the applicant and potential live entertainment



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1 venues to come to some kind of agreement before  
2 they file the license so they can file that  
3 agreement with the license.

4 We're going to have the same issue when  
5 we come to surrounding communities. It's the same  
6 issue. It's the same formula. So, the question  
7 is how do we incentivize that agreement upfront.

8 One way to incentivize that agreement  
9 upfront is to lay out the criteria that we are going  
10 to use. And I agree in the main it's a fact-bound  
11 inquiry except that at the heart of it is something  
12 that is, it would seem, not so much a fact-bound  
13 inquiry or at least a fact that's easily  
14 determinable.

15 If you're going to have an exclusivity  
16 agreement that's going to knock a performer who you  
17 otherwise would be able to hire out of your venue,  
18 then you have been impacted. And so presumptively  
19 at least that is something that we would look  
20 carefully at in determining what was an impacted  
21 live entertainment venue and somehow forcefully we  
22 ought to state that upfront.

23 CHAIRMAN CROSBY: I think to your  
24 point, this would be one place where it would be

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1 very important that we have an ongoing reg. that's  
2 very clear. Because if somebody says we're not  
3 going to and three years later they are, then we  
4 would re-open this question for sure. So, that  
5 would be very important.

6 I think if we could do the word  
7 presumptively, I think I wouldn't quite agree with  
8 saying absolutely as a matter of fact if you use  
9 these that you are impacted.

10 COMMISSIONER MCHUGH: Right. I  
11 agree.

12 CHAIRMAN CROSBY: If we could get  
13 presumptively in there, if we have to do it as a  
14 reg., we have to do it as a reg. If we can do it  
15 as an advisory, we'll do it as an advisory. But  
16 I would agree with that. So, it makes this a  
17 little stronger than I had written it but doesn't  
18 make it absolute.

19 Is there other discussion on that?

20 COMMISSIONER STEBBINS: Just sort of a  
21 quick. I'm sorry I can't recall the number, but  
22 we're only talking about not-for-profit  
23 municipally-owned performance venues.

24 CHAIRMAN CROSBY: Right.

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1 COMMISSIONER STEBBINS: I can't  
2 recall but I can't imagine it's a big number.

3 CHAIRMAN CROSBY: It's like eight or  
4 10 that are a part of this coalition.

5 COMMISSIONER ZUNIGA: Nine or 10.

6 COMMISSIONER STEBBINS: It would  
7 appear to me if I was an applicant, I would try to  
8 come before this Commission having talked to eight  
9 people, eight to 10 people and essentially trying  
10 to do as much -- getting back to the Judge's point  
11 of how do we incentivize this conversation and  
12 these agreements that already have agreements.  
13 It's eight to 10. I don't think any operator would  
14 want to have to be in a position of three years down  
15 the line of trying to get XYZ act in here and kind  
16 of regulation kind of kicks in at a later date.

17 But I don't know exactly what we would  
18 -- I guess the incentive is to avoid the  
19 frustration later and try to work it out with eight  
20 to 10 entities. It just doesn't seem to be that  
21 many people.

22 COMMISSIONER MCHUGH: That might be.  
23 On the other hand, somebody who's separated by 90  
24 miles from the entertainment venue may say, come

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1 on, unless we say the criterion is not  
2 geographical. It's not the audience draw. It's  
3 the performance draw.

4 COMMISSIONER STEBBINS: Right.

5 COMMISSIONER MCHUGH: And that would  
6 be something that if we went this route, we would  
7 clarify that so that everybody would know.

8 COMMISSIONER ZUNIGA: I think we need  
9 to state whatever way whether by policy or  
10 regulation. That we understand that the issue  
11 here is those exclusivity clauses, which are on the  
12 supply side not necessarily on the geographic  
13 side.

14 CHAIRMAN CROSBY: Right. Okay.  
15 Other?

16 COMMISSIONER MCHUGH: The only other  
17 thing is minor, Mr. Chairman. And that is in the  
18 protocol and procedures point, we have each side  
19 appointing one arbitrator and those two appointing  
20 a third. If they can't do it right away we ought  
21 to leave it open for the Commission to do it so they  
22 don't fool around for two weeks, not willing to  
23 agree on the third.

24 CHAIRMAN CROSBY: On the third?

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1 COMMISSIONER ZUNIGA: Yes.

2 CHAIRMAN CROSBY: Isn't that their  
3 problem? Why do we care if the applicant or I  
4 suppose the entity -- the entity's representative  
5 could stall just for the sake of stalling?

6 COMMISSIONER MCHUGH: Maybe it's not a  
7 problem. It just seems to me that we avoid the  
8 possibility of dragging out the process even  
9 further.

10 CHAIRMAN CROSBY: Okay. Well, then I  
11 think let me frame it where I think this has been  
12 amended and then maybe somebody can so move.

13 I think we would have a motion that we  
14 accept the recommendations as written with the  
15 amendment that we will make the statement that  
16 presumptively in the event that we have to weigh  
17 in on whether or not a venue is impacted, we would  
18 conclude that it is if it's within a geographic  
19 exclusivity region. But it's a rebuttable  
20 presumption. And that we would try to implement  
21 the recommendations that come under the advisory  
22 in an advisory if we can. And if not, we will do  
23 it via regulations.

24 COMMISSIONER MCHUGH: Right.

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1 CHAIRMAN CROSBY: Do you want to so  
2 move, Commissioner?

3 COMMISSIONER MCHUGH: So moved.

4 COMMISSIONER STEBBINS: Second.

5 CHAIRMAN CROSBY: Any further  
6 discussion on that one? I guess the fact that  
7 nobody's objected, particularly you that this as  
8 good a protocol or procedure as anything else?

9 COMMISSIONER MCHUGH: Yes.

10 CHAIRMAN CROSBY: So, all in favor of  
11 the motion say aye. Aye.

12 COMMISSIONER STEBBINS: Aye.

13 COMMISSIONER ZUNIGA: Aye.

14 COMMISSIONER MCHUGH: Aye.

15 COMMISSIONER CAMERON: Aye.

16 CHAIRMAN CROSBY: All opposed? The  
17 ayes have it.

18 Okay. Key policy question number  
19 four, which is Commissioner Cameron.

20 COMMISSIONER CAMERON: Forty,  
21 correct?

22 CHAIRMAN CROSBY: Sorry, 40.

23 COMMISSIONER CAMERON: Should the  
24 Commission prescribe the game rules and controls

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1 a licensee may have or should it solicit proposals  
2 from applicants or licensees?

3           Legislation does not speak to this  
4 issue directly. Our strategic plan does. Pages  
5 158 through 163, we talk about dividing the rules  
6 into two categories. Integrity-based rules that  
7 apply to all games and game-specific rules  
8 regulating how the games are played.

9           I just listed out some of the pros and  
10 cons. So, when we are talking about the regulator  
11 saying this is how the games will be played, it is  
12 a standardized process. It generally provides  
13 less flexibility to the operators.

14           Assist the regulators in the oversight  
15 of the game play. Everything is equal. They  
16 understand the rules. It eliminates training  
17 regulators on the differences in rules among  
18 casino operators. Fewer patron disputes because  
19 they understand the rules are played the same way  
20 at every facility in the Commonwealth. If it's a  
21 regulation, it may require more time to amend when  
22 changes are necessary.

23           On the con side, rather the pros for  
24 letting the operator make the rules and then of

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1 course the regulator would say yes, we agree, and  
2 we're going to allow you to do it that way, it may  
3 lack some consistency in the play, the payouts,  
4 the wagers. But at the same token, it allows for  
5 diversity and game options offered to players.  
6 There could be higher incidents of patron  
7 disputes. It may result in a competitive  
8 advantage to one or more casino operators  
9 resulting different odds. Again, we get back to  
10 the training of the regulators. And it may  
11 expedite rule changes.

12           Whichever we choose to go, by the way,  
13 obviously we would still maintain control for an  
14 evaluation of compliance. We would review the  
15 manufacturer's specification for game equipment.  
16 The payout schedule, the calculation, the table  
17 layout, number of decks, all of those things, and  
18 of course a laboratory would take a look at all of  
19 this before we gave our approval.

20           There was only one public comment on  
21 this. And I was actually surprised that Sterling  
22 Suffolk was in favor of consistent across the board  
23 way of doing things. In other words, the  
24 regulator makes that decision.



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1 I did sit at a meeting out in Las Vegas  
2 and listening to gaming operators who are very much  
3 in favor of allowing the flexibility, allowing the  
4 individual casinos to have some flexibility, which  
5 actually may bring patrons to their facility over  
6 another because they like the way the games are  
7 being played at that facility. So, those are two  
8 differing comments.

9 Our gaming consultants are split on  
10 this one. They don't have a firm recommendation  
11 for us, which is unusual. It really is a question  
12 of -- And jurisdictions that we've looked at are  
13 split. New Jersey, West Virginia, Pennsylvania,  
14 Delaware all standardized rules by the regulator.  
15 On the other hand, Ohio, Illinois, Iowa, Louisiana  
16 allow the casino operators to develop the game  
17 rules subject to approval by the regulator.

18 So, having heard all of this, now I'm  
19 looking at those bigger jurisdictions New Jersey,  
20 Pennsylvania we're up to 11 facilities now.  
21 Certainly, that would be a little more difficult  
22 for the regulator to really understand a different  
23 set of rules in every facility. Now here we're  
24 looking at three in three distinct regions of the

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1 state.

2 CHAIRMAN CROSBY: Four, because it  
3 would have to do with slots too.

4 COMMISSIONER CAMERON: Correct. But  
5 most of this we're talking about are table games.  
6 They're different rules. So, our regulators, our  
7 folks out at those casinos probably will not be  
8 traveling from facility to facility. They would  
9 be in the one facility because of the distance  
10 between them, most likely. So, I don't think we  
11 have the same training issues that they do in other  
12 jurisdictions.

13 And I know one of the main thrusts here  
14 with the legislation was to allow for economic  
15 development. And that is one of the advantages of  
16 letting the operators have some say in the way  
17 business is done.

18 So, if we keep that in mind and the fact  
19 that we are -- rather our regional locations should  
20 not really be a problem for regulators to  
21 understand the rules in those facilities. I think  
22 at this point, I am leaning towards, and I didn't  
23 clearly state this, by the way, I said we need to  
24 discuss it, but I think I'm leaning towards letting

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1 the operators have a say in this. Be able to give  
2 us some ideas of things that they would like to do.

3 And of course, we maintain control.  
4 We'll be looking at all of the appropriate  
5 calculations and layouts. They have all been  
6 tested in a lab.

7 So, that was my summary of what others  
8 do and the decision we have before us. Again, I  
9 think looking at the regional approach that we've  
10 taken here and the flexibility which can allow for  
11 some competitive, some would say a competitive  
12 advantage.

13 CHAIRMAN CROSBY: Can you give some  
14 examples, give some more examples of rules? What  
15 are we talking about?

16 COMMISSIONER CAMERON: Talking about  
17 the kind of card game. For example, in Atlantic  
18 City, poker is prescribed a certain way or it has  
19 to played this many cards. These are the rules.  
20 Where there are so many variations now on different  
21 games.

22 CHAIRMAN CROSBY: Like even beach  
23 poker?

24 MR. MICHAEL: Blackjack you can hit on

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1 a soft 17, you don't hit on a soft 17. In craps,  
2 you offer double odds or triple odds. To be able  
3 to do the kinds of advantageous marketing  
4 techniques that can be adapted to rules of the  
5 games.

6 There are casinos, as Commissioner  
7 Cameron said, there are some casinos Massachusetts  
8 that will offer entirely different games than  
9 other casinos do. There's no prescription in the  
10 statute that says you have to have blackjack, you  
11 have to have roulette.

12 There are all kinds of game developers  
13 now who come in with a new type of game. And one  
14 casino may have it and one casino may not. So, the  
15 idea that rules of games that everybody has might  
16 be different, we represent the share of the  
17 consultants that think that that's not such a bad  
18 thing that it wouldn't be so hard.

19 CHAIRMAN CROSBY: Flexibility is not  
20 such a bad thing.

21 MR. MICHAEL: Flexibility is not such  
22 a bad thing.

23 MR. CARROLL: We think Commissioner  
24 Cameron is right.

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1                   COMMISSIONER MCHUGH: Surprise,  
2 surprise. What's the difference between an  
3 integrity-based rule applicable to all games and  
4 a game specific. I understand a game-specific  
5 rule.

6                   MR. GUSHIN: There needs to be  
7 flexibility and all states have flexibility even  
8 the ones that have rules of the games. In other  
9 words, the casino would tell you if they want to  
10 use eight decks or six decks or four decks. That's  
11 purely discretionary.

12                   But we have found in the past that it  
13 helps to have at least in the beginning a standard  
14 format so that everybody is on the same page, the  
15 regulators, the state police identifying  
16 collusion or identifying some of crimes that  
17 typically take place in the casinos requires that  
18 the regulators have an in-depth knowledge of the  
19 games or you're totally dependent on the casino to  
20 tell you that. And we think it should be you need  
21 your own independent capability.

22                   What we've recommended in some of these  
23 other jurisdictions are start with some of these  
24 rules and provide as much flexibility to the

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1 operators as possible. And then revisit that  
2 issue a couple of years down the road once the  
3 regulators are trained and once the casinos are  
4 operating here. And kind of balance it in that  
5 way.

6 This is something that can and should  
7 in our opinion in every jurisdiction be revisited.

8 MR. MICHAEL: The integrity rules  
9 would be something like when a dealer leaves a  
10 table, they have to show their hands to the camera.  
11 That would be something that uniformly everybody  
12 should do for integrity purposes.

13 COMMISSIONER MCHUGH: In the counting  
14 house, they have to show the empty box?

15 MR. MICHAEL: Right.

16 MR. CARROLL: Minimum staffing, for  
17 example, those type of things.

18 MR. GUSHIN: We're not suggesting the  
19 staffing.

20 MR. CARROLL: No, no. But I'm saying  
21 those types of rules.

22 MR. GUSHIN: We're talking about just  
23 rules of the games.

24 CHAIRMAN CROSBY: It sounds like are

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1       you both in agreement on integrity rules that they  
2       should be the same?

3               MR. MICHAEL:   Yes.

4               MR. GUSHIN:   Yes.

5               CHAIRMAN CROSBY:   But on these kind of  
6       play rules.

7               MR. MICHAEL:   Game variations, the  
8       Commission won't be able really even to think of  
9       all of the variations that can be played in a game.  
10      Let the casino decide not without your approval  
11      ultimately that say, okay, we looked at this and  
12      this works.   But we're more on the side of  
13      flexibility.

14              MR. CARROLL:   Roulette players will  
15      gravitate towards a roulette table that has a  
16      single zero instead of a double and triple zero,  
17      for example.   Craps players will be looking, like  
18      Guy pointed out, triple odds on craps, different  
19      things like that.

20              And those are the type of things that  
21      the operator will evaluate in putting out his  
22      selection of table games based on what he thinks  
23      the particular demographic will be most impacted.

24              MR. GUSHIN:   We're not disputing that

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1 we agree with that. Make the operator -- you  
2 should have some broad rules and then operator  
3 tells you what they want to do. And then you  
4 accept it. And if they want to change it, they  
5 tell you what that change will be.

6 MR. POLLOCK: One quick point though  
7 and Guy and Bob make the point about odds at craps.  
8 That does not necessarily -- You can have  
9 industry-wide rules but still allow some  
10 flexibility. Atlantic City for example, a casino  
11 can offer up to 10 times odds on craps. They don't  
12 have to. They can offer five times odds. So,  
13 there is flexibility within that arrangement.

14 COMMISSIONER MCHUGH: What do we make  
15 of the fact that we only got one comment. That  
16 comment was from an industry person, and that  
17 comment favored uniformity? Do we place any  
18 weight on that?

19 COMMISSIONER CAMERON: It's very  
20 different than what I heard in Las Vegas, which was  
21 many, many operators talking about the fact that  
22 they like that flexibility. That really helps  
23 them. And they have a new game, they want to be  
24 able to introduce it. It's how they feel like they



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1 can make the most money and keep the players  
2 interested. So, it is different than what I heard  
3 at one of the many seminars out there.

4 MR. GUSHIN: The regional casinos, the  
5 neighborhood casinos in Vegas, definitely that's  
6 100 percent accurate. They want to be able to  
7 compete against the other neighborhood casinos by  
8 offering different the games. That's totally  
9 right.

10 The counter is in the limited  
11 jurisdiction. And Caesars and some of the big  
12 companies they try to train their people because  
13 they transfer them from jurisdiction to  
14 jurisdiction. You may have a shift manager or a  
15 floor manager that operated in Indiana or  
16 elsewhere being interchanged here frequently.

17 CHAIRMAN CROSBY: Why is this question  
18 one we need to answer now?

19 MR. MICHAEL: It isn't.

20 CHAIRMAN CROSBY: Okay.

21 MR. MICHAEL: To the extent that we  
22 will be drafting the Phase II regulations. And  
23 the Phase II regulations we want to do the slots  
24 first. So, there might be some rules regarding

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1 slots that we would have to draft that we would need  
2 your guidance in terms of whether or not you want  
3 them general or specific.

4 The table games would come later.  
5 Most of this involves table games anyway.

6 CHAIRMAN CROSBY: I'm fine to do it  
7 now, if we can. We started this out thinking there  
8 were certain kinds of questions like what are we  
9 going to say about surrounding communities that we  
10 really had to have answers now so the participants  
11 knew.

12 And somehow, we ended up with a bunch  
13 of other questions, many of which really aren't so  
14 time sensitive, but that's fine. Okay.

15 COMMISSIONER MCHUGH: On that point  
16 though is there any reason to parse this question  
17 between table games rules and slots rules?

18 MR. GUSHIN: Slots are totally  
19 different. You might have electronic gaming here  
20 to some degree because that's growing phenomenon  
21 in the industry. But that's handled with the same  
22 rules as the electronic gaming, has it random, it  
23 has to be --

24 COMMISSIONER MCHUGH: So, uniformity

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1 is necessary just by the nature of the beast  
2 uniformity is necessary in slots? You can't have  
3 slots rules?

4 MR. GUSHIN: You're going to have  
5 technical rules for the slot machines which you'll  
6 either promulgate or adopt one of the major test  
7 labs.

8 MR. MICHAEL: It's two different  
9 aspects with the slots, I think. To the extent  
10 we're analogizing it to rules of the game on a  
11 table, the rules of the game on a slot machine are  
12 individual to each slot machine.

13 So, they'll be submitting to a lab.  
14 And the lab will test to make sure the machine plays  
15 according to its own rules. And that is a little  
16 bit of a difference from table games, which is not  
17 done by computer and is done by people. And they  
18 have to know what those particular rules are.

19 But a slot machine's functionality is  
20 that the tests for its functionality should be  
21 uniform so that everyone knows what has to be  
22 approved and what has to be reviewed and what has  
23 to be tested.

24 COMMISSIONER MCHUGH: So, slot

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1 machine X in casino is going function exactly the  
2 same way as slot machine X in the slots parlor.

3 MR. MICHAEL: It'll function the way  
4 its computer brain tells it to function. So, the  
5 same game in casino A may have a 92 percent payout  
6 percentage. That same game casino B they may set  
7 to a 94 percent payout percentage.

8 So, every one of those games is tested  
9 in the lab to make sure that what its theoretical  
10 percentage is, what it's supposed to pay out, it  
11 will pay out. And the rules of that game may be  
12 the same, the payout could be different.

13 COMMISSIONER MCHUGH: Then the rules  
14 would be different? In other words, it'll pay out  
15 if you get a single gold star.

16 MR. GUSHIN: It's irrelevant really.  
17 It's the payout percentage. Say you have a 92  
18 percent payout.

19 COMMISSIONER MCHUGH: The long and  
20 short of it is this conversation doesn't apply to  
21 slot machines?

22 MR. GUSHIN: That's right.

23 COMMISSIONER STEBBINS: The only  
24 reason I thought we were potentially entertaining

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1       this question now is how much of this ability to  
2       -- of the flexibility to establish my own games or  
3       follow the standard route, how much of that plays  
4       into an operator's kind of planning model in terms  
5       of revenue, floor layout anything like that.

6       That's the only reason I thought this question  
7       might be germane to kind of the early stages.

8               MR. GUSHIN:   It could.   It depends.  
9       I think the more important issue is going to be the  
10      breakdown of games, which is going to be based on  
11      your demographics.   For example, if they have  
12      Asian players, you're going to a much higher  
13      baccarat number of tables than you would have  
14      otherwise.   Different segments go to different  
15      markets.   The rules of the games theoretically  
16      could have an impact but --

17              MR. POLLOCK:   I don't think they're  
18      material that much.

19              MR. GUSHIN:   No, they're not material.

20              COMMISSIONER STEBBINS:   All right.

21              COMMISSIONER CAMERON:   So, we could  
22      hold this until -- I think we're planning another  
23      policy discussion toward the end of January to talk  
24      about some of those number of threes.   So, this

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1       could be a question that we hold.

2               It was on this list. It was I believe  
3       a number two that got moved up.

4               COMMISSIONER STEBBINS: It'll be  
5       interesting to hear from some of the other  
6       potential applicants.

7               CHAIRMAN CROSBY: Yes. For the  
8       record, my instinct is kind of the same as yours.  
9       I sort of like this laissez-fair, let them figure  
10      out their own preferences. And these are going to  
11      be relatively far apart casinos. It's not like  
12      going to a place where you could go across the  
13      street and all of a sudden have to learn a new set  
14      of rules.

15              You're probably going to pretty much  
16      use one or the other of the facilities. And we  
17      could certainly, as you say, we could make a  
18      priority out of making sure that the regulatory  
19      presence was pretty much trained for one facility.

20              And I sort of like the idea, prefer the  
21      idea I think of letting people be flexible. I am  
22      puzzled as Commissioner McHugh is that the one  
23      operator who responded took the other position and  
24      the other ones didn't say anything. Maybe it

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1       isn't such a hot -- Obviously, they don't care that  
2       much.

3               MR. MICHAEL: They just didn't take a  
4       position.

5               COMMISSIONER STEBBINS: I think the  
6       piece about the consumer frustration, the angry  
7       customer I think is somewhat limited. As the  
8       Chairman pointed out, three potentially four  
9       facilities. You're going to begin to feel the  
10      rules for each operator and choose where you want  
11      to go.

12              COMMISSIONER ZUNIGA: For whatever  
13      it's worth, I'll state for the record that I  
14      appreciate the viewpoint of what may be safer or  
15      more desirable in the start-up mode, which is where  
16      we will find ourselves. And if consistency points  
17      to that direction, I would be inclined to ere on  
18      that side. But I agree that we perhaps can table  
19      this.

20              CHAIRMAN CROSBY: I don't see any  
21      reason to force a vote on this. I think we'd all  
22      be interested in other people's -- in other  
23      feedback, if there is any. So, anybody here who  
24      is representing any industry players, we'd love to

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1 know what your preference is, what your thoughts  
2 are on this issue.

3 Okay, question number 32 was mine.

4 And at one point, this was a big one. The policy  
5 question was should the Commission set a time limit  
6 or other rules addressing the tribal compact/land  
7 in trust issue in Region C?

8 And while that was an important  
9 question awhile back and may become an important  
10 question again, since we have subject to a one-week  
11 hearing period, decided that we will go down this  
12 parallel track, we have intervened to stop the  
13 delay in Region C.

14 So, I think we go forward with that next  
15 when we vote formally on it. Region C will be a  
16 little behind but it will be like 30 to 60 days  
17 behind, which is not going to be material in the  
18 big picture. And we will give everybody a chance  
19 during the background period to stay in sync with  
20 the rest of the regions.

21 So, we may have to revisit this issue,  
22 but Commissioner McHugh and I discussed it and I  
23 think agreed there is no need for us to deal with  
24 this issue at this stage of the game. Is that



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1 right, Commissioner?

2 COMMISSIONER MCHUGH: It is, that's  
3 right.

4 CHAIRMAN CROSBY: Question number one  
5 was my question, but I happily offloaded it on  
6 Ombudsmen Ziemba. Do you want to join us?

7 COMMISSIONER STEBBINS: You gave him  
8 an easy one.

9 CHAIRMAN CROSBY: Yes. I gave him an  
10 easy one, right. Wait until you see the others I  
11 gave him.

12 MR. ZIEMBA: Thank you, Mr. Chairman.  
13 I think you have a benefit of a probably too lengthy  
14 memo. But I'll try to summarize some of the  
15 provisions of that memo.

16 COMMISSIONER MCHUGH: I thought it was  
17 really very helpful.

18 CHAIRMAN CROSBY: Well done, yes.

19 MR. ZIEMBA: Before I get into some  
20 the analysis, I'd like to just run through some of  
21 the comments that we've received because it is  
22 instructive of some of the recommendations that I  
23 have in my memo. For the general question is how  
24 will we define surrounding communities and should

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1 we publish that definition early in the process?

2 This is probably the number one issue  
3 that we received comments on. Sterling Suffolk  
4 Racecourse said no, consistent with the testimony  
5 that you heard yesterday. They mentioned that the  
6 statute provides the necessary factors and that we  
7 should first work on the protocols for resolving  
8 disputes. And the protocols are similar to those  
9 ones that were just mentioned on the previous  
10 question that we just discussed.

11 Shevsky Froelich, City of Springfield  
12 they recommended we should define impacts but that  
13 we take into account those impacts on a  
14 case-by-case determination after the application  
15 is submitted.

16 Mass. Audubon suggested that the  
17 definition should be broad enough to encompass  
18 communities with environmental, social or  
19 economic impacts.

20 Paul Vignoli recommended that yes, we  
21 should further define surrounding communities.

22 Philip Cataldo also recommended that  
23 we should move forward. For the definition we  
24 should use a telephone company definition.

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1           The MAPC recommended that we move  
2       forward with a further definition of surrounding  
3       communities. And they recommended very specific  
4       criteria, many of which are adopted in the  
5       memorandum that we have here but they've been  
6       modified. And I'll go over that in a minute.

7           Town of Lakeville recommended yes, we  
8       should. And they recommended a standard of 10  
9       miles or less.

10          The Town of Bridgewater yes. They  
11       recommended a series of 10-mile circles up to 50  
12       miles where those communities within a circle  
13       would be the most impacted and more likely to be  
14       a surrounding community.

15          CHAIRMAN CROSBY: Who did that?

16          MR. ZIEMBA: The Town of Bridgewater.  
17       Joshua Levin recommended 15 to 20 miles.

18          Martha Robinson recommended a radius  
19       of miles or travel distance.

20          Andrea Powers recommended a similar  
21       thing regarding a short drive.

22          The MMA recommended yes, but it should  
23       be based on a demonstration of the impacts traffic  
24       and environmental, public infrastructure, greater

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1 public safety demands and quality of life.

2 And then we received a series of  
3 letters. Let me just mention the Foley Hoag. The  
4 Foley Hoag said that there's a statutory  
5 definition. They commended the Commission on the  
6 discussion regarding the role of the RPAs in  
7 resolving disputes, especially establishing  
8 protocols -- excuse me, especially in regarding  
9 providing help in the letters of intent that are  
10 currently required under our regulations, so that  
11 applicants and surrounding communities, host  
12 communities can apply for technical assistance.

13 They state that the definition must be  
14 after submission of the RFA-2 process. That it  
15 must be based on factors and presentation of  
16 evidence after the submission of the application.

17 I'll mention a number of comments that  
18 we received from different groupings of  
19 legislators. From Cambridge, Medford and for  
20 Somerville, they were all recommending that the  
21 Commission take into account their particular  
22 communities. But they had specific standards.  
23 And I think it bears reading. It's just a short  
24 paragraph that would be of interest to the

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1 Commission.

2 In the third paragraph, they note a  
3 simple calculation of distance from the casino  
4 such as five or 10 miles might be sufficient in some  
5 areas. But a more flexible definition would allow  
6 communities which believe they would be or have  
7 been affected to make their cases.

8 We urge the Commission to allowing  
9 communities to present evidence of potential  
10 impact to the Commission, including possible  
11 effects of traffic, infrastructure, environment  
12 and public safety in order to be regarded as a  
13 surrounding community.

14 Following the opening of a casino, the  
15 actual impacts may be different. So, communities  
16 should have the opportunity to present evidence of  
17 the actual impacts and be deemed a surrounding  
18 community. We would greatly appreciate your  
19 consideration.

20 So, in regard to the recommendation, I  
21 think that there's generally a threshold question  
22 of whether or not the MGC, the Commission should  
23 further define surrounding communities. The  
24 issue of surrounding communities was a very

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1 significant one in the legislative debate. I  
2 think it might be safe to say that it was probably  
3 one of the issues that most Legislators had a very  
4 distinct interest in. And there was numerous,  
5 numerous amendments that were provided to the Act  
6 or proposed to the Act. We included a copy of that  
7 within your packets.

8 Although the Gaming Act requires the  
9 Commission to promulgate numerous regulations  
10 pursuant to MGL Chapter 23K Section 5, this is not  
11 one of them. Instead, what the Gaming Act  
12 provides is that the Commission shall -- excuse me  
13 that the Commission shall identify which  
14 communities shall be designated as the surrounding  
15 communities after a review of the entire  
16 application and in the independent evaluations.

17 That section further states that in  
18 making that determination that a community is a  
19 surrounding community, the Commission shall  
20 consider the detail plan of construction submitted  
21 by the applicant, information received from the  
22 public and factors which shall include but not be  
23 limited to population, infrastructure and  
24 distance from the gaming establishment and

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1 political boundaries.

2           Given the factors and the fact that a  
3 decision shall not be made until after the  
4 application with all of the information is  
5 submitted to the Commission, it is doubtful that  
6 any statutory or regulatory definition could fully  
7 satisfy whether or not a community is a surrounding  
8 community.

9           It really seems as if the Legislature  
10 is asking the Commission to make a case-by-case  
11 determination of the applicability after the  
12 summation of all of those materials.

13           So within that context, we are faced  
14 with a number of different options. And I ball  
15 them into three basic categories. There's many  
16 more permutations. But the three options that I  
17 present to the Commission are that the Commission  
18 has the option to rely just on the statutory  
19 factors in a case-by-case determination at the  
20 time of the review of the Phase II applications  
21 before the Commission with no further guidance  
22 provided to the applicants or to host and  
23 surrounding communities.

24           Option two is through a guideline or a

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1 regulation further refine the statutory factors  
2 with examples of the type of impacts that taken  
3 together collectively would result in a  
4 presumption that one is a surrounding community.

5 And then the third option is establish  
6 bright line tests through regulation prior to  
7 RFA-2 that would result in a surrounding community  
8 determination or even specifically determine  
9 which communities are surrounding communities to  
10 the sites of gaming facilities that have  
11 identified themselves in the Phase I process.

12 The question of what is a surrounding  
13 community is important not only for the purpose of  
14 the applications that must be submitted to the  
15 Commission, but it also has importance after  
16 casinos or gaming facilities are up and running.

17 Pursuant to the Act, communities can  
18 take advantage of the community mitigation funds  
19 that's provided in MGL Chapter 23K Section 61.  
20 And whether or not a community is a surrounding  
21 community might have a bearing on whether or not  
22 you could access the funds which are rather  
23 significant after a casino is operating.

24 The Act seems to indicate that access



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1 to those funds is not strictly limited to  
2 communities that have been defined as surrounding  
3 communities in the application process. And in  
4 many ways that is a really beneficial thing because  
5 even though there is a tremendous amount of  
6 importance of being designated a surrounding  
7 community in the application, at least it's not the  
8 end of the game for communities.

9 If communities are experiencing  
10 difficulties in the future, there's a potential  
11 that they could go to the mitigation fund to get  
12 access to funds to identify those impacts.

13 And it's different, obviously, than  
14 during the application phase or if you have a  
15 signed agreement with an applicant, because you  
16 have to apply to the Commission to get those funds  
17 and it's not an automatic.

18 But the fact if we make a determination  
19 that communities can come to the fund after the  
20 fact that may relieve some of the anxiety out  
21 there.

22 So, I don't know if we want to discuss  
23 some of these because this is rather a lengthy  
24 memo, if we wanted to discuss some of these

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1 subparts first. I can go on, if you'd like me to.

2 CHAIRMAN CROSBY: Yes.

3 MR. ZIEMBA: So, in regard to the three  
4 options that we presented, one which is just rely  
5 basically on the statutory factors allow the  
6 applicants in the surrounding committees to appear  
7 before the Commission. Number two, which is  
8 through a guideline or regulation refine the  
9 statutory factors with examples. And number  
10 three the option is to establish bright line tests.

11 There's strength and weaknesses of  
12 each one of those different options. Option one  
13 that places the most responsibility on the  
14 applicant to determine which communities are  
15 surrounding communities. Although on its face  
16 that might present an advantage to an applicant  
17 because one could argue that an applicant could  
18 avoid a lot of significant mitigation costs if they  
19 unduly restrict the definition of a surrounding  
20 community.

21 There are consequences for that type of  
22 action. For example, the Commission shall weigh  
23 these types of issues on how upset a surrounding  
24 community is and the level of support or

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1 non-support in surrounding communities in the  
2 context of its evaluation of applications.

3 And to the degree that an applicant  
4 fails to address impacts at surrounding  
5 communities, it risks that being a factor that the  
6 Commission could weigh heavily in their review of  
7 the application.

8 Also, applicants risk potential delay  
9 in review of their application if indeed they don't  
10 identify surrounding communities properly. As we  
11 were discussing earlier, there's a process by  
12 which the Commission after the application is  
13 submitted, the Commission shall review any dispute  
14 regarding the definition of a surrounding  
15 community status.

16 And at that time the Commission will  
17 set aside a number of 30 days to resolve that  
18 dispute and for the groups to try to hammer out an  
19 agreement after the Commission has designated a  
20 community as a surrounding community.

21 But then even after the fact, there is  
22 a protocol and procedure whereby the Commission  
23 shall review, if they can't reach an agreement, the  
24 status of their negotiations. And basically

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1       there may be a procedure that was outlined earlier  
2       impose upon conditions upon the different  
3       applicants if the parties are to proceed in an  
4       application.

5               While this option places a lot of  
6       responsibility on the applicants, it is obviously  
7       the least clear of the three options. In my  
8       travels, in conversations across the Commonwealth  
9       with surrounding communities and with host  
10      communities, there's a lot of -- this is probably  
11      the number one question of what is a surrounding  
12      community.

13             And is my community a surrounding  
14      community? Are you going to further define what  
15      is a surrounding community? So, in that regard,  
16      this option really does fail to provide much  
17      further guidance beyond the statutory factors.

18             Now the statutory factors there are a  
19      number of them which I'll go over one by one. And  
20      they do provide some guidance to communities if we  
21      were to put out an advisory that laundry list the  
22      factors that exist in the statute. And that  
23      communities are advised to weigh those factors  
24      when they're considering whether or not they are

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1 a surrounding community.

2 But in reality, they are a little bit  
3 more broad than provide meaningful input to  
4 surrounding communities -- excuse me, to  
5 communities on whether or not they are surrounding  
6 communities.

7 Option three, I'll go into option three  
8 because option two is the recommended, at least my  
9 recommended option.

10 Option three, this relates to the  
11 bright line test. And especially with the broad  
12 range of impacts that are possible with  
13 surrounding communities, I think it is almost  
14 impossible to define a bright line test that would  
15 really define what a community -- whether or not  
16 a community is a surrounding community or not.

17 In addition, a bright line test would  
18 seem to contravene the purposes of the statute  
19 whereby the Commission shall weigh the factors  
20 after an application is submitted based on the full  
21 application, and the factors that would be  
22 provided by the applicant and/or the surrounding  
23 community in the context of its review of  
24 designation.

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1                   It certainly would provide a lot of  
2                   clarity to communities. It would relieve a lot of  
3                   anxiety in some regards of whether or not a  
4                   community is a surrounding community so that the  
5                   parties could go directly to negotiation.

6                   But then again, it could have very  
7                   distinct impacts upon applicants who may in their  
8                   planning stages have allocated only a certain  
9                   amount towards what they can give out for  
10                  mitigation. And if they go beyond that maybe they  
11                  might have an impact on whether or not they are able  
12                  to proceed in their application phase.

13                  One example of how we have to be very  
14                  concerned about preoperational costs is the  
15                  Ameristar situation where according to public  
16                  reports they backed out of their application  
17                  primarily because of some of the upfront costs  
18                  without ever even knowing if they would be able to  
19                  go through to the Commission.

20                  It's a little bit different here, but  
21                  preoperational costs and a requirement that they  
22                  have to negotiate with a number of different  
23                  communities that they don't believe are truly  
24                  impacted might have some ramifications.

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1                   CHAIRMAN CROSBY: John, just I think,  
2 unless anybody disagrees with me, I think when you  
3 get to your recommendation, generalize it. I  
4 don't think you need to go through all of it. Just  
5 generalize as to the principal. I don't think we  
6 need to go through each one of the impacts.

7                   MR. ZIEMBA: Great. So, I will give  
8 you just the board categories of statutory  
9 factors. Under option two, what I recommend is  
10 that we break out each of the statutory factors  
11 that I mentioned a little bit earlier geographic  
12 proximity, impact on transportation  
13 infrastructure, development impact and  
14 operational impact. And that we come up with a  
15 list of --

16                  CHAIRMAN CROSBY: Population.

17                  MR. ZIEMBA: Excuse me, yes. That's  
18 the one I can't really put my hands around. Sorry  
19 I missed that one. And population and that we list  
20 a number of different factors that the Commission  
21 would consider when it is doing the evaluation  
22 during the Phase II process.

23                  This goes back to some of the debate  
24 that we had a little bit earlier on whether or not

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1 the Commission can issue guidelines for the type  
2 of factors that it would consider at the time of  
3 that review rather than doing a regulation.

4 Why I think that's important is one of  
5 the -- at least one of the considerations that  
6 we've received from the applicants is that we have  
7 to be wary of the timetable for us to promulgate  
8 regulations on how that may impact the local  
9 negotiation process.

10 So, if indeed we put out a regulation  
11 that may come about in May or in June, there may  
12 be an attendant delay at the local negotiation  
13 process because some communities may say I really  
14 need to wait until those regulations are  
15 promulgated before we can really truly enter into  
16 negotiations.

17 Whether that would actually happen I'm  
18 not certain. If we provided guidance to  
19 communities of what we think should occur,  
20 perhaps they would do it.

21 CHAIRMAN CROSBY: It would in effect  
22 be a guideline because we'd be saying here is what  
23 we are going to put in the reg.

24 MR. ZIEMBA: Correct. So, that



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1 remains to be seen, but it's definitely a point  
2 worthy of consideration. So, geographic  
3 proximity, impact on transportation  
4 infrastructure, development impact, operational  
5 impact and then population are all of the statutory  
6 categories.

7 And then you'll see broken down within  
8 each of those groups is a number of different  
9 factors that I'm recommending that we solicit  
10 input on. This is -- I think what we always  
11 anticipated was that we would put forward a  
12 recommendation. And that we would solicit public  
13 input and input from all of the affected on the  
14 types of factors or the types of considerations  
15 that would go into the definition.

16 And we've done our best to have a fairly  
17 comprehensive and inclusive list of the factors  
18 that the Commission could consider. But  
19 certainly there might be more out there.  
20 Certainly, the actual wording of these is subject  
21 to change. And I think the input of folks out  
22 there would definitely be very useful to the  
23 Commission as we put forward an opinion.

24 I'll just break out a couple of the

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1 factors that I mentioned in the memo, just because  
2 I didn't recommend one and I did recommend another.

3 From my earlier comments, from the  
4 comments that we received from the general public  
5 and when you take a look at the legislative debate,  
6 there seems to be a focus on defining surrounding  
7 communities within the context of certain mile  
8 away from a gaming facility or miles away from a  
9 surrounding community.

10 And my recommendation is that it may be  
11 a little bit -- I know when you're setting rules,  
12 especially with a concrete number, it's just  
13 inevitable that somebody may attack that as being  
14 arbitrary. But in this context, it may be very  
15 difficult to set a specific mileage minimum  
16 without being accused of being arbitrary.

17 In the course of my research, I tried  
18 to go and see if there are any standards out there  
19 that would lead us to a conclusion of a certain  
20 mileage. And try to take a look at what the  
21 typical traffic impact studies would recommend of  
22 a certain mileage. And I was unable to really find  
23 anything.

24 I talked to a number of different

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1 entities and agencies to see if they had any input  
2 on that. And I'm not saying that that's probably  
3 the end of the research but at least I wasn't unable  
4 to come up with anything in the context of my  
5 review.

6 The recommendation here is that  
7 instead of a specific mileage as the example, that  
8 the Commission would likely just utilize a  
9 commonsense understanding that if you are closer,  
10 if you are within a mile, it's much more likely that  
11 you would experience an impact than if you are 50  
12 miles away.

13 But within both of those extremes, I  
14 think the people could argue that they might be  
15 impacted. For example, like the live  
16 entertainment venues. Many of those folks have  
17 said that even though we are 50 miles away, we are  
18 directly impacted by things that have happened at  
19 the casinos in Connecticut. And within a mile  
20 away, I guess it's not impossible that you might  
21 not experience very significant impacts.

22 I think the bottom line of the whole  
23 analysis is that what the Commission should take  
24 a look at is the true impacts or the objective

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1 impacts to the extent that they can be ascertained  
2 and projected.

3 Again, everything, even the best  
4 traffic impact study is merely a prediction of  
5 the future. But to the extent in determining  
6 surrounding communities we take a look at the  
7 likely impacts based on reasonable evidence, I  
8 think that that is probably the best we can do at  
9 the time of the review of the applications.

10 The one other factor that I did include  
11 in the factors that we should put out the wall for  
12 comment was proximity of residential areas in  
13 potential surrounding communities to gaming  
14 facilities.

15 So, that's a little bit different from  
16 just proximity to the host community shared border  
17 with the host community, proximity to the gaming  
18 facility. We split that out as a specific factor  
19 just because it is a very common item for people  
20 to consider of how close a facility, be it an  
21 industrial facility, a utility facility, how close  
22 that is to residential areas.

23 This I do note that the Legislature  
24 rejected amendments in this regard. But it did

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1       seem like something that the Commission might  
2       consider even if it states it or it doesn't when  
3       it receives an application.

4               CHAIRMAN CROSBY:   Right.

5               MR. ZIEMBA:   So, I broke that out.

6               CHAIRMAN CROSBY:   Thank you.

7               MR. ZIEMBA:   So, in sum, the  
8       recommendation is that the Commission adopt option  
9       two to provide further refinement of the types of  
10      impacts taken in their totality that would have an  
11      of whether or not the Commission would determine  
12      a community to be a surrounding community after the  
13      Commission considers the RFA-2.

14              It would use these examples to organize  
15      its discussion at the time of the determination.  
16      And that because the answer to this question is  
17      easy to answer and that should we define it or  
18      publish a guideline early in the process,  
19      absolutely.

20              So, the recommendation is that no later  
21      than January 2013 that we publish this advisory of  
22      the types of factors that would be considered by  
23      the Commission during that definition.

24              COMMISSIONER STEBBINS:   After we have

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1       gotten comments.

2                   MR. ZIEMBA:   After we have gotten  
3       comments, but still get the full advisory out by  
4       January.   A number of different communities are  
5       considering mitigation agreements right now.   And  
6       if we get something out within a matter of weeks,  
7       at least it is hoped that they would consider some  
8       of these factors in their calculations or  
9       conversations with surrounding communities.

10                  CHAIRMAN CROSBY:   Great.   Great job.  
11       Thank you.   I'm glad I passed it on to you.  
12       Questions, ideas, suggestions?

13                  COMMISSIONER CAMERON:   I also thought  
14       it was very well explained.   And the rationale for  
15       your selection makes a lot of sense.

16                  CHAIRMAN CROSBY:   This does have --  
17       This has the same question that you were concerned  
18       about, right, is can we issue an advisory or would  
19       it have to be a reg.?

20                  COMMISSIONER MCHUGH:   It does have the  
21       same question but here I think it would be  
22       advisable to issue a reg. because this is much more  
23       fact intensive.   We're not just talking about a  
24       single fact.

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1                   So, whether we have the power to do it  
2                   by an advisory or not, it seems to me we ought to  
3                   do that by regulation. It seems to me that we are  
4                   going to announce a policy now which will help  
5                   people understand what the regulations are highly  
6                   likely to contain.

7                   We're going to ask for public comment  
8                   on the policy. And then we're going to take the  
9                   policy supplemented by the comments to the next  
10                  level, which either would be applying it or  
11                  publishing a regulation that we then apply. And  
12                  I prefer the latter because of the importance.

13                 CHAIRMAN CROSBY: Which we could do  
14                 with the other one as well, the live entertainment  
15                 venue.

16                 COMMISSIONER MCHUGH: We absolutely  
17                 can. We absolutely can. We can jump right on it.  
18                 In terms of substance, I think this is very  
19                 well-thought-out. And I think that again the  
20                 issue is how do we incentivize the applicant and  
21                 the potential surrounding community to make that  
22                 agreement early on?

23                 The only way we can really do that is  
24                 by telling both what kinds of factors we're going

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1 to take into account. And the functional factors  
2 that you've articulated it seems to me are at the  
3 heart of this.

4 The only thing I might add to that or  
5 would ask you about is should we sort of overlay  
6 the specific factors on the breakout with some  
7 language to convey that the impacts we'll be  
8 looking for are those that are materially greater  
9 than those that are generally experienced as a  
10 result of the casino?

11 In other words, it is conceivable that  
12 if a casino goes in region X, everybody within 50  
13 miles around or 60 miles around is going to feel  
14 some increase in housing say. That's true of  
15 everybody. But there's a level at which the  
16 housing impact is going to put a drain on community  
17 resources that's significantly greater than those  
18 felt by the general population.

19 It seems to me that would be a useful  
20 thing for people to know in terms of eliminating  
21 some communities as potential surrounding  
22 communities. Also recognizing that as you  
23 correctly pointed out the community mitigation  
24 fund is available if it turns out that the impact



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1 is greater than anticipated or greater than the  
2 community can handle even though it's not a  
3 surrounding community.

4 But it seems to me that some effort  
5 ought to be made to differentiate the sort of  
6 general impact of a casino and the impacts that  
7 cause somebody -- some entity to become a  
8 surrounding community.

9 MR. ZIEMBA: The one point I will make  
10 in reaction to that that's a very commonsense  
11 approach that you recommend. But in regard to the  
12 issue of regulations versus guidelines, you see  
13 from the memo that I came down on the side of  
14 guidelines rather than regulations for a couple of  
15 reasons.

16 For one, because of the time factor  
17 that I mentioned. But number two because as a  
18 scrivener it's very, very difficult to define  
19 things with the precision that would be important  
20 to the Commission when it reviews that.

21 Like your example just then, it's a lot  
22 easier to state that than to actually put that down  
23 in a regulation that has to be, has to be followed.

24 The approach that I was taking was that

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1 these are the types of factors the Commission would  
2 consider at the time that it reviews the evidence  
3 that is before the Commission. But it is not  
4 limited to those factors and how they are precisely  
5 written in the regulation. And that could be very  
6 limiting of the type of factors that the Commission  
7 should really take a look at at the time that it  
8 reviews it.

9 COMMISSIONER MCHUGH: This gets back  
10 in some ways to the discussion that we had  
11 yesterday. And that is how do we confine our  
12 discretion in a way that allows the affected  
13 parties to know how we're going to exercise this  
14 broad range of discretion without backing  
15 ourselves into some arbitrary corner.

16 And it seems to me that one could write  
17 a regulation that says in effect if called upon to  
18 do so the Commission will define in accordance with  
19 the statute the surrounding communities. In  
20 defining the surrounding communities, the  
21 Commission will consider the following factors  
22 whether it will consider the impact of the casino  
23 on construction, traffic on these various things  
24 and will determine whether those impacts are

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1 materially greater than those felt by the public  
2 at large.

3 And then you have simply listed what  
4 you're going to look at. You haven't said how you  
5 are you going to apply them, the weight you're  
6 going to give them. But you have given people a  
7 heads up as to what they have to come in prepared  
8 to show in order to get themselves defined as a  
9 surrounding community. And that's helpful to  
10 both sides.

11 CHAIRMAN CROSBY: But the way you just  
12 got through saying it, I thought it sort of played  
13 into what you were concerned about. I thought  
14 what you were saying you want it to say these are  
15 advisory. These are descriptive. These are the  
16 kinds of things. These are characteristic of what  
17 we will be looking at, examples of what we'll look  
18 at.

19 MR. ZIEMBA: Yes.

20 CHAIRMAN CROSBY: But you were trying  
21 very hard to make it just exemplary, not something  
22 we really were nailed to. And I don't know. I  
23 don't have an opinion whether a reg. -- You can use  
24 the exact same words in a reg. You can write a reg.

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1       that says we will use these as examples and  
2       consider we will look at other issues.

3               Whether a reg. is inherently any more  
4       rigid than a guideline, I don't have an opinion.

5               MR. ZIEMBA: Let me just give you one  
6       example. For example if you look at four  
7       operational impact, I put the word demonstrated  
8       impact on public education. And demonstrated, I  
9       put the word in there for a reason. I put that in  
10      because at the time that a casino is in the  
11      application phase, it may be very difficult to  
12      demonstrate where the impacts will be found in  
13      surrounding communities.

14              We have some examples from the  
15      Connecticut casinos where the impacts on housing  
16      were felt a couple of towns over.

17              But at the time of the application,  
18      it's merely a prediction of where those workers  
19      will find themselves. So, we will have numerous  
20      housing studies that are part of the application,  
21      but we don't necessarily know what school systems  
22      will be impacted.

23              CHAIRMAN CROSBY: Why does that  
24      mitigate for a guideline rather than a reg.?

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1 MR. ZIEMBA: Because if the word  
2 demonstrated is part of the regulation, than the  
3 fight before the Commission will have to be on  
4 whether or not it's demonstrated, how it's  
5 demonstrated. So, it's the fight regarding the  
6 very specific words that are the focus of the  
7 factors and not on that the Commission is putting  
8 forward a number of factors that in its commonsense  
9 understanding everyone should consider.

10 So, at the time of the application both  
11 the surrounding community and the applicant will  
12 put forward all of the evidence that they have.  
13 But they're not constrained regarding the specific  
14 words that we put in the regulation that is  
15 promulgated in June.

16 COMMISSIONER MCHUGH: Then we use  
17 different words, it seems to me. We can avoid  
18 those fights. There are ways to do that. But it  
19 seems to me that we ought to with this one in  
20 particular deal with it with all of the rigidity  
21 that's possible in order to begin to close some of  
22 the uncertainty that surrounds this concept now in  
23 order to get people focused on what it is at stake  
24 when they are considering whether they are

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1 surrounding communities or not, whether both the  
2 applicant and the surrounding community.

3 Otherwise it seems to me if we don't do  
4 something that helps people reach those  
5 understandings, and we're going to get a bunch of  
6 disputes when the application is filed that we have  
7 to resolve. Then there's a 30-day period to whip  
8 out an agreement. And that is not a useful process  
9 for the applicant or the surrounding community.

10 The fewer of those we can have in this process, the  
11 better off everybody is, it seems to me.

12 COMMISSIONER CAMERON: I can see  
13 gaming consultants agreeing, disagreeing. I just  
14 thought I'd like to hear their perspective on this.

15 MR. POLLOCK: A couple of points I  
16 think that John's option two is the clear of them.  
17 And the bright line is just not going to be  
18 apparent. There's going to be a lot of  
19 unanticipated consequences.

20 CHAIRMAN CROSBY: We're with you on  
21 that.

22 MR. POLLOCK: And moving forward, I  
23 think that in addition to what John has suggested,  
24 I think this can be done in the form of regulation

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1 is that some of the things we thought about to be  
2 considered would be that the burden as to what is  
3 a surrounding community, what is not a surrounding  
4 community should be on the community itself,  
5 should have the burden of demonstrating it.

6 In part because what we are talking  
7 about is we're talking about the impacts on  
8 surrounding communities. What we're really  
9 talking about are the negative impacts. There are  
10 going to be communities that may be impacted. And  
11 they may be in close proximity or they may be in  
12 distant proximity, but they may not be negatively  
13 impacted.

14 So, the burden should be on the  
15 community to demonstrate that it needs to have this  
16 agreement in place in order to deal with the  
17 impacts.

18 Another issue to be considered is that  
19 unlike host communities, surrounding communities  
20 really have to be required or should be required  
21 to negotiate in good faith with an applicant.

22 In the alternative, if they weren't  
23 required to negotiate in good faith and an  
24 applicant is required to have surrounding

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1 community agreements in place, you are effectively  
2 giving the surrounding communities veto power over  
3 an application.

4 So, there would be a different between  
5 the surrounding community's role and the host  
6 community role.

7 CHAIRMAN CROSBY: That's in the  
8 statute too. The statute won't let them just say  
9 no, you can't. That's another one we'll get to in  
10 a second.

11 What about the issue of whether this  
12 would be better accomplished in a guideline versus  
13 a reg.?

14 MR. CARROLL: I think the  
15 identification of the objective criteria is good.  
16 I agree with Commissioner McHugh in that regard.  
17 And I think the regulation can be drafted that  
18 would allow for the Commission to retain the  
19 discretion to weight the particular criterion in  
20 whatever is the most appropriate fashion.

21 But the idea that some further  
22 clarification of the generalized factors that the  
23 statute identifies is a good thing. I think it  
24 helps the surrounding communities to assess --



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1                   CHAIRMAN CROSBY: We're doing that  
2                   Bob. We are going to do that. I think we've  
3                   agreed on that. There's sort of a sub-debate  
4                   going on and we don't have to answer this at the  
5                   moment.

6                   MR. CARROLL: The choice between a  
7                   regulation and guideline I think has been stated.  
8                   I think the regulation does add a little heavier  
9                   force to it. And I think it would be prudent not  
10                  to make it so that there's an objective requirement  
11                  that each factor has to be satisfied to the point  
12                  that the regulation becomes too constraining. I  
13                  think for regulation of the two we prefer precision  
14                  if possible. It just seems to be --

15                 MR. MICHAEL: One thing that may have  
16                 been said already just underline is these are going  
17                 to be hotly contested issues. And a community  
18                 that wants to be a surrounding community and isn't  
19                 determined not to be one, is not going to be very  
20                 happy.

21                 And the likelihood of some challenge to  
22                 that is also a distinct possibility. And to the  
23                 extent that the Commission can point to it having  
24                 undergone all of the necessary procedural steps to

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1 have come to the conclusion it did is going to be  
2 hopeful in the defense of its decision.

3 And having a regulation -- The question  
4 of whether it should be a regulation or shouldn't  
5 be a regulation should be avoided if at all  
6 possible by having a regulation. And thereby not  
7 giving a challenger that argument in any appeal  
8 from any decision you make.

9 MR. INGIS: I agree what Commissioner  
10 McHugh and the other consultants have said. This  
11 is a matter, I believe, is probably addressed  
12 through a regulation.

13 But I point out so it's out there on the  
14 table, it impacts on timing. While the  
15 promulgation of a regulation is under the  
16 Commonwealth's procedures, it's going to take  
17 probably until March or April at the earliest to  
18 have it the full force in effect of that  
19 regulation.

20 Given that I still believe that that's  
21 the more prudent course of action for the  
22 Commission to employ.

23 CHAIRMAN CROSBY: As we discussed, we  
24 can do it as a guideline first.

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1 MR. INGIS: That would be a  
2 recommended procedure so that the surrounding  
3 communities are aware of what is going to be  
4 anticipated.

5 CHAIRMAN CROSBY: One quick question,  
6 are you folks here for the duration, because I had  
7 a different question I wanted to make sure to get  
8 to you.

9 MR. GUSHIN: It depends how long the  
10 duration is.

11 CHAIRMAN CROSBY: If we can make it,  
12 you can make it. I have a question. Can we reopen  
13 this? Can you become a surrounding community  
14 after your license has been awarded and we decided  
15 the judgment was wrong but we'd like to either  
16 include you or exclude you, I suppose. Can that  
17 be reopened?

18 MR. ZIEMBA: Yes. My recommendation  
19 on this is that based on my analysis and I'd love  
20 to have that confirmed by our legal consultants  
21 that after the fact these communities can apply to  
22 the community mitigation fund.

23 CHAIRMAN CROSBY: That's not the same  
24 as saying they can be a surrounding community and

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1 get money from the operator for mitigation.

2 MR. ZIEMBA: Would there be a  
3 substantive impact of them being labeled as  
4 surrounding community?

5 COMMISSIONER MCHUGH: The value of  
6 being a surrounding community is not only that you  
7 get the money, but you get a seat at the table at  
8 the license application process. You get the  
9 right to be heard on the application as does the  
10 impacted live entertainment venue.

11 So, after the license has been awarded,  
12 unless the licensing process is reopened, the  
13 utility of being a surrounding community is no  
14 different, I think, than being somebody else who  
15 is impacted. You still can apply to the community  
16 mitigation fund.

17 CHAIRMAN CROSBY: But we would rather  
18 not, if you're a surrounding community you  
19 negotiate a deal upfront.

20 COMMISSIONER MCHUGH: Right.

21 CHAIRMAN CROSBY: And mitigation  
22 payments or transactions are done by the  
23 developer.

24 COMMISSIONER MCHUGH: That's right.

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1                   CHAIRMAN CROSBY: And we would like  
2                   them to continue to be done by the developer not  
3                   to use our finite mitigation monies if we can.

4                   COMMISSIONER MCHUGH: Right. But on  
5                   the pre- and post-license award question for  
6                   designating a surrounding community, the  
7                   difference in terms of money is almost  
8                   immaterial. Because the value of being a  
9                   surrounding community is you get the right to  
10                  participate, perhaps to ask questions at the  
11                  licensing hearing.

12                 CHAIRMAN CROSBY: I understand that.  
13                 But isn't there another value of being a  
14                 surrounding community in that --

15                 COMMISSIONER ZUNIGA: -- you can  
16                 negotiate a surrounding community agreement.

17                 CHAIRMAN CROSBY: You negotiate a  
18                 surrounding community agreement and the money will  
19                 come from the operator.

20                 COMMISSIONER MCHUGH: Yes.

21                 CHAIRMAN CROSBY: If we can reopen and  
22                 make somebody a surrounding community they then  
23                 have to execute a surrounding community  
24                 agreement.

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1           The applicant has to have a surrounding  
2     community agreement. It's not a precursor  
3     anymore to a license reg., which is different.  
4     But if we have right to do that I think that would  
5     be in the Commission's interest particularly never  
6     mind the community's interest.

7           COMMISSIONER MCHUGH: I think we need  
8     to take a look at the statute, Mr. Chairman, on  
9     that. I don't see in the statute --

10          CHAIRMAN CROSBY: That's what I was  
11     asking.

12          MR. ZIEMBA: I'm not trying to prolong  
13     this conversation. But just the one thing I would  
14     note is that the potential of having numerous  
15     communities show up at the Commission is a very  
16     obviously, it is, it's a huge concern which is one  
17     of the reasons why we've been focusing so much  
18     effort at engaging the regional planning agencies  
19     to try to identify all of these issues upfront.

20          So, even if one community does not have  
21     surrounding community status for the purposes of  
22     this, the application, potentially there might be  
23     impacts that can be addressed by the applicant  
24     outside of being designated as surrounding

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1 community.

2 And that is part of the process that  
3 hopefully with the regional planning agencies we  
4 can engage because there'll likely be numerous  
5 communities that will be impacted. And  
6 potentially the applicant could agree to address  
7 those without actually falling within the  
8 procedures and becoming a surrounding community  
9 status.

10 COMMISSIONER MCHUGH: Yes. Yes.

11 CHAIRMAN CROSBY: Okay. Any other  
12 questions? Thoughts? So, I think we are  
13 probably ready to put this to motion. It seems  
14 like there's a pretty strong consensus  
15 that yes, we agree with the recommendation. In  
16 fact, I think pretty much the literal word. We  
17 would want to adopt the recommendation as written.  
18 The timeframe being that we would flesh out this  
19 list, post it for either formal or informal public  
20 comment. And then publish a definitive advisory  
21 which will likely go on to become a reg. by the end  
22 of January.

23 Anybody want to move that?

24 COMMISSIONER ZUNIGA: So moved.

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1 COMMISSIONER CAMERON: Second.

2 CHAIRMAN CROSBY: Okay. Any further  
3 discussion on question number one? All in favor?  
4 Aye.

5 COMMISSIONER STEBBINS: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER CAMERON: Aye.

8 COMMISSIONER MCHUGH: Aye.

9 CHAIRMAN CROSBY: Opposed, nay? All  
10 right. I mean no nays. Okay, where are we,  
11 question number 17? No, question number two.

12 Again, this was my question. And  
13 again I offloaded it on Ombudsman Ziemba.

14 But I'm going to suggest that we take  
15 a little break. So, we'll be back in five minutes.

16  
17 (A recess was taken)

18  
19 CHAIRMAN CROSBY: We are reconvening  
20 public meeting number 41. I think we'll go  
21 straight to question two. Should the Commission  
22 issue guidelines to municipalities which may be a  
23 surrounding community to more than one host  
24 community? Ombudsman Ziemba?



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1                   MR. ZIEMBA: I promise to be a little  
2 bit more brief in this presentation. So, the  
3 question is should the Commission issue guidelines  
4 to municipalities which may be a surrounding  
5 community to more than one host community?

6                   And the recommendation is that the  
7 Commission should take a look at the procedure to  
8 resolve disputes pursuant to MGL Chapter 23K  
9 Section 17(a). We've discussed those procedures  
10 already today where the Commission shall establish  
11 protocols and procedures to resolve disputes.

12                  And the premise of my answer is that if  
13 you really take a look at it, whether or not a  
14 community is a surrounding community to one  
15 community or to multiple communities, if there is  
16 a dispute that it could be fully resolved or  
17 potentially could be fully resolved within the  
18 procedure here.

19                  What you may be concerned about is if  
20 a surrounding community might exhibit some  
21 preference to one or another host community. But  
22 if the Commission establishes procedures so that  
23 it can evaluate that in the context of those  
24 procedures and it established procedures to

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1 resolve any dispute, in many ways is no different  
2 than a surrounding community that has a dispute  
3 with just one host community.

4 So, I think that the law already  
5 provides method to take that into account and to  
6 resolve these disputes. So in that regard, I  
7 don't believe it is really necessary to issue new  
8 guidelines for such situations with a couple of  
9 noted exceptions.

10 Earlier today we heard that perhaps  
11 that the Commission should institute a general  
12 good-faith standard within its regulations. And  
13 the good-faith standard would apply to applicants,  
14 host communities, but also potential surrounding  
15 communities. And that could be taken into account  
16 in either the application or in the context of a  
17 surrounding community which was not predesignated  
18 as a surrounding community that could be taken into  
19 account during the resolution procedure.

20 So, if it was ever demonstrated that  
21 there was bad-faith, the arbitrator could take  
22 that into account in resolving the dispute as part  
23 of the evidence before the arbitrator.

24 I think it is fairly unlikely or it will

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1 be rather rare that you have a proven violation of  
2 the good-faith standards. The example that I give  
3 is that even though a surrounding community may  
4 negotiate two distinctly different surrounding  
5 community agreements with different host -- excuse  
6 me, with applicants in different host communities,  
7 that might just be evidence that they were just  
8 trying to get the best deal that they possibly  
9 could. It may not be provable as bad-faith.

10 Where it rises to the level if you have  
11 factors that indicate that one surrounding  
12 community is actively trying to sabotage another  
13 community's application such as that there is  
14 never a distinct, concrete, finalized, executed  
15 agreement, that's where this bad-faith standard  
16 could eventually come into play.

17 The other recommendation is that the  
18 Commission could consider as evidence, if indeed  
19 one surrounding community executed an agreement  
20 with a favored, for lack of a better word, favored  
21 host community failed to execute an agreement with  
22 another host community, the applicant in that host  
23 community, potentially if there are similar types  
24 of impacts, the arbitrator could use as evidence

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1 any measures that that surrounding community  
2 agreed to in the executed host community -- excuse  
3 me surrounding community agreement with the other  
4 host community.

5 To put it more simply, if a surrounding  
6 community executes an agreement with one  
7 community, it agrees to a whole host of measures,  
8 but for whatever reason it fails to do so with  
9 another host community, the arbitrator could use  
10 the evidence of what was included in the executed  
11 surrounding community agreement in the process of  
12 resolving the dispute between the applicant and  
13 the potential surrounding community as part of  
14 that arbitration process.

15 But beyond that I don't see a need for  
16 further guidelines in this regard.

17 COMMISSIONER STEBBINS: John, quick  
18 question. Why are you including the host  
19 community in the good-faith standard?

20 MR. ZIEMBA: In disputes regarding --  
21 You're right. In dispute regarding surrounding  
22 communities and applicants, the procedure that  
23 we're utilizing, the 23K Section 17(a) procedure,  
24 I think that really only involves, as you're

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1 pointing out, only involves the applicant and the  
2 surrounding community.

3 But that I included host community  
4 under the good-faith standard just for some of the  
5 reasons that I think we've discussed that all  
6 applicants and communities should exhibit  
7 good-faith in their dealings.

8 CHAIRMAN CROSBY: There's actually no  
9 obligation for a host community to execute -- to  
10 follow a good-faith negotiation in its host  
11 community agreement.

12 MR. ZIEMBA: Right.

13 CHAIRMAN CROSBY: They can do whatever  
14 they want, right?

15 MR. ZIEMBA: Right.

16 CHAIRMAN CROSBY: It would be a  
17 little, Commissioner Stebbins is right, I think  
18 it's a minor point, but I think in this context  
19 doesn't really make sense.

20 I can't really think of any applicants  
21 that would apply because they have to talk with  
22 entertainment venues as well as surrounding  
23 communities. But it really doesn't seem like host  
24 communities really fit in this.

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1                   MR. ZIEMBA: Unless a host community  
2                   did something to disadvantage a particular  
3                   surrounding community, but again you're right. I  
4                   don't have a concrete example.

5                   CHAIRMAN CROSBY: Okay.

6                   COMMISSIONER MCHUGH: What does  
7                   good-faith mean?

8                   MR. ZIEMBA: What does good-faith  
9                   mean? Let's see, Mr. Chairman, you and I  
10                  discussed a couple of examples. I'm trying to  
11                  remember what some of those examples might be.

12                  CHAIRMAN CROSBY: Do you mean what  
13                  would it be designed to protect against or how do  
14                  you define it?

15                  COMMISSIONER MCHUGH: What does it  
16                  mean?

17                  CHAIRMAN CROSBY: I thought it was  
18                  just like a reasonable man standard.

19                  MR. ZIEMBA: For example, the example  
20                  that I mentioned that a surrounding community  
21                  purposely sabotaged negotiations --

22                  CHAIRMAN CROSBY: Applicant A over  
23                  applicant B.

24                  MR. ZIEMBA: -- with a particular host

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1 community so that they cannot not proceed to --

2 COMMISSIONER MCHUGH: Suppose it did  
3 that because it felt that knocking out the first  
4 application would be highly beneficial to the  
5 town? That application A is much more favorable  
6 to the town than application B. So, it uses its  
7 power to try and sabotage B for the good of the  
8 town? Is that bad-faith?

9 I'm not trying to cross-examine. I  
10 just wonder what utility on a cost-benefit basis  
11 we get from adding a good-faith standard as opposed  
12 to getting ourselves potentially into sort of  
13 satellite litigation over that standard, when most  
14 of the effects that we're trying to achieve by  
15 putting that standard in, i.e., the ability to use  
16 evidence of what you did in situation A to prove  
17 that the agreement in situation B should parallel  
18 it is available anyway.

19 MR. ZIEMBA: Right.

20 COMMISSIONER MCHUGH: And it strikes  
21 me that a good-faith standard simply injects  
22 something that is both difficult to prove and of  
23 marginal utility.

24 MR. ZIEMBA: Yes. In my analysis I

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1 state that it is very difficult to prove good-faith  
2 standard. And I guess in perhaps in discussing  
3 the good-faith standard, I was running with the  
4 premise of the question of here is an issue of a  
5 potential bad of some situation with surrounding  
6 communities that may have impacts on multiple host  
7 communities. And is there something that the  
8 Commission should do about that?

9 CHAIRMAN CROSBY: Well, the statute  
10 says that if they can't agree then we, again, have  
11 to have protocols and procedures for ensuring the  
12 conclusion of the negotiation of a fair and  
13 reasonable standard --

14 MR. ZIEMBA: Right.

15 CHAIRMAN CROSBY: -- fair and  
16 reasonable agreement, which I was going to ask  
17 doesn't that already essentially take care of the  
18 good-faith requirement.

19 But in any event, I think, I don't know  
20 what is -- what does fair and reasonable mean?  
21 Could surrounding community decide that the deal  
22 with A was better for them? So, they simply  
23 flat-out refuse to do a deal with B and thereby try  
24 to deny B the license? Would that be fair and



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1 reasonable?

2 COMMISSIONER MCHUGH: It may not be  
3 fair and reasonable, but those are the statutory  
4 standards. And it seems to me that they're  
5 difficult enough, Mr. Chairman, so we don't need  
6 to add another difficulty on top of them.

7 CHAIRMAN CROSBY: I didn't notice  
8 about this fair and reasonable until you put it in,  
9 until you put the statute. It does sort of seem  
10 to me from that standpoint that it takes care of  
11 the case -- the hypothetical you and I were talking  
12 about is dealt with as well as it can get dealt  
13 with.

14 MR. ZIEMBA: I think that's right.  
15 They could be seen as one in the same without  
16 injecting --

17 CHAIRMAN CROSBY: A new factor.

18 MR. ZIEMBA: -- what is the definition  
19 of good-faith.

20 CHAIRMAN CROSBY: Well, we've already  
21 got one bad enough we can't define.

22 MR. ZIEMBA: Right, I've already  
23 argued against trying to define difficult words.  
24 A point well taken. So, in that regard, the

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1 recommendation is that we rely on the process  
2 that's already established under General Laws.

3 CHAIRMAN CROSBY: Right. Right. Is  
4 there any further discussion?

5 COMMISSIONER STEBBINS: I want to pick  
6 up on the Judge's point, because it does I think  
7 get back to the protocols and procedures that if  
8 ultimately an agreement can't be reached between  
9 one applicant and surrounding community is drawing  
10 on the basis of an agreement they might have signed  
11 with another applicant.

12 I'm not quite sure where I'm going with  
13 this. In terms of establishing protocols and  
14 procedures. Surrounding community A for whatever  
15 reason, I think I did a good deal with applicant  
16 A. So, I negotiate an agreement that covers the  
17 mitigation out of five, six topics.

18 I'm not negotiating with applicant B  
19 for any number of reasons. Is it fair to say you  
20 take at the appropriate point whatever agreement  
21 I've done with A and the Commission could  
22 essentially say we want you to replicate that in  
23 whatever kind of timeline we want to do.

24 If you're saying that roads, schools,

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1 water, whatever impacted, we could probably convey  
2 those at minimum being in an agreement that  
3 essentially we would have to arbitrate or have to  
4 force with them to sign with the applicant that  
5 they don't want to deal with for whatever reason.

6 MR. ZIEMBA: Right. The  
7 recommendation is that you can take if there is an  
8 executed agreement in trying to determine what is  
9 a fair and reasonable outcome. You can take the  
10 impacts and the measures to mitigate those impacts  
11 as evidence and determine what is a fair and  
12 reasonable conclusion.

13 CHAIRMAN CROSBY: This came up because  
14 somebody at Munson -- when I was in Western Mass.,  
15 I think Munson either is or perceives that it might  
16 be a surrounding community to both the Palmer and  
17 the Springfield site.

18 And the person from Munson said to me,  
19 what would we do in that situation? And I thought,  
20 mmmm, I hadn't thought about that. That's an  
21 interesting question. I think I saw it written  
22 recently that Chelsea might be a potential  
23 surrounding community to either an Everett or an  
24 East Boston site and the same issue.

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1                   So, it is an interesting issue. Where  
2                   this began was what authority do we want - do we  
3                   think is appropriate to vest in a surrounding  
4                   community using a clause which was intended, I  
5                   think, to do one thing which is to mitigate the  
6                   impacts of a casino on a community in a reasonable  
7                   way for another purpose, which is to exercise a  
8                   significant role in deciding which of two  
9                   competing organizations gets the nod.

10                  And it's an interesting question, but  
11                  I think what maybe we've decided is for good or ill,  
12                  there is a mechanism and it's as good as we can come  
13                  up with. And if it comes up, then we'll just deal  
14                  with it when the time comes. And we'll have to  
15                  figure out in the context what fair and reasonable  
16                  means, in a context which is probably not really  
17                  anticipated by the drafters.

18                  COMMISSIONER MCHUGH: But don't we  
19                  have built into this now the arbitration bit?

20                  CHAIRMAN CROSBY: We haven't said that  
21                  yet here. Because it says we have to do protocols  
22                  and procedures. But in the live entertainment  
23                  venues, we've said it would be the you appoint one,  
24                  I appoint one, they appoint one. We haven't come

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1 up with that mechanism for this.

2 COMMISSIONER MCHUGH: Okay. I missed  
3 that.

4 MR. ZIEMBA: And I would recommend, I  
5 think there are probably a lot of issues that we  
6 should consider in coming up with those protocols.  
7 We've heard from a number of applicants who  
8 recommended that we should concentrate a lot of  
9 time and resources to getting that resolved as  
10 early as we can in the process. And I would  
11 recommend that as well.

12 If you take a look at some of the -- I'm  
13 not going to go into this, because this isn't an  
14 item. But if you take a look at some of the  
15 amendments that were offered by Legislators on the  
16 surrounding communities debate, there are a lot of  
17 proposals on how you finally resolve that debate  
18 between the applicant and the surrounding  
19 community.

20 And one of the proposals was that you  
21 basically take the last and best offer from the  
22 community as the last offer. So, I'm not  
23 recommending that, but I'm saying that there are  
24 a lot of potential things for the arbitrator to

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1 consider. And maybe we would want to do it when  
2 we get into it further.

3 CHAIRMAN CROSBY: That's having to do  
4 with surrounding communities. This very  
5 idiosyncratic case that we talked about which is  
6 a surrounding community with more than one host  
7 community, which we didn't know if it's going to  
8 occur. So, I don't know that we need to worry  
9 about the protocols and procedures for this  
10 section now.

11 MR. ZIEMBA: Right, but they would  
12 just be encompassed within the surrounding  
13 community's protocols and procedures.

14 CHAIRMAN CROSBY: In effect, yes.

15 MR. ZIEMBA: Just to resolve the  
16 dispute between two parties, the procedures will  
17 be utilized. There's no need for a special  
18 regulation applying to these multiple --

19 CHAIRMAN CROSBY: Right, right. But  
20 we still don't -- Maybe I'm missing something.

21 MR. ZIEMBA: We still need to work on  
22 those protocols.

23 CHAIRMAN CROSBY: We still have to  
24 come up with the protocol and procedure at some

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1 point.

2 MR. ZIEMBA: Correct.

3 CHAIRMAN CROSBY: Okay.

4 COMMISSIONER STEBBINS: Sorry, John.

5 The comment I was making I just noticed in  
6 paragraph 11. My apologies.

7 CHAIRMAN CROSBY: So, do somebody want  
8 to move? I think we have a consensus here to adopt  
9 the recommendation as in the first paragraph not  
10 including the second paragraph. And to encourage  
11 the ombudsman to think about protocols and  
12 procedures in good time.

13 COMMISSIONER STEBBINS: So moved.

14 CHAIRMAN CROSBY: Second?

15 COMMISSIONER CAMERON: Second.

16 MR. ZIEMBA: He needs a lot of  
17 encouragement.

18 COMMISSIONER STEBBINS: Come back and  
19 define in good time for us at some point.

20 CHAIRMAN CROSBY: Any further  
21 discussion? All in favor of adopting question two  
22 as slightly modified say aye. Aye.

23 COMMISSIONER STEBBINS: Aye.

24 COMMISSIONER ZUNIGA: Aye.

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1 COMMISSIONER CAMERON: Aye.

2 COMMISSIONER MCHUGH: Aye.

3 CHAIRMAN CROSBY: Opposed? Okay.

4 It is adopted.

5 Let's go to question 17. Once again,  
6 my issue, once again offloaded. Ombudsman  
7 Ziemba.

8 MR. ZIEMBA: So, the question is  
9 should the Commission specify the minimum required  
10 content for a host community agreement?

11 We heard some testimony regarding this  
12 issue yesterday, but I will go through some of the  
13 comments that we received. Sterling Suffolk  
14 raised a number of issues. They have a rather  
15 lengthy answer on this question, but the general  
16 tenor is that the support for local control is  
17 baked into the Gaming Act and that should be taken  
18 into account.

19 Mass. Audubon said that it is important  
20 to have baseline conditions for all community  
21 agreements.

22 City of Boston strong support for  
23 principles of local control.

24 Paul Vignoli, yes. Philip Cataldo,



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1       yes. Martha Robinson, yes but make sure that  
2       these minimums are the bare minimums and that  
3       communities are free to add to them.

4               Shevsky and Froelich for the City of  
5       Springfield said absolutely not. It's  
6       inconsistent with the Act.

7               MAPC said yes, except it should be  
8       stated that the minimums can be exceeded. The  
9       minimums would be valuable in assisting smaller  
10      communities.

11              City of Revere, no. They've  
12      emphasized the principle of local control.

13              Town of Bridgewater, yes. This would  
14      be helpful to the communities.

15              Andrea Powers, yes. A common baseline  
16      would save time and money.

17              MMA, Mass. Municipal Association, no.  
18      No minimum but the Commission should advise  
19      communities upon request.

20              We heard a lot of testimony yesterday  
21      regarding some of the issues behind minimum  
22      required content. I think I can briefly just  
23      actually read these. It might be worthwhile to  
24      read them.

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1                   So, arguments that the Commission  
2                   should utilize its authority to review host  
3                   community agreements as part of an application,  
4                   but refrain from establishing regulatory minimums  
5                   for the agreement including establishing the  
6                   minimum content of host community agreement  
7                   presumes that the Commission knows better than the  
8                   host community whether it should enter into such  
9                   agreement and allow a gaming establishment into  
10                  its community.

11                  The statute makes clear that the  
12                  decision to enter into a host community agreement  
13                  is with the host community itself. And the  
14                  Commission has no role to approving it prior to  
15                  receiving the gaming application.

16                  Creating regulatory minimums would  
17                  impact the authority and responsibility of local  
18                  governments to determine what is in the best  
19                  interest of their citizens.

20                  Host communities are in the best  
21                  position to evaluate local conditions that vary  
22                  from other host conditions and regulatory minimums  
23                  that may not be able to reflect local variances.

24                  Such standards may be subject to

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1 litigation and the attendant delay of litigation  
2 if they're deemed to be in excess of the Gaming  
3 Commission's statutory authority.

4 Establishing minimums to regulation  
5 may cause participants to delay negotiating  
6 agreements until after the lengthy time required  
7 to promulgate regulations.

8 Since regulatory minimums are by their  
9 nature minimum standards, host communities like  
10 will see much more robust and precise measures than  
11 possible in a regulation promulgated after months  
12 of deliberation and process.

13 And once established regulations take  
14 more time to amend if additional circumstance and  
15 information becomes available to warrant a change  
16 in any minimum standard.

17 The statute establishes procedures so  
18 that citizens are properly informed about the host  
19 community agreement when they make a decision on  
20 the ballot measure.

21 The Commission could issue best  
22 practices guidelines that host communities could  
23 consider in negotiating host community  
24 agreements.

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1 Host agreements could be legally  
2 challenged if they do meet the strictures of the  
3 language or the regulatory minimums.

4 And finally, the statute includes  
5 numerous minimum requirements that an applicant  
6 must meet in order to be licensed.

7 There are a number of arguments in  
8 favor of moving forward with minimum regulations.  
9 The extensive experience many applicants have with  
10 such agreements may place host communities at a  
11 very distinct advantage.

12 Although resources are available to  
13 help host communities evaluate such agreements,  
14 host communities still may be at a disadvantage  
15 given the significant legal resources and other  
16 resources and experience of applicants.

17 The statute provides the Commission  
18 with the broad power and authority to implement the  
19 purposes of the statute.

20 Minimum requirements establish a floor  
21 for negotiations for host communities.

22 Guidelines do not have the force of law  
23 and could not be enforced by the Commission.

24 Inadequate host agreements could lead

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1 host communities to rely on resources from the  
2 community mitigation fund increasing competition  
3 for funds, which may be needed for surrounding  
4 communities or other communities and entities  
5 impacted by gaming establishments.

6 The recommendation here is that the  
7 Commission should consider issuing guidelines  
8 regarding the minimum content for host and  
9 surrounding communities in the very near future,  
10 likely prior to January.

11 CHAIRMAN CROSBY: Surrounding,  
12 surrounding is not on the table here.

13 MR. ZIEMBA: Correct. But in the  
14 process -- Excuse me. It's not constrained to the  
15 question at hand. But in the process of coming up  
16 with a host advisory, it would likely if the  
17 Commission so determines --

18 CHAIRMAN CROSBY: We've already  
19 determined that we were going to come up with  
20 guidelines that will probably be regs. for the  
21 surrounding community. This is separate.

22 MR. ZIEMBA: That's regarding the  
23 definition of factors to be considered and whether  
24 or not a community is a surrounding community.

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1 CHAIRMAN CROSBY: Right.

2 MR. ZIEMBA: But a lot of surrounding  
3 communities have questions on what they should  
4 consider when they are considering surrounding  
5 community agreements.

6 COMMISSIONER ZUNIGA: The content of  
7 the agreement.

8 CHAIRMAN CROSBY: But the question  
9 posed was host.

10 MR. ZIEMBA: I will limit my remarks to  
11 the host communities. Guidelines could be  
12 available in the time that it's anticipated that  
13 some communities may be nearing the completion of  
14 their agreements with applicants.

15 The exception to the general rule is  
16 that we may want to consider some regulations  
17 within host agreements. Those regulations do not  
18 get at the specific mitigation measures that  
19 communities would be expecting to be included in  
20 those host agreements, but they would touch upon  
21 other issues that are important to the Commission.

22 For example, the Commission could  
23 require that all host community agreements are  
24 subject to regulations or regulatory amendments

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1       that may be issued by the Commission. And that  
2       gets at regulations such as if a host community  
3       agreement involves an applicant that has been  
4       rejected by the Commission, that the Commission  
5       views that host community as null and void.

6               Further, the Commission could consider  
7       requiring provisions that make them subject to  
8       amendment if the basis of the mitigation plan is  
9       substantially and materially changed. The  
10      example that I give is that if a mitigation  
11      agreement is predicated upon a new interchange  
12      that must be approved by the State and by Federal  
13      authorities, and that interchange is not possible,  
14      that potentially we might require a provision in  
15      host agreements that would require the parties to  
16      take that into account.

17             Again, the counterargument to that is  
18      that local control means local control. So, to  
19      the extent that the Commission is extending itself  
20      into the host community agreements, that it should  
21      not do so.

22             That the communities should through  
23      their own deliberations anticipate some of these  
24      factors that could come about. Especially if a

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1 mitigation plan is dramatically different from  
2 that which they are negotiating, it would be in  
3 their interest to come up with such a provision,  
4 but not necessarily a community agreement may not  
5 have such a provision. But again that's up to the  
6 community. That's what I have to offer.

7 CHAIRMAN CROSBY: Questions,  
8 thoughts, reactions?

9 COMMISSIONER MCHUGH: Once again, I  
10 have some doubt as to whether we can do the kinds  
11 of things outlined here by guideline as opposed to  
12 regulations. But let's put that to one side for  
13 a minute, because I think we need to have an  
14 exploration of that. We've already got a  
15 foundation for it. Within the next few days, I  
16 want to try and get something distributed to all  
17 of us so we're on the same page.

18 But in my looking at this, I go back to  
19 the sort of three-pronged approach that it seems  
20 to me that the statute lays out. Where the host  
21 community developer relationship is involved  
22 that's really a matter for local control as I look  
23 at this scheme.

24 Where the host -- Where the developer



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1 is working with the surrounding communities, we  
2 have a greater role to play to protect the  
3 surrounding community. And we have a much greater  
4 role to play when the regional content is  
5 concerned.

6 And I would be very reluctant to  
7 prescribe minimum contents for the host community  
8 agreement. If they negotiate a bad agreement that  
9 we think is really terrible when the application  
10 is presented, we can deny the license. If they  
11 negotiate a marginally bad agreement and then come  
12 to the community mitigation fund to make up things  
13 that they should have considered when they  
14 negotiated the agreement, and take money from  
15 others who had no opportunity to be at the table,  
16 we can give the others a preference and say you've  
17 got elected officials to deal with here. And you  
18 voted on this.

19 The one part that concerns me, as you  
20 correctly pointed out in this thoughtful  
21 memorandum, is what happens if we get a host  
22 community agreement that's premised on a major  
23 mitigation condition that proves impossible to  
24 fulfill because the permits can't be granted?

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1       What do we do then? And should we require a host  
2       community agreement to take account of that  
3       possibility?

4               It seems to me that there are two ways  
5       to approach that. One would be to say yes, there  
6       ought to be a provision in there. And that the  
7       disclosure to the community ought to say that this  
8       whole plan is contingent on a number of permits  
9       that are not yet in hand. So that the community  
10      understands what it has voted on.

11             The second is that we ought to reserve  
12      as maybe it's unnecessary to do anything to  
13      reserve, we probably already have the power,  
14      something for our exercise of power when issuing  
15      the license to put in conditions that unless a  
16      series of major mitigation effects come to pass the  
17      license is void and we will do further processing,  
18      which may include the requirement for another  
19      community vote. I don't know that we have the  
20      power to do that. But that's another approach to  
21      take.

22             So in summary, I think that apart from  
23      trying to deal with that contingency the failure  
24      of a major mitigation effort, we should not require

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1 minimum standards in a host community agreement.

2 MR. ZIEMBA: That's consistent with my  
3 recommendation. In regard to the guidelines, I  
4 think that is consistent with the role of the  
5 Commission to provide educational -- to provide  
6 education on issues to the general public and to  
7 communities to the extent that it can.

8 COMMISSIONER MCHUGH: And I'm all in  
9 favor of providing education and assistance. The  
10 question I have, and I think we need to discuss a  
11 little bit further is assume we promulgate  
12 guidelines. Then can we deny an application say  
13 because the application -- the host community  
14 agreement doesn't meet the guidelines without  
15 having formalized the guidelines in a regulation.  
16 I'm concerned that we can't do that.

17 MR. ZIEMBA: That's a very good point  
18 and one that I didn't really consider in this  
19 memorandum. The provision of guidelines was  
20 meant purely to inform local communities of the  
21 types of things that they should consider when they  
22 are doing the host community agreements.

23 But you're exactly right. When you're  
24 putting out those guidelines, does that all of a

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1 sudden become a standard that the Commission would  
2 utilize when evaluating host community agreements  
3 as part of its review?

4 And the side that I ended up on was that  
5 it's within the educational purpose of the  
6 Commission, but you're right. It is a very  
7 tricky, fine line distinction that deserves  
8 further consideration.

9 COMMISSIONER MCHUGH: I see. Well,  
10 we may be able to put sufficient disclaimer  
11 language in there and make clear what we're doing  
12 and serve the educational purpose without creating  
13 a mechanism for evaluation. That becomes  
14 problematic. We could do that.

15 CHAIRMAN CROSBY: We've done other  
16 guidelines. Guidelines for schools for example.  
17 And all over it we said this not a legal. I  
18 basically echo Commissioner McHugh. And I've  
19 sort of changed my view on this. I think that the  
20 law gives, as the Commissioner said, very wide  
21 discretion relative to host community agreements.  
22 And it's different from surrounding and different  
23 from other things.

24 And if we very much, and we are

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1 proactive on if communities want help and the  
2 smaller communities do and the larger ones tend not  
3 to, but if they do, we are there to provide it. And  
4 we provide it evenhandedly.

5 But it's such a small group of  
6 communities with which we can have regular and are  
7 having regular -- you are having regular  
8 communication, that I'm not sure that publishing  
9 guidelines for host community agreements really  
10 adds very much. And if it runs the risk in any way  
11 of compromising us down the road, I wouldn't do it.

12 So, I lean against, and as I say I've  
13 changed my mind on this, but I lean against any kind  
14 of formal guidelines. I'm in favor of  
15 communicating. And I would add that I think when  
16 the proposal comes to us, we are at a court of last  
17 resort. I think we could probably send if we had  
18 a competitive proposal and one of the competitors  
19 had what we thought was a good host community  
20 agreement and one was not, we could favor the one  
21 that was. That will clearly be one of the things  
22 we would consider.

23 If we think a community is being taken  
24 advantage of or didn't do a good job of looking out

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1     for its own interest, we will take that into  
2     consideration. If we have a situation where we  
3     have no competition, just one proposer, we can send  
4     it back saying we don't like this host community  
5     agreement. And we're not going to approve it  
6     unless you do such and such.

7             So, we do have the authority as your  
8     document says in the final analysis to make sure  
9     that we think -- to weigh what's in the host  
10    community agreement. But prior to that moment, I  
11    agree with Commissioner McHugh that we should not.

12            The issue of what happens in the event  
13    of a major material change in circumstance, I  
14    almost consider it a separate issue. It's a real  
15    issue. It has to get dealt with. I almost think  
16    we have to deal with that as a separate issue from  
17    this one. Maybe it turns out that that is one  
18    guideline we issue. But I would sort of set that  
19    aside. We have many hands over there, Guy and  
20    Steve.

21            MR. MICHAEL: It is a different  
22    question. In the context of the issue about what  
23    happens if there's a promise made in the agreement  
24    that can't be fulfilled.

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1           Two observations, one this is going to  
2           a vote of the public. And I can imagine a voter  
3           looking at a proposition that says at the top this  
4           may or may not happen. This is all subject to our  
5           getting all of the permits, which is absolutely  
6           true. But why should they vote in favor? What  
7           are they voting on? Could that influence the vote  
8           in the sense that they're going to say tell me what  
9           I'm actually getting and then I'll vote on it.

10           I don't know that that's ever really  
11           possible because you have all of those permitting  
12           procedures. But to the extent you emphasize that  
13           everything in this agreement is all subject to some  
14           future event, you may be discouraging people from  
15           voting for it.

16           I'm wondering whether or not  
17           necessarily telling the communities what they have  
18           to put in the agreement, but establishing some kind  
19           of form for the agreement that says here are  
20           mandatory elements. These are things we promise  
21           you. This is what's going to happen. And these  
22           here are some elements that we are going to try to  
23           do. These are things that potentially could  
24           happen.

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1                   And at least the voter is given the full  
2                   range -- is given something that's substantial  
3                   that they can depend on and then other things that  
4                   necessarily have to be contingent. I am a little  
5                   bit concerned about presenting the public with a  
6                   vote on something that's potentially ephemeral.

7                   CHAIRMAN CROSBY: We're not saying  
8                   that we should do that. And we're going to talk  
9                   about what's in the summary in a minute. But I  
10                  don't think we're taking the position that you  
11                  should say everything is contingent.

12                  What we're saying is, what  
13                  Commissioner McHugh and I are saying is it's up to  
14                  the host community to determine what is in the  
15                  agreement. If they want to say it's all  
16                  ephemeral, that's their business. If they want to  
17                  say it's all for sure, that's their business.  
18                  Steve did you have -- That's what we're saying.  
19                  Whether it's right or wrong, I don't know.

20                  MR. INGIS: My point was triggered by  
21                  something you said. If the Commission determines  
22                  that a host agreement at some point is  
23                  unsatisfactory that you could have them revise it.  
24                  I'd point out that the host agreement is the



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1 predicate for requesting a referendum in the first  
2 place.

3 So, the public is going to be voting on  
4 something that you're now saying could be  
5 materially revised. I'm not sure that you would  
6 have the authority to do that.

7 CHAIRMAN CROSBY: No, that's a good  
8 point. This goes to almost the same point we were  
9 talking about before. What happens if a major  
10 point in the host community agreement is not  
11 materialized, such as a massive new traffic  
12 interchange. That's a dramatic example that  
13 people presume.

14 MR. INGIS: But I'm saying considering  
15 the issue of whether you want to prescribe minimum  
16 standards, I don't want anyone to have the  
17 misimpression that you'll be able to correct it at  
18 a subsequent point.

19 After the referendum takes place, your  
20 hands are pretty much tied.

21 CHAIRMAN CROSBY: As a practical  
22 matter, we would be making it a better deal for the  
23 community. But I hear your point.

24 MR. INGIS: The public may have

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1 different reaction. It's hard to speculate as to  
2 what they would be.

3 COMMISSIONER CAMERON: Because the  
4 referendum is unique to the Commonwealth, don't  
5 you think that that guards against a weak agreement  
6 with the host community? Don't you think it would  
7 tend to be somewhat inclusive because of the fact  
8 that the vote depends on it?

9 MR. INGIS: I think it is so much  
10 speculation as to what the public is going to be  
11 aware of and what's going to cause them to vote in  
12 favor or opposed, that it's difficult to fathom all  
13 of the possible scenarios.

14 MR. MICHAEL: I agree. I think if we  
15 were speculating, it would be more likely that if  
16 you're trying to encourage someone to vote for you,  
17 you would give them more rather than give them  
18 less. And again, if I had to guess on what would  
19 happen, that would probably be the outcome. But  
20 you don't know the sequence, who knows what people  
21 want.

22 COMMISSIONER MCHUGH: This also and it  
23 seems to me it's a side issue but it's thrust to  
24 the forward by this discussion, it seems to me, or

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1 it illustrates the importance of trying to get the  
2 permitting process to move as quickly and  
3 synchronously as possible because the number of  
4 independently moving pieces can greatly  
5 complicate the issue, particularly after a vote is  
6 taken.

7 We have to keep, and I know we are, and  
8 try and keep working on that and see what we can  
9 do to facilitate making that process work. I'm  
10 not sure we can do this by ourselves.

11 MR. INGIS: I just wanted to  
12 interject. Obviously, you don't have to reach  
13 this issue with the determinations made not to  
14 prescribe minimum requirements for host  
15 agreement. But if the Commission were to find  
16 that you wanted to issue either regulations or  
17 guidelines, I would strongly suggest that the same  
18 arguments of (INAUDIBLE) was discussed in the  
19 findings of surrounding community that  
20 regulations are pretty much imperative as opposed  
21 to guidelines. Guidelines can be issued for  
22 education purposes, as you suggested, but not in  
23 terms of prescribing the minimum requirements.

24 CHAIRMAN CROSBY: Right.

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1                   COMMISSIONER STEBBINS: One thought,  
2                   and again, I come down the side that I think the  
3                   statute is pretty clear in terms of local control  
4                   and granting authority for them to negotiate a host  
5                   community agreement. I guess the caution flag I  
6                   would raise, and maybe this is simply even a  
7                   responsibility for you to deal with communities,  
8                   is just to make sure communities are mindful of our  
9                   evaluation criteria so that they don't put  
10                  something in their host community agreement that  
11                  is something that we're going to have to judge  
12                  under Section 18. And all of a sudden could hamper  
13                  the ability for us to approve their license  
14                  applications.

15                MR. ZIEMBA: And part of that is what  
16                I was contemplating when you put out these  
17                educational materials. Here are the types of  
18                standards that would be important to the  
19                Commission based on the statute. And then there  
20                are a number of other issues of what a community  
21                should do in moving forward with their mitigation  
22                agreement and are there best practices.

23                        Again, I sort of address this in my memo  
24                        which is in any materials that come out of the

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1 Commission that it would be very difficult to make  
2 sure that they are evenhanded. For example, even  
3 if we rely on third parties to provide examples of  
4 best practices, best practices according to whom?

5 If you ask an applicant with experience  
6 around the country, they may say well that actually  
7 never even worked for the benefit of a particular  
8 community that type of a provision. So, we have  
9 to be mindful of all of those types of things when  
10 we put out our educational materials or frankly  
11 whenever I open my mouth. Whether or not it's  
12 written down or not is sort of a subset of the  
13 question.

14 But I think that as we go forward and  
15 evaluate what we provide for our educational  
16 materials even if we're not voting today to publish  
17 those materials in January, perhaps we should  
18 think about that a little bit further. Because  
19 every day when I'm visiting with host and excuse  
20 me for talking about surrounding communities, but  
21 there's a wealth of questions out there and some  
22 yearning for concrete advice in that regard.

23 COMMISSIONER STEBBINS: Again, my  
24 suggestion is not for -- again, I'm not sure I could

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1       see a scenario where a host community agreement  
2       would have some piece of the agreement that would  
3       fly in the face of what the Commission is going to  
4       look for in an application. But again, a  
5       recommendation, just a suggestion to a host  
6       community, be mindful of what we're judging an  
7       evaluation on.

8               MR. ZIEMBA: In practice a number of  
9       these host communities --

10              COMMISSIONER STEBBINS: An unofficial  
11       guideline, I guess.

12              MR. ZIEMBA: Right. In practice, a  
13       number of these host communities are being  
14       represented by counsel who are taking into  
15       consideration all of the considerations that we  
16       have to when the Commission makes its decision.

17              COMMISSIONER STEBBINS: Let's make  
18       sure the applicant is too.

19              MR. ZIEMBA: Hopefully, yes.

20              CHAIRMAN CROSBY: And there's a lot of  
21       description in the statute, right? There's lots  
22       of direction. I'm not sure we could add much to  
23       what's in the statute in terms of general --

24              MR. ZIEMBA: I won't go into it here,

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1       because it's sort of beyond the question. But  
2       there's all sorts of issues out there. Should  
3       host communities engage in peer review of traffic  
4       impacts or would they rely on the applicant?  
5       Those are the types of issues that we may never get  
6       to in an educational material because it's a rather  
7       charged answer.

8                 But we know that communities all over  
9       the country do engage in peer review to take a look  
10      at traffic impacts. Whether or not we felt that  
11      that was a recommendation as a guideline for people  
12      to consider, that would have to be considered based  
13      on input from all of the parties.

14                So, it was a process that I recommended  
15      of putting out these educational materials, but I  
16      know how difficult it's going to be to come up with  
17      educational materials that are fair and balanced,  
18      for lack of a better word, and exhibit good-faith  
19      by me and whatever other standard.

20               CHAIRMAN CROSBY: Take that as an  
21      example. So, if we adopt your suggestion, which  
22      is that do we to issue minimum content and  
23      guidelines, would that question addressed? You  
24      said that is something that comes up fairly often.

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1                   MR. ZIEMBA: It comes up fairly often.  
2                   And actually, I have no idea what we would issue.  
3                   We might issue an advisory. You could answer it  
4                   the community should consider whether or not they  
5                   should engage in peer review based on the  
6                   application that is provided to them at the time  
7                   demonstrating those impacts. If they feel it's  
8                   sufficient, it is a decision that the community  
9                   should make.

10                  So, you could potentially come up with  
11                  something where the Commission is not saying we  
12                  want you to engage in peer review. But you're at  
13                  least getting it out there to host communities and  
14                  surrounding communities that this is a question  
15                  that they should resolve for themselves in  
16                  evaluating what they need to do for the host  
17                  community agreement.

18                  COMMISSIONER MCHUGH: Now, we're  
19                  getting off the focus of today's meeting. But  
20                  couldn't we also achieve the same result at a lower  
21                  risk if we got the regional planning authorities  
22                  to take the laboring oar on in some of this and help  
23                  them to consider and promulgate the guidelines  
24                  like we use. They wouldn't be our guidelines, but



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1     it would draw on their expertise, their knowledge  
2     of best practices, their knowledge of the local  
3     community conditions. They've already got a  
4     whole bunch of this stuff.

5                 For us to sit here and say you ought to  
6     have peer review this and that seems to me beyond  
7     our expertise. And we'd be much better off to get  
8     these --

9                 MR. ZIEMBA: Well, there's a lot of  
10    expertise behind me.

11                COMMISSIONER MCHUGH: I understand.  
12    I understand. The room is full of expertise.

13                CHAIRMAN CROSBY: Thousands and  
14    thousands of dollars worth.

15                COMMISSIONER MCHUGH: But it seems to  
16    me systemically we come out with a better product  
17    if we've got the established entities involved in  
18    this in a cooperative collaborative way.

19                CHAIRMAN CROSBY: I think it's a very  
20    fair and interesting question. But again, we're  
21    weighing two competing interests. One is the  
22    clearly expressed interest of local control at the  
23    host community level in particular versus on the  
24    other hand making sure that the best most

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1 comprehensive thoughtful planning takes place at  
2 the point of impact of a casino. And there is a  
3 tension between those two interests.

4 But we can service this interest, the  
5 interest of appropriate planning and mitigation at  
6 the critical point of impact by the technical  
7 assistance we are providing, by the RPAs who are  
8 actively involved and clearly have the  
9 resources. And we do have a fallback position  
10 when it finally comes to us. Taking that example  
11 whether we need peer reviews, we'll have DOT  
12 looking at it ourselves.

13 So, it does feel to me like we don't  
14 have to compromise the local control principle  
15 because of something overriding because we can  
16 come up with plenty of ways to deal with the need  
17 to mitigate appropriately at the principal point  
18 of impact.

19 MR. ZIEMBA: Right.

20 CHAIRMAN CROSBY: So, when we weigh  
21 those out, I think I come down where the Judge  
22 originally said.

23 MR. ZIEMBA: Which is in regard to  
24 requiring that's absolutely where my

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1 recommendation was as well.

2 CHAIRMAN CROSBY: Well, even on  
3 guidelines, even guidelines I think there are  
4 plenty of other ways to get -- With all of the  
5 problems that guidelines have. One thing we  
6 talked about before you were hired was maybe  
7 there's something for you to think about where if  
8 you feel that you make a material recommendation  
9 in response to a question or your delivery of  
10 technical assistance, you could have your own  
11 place on the website, ombudsman questions.

12 It says I was asked in Everett if they  
13 can do such and such. And the answer that I gave  
14 was the following. And I was asked in Lakeville  
15 if I could do such and such and -- That would be  
16 worth thinking about just as sort of abundance of  
17 caution to make sure that on really substantive  
18 material statements that everybody has equal  
19 access to it.

20 I'd consider that maybe worth thinking  
21 about, but not guidelines and not minimums.

22 MR. MICHAEL: I'm sorry. Just as a  
23 follow up. We've been approaching this from the  
24 standpoint of making sure that the casino provides

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1 sufficient mitigation and sufficient benefit to  
2 the community.

3           Following up on Commissioner Cameron's  
4 point, there's a similar likelihood that the  
5 casinos will promise too much. And does the  
6 Commission intend to evaluate the host community  
7 agreements in terms of whether or not they're  
8 actually feasible? If your financial analysis of  
9 the casino application demonstrates to you that  
10 what the casino has promised to provide to the  
11 community it can't afford to provide, would that  
12 be a factor in your analysis? And it's kind of  
13 looking at it from the reverse. And if that would  
14 be a factor in your analysis, is that something that  
15 they should know in advance?

16           COMMISSIONER MCHUGH: I don't have a  
17 firm answer to that now, but I do think we need to  
18 consider that. I got off the bus every day for a  
19 while and looked at the hole in the ground that used  
20 to be Filene's. And the last thing we need is a  
21 hole in the ground someplace else around the State  
22 that was five times the size of it. So, I think  
23 that's a critical inquiry, the financial -- but it  
24 fits into the financial viability of the proposal,

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1       which is clearly in our wheelhouse when we look at  
2       the overall application, I think.  Somehow, we  
3       have to come to grips.

4               MR. INGIS:  We believe it is more  
5       likely that that would be the scenario that they  
6       would overpromise as opposed to -- as far as the  
7       negotiations for the host agreement.

8               COMMISSIONER CAMERON:  And that's  
9       happened in other jurisdictions, right, promise  
10      and not deliver.

11              MR. MICHAEL:  Right.

12              MR. INGIS:  Especially if one  
13      applicant gets wind of what another applicant is  
14      doing when they are contesting for the same region.  
15      The scale of the bar will be raised to the higher  
16      level and they'll keep making grandiose promises.

17              They will come before you and then  
18      you'll make a determination that perhaps  
19      financially it's not a viable project.  And you  
20      feel therefore that the host community has been  
21      promised things that are not going to be  
22      materialized.  Now there's been a vote based on  
23      that host community agreement.

24              COMMISSIONER ZUNIGA:  I recall from

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1       our mitigation forum one of the points that was  
2       made strongly, I thought was relative to ensuring,  
3       finding ways -- It was a recommendation really.  
4       It was the lady from Harrison, Nevada recommending  
5       strongly that mitigation monies be done for  
6       mitigation purposes.

7               That throughout this processes  
8       communities find themselves and applicants would  
9       oblige to essentially make a payment, a good  
10      neighbor payment in lieu of trying to determine  
11      mitigation or mitigation needs. Or maybe in  
12      addition to that where we get into now the  
13      overpromises.

14             So, if nothing else as a minimum in  
15      these agreements, I would like to the extent  
16      possible try to define the two. Articulate what  
17      is clearly a good neighbor payment and what is for  
18      the purposes of mitigation. Because there's at  
19      least those two components that would be part of  
20      potentially have a place in this agreement that if  
21      nothing else should be articulated.

22             I would be the one minority perhaps in  
23      favor of trying to issue guidelines along those  
24      lines. They don't have to be very extensive, but

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1 best practices or whatever it may be. Recognize  
2 local control and there is a long history here in  
3 New England, but where there could be best  
4 practices, reminders, advisories, whatever we  
5 could issue.

6 Some may be helpful to some communities  
7 and some others may already have encountered  
8 because they are, let's call a spade a spade,  
9 communities are different from one another. We  
10 have many of them, 351 cities and towns and they  
11 are significantly different, maybe not all of the  
12 ones that we'll have or entertain a casino. So,  
13 I just wanted to state that.

14 CHAIRMAN CROSBY: On the point, when I  
15 go around and speak around the State, I often make  
16 the parallel to when I was involved in the cable  
17 television industry in its early days when it was  
18 licensed by municipality. And the big  
19 municipalities that had a lot of households asked  
20 for impossible outrageous things and forced the  
21 bidders to lie. And the only way you could win a  
22 contract was to just lie to beat the band.

23 So, everybody had a production studio  
24 in every neighborhood and free basic cable for

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1 everybody for life and on and on. And none of it  
2 would ever happen.

3 And we are not interested in trying to  
4 set a standard that forces people in order to win  
5 the licenses to do something which they cannot do.  
6 And I make that a conscientious point. We do not  
7 want to make that kind of a standard here.

8 Whether we should make it a rule or a  
9 reg. don't let overpromises. I think if we're  
10 going to be pretty firm, at least by our standards,  
11 on the issue of letting host community agreements  
12 be the business of the host community so long as  
13 it does not impede our process nor run the risk of  
14 impugning the integrity of the process, as long as  
15 that is the standard we are going to hold and stick  
16 to it, like on this issue, then I think we're going  
17 to stick with it.

18 And we're saying if the host community  
19 comes up with a deal which is wildly over, we will  
20 be looking at the financial viability of these  
21 things. And we will probably pick somebody else,  
22 if they were not able to negotiate a deal with the  
23 applicant and the municipality We're saying you  
24 want to make a dumb deal that's your right. Make



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1 a dumb deal. But you'll pay the price when you get  
2 to us. I think that's where we're kind of coming  
3 down.

4 Okay. Not maybe necessarily  
5 unanimous but the question is should the  
6 Commission specify the minimum required content.  
7 We've moved far afield, but not too far afield. I  
8 think all of this is very related. So, I think we  
9 should call the question. Should the Commission  
10 specify the minimum required content. Do you want  
11 to move -- for a host community agreement?

12 COMMISSIONER STEBBINS: So moved.

13 COMMISSIONER MCHUGH: No.

14 CHAIRMAN CROSBY: No?

15 COMMISSIONER MCHUGH: Should they.

16 CHAIRMAN CROSBY: Should they, right.

17 So, the question is -- Do you want to frame that  
18 question?

19 COMMISSIONER MCHUGH: Yes. I move  
20 that the Commission not require minimum content to  
21 a host community agreement.

22 CHAIRMAN CROSBY: Should we amend that  
23 to say -- because John's recommendation was not  
24 that we have minimum content, but that we would

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1 consider issuing recommendations, guidelines.  
2 And I think we have now talked a lot about whether  
3 we want to do guidelines or in lieu of minimum  
4 content. Do you want to put that into the same  
5 motion?

6 COMMISSIONER MCHUGH: Surely. I'll  
7 withdraw the old motion and move that the  
8 Commission has concluded that it will not specify  
9 the minimum required content for a host community  
10 agreement nor will it issue Commission guidelines  
11 for that content.

12 MR. ZIEMBA: There was one exception,  
13 Mr. Chairman, that you mentioned where if  
14 something -- if a regulation was necessary so that  
15 the work of the Commission is not impeded by a host  
16 community agreement that that potentially could be  
17 considered.

18 Potentially that may never come to pass  
19 if the Commission says for example the example that  
20 I gave, which the Commission decides somebody  
21 didn't pass their license Phase I, so they're not  
22 an applicant. So, there's no importance to the  
23 host community agreement. So, imposing a  
24 regulation in that type of circumstance wouldn't

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1 amount to anything.

2 But potentially there might be  
3 provisions in the agreement that would survive. I  
4 have no idea. All I was saying is that there might  
5 be situations where the Commission for its own  
6 purposes might want to reserve itself some  
7 authority within the exception but not getting  
8 into the business of what types of mitigation  
9 communities should get involved in or what they  
10 should require.

11 So, I think the exception that you were  
12 talking about was along those lines. But the  
13 general premise is the Commission should  
14 definitely not get involved in the content of host  
15 community agreements to the degree that it impacts  
16 mitigation measures and all of the typical things  
17 that are included in mitigation agreements.

18 CHAIRMAN CROSBY: Well, I think the  
19 motion is what the Commissioner said, which is no  
20 minimum -- no specification in minimum content and  
21 no Commission guidelines to --

22 MR. ZIEMBA: With no exception?

23 CHAIRMAN CROSBY: Yes. There may be,  
24 if I understood you in what you were saying right,

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1       there may well be a circumstance that comes up  
2       where we think something has happened in a host  
3       community agreement or in some other thing, which  
4       does violate the principles that we've  
5       established, impede our process, impugn the  
6       integrity of the process in which case we would act  
7       on that. But I wouldn't see that as -- I don't see  
8       that as an exception to this motion. Maybe I  
9       misunderstood what you were saying.

10               MR. ZIEMBA: If you said that there  
11       shall be no minimum required content but then you  
12       require something as content in the host community  
13       agreement such as the provision that subjects the  
14       host community agreement to regulations or orders  
15       issued by the Commission, there is minimum  
16       required content.

17               COMMISSIONER MCHUGH: But if we pass  
18       this motion, we won't do that.

19               MR. ZIEMBA: That's the point that I'm  
20       making. So if you're passing this motion that  
21       provision that you were talking about would be  
22       prohibited by this motion.

23               COMMISSIONER MCHUGH: But the remedy  
24       for that is not necessarily requiring that

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1 something go in the host community agreement.  
2 It's rejection of the agreement or a condition on  
3 the license that remedies the deficiency in the  
4 host community agreement or a number of other  
5 things.

6 This is simply a content regulation  
7 motion. And this says we are going to keep the  
8 hands of the host community agreement. We're not  
9 going to issue guidelines with respect --  
10 Commission guidelines with respect to that  
11 content. But it doesn't affect our right to  
12 reject an agreement that we think is impermissible  
13 or to issue as conditions on the license any other  
14 remedial steps that we think are essential.

15 MR. ZIEMBA: My point was just to  
16 mention that that is the idea that is on the table.

17 COMMISSIONER CROSBY: Yes.

18 COMMISSIONER ZUNIGA: Commissioner  
19 McHugh, I would like, if you didn't mind to split  
20 that vote into two different motions because it has  
21 two components, one of which I favor and one of  
22 which I do not, the regulation and the guideline.

23 COMMISSIONER STEBBINS: Withdraw  
24 another motion.

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1                   COMMISSIONER MCHUGH: I withdraw the  
2 motion and here's a new motion. I move that the  
3 Commission not specify the minimum required  
4 content for a host community agreement.

5                   CHAIRMAN CROSBY: Second?

6                   COMMISSIONER CAMERON: Second.

7                   CHAIRMAN CROSBY: Is there further  
8 discussion.

9                   COMMISSIONER STEBBINS: Just for  
10 point of discussion --

11                  CHAIRMAN CROSBY: Do you want him to  
12 withdraw the motion?

13                  COMMISSIONER STEBBINS: No, I don't  
14 want him to withdraw any motion. Just to point out  
15 in the presentation that John pulled together and  
16 this goes back to my earlier comment about  
17 communities again being mindful of our approval  
18 process.

19                  You highlight a provision in Section  
20 18. We'll evaluate an issue with statement of  
21 findings including the following objectives,  
22 mitigating potential impacts on host and  
23 surrounding communities, which I'm assuming the  
24 evidence we're going to use for that is whatever

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1 is in the host community agreement is. So, again  
2 back to my point about communities being mindful  
3 of we're going to have to make evaluative  
4 judgments. Sorry.

5 CHAIRMAN CROSBY: No. So, your point  
6 is the legislation has said all along what we're  
7 now saying, right?

8 COMMISSIONER STEBBINS: Right.

9 CHAIRMAN CROSBY: Which is that we  
10 already have the authority to use these criteria.

11 COMMISSIONER STEBBINS: Right.

12 CHAIRMAN CROSBY: Good point. Any  
13 other further comment? All in favor, aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 CHAIRMAN CROSBY: All opposed? No  
19 opposed. Commissioner?

20 COMMISSIONER MCHUGH: The second  
21 motion is that the Commission not issue Commission  
22 guidelines as to the minimum required content for  
23 a host community agreement.

24 CHAIRMAN CROSBY: Second?

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1 COMMISSIONER CAMERON: Second.

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

4 COMMISSIONER STEBBINS: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER MCHUGH: Aye.

7 CHAIRMAN CROSBY: Opposed?

8 COMMISSIONER ZUNIGA: Nay.

9 CHAIRMAN CROSBY: Nay, Commissioner  
10 Zuniga opposed. Now, the last one that I am  
11 responsible for an offloaded would be question 37.  
12 Do you need a break or are you all right?

13 MR. ZIEMBA: I'm good. This is an  
14 easy one, hopefully.

15 CHAIRMAN CROSBY: Are you all right?  
16 Do you need a break?

17 COURT REPORTER: No, I'm good.

18 CHAIRMAN CROSBY: Go ahead. Read the  
19 question.

20 MR. ZIEMBA: Question 37, the question  
21 is should the Commission set election criteria for  
22 a local referendum if there are more than one  
23 project on a ballot? We received a number of  
24 comments related to this question.



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1 Sterling Suffolk said no.

2 Massachusetts already has strong election loss.

3 Philip Cataldo said yes.

4 MGM/Springfield said yes. The  
5 complexity warrants instructive guidelines. And  
6 then the further comment was that having all  
7 qualifying applicants on the same ballot makes  
8 sense.

9 Shevsky Froelich City of Springfield  
10 said no. The ballot question and the referendum  
11 are best run at the local level with no need of  
12 assistance by the MGC.

13 City of Revere said no.  
14 Campaign-finance law, ethics law and conflict of  
15 interest law already provide strict standards.

16 Paul Vignoli said yes.

17 In the analysis here, again, what I  
18 recommend the Commission is that it looks to the  
19 General Laws for the answer to this question. MGL  
20 Chapter 23K 15(13) sets forth fairly simple  
21 standard that no applicant shall be eligible to  
22 receive a license unless a majority of the votes  
23 cast in a host community in answer to the ballot  
24 question on the gaming establishment, my words, is

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1 in the affirmative.

2 The language of the ballot question  
3 required by MGL 15(13) is specific to each gaming  
4 establishment. So, under this standard, even  
5 though there may be multiple applicants put on the  
6 ballot, each applicant must receive a majority  
7 vote in order to be considered for licensure by the  
8 Commission. Since this is a fairly  
9 straightforward standard established by statute,  
10 there's likely no need for further criteria by the  
11 Commission.

12 Then I do some further discussion  
13 regarding potential designations of elections in  
14 a ward versus in a community. I think this is  
15 fairly unlikely to occur. So, it doesn't deserve  
16 your time right now.

17 The recommendation is it's recommended  
18 that no further election criteria are necessary  
19 unless the Commission becomes aware of a situation  
20 that is meant to unfairly prejudice any  
21 applicant's ability to receive a fair  
22 consideration through local ballot.

23 Perhaps the Commission may want to  
24 discuss if it becomes aware of any situation

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1       whether or not it would want to act on the local  
2       ballot. I'm thinking about that now. So,  
3       perhaps not as straightforward as I once thought.

4               COMMISSIONER CAMERON: I think we need  
5       to explore that piece of this. What action could  
6       we take if we're not involved?

7               MR. ZIEMBA: Basically, in this  
8       recommendation I was saying the Commission  
9       shouldn't take any action on a ballot. If some  
10      situation comes up that the Commission becomes  
11      aware of, then the Commission would just simply  
12      consider whether or not it's within the authority  
13      of the Commission at that time. And whether or not  
14      any actions the Commission would take would be  
15      helpful.

16              As mentioned in the comments, there are  
17      numerous election laws that govern because my  
18      recommendation initially said that the Commission  
19      shouldn't take any action. I didn't fully  
20      research any of those election laws to see if they  
21      would prohibit the Commission from acting if it  
22      knew of any situation that would be difficult.

23              But my recommendation is to continue on  
24      this recommendation. But if something happens

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1 the Commission could consider it at a later point  
2 after full evaluation of the election laws and its  
3 authority.

4 But since that circumstance may never  
5 come about, perhaps this isn't really necessary to  
6 use the Commission's resources at this time.

7 CHAIRMAN CROSBY: Would that pretty  
8 much fall into the same standard as if the  
9 Commission thought there was something  
10 inappropriate going on in an election where there  
11 was only one on the ballot?

12 MR. ZIEMBA: Correct.

13 CHAIRMAN CROSBY: In other words, we  
14 sort of always have the right to consider whether  
15 we can take a step if we think there is something  
16 wrong in the election.

17 COMMISSIONER STEBBINS: Absolutely  
18 within the context of the election laws.

19 CHAIRMAN CROSBY: Right, exactly.

20 COMMISSIONER STEBBINS: John, I'm  
21 assuming the election law defines let's say for a  
22 community if they have more than one proposal.  
23 Election law defines how an individual is able to  
24 vote.

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1                   Take Springfield for instance.  
2           Springfield puts both items on one referendum  
3           ballot, election law guides how a voter can vote  
4           on those ballot items, whether they can vote for  
5           one, vote for -- That's all pretty much guided by  
6           the election law?

7                   MR. ZIEMBA: What's anticipated in the  
8           answer to this question is that if the question is  
9           put forward in the manner that it is put forward  
10          in the statute, that it's specific to that  
11          applicant. And then voters either vote yes or no  
12          to that question that relates to that applicant.

13                  So, if it's a majority vote of the  
14          voters on that specific question, then they can  
15          come forward for licensure by the Commission.

16                  COMMISSIONER STEBBINS: Okay.

17                  COMMISSIONER ZUNIGA: I think that the  
18          answer to your question may be what's in the Gaming  
19          Act, which is the review by the city solicitor that  
20          provides the summary that goes into the question.  
21          And the question is prescribed in the section.

22                  COMMISSIONER STEBBINS: No, it wasn't  
23          necessarily really the summary. It's the two  
24          items, as a voter am I limited to vote on one and

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1 not the other? I think I answered my own question.  
2 I think the election law would probably follow suit  
3 and you'd be able to vote on both questions.

4 CHAIRMAN CROSBY: Take the  
5 Springfield situation. If the mayor, I guess it  
6 is, decided to put both on the ballot and it would  
7 have to go to a single question, how the question  
8 would be framed is specified. There would be a  
9 summary as specified.

10 But the mayor might then also choose to  
11 say tell us which one of these two you prefer. I  
12 guess that would be fine, right?

13 MR. ZIEMBA: I don't think so. I  
14 think it's a yes or no question pursuant to the Act.

15 CHAIRMAN CROSBY: Well, I know it's a  
16 yes or no on that. Could the mayor have a third  
17 question? So, in other words, the community a  
18 majority votes yes on both. But on a second vote  
19 which is do you prefer site A or site B so that the  
20 mayor knows which one he wants to bring to the  
21 Commission --

22 MR. ZIEMBA: Sort of like as an  
23 advisory question, a local advisory?

24 CHAIRMAN CROSBY: -- which the mayor

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1 would say he would follow, right. That's the only  
2 one I can think of.

3 COMMISSIONER ZUNIGA: Well, there's  
4 another one. There's vote for however many you  
5 want. Vote for one, vote for two, if you want to  
6 vote yes.

7 CHAIRMAN CROSBY: It would be a third  
8 question.

9 COMMISSIONER ZUNIGA: It could be  
10 structured as two.

11 CHAIRMAN CROSBY: As two questions?

12 COMMISSIONER ZUNIGA: Yes.

13 CHAIRMAN CROSBY: How would you do  
14 two?

15 COMMISSIONER ZUNIGA: Two proposals,  
16 vote yes or no on either one or both.

17 CHAIRMAN CROSBY: Yes. But you might  
18 not get a majority for anything. Okay. I think  
19 the answer to your question was at this stage of  
20 the game, there's enough law out there whether it's  
21 this law or other election law.

22 COMMISSIONER STEBBINS: I was just  
23 wondering if it was treated similar to when you  
24 have a ballot, normal election here you have a

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1 ballot with several referendum questions. You're  
2 not limited by which referendum question you can  
3 vote on. You have the opportunity to vote for both  
4 questions.

5 MR. ZIEMBA: The General Laws, I'll  
6 just read very quickly what it says. It says that  
7 at such election the question submitted to the  
8 voters shall be worded as follows. Shall a city  
9 or town of blank permit the operation of a gaming  
10 establishment licensed by the Gaming Commission to  
11 be located at blank, yes, no.

12 So, that puts forward a very  
13 straightforward forward yes, no on that one  
14 question.

15 COMMISSIONER STEBBINS: I'm probably  
16 not making myself clear. In looking at the ballot  
17 if again the City of Springfield decides to put  
18 both applicant questions on the ballot, is the  
19 voter -- essentially, I think election law guides  
20 this. The voter is allowed to go in and vote on  
21 each applicant's question.

22 MR. ZIEMBA: Yes.

23 COMMISSIONER STEBBINS: Not like,  
24 okay, I can only restrict my vote to voting yes or



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1 no on applicant question number one. And I can't  
2 vote on applicant question number two. I'm just  
3 trying to clarify that I can vote on both of those  
4 questions, regardless of what it says.

5 I just want to make sure that election  
6 law, I believe, allows, kind of guides that  
7 principle of here's the question. I can vote yes  
8 or no. Go down to the next question and I can vote  
9 yes or no. Sorry.

10 MR. ZIEMBA: No, I don't know of a  
11 circumstance. Are you saying would there be some  
12 instruction in the ballot that says you can only  
13 vote for one of the two following questions that  
14 have been worded?

15 COMMISSIONER STEBBINS: Right. I  
16 don't think there's a restriction either.

17 CHAIRMAN CROSBY: I don't know why  
18 they couldn't say that.

19 COMMISSIONER MCHUGH: I don't know the  
20 answer to that question either, but aren't there  
21 a whole range of scenarios that one could envision  
22 if there's more than one vote? You could have two  
23 separate elections. You could have sequential  
24 elections.

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1           The mayor of a town that's got two could  
2     say this is my favorite. Let's see if this flies.  
3     If it flies, that's the one I'm going with. If  
4     not, we'll put the second one to vote. He or she  
5     could do that.

6           They could put both on the ballot that  
7     say vote for both. You approve both and then I'll  
8     decide. They could put two on the ballot and say  
9     I want you to say yes or no, but I want you to say  
10    yes or no as to the one of the two you prefer.

11          With the other one, you could have two  
12    vote for yes and then an advisory question, which  
13    one do you prefer. I don't see how any of that so  
14    long as the summary is fair and the ballot  
15    otherwise complies with Section 23K 15(13), how  
16    any of those methods would be impermissible. If  
17    there's some doubt about that, we better do some  
18    further research on the election laws.

19          CHAIRMAN CROSBY: I think we're trying  
20    to answer a hypothetical. We have no idea what  
21    they're going to do. I think presumably if  
22    Springfield decides to deal with this or some other  
23    community deals with this, they will do their own  
24    research. They will try to find within the law a

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1 way to answer the question. If we see they've come  
2 up with a mechanism that we are not comfortable  
3 with, we can then act. But I think to go any  
4 further to try to figure these --

5 MR. ZIEMBA: That was my  
6 recommendation that if some circumstance comes up  
7 where the Commission decides that its truly not a  
8 fair and reasonable result than we should analyze  
9 it at that point.

10 CHAIRMAN CROSBY: Right, I agree.  
11 Okay. So, does somebody want to move? We are  
12 accepting the recommendation at the word  
13 necessary.

14 COMMISSIONER STEBBINS: Move to  
15 accept the recommendation no further election  
16 criteria are necessary.

17 CHAIRMAN CROSBY: Second?

18 COMMISSIONER MCHUGH: Second.

19 CHAIRMAN CROSBY: Any further  
20 discussion? Do you have any more questions?

21 COMMISSIONER STEBBINS: No, I'm good.

22 CHAIRMAN CROSBY: All in favor? Aye.

23 COMMISSIONER STEBBINS: Aye.

24 COMMISSIONER ZUNIGA: Aye.

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1 COMMISSIONER CAMERON: Aye.

2 COMMISSIONER MCHUGH: Aye.

3 CHAIRMAN CROSBY: Opposed? All  
4 right. I was thinking this was the question that  
5 we talked about yesterday which was should we  
6 approve the summary. But I now remember that  
7 whether we should approve the summary is a three.

8 And that was the three, Commissioner  
9 McHugh, that I thought should be moved up to this  
10 week if we can. But nobody has dealt with that one  
11 yet. But it's been discussed a lot. Maybe I'll  
12 try to take a crack at it if I can and see if we  
13 can get it on the agenda for Friday.

14 It's not terribly time sensitive.  
15 We've got time to deal with it. But there's enough  
16 conversation going on about it and it relates to  
17 all of these local control issues that I think it  
18 would be good if we can join in before the week is  
19 out.

20 So, if I can get around to it, I will.  
21 If not we'll get to it when we get to it.

22 So, we got question 31 to go. I am  
23 going to suggest we take a brief break, since half  
24 the group has already anyway. We'll see you in

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1 five minutes.

2

3 (A recess was taken)

4

5 CHAIRMAN CROSBY: We will reconvene  
6 public meeting number 41. And before we get to our  
7 last question, Commissioner Stebbins had  
8 something he wanted to raised about our topics  
9 yesterday.

10 COMMISSIONER STEBBINS: Yes. As we  
11 were discussing question four yesterday, which  
12 talked about any information in addition to that  
13 specified under Section 9, what should the  
14 Commission require Phase II applicants to provide,  
15 our consultants raised, I think it was Fred,  
16 conveniently enough he just came back in the room.

17 COMMISSIONER ZUNIGA: I think it was  
18 Guy, no disrespect to Fred.

19 COMMISSIONER STEBBINS: It was Guy?  
20 No disrespect to you, Fred. Talking about asking  
21 an applicant to submit their business plan. And  
22 I was curious about that because it may help us  
23 collect information that may already be required.  
24 It may also give us some guidance again looking at

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1 revenue projection, anything else.

2 MR. GUSHIN: I think the revenue  
3 projections are critical. And one of the  
4 fundamentals is the benefit that will be derived  
5 from the implementation of these casinos in having  
6 -- And they have to do that. The publicly traded  
7 companies are already putting in SEC statements  
8 and making those projections.

9 But having the financial projections  
10 for these properties is a critical benchmark going  
11 forward. And someone else mentioned before how  
12 the casinos are going to present themselves in the  
13 best possible light. They want enter into these  
14 host agreements. They want to get through these  
15 elections. They're looking at what the reality  
16 is based on the facts and circumstances later on.

17 COMMISSIONER STEBBINS: In my  
18 standard definition of a business plan oftentimes  
19 there are business strategies or information that  
20 could well be defined as confidential.

21 MR. GUSHIN: Yes. Strategies in the  
22 marketing are something that might be a little  
23 different. You are certainly entitled to  
24 question a casino if they say we're going to do \$700

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1 a day per table and every other casino out in that  
2 area does \$300 a day per table. How did you get  
3 that? What are your assumptions? What is that  
4 based up?

5 COMMISSIONER STEBBINS: So, you  
6 raised a good question about additional  
7 information we can ask for. And maybe we have Guy  
8 to thank for this, but again going back to Section  
9 9 and additional information we should ask for.  
10 You raise the idea of the business plan, which I  
11 don't think occurred to Enrique and I at the time  
12 we were answering that question.

13 I think there is helpful information in  
14 there. I want to be mindful of information they  
15 want to protect. But it also may give us some good  
16 insight into their idea, their goals for the  
17 operations at that particular facility. But  
18 again, I don't want to ask for information that is  
19 theirs to protect or theirs to not compromise.

20 MR. MICHAEL: The Commission should be  
21 able to see information that's proprietary. It  
22 will just be there is a procedure in the  
23 regulations to request confidentiality. And if  
24 the request is valid it could be granted.

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1                   COMMISSIONER STEBBINS: A typical  
2 business plan, a simple submission of a business  
3 plan essentially allow an applicant to kind of  
4 double up on information that we may request  
5 elsewhere?

6                   MR. MICHAEL: Hopefully, yes. There  
7 are very few restrictions on what you can ask for  
8 as a Commission. You have an IEB. It is  
9 essentially kind of a digging tool that can go  
10 places that are inaccessible to a lot of other  
11 agents.

12                   This is not a situation where you are  
13 forcing someone to be investigated. They have all  
14 volunteered to be investigated. The application  
15 form consents to all of this to provide whatever  
16 information is requested. So, you should use  
17 those tools.

18                   COMMISSIONER STEBBINS: But in terms  
19 of our efforts to hopefully speed up the process,  
20 would this simple request of submit your business  
21 plan for your XYZ proposed operation, would that  
22 necessarily help expedite the process, help  
23 expedite the information that we need to base our  
24 determination on?



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1 MR. GUSHIN: It's in one place. They  
2 have a lot of the same information in one place.

3 MR. CARROLL: They've done economic  
4 evaluations. They have projections.

5 CHAIRMAN CROSBY: You're talking this  
6 would be part of the RFA-2 application.

7 COMMISSIONER STEBBINS: Right, the  
8 RFA-2.

9 MR. GUSHIN: Remember they have to do  
10 this when they go to Wall Street to get the money.  
11 All you need are copies of what they essentially  
12 what they gave them.

13 And we always ask for that during an  
14 investigation. This will take place after the  
15 investigation suitability are completed. So, you  
16 want ones more current to the time you're  
17 evaluating them.

18 MR. CARROLL: The financial viability  
19 of the project will have been passed on from the  
20 investment side already and you'll have access to  
21 all of those materials that you can review.

22 COMMISSIONER STEBBINS: So, putting  
23 forward the simple request of additional  
24 information and ask for a business plan for your

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1 operation at this location is going to help them  
2 facilitate information to us that we are going to  
3 require. And hopefully will facilitate the  
4 application process a little bit faster.

5 MR. POLLOCK: Also in any competitive  
6 bidding process, that we're aware of that's  
7 standard procedure. You're not going to find too  
8 many objections because that's going to be what's  
9 required to support their projections.

10 COMMISSIONER STEBBINS: So then, Mr.  
11 Chairman, if I might offer a motion if we go back  
12 to question four. I move that the Commission in  
13 the Phase II application process request a  
14 business plan from the applicant for the operation  
15 that they are proposing.

16 MR. MICHAEL: Absolutely. It could  
17 either be in the Phase II regulations or just an  
18 independent request, either way.

19 MR. POLLOCK: And perhaps any other  
20 relevant documentation which will help you assess.

21 CHAIRMAN CROSBY: You're talking  
22 about Section 9. Isn't Section 9 the one that sort  
23 of lays out the baseline?

24 COMMISSIONER STEBBINS: Right.

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1                   CHAIRMAN CROSBY: It's not evaluation  
2 criteria.

3                   COMMISSIONER STEBBINS: Right. It's  
4 the baseline application material. And the  
5 question yesterday is there anything in addition  
6 to what's already asked for in Section 9 should we  
7 additionally request. And my motion is to ask an  
8 applicant to provide a copy of their business plan  
9 for that operation.

10                  CHAIRMAN CROSBY: Second?

11                  COMMISSIONER ZUNIGA: Second.

12                  COMMISSIONER STEBBINS: Any further  
13 discussion.

14                  COMMISSIONER MCHUGH: No. I'm fine  
15 with the motion. I forgot what we did yesterday.  
16 Did we yesterday in voting on question four list  
17 the things we were going to request in terms of an  
18 addition to the list?

19                  COMMISSIONER ZUNIGA: We did not  
20 technically. We concluded that this was a  
21 question that could, depending on the discussion  
22 of this week especially, we could come back to just  
23 for that very reason.

24                  COMMISSIONER MCHUGH: Okay. Thank

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1       you.

2                   CHAIRMAN CROSBY: All in favor? Aye.

3                   COMMISSIONER STEBBINS: Aye.

4                   COMMISSIONER ZUNIGA: Aye.

5                   COMMISSIONER MCHUGH: Aye.

6                   COMMISSIONER CAMERON: Aye.

7                   CHAIRMAN CROSBY: Opposed? Motion  
8       passes.

9                   I didn't offload this one. Somebody  
10       else must have offloaded this one, question 31.

11                  MR. ZIEMBA: Mr. Grossman worked on  
12       this matter with me. I'm going to let him go  
13       through some of the recommendations here. But in  
14       general when we took a look at this question, we  
15       took a look at it within the context of what are  
16       the currently existing provisions of the ethics  
17       law. And then are there specific provisions  
18       included in the gaming law that are applicable?

19                  In general, the question number 31 is  
20       will the Commission promulgate additional ethics  
21       or reporting standards for applicants and/or  
22       related municipalities?

23                  And I'm going to let Mr. Grossman go  
24       through some of the analysis.

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1                   MR. GROSSMAN: The first thing is the  
2                   good news is this clearly has to be done by  
3                   regulation as opposed policies. So, we set that  
4                   issue aside.

5                   And then the question becomes would the  
6                   Commission be able to craft meaningful and readily  
7                   enforceable set of regulations as they apply to the  
8                   groups of people that we're talking about. And  
9                   there's really two separate groups of people.

10                  On the one hand, you're talking about  
11                  applicants and licensees or applicants who would  
12                  later become licensees. And on the other, you're  
13                  talking about municipal employees and municipal  
14                  officials. And the Commission, I believe, has  
15                  recognized on a number of occasions that the  
16                  Legislature was very careful and deliberate in  
17                  promulgating and enacting this comprehensive  
18                  legislative scheme.

19                  So, we have to look to what they did and  
20                  what they didn't do. And one of the things that  
21                  I think is noteworthy that they didn't do is to  
22                  mandate the Commission to enact or promulgate  
23                  regulations relative to ethics for applicants, for  
24                  licensees and for municipal officials and

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1 employees.

2 Where they did in Section 3(k) of  
3 Chapter 23K mandate the Commission to adopt those  
4 types of ethics rules for its own employees and for  
5 itself. So, that's the baseline with which we  
6 took to reviewing this issue.

7 In order to figure out whether such  
8 rules were necessary, we thought at first  
9 important to figure out what the existing rules  
10 were. And we articulated them here in the memo.  
11 These were the primary ones which is not to say  
12 there aren't others that may apply to these  
13 individuals.

14 But when stepping back to think about  
15 all of the situations we would be attempting to  
16 prevent or prohibit, it seems at least at this  
17 juncture, that all of those would be covered by the  
18 existing rules. Which is not to say as we step  
19 back and attempt to draft regulations moving  
20 forward, as we comb through the regulations from  
21 other states and review best practices that there  
22 won't be other principles that we will want to  
23 incorporate within the regulations. But as we sit  
24 here today, I think it would be difficult to draft

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1 a set of regulations that apply to just these  
2 groups.

3 And there are just a few that I point  
4 out. The first as they apply to applicants. And  
5 I think applicants are clearly separate from  
6 licensees. Licensees will clearly is a very  
7 robust set of regulations in the future once they  
8 become a licensee. So, we included them here just  
9 to add some texture to the presentation. But  
10 really we're focused on the applicants.

11 And you'll see through review of 23K  
12 that there are a number of provisions that impose  
13 ethical obligations upon applicants. The first  
14 deal with the continuing duty of applicants to  
15 cooperate what the Commission. There is an  
16 obligation upon applicants to provide full and  
17 truthful information to the Commission.

18 There are prohibitions against certain  
19 political contributions, certain disclosures that  
20 are required relative to political contributions.  
21 And then of course, there are the standard ethics  
22 laws, if you will, Chapter 268A that prohibit all  
23 things related to what we would consider to be  
24 bribery and things of that sort.

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1                   So, I think when you step back and try  
2                   to envision any scenario that we would consider to  
3                   be unsavory when it comes to the dealings of  
4                   applicants, most if not all of those things are  
5                   already covered, I would suggest.

6                   And I think the same can be said of  
7                   municipal employees and municipal officials at  
8                   this point who are subject to the existing ethics  
9                   laws, of course, under 268A, 268B and the Ethics  
10                  Commission regulations. And I think when you go  
11                  through those, and we've set them out here so you  
12                  can look at as well, that most with one exception,  
13                  which I'll mention in a second, pretty much once  
14                  again any potentially unsavory acts that a  
15                  municipal employee or official would be engaged in  
16                  are addressed in the ethics laws.

17                  In fact, the Legislature of course  
18                  supplemented 268A with Section 5(a) dealing with  
19                  the so called cooling-off period for municipal  
20                  officials in their dealings with gaming licensees  
21                  and the like.

22                  The only hole if you will in this whole  
23                  thing that I was able to detect as we looked through  
24                  this was the issue pertaining to the wagering at



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1 gaming establishments by municipal officials.

2 And I know that's an issue that you'll have before  
3 you. So, that may be better left there.

4 But that would be certainly something  
5 that you would consider including in any so-called  
6 code of ethics that applies to municipal  
7 officials. But aside from that, I think 268A is  
8 very robust and would be able to cover just about  
9 any scenario that would concern you at this point.

10 And just by way of contrast and  
11 conclusion, I would say that for example, in the  
12 draft ethics code that you'll consider that we  
13 proposed for the Commissioners and our own  
14 employees, we have enhanced the unwarranted  
15 privileges provision that exists in the ethics  
16 code, which limits unwarranted privileges to  
17 substantial benefit, which would be \$50 or more.

18 In the Commission code that we are  
19 proposing, we remove that. So, any Commissioner  
20 or employee would be prohibited from receiving any  
21 unwarranted privilege regardless of value. So,  
22 there are certain areas if you are inclined to do  
23 so that we could enhance. But at this juncture,  
24 it may be premature.

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1                   CHAIRMAN CROSBY: Questions,  
2 thoughts?

3                   COMMISSIONER MCHUGH: It's a good  
4 succinct analysis, I think, comprehensive and very  
5 helpful.

6                   CHAIRMAN CROSBY: The one thing that  
7 occurred to me and it was actually suggested to me  
8 by somebody, because of the referendum process we  
9 have, there is an invitation to win favor in the  
10 community.

11                   And A - is this covered already by  
12 something else? And B - if it isn't, is it worth  
13 thinking about? It might be an interesting kind  
14 of protection for the process and for the  
15 developers to require them to disclose to us  
16 anything that is asked for. If somebody solicits  
17 a contribution to their organization, if somebody  
18 asks for a job for friend, anything.

19                   So, it puts them in a position of saying  
20 if somebody comes to them for a contribution to  
21 their nonprofit, it puts them in a position of  
22 saying yes or no, but you should know that I have  
23 to disclose that this request was made.

24                   A - is that covered? And B - do you

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1 think it adds anything material to the protections  
2 to the process that are already in the law?

3 COMMISSIONER MCHUGH: Let me just jump  
4 in here again because this ties into something that  
5 occurred before Todd arrived.

6 And that is our existing regulations  
7 require disclosure of all things that were given  
8 to a municipality or a municipal official, even  
9 permissibly. And there's a look-back provision  
10 to November 21, 2011 when the legislation was  
11 passed. Anything was actually given by way of  
12 donations to community funds, new playgrounds and  
13 the like is there.

14 There is no request -- no regulation at  
15 the moment saying that you have to disclose  
16 anything that was requested. So, that would be  
17 new, but that's the context in which -- this would  
18 have to be done by regulation, I think, since as  
19 Todd had said, we are regulating outside folks.  
20 So, that's the context that --

21 MR. GROSSMAN: I think we always have  
22 to consider the relative enforceability of any  
23 regulation we put into effect. So, the question  
24 would be how well we could put an enforcement plan

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1 together to ensure that we cover all of that.

2 But certainly asking for that type of  
3 information sounds reasonable. Whether it's  
4 already covered, I'd have to go back and look at.

5 MR. ZIEMBA: One thing we'll mention  
6 in regard to municipal officials, if we're talking  
7 about municipal officials, 268A Section 17(a)  
8 states that no municipal employee shall directly  
9 or indirectly receive or request compensation from  
10 anyone other than the city or town or municipal  
11 agency it related to any particular manner in which  
12 the same city or town is a party or has a direct  
13 or substantial interest.

14 In addition, there's an unwarranted  
15 privileges section. Maybe Todd can help me find  
16 that.

17 MR. GROSSMAN: 23(b)(2).

18 MR. ZIEMBA: 23(b)(2) that prohibits  
19 municipals from obtaining any unwarranted  
20 privileges based on their position. So, in a  
21 situation such as a municipal official asks a  
22 casino operator to hire a relative based on  
23 something that is before them, that would clearly  
24 fall within the authority of the Ethics Commission

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1 to make a determination on whether or not that  
2 violates the ethics laws.

3 MR. GROSSMAN: Then there is 23(b)(3)  
4 as well which talks about doing something that  
5 would cause a reasonable person to conclude that  
6 that person can improperly influence an official  
7 and unduly enjoy their favor based upon something  
8 they've done. That's the so-called, I think,  
9 appearance of impropriety clause, which may cover  
10 something like that.

11 I think the ethics laws are fairly  
12 robust. We could certainly plug some holes if it  
13 that is necessary.

14 CHAIRMAN CROSBY: That's that  
15 question I'm asking. I can imagine that folks who  
16 are trying to get ready -- everybody is going to  
17 go to the folks that come into town and say, hey,  
18 don't you want to contribute to my little league  
19 or my whatever? And some of that is fine.  
20 Sometimes maybe a motivation might not be fine.

21 But it's a way to provide some cover.  
22 It's a way to bring disclosure to a process, which  
23 I think is a little innovative. I don't think it  
24 is -- There are certain things that are covered.

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1       You can't ask for a bribe. It just seems to me it  
2       might be -- It might be a mountain out of a  
3       molehill. I don't know.

4               COMMISSIONER ZUNIGA: I'd like to  
5       agree with the distinction that Commissioner  
6       McHugh makes which is asking and giving, an  
7       important one. And we're covered with the giving.  
8       And it's only a disclosure. It doesn't even  
9       preclude it.

10              CHAIRMAN CROSBY: No, it doesn't  
11       preclude it at all. It's a protection for the  
12       applicant, which is a protection for the process.

13              COMMISSIONER ZUNIGA: It is.

14              CHAIRMAN CROSBY: So, you sidle up to  
15       the applicant and say, hey, my club would sure like  
16       a few bucks --

17              COMMISSIONER ZUNIGA: Right.

18              CHAIRMAN CROSBY: -- without knowing  
19       that it's going to be disclosed.

20              COMMISSIONER ZUNIGA: But if we try to  
21       -- and this goes back to the enforceability. If  
22       we try to have the applicant document how many  
23       times they're asked unsuccessfully than that maybe  
24       a bit too onerous really just in terms of

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1 documentation.

2 They could easily reject on the basis  
3 of if I gave you, I would have to disclose it to  
4 the Commission.

5 COMMISSIONER CAMERON: Have we seen  
6 anywhere else some kind of language like that, you  
7 have to disclose?

8 MR. MICHAEL: Disclosures, there are  
9 more severe restrictions, gambling restrictions.  
10 In New Jersey, for example, are prohibited local  
11 officials, state officials are allowed that have  
12 jurisdiction over.

13 COMMISSIONER CAMERON: Yes,  
14 prohibited, yes.

15 MR. MICHAEL: So, they're even more  
16 severe than just disclosure of potential  
17 approaches.

18 I don't know that there's specific  
19 requirements that the local officials -- Under the  
20 casino law there is no requirement that local  
21 officials report anybody from a casino that  
22 approached them or if they were approached by.

23 MR. POLLOCK: But there are  
24 restrictions on a thing of value, if you going to

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1 give a thing of value.

2 MR. CARROLL: One of the things we had  
3 pointed out at our first read of the statute months  
4 ago when we had submitted some general comments  
5 that the Commission would be asking to the local  
6 official prohibition on gambling and suggested  
7 that be included. I think it's in, I'm pretty sure  
8 it's in the strategic plan, the recommended  
9 legislative amendment.

10 That is something that we have observed  
11 around the country that different governments have  
12 put into effect. And I noticed in the statutes  
13 that were cited in today's I think very good  
14 summary of the different applicable ethical areas,  
15 there is discussion in there about prohibition of  
16 offers and so forth of let's say favoritism or  
17 whatever, very difficult to police.

18 And if someone is an official and going  
19 to a licensee as opposed to an applicant. going to  
20 a gambling location and is extended credit, maybe  
21 more than let's say the parameters would normally  
22 establish for the place, and that person gets  
23 themselves deeply in debt to the facility, if those  
24 types of situations occur, you have temptations



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1       that you want to avoid.

2               Prohibition avoids the difficulty in  
3       trying to police the type of protections that  
4       otherwise exist in the ethical laws. And  
5       sometimes that actually prohibition is better for  
6       both parties. It prevents suspicion and it  
7       prevents temptation.

8               And that was why we came down on the  
9       side of recommending that the prohibition be put  
10      in effect. In and of itself it's sometimes  
11      difficult to police also. But obviously if you  
12      know a particular official or particular elected  
13      official is there, that person is involved  
14      actively in the supervision of the government of  
15      the host community, and they're at the tables every  
16      night, it also creates a public perception issue.

17              CHAIRMAN CROSBY: Yes. We're going  
18      to deal with this one. This is, as you know, a  
19      separate question that we are going to get to. But  
20      at the moment, the recommendation is that we not  
21      add anything else to the panoply of laws that are  
22      already in place. I'm raising the possibility of  
23      one exception. I'm not hearing anybody else rise  
24      to the idea.

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1                   COMMISSIONER CAMERON: I think it's  
2                   interesting to explore. I just don't know if  
3                   anyone else has that. This is again from the  
4                   operator's side. The applicant have you been  
5                   solicited.

6                   MR. INGIS: It's a question that comes  
7                   up during the course of investigations on a routine  
8                   basis but I don't remember it ever being actually  
9                   provided for.

10                  MR. MICHAEL: It could also be in the  
11                  criminal law if a casino, if anybody is approached  
12                  for solicitation on a bribe they have to report it.

13                  MR. ZIEMBA: If it's in return for an  
14                  action. But if it's Boys Club that goes to an  
15                  applicant, hey, can you contribute? It would make  
16                  you look better in the community. That's part of  
17                  the conduct that I don't know if we need to get into  
18                  the regulation business.

19                  CHAIRMAN CROSBY: It's readily abused  
20                  and there is going to be a gray area. When you have  
21                  a business, you oftentimes get phone calls from  
22                  people raising money for various things and you  
23                  think if I don't give, maybe they're not going to  
24                  come when my alarm goes off. So, there's an

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1       implicit -- But I don't hear that it strikes  
2       anybody.

3               It's a very interesting technique. I  
4       think it does some interesting things. But I  
5       don't hear anybody else thinking that it's a good  
6       enough idea to amend the recommendation from the  
7       floor.

8               MR. ZIEMBA: It's consistent with the  
9       recommendation that there may be some exceptions  
10      that should be reviewed within the context of the  
11      existing law. So, it's directly in keeping with  
12      the recommendation.

13              CHAIRMAN CROSBY: But you're saying at  
14      the moment --

15              MR. ZIEMBA: -- no broad based  
16      approach to new regulations, but we should  
17      evaluate exceptions where they come up and where  
18      we should take a look at.

19              CHAIRMAN CROSBY: Right. But I'm  
20      hearing the evaluation at this point is not worth  
21      pursuing further. Okay.

22              So, it sounds like -- So, the  
23      recommendation is that we -- why doesn't somebody  
24      say it specifically so we can so move. The

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1 bottom-line recommendation is.

2 MR. GROSSMAN: I guess the  
3 recommendation would be not at the present time to  
4 draft for promulgation a specific set of ethics  
5 requirements for applicants, licensees, municipal  
6 employees or municipal officials.

7 CHAIRMAN CROSBY: Ethics or reporting  
8 standards, right.

9 COMMISSIONER ZUNIGA: So moved.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER CAMERON: Second.

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

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER STEBBINS: Aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 CHAIRMAN CROSBY: Opposed? The ayes  
19 have it.

20 COMMISSIONER CAMERON: Good work.

21 CHAIRMAN CROSBY: Before we adjourn, I  
22 just have an information. This is I don't know  
23 of interest to anybody, but as long as we have the  
24 consultants here. Commissioner Zuniga and I were

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1 on the online gaming task force that Treasurer  
2 Grossman put together.

3 And the recommendations that are going  
4 to come out of that I've heard on the radio already.  
5 So, it's not a secret. They basically, the task  
6 force is going to recommend that the Lottery under  
7 Treasurer Grossman essentially get some right to  
8 begin to explore pilot programs in various kinds  
9 of online gaming. And also to pursue a study in  
10 effect with the Gaming Commission and the casino  
11 operators about what the relationships there  
12 should be and so forth. So, we were fine with it.  
13 We agreed with it with the task force report.

14 But the Spectrum report, which will be  
15 appended to it had as its almost strongest  
16 recommendation that all online gaming should be  
17 done by and supervised by the Lottery.

18 And Commissioner Zuniga and I said, A  
19 - that's never been discussed. But B - we don't  
20 know enough to know whether that's a good idea or  
21 not. We just don't know whether certainly  
22 probably lottery products ought to be done by the  
23 Lottery, but whether casino games should be done  
24 by the Lottery or whether poker should be done by

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1 the Lottery, we don't know. So, we just said we're  
2 not endorsing the Spectrum report. We're  
3 endorsing the task force report.

4 But my question to you all was just as  
5 an early window on this, we are going to have to  
6 at some point go to our licensees. And as this  
7 legislation unfolds and recommend whether we agree  
8 with that or not. So, just off the tops of your  
9 heads, from what you see going around, what you  
10 think values are, what's your sense about that?  
11 Whether the Gaming Commission needs to --

12 We are not interested in a turf fight.  
13 If it's somebody else's business and it makes sense  
14 to go there, fine. It doesn't matter to us. But  
15 in terms of maximizing servicing our interests and  
16 the casinos' interests, do you have an opinion on  
17 that?

18 MR. MICHAEL: Let Spectrum talk to  
19 that first.

20 MR. GUSHIN: Michael can talk because  
21 he did the report for the Lottery. But basically  
22 there's a broader backdrop here the issue of  
23 Federal legislation which may or may not happen.  
24 No one really knows. We think it's unlikely this

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1 session. But that would preempt a lot of what's  
2 happening around the country with states moving  
3 into Internet gaming based on the decision that the  
4 Justice Department issued that letter last year.

5 We see a lot of lotteries, we see all  
6 of the lotteries considering this because it's the  
7 easiest and it facilitates moving onto poker and  
8 perhaps Internet gaming down the road.

9 So, these are issues that a lot of  
10 states are now grappling with. Nevada passed, the  
11 Nevada Gaming Control Board passed regulations.  
12 But their problem is they don't have a big  
13 population base. So, they would have to enter  
14 into consortiums with other states.

15 So, these are issues and it's certainly  
16 legitimate for the Commission as well as the  
17 Lottery to think about these things and see if  
18 there is a unified policy.

19 MR. POLLOCK: I'll just try to answer  
20 it succinctly. We were tasked with a couple of  
21 assignments with respect to the Lottery. One of  
22 which was to explore whether or not the Lottery  
23 should even enter this realm. It's question of a  
24 lot of lotteries around the country whether

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1 they're in casino states or not are grappling with  
2 the most or saying that we sort of have to move into  
3 that realm.

4 But we were also tasked with if the  
5 Lottery is going to do it has to do so effectively.  
6 And one of the tasks was also to ensure that  
7 whatever recommendations we were able to come up  
8 with protected the interests of the 7400 Lottery  
9 retailers in the Commonwealth as well as the value  
10 of the future casino licenses.

11 So, essentially what we said with all  
12 of that in mind and assuming that you want an  
13 effective regulatory structure and you don't want  
14 competing entities going head to head unnecessarily  
15 in the online space, one of things we thought as an  
16 initial starting point would be that if the Lottery  
17 is going to pursue some form of online gaming that  
18 it do so with the full cooperation of the future  
19 casino industry when it comes online. With the  
20 understanding that generating revenues online is  
21 one goal, but it's only one goal.

22 An additional goal would be then how do  
23 you use online and the online presence to generate  
24 physical visits to casinos, which is where the jobs



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1 are. Where it has its own revenue stream and helps  
2 justify that capital investment.

3 So, we suggested in the recommendation  
4 for consideration that as the Lottery moves toward  
5 that -- If the Lottery is going to move there, the  
6 Lottery should do it but with developing cross  
7 marketing campaigns with the future licensees that  
8 would help them, the casino licensees to use this  
9 online opportunity provided by the Lottery as a way  
10 to market to additional customers to get them to  
11 visit casinos.

12 Additionally, we recognize that in any  
13 sort of recommendations like this, things are  
14 moving very quickly. And no regulation is set in  
15 stone forever. That circumstances change,  
16 technology changes, demographics change, the  
17 economics change. And it may be at some future  
18 point, but that's not a viable alternative, not the  
19 most viable option. But at least initially, this  
20 was what we felt would be the most effective way  
21 for the Lottery to pursue online.

22 COMMISSIONER CAMERON: But we're  
23 talking online gaming. It's separate than  
24 lottery. I don't see your recommendation. We're

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1 the independent Gaming Commission. And I don't  
2 see where you'd make the recommendation that all  
3 gaming should go to the Lottery. I just don't see  
4 that, personally.

5 And I've learned a lot about this in the  
6 last couple of -- Lots of gaming commissions are  
7 now -- New Jersey is very actively underway writing  
8 regulations for this. It's the gaming side of the  
9 house. Nothing to do with the lottery, New  
10 Jersey.

11 So, I don't see your recommendation as  
12 being viable now that we are an independent gaming  
13 commission up and running. I just don't see where  
14 the Lottery would be the appropriate avenue for all  
15 online gaming.

16 MR. POLLOCK: And you have identified  
17 one of the challenges facing any state is that one,  
18 unanticipated to be sure, but one of the challenges  
19 facing all states as online gaming moves closer to  
20 reality is that the line between lotteries and  
21 casinos is going to blur. There's no question  
22 about that.

23 In states such as including New Jersey,  
24 they're not necessarily speaking to each other in

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1 terms of developing a coordinated policy.

2 That was essentially the genesis of  
3 that is trying to find a means or suggesting one  
4 alternative as a means of protecting the value of  
5 the casino licenses while still allowing the  
6 Lottery to pursue.

7 MR. MICHAEL: We weren't part of that  
8 Spectrum recommendation on that job, but I do  
9 understand the point that Mike's making. I would  
10 also point out though that online gaming is not  
11 really another form of gaming. Online gaming is  
12 just another method by which people play games.  
13 It's not a whole other types of gaming.

14 So, to the extent that an agency is  
15 established that has jurisdiction over games  
16 played in a certain place, these will be games  
17 played in that place. And it would seem at this  
18 stage -- And I can understand if Lottery does it  
19 first before the casinos are up and going,  
20 obviously, Lottery has to monitor that and  
21 regulate that. But when casinos are operating and  
22 they offer online gaming if they're allowed to, it  
23 would seem to me it would make things a little  
24 inconvenient for them to have answer to two

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1 different agencies in order to play the same types  
2 of games.

3 And to have two different licenses from  
4 the lottery to the employees. A lot of the  
5 employees will be on the floor offering games that  
6 are online. Do they have to get licenses from both  
7 agencies? So, it raises a lot of questions.

8 I understand Spectrum's  
9 recommendation because at these initial stages  
10 there really are no casinos to have these games.  
11 The Lottery might be able to get up and running very  
12 quickly.

13 CHAIRMAN CROSBY: That wasn't the  
14 point though. That was sort of the way I felt. We  
15 said we don't know a thing about this. We don't  
16 know what the casinos want to do. We don't have  
17 casinos yet. Nothing is going to happen for a long  
18 time. So, this is not an urgent issue.

19 But it raised the same issue with me.  
20 It seemed to me sort of as a practical -- the  
21 Legislature made the decision that they wanted to  
22 have two regulatory bodies. Maryland made a  
23 different decision. Whether it's good or bad is  
24 beside the point. This is a decision that they've

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1       made. Why you would recommend that the casinos  
2       have to be regulated by two different agencies  
3       seemed odd to me.

4               MR. POLLOCK: We surely didn't  
5       anticipate that about --

6               CHAIRMAN CROSBY: If all online  
7       gambling were being regulated by the Lottery then  
8       that necessarily is what the implication was.  
9       Anyway, I was just interested in hearing a little  
10      bit more from you, but also hearing in your  
11      instinct on that.

12              COMMISSIONER CAMERON: Can I just say  
13      one thing about submissions? I know there are a  
14      lot of folks that are working with applicants here.  
15      And just speaking from -- this is from the  
16      Investigations and Enforcement Bureau, just we are  
17      looking at applications. We're looking to get  
18      this process done in a way that's timely for  
19      everybody. And I would just ask if we could really  
20      concentrate on complete -- all of the information  
21      that is requested, if we could pay a lot of  
22      attention to submitting to us those applications  
23      with all of that requested information from all of  
24      the entities. That would be very helpful to us in

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1 turning it around, starting the investigation.

2 We really can't start that  
3 investigation unless we have all of the  
4 information requested. So, if you can just get  
5 that word out, that would be very awful. Thanks.

6 CHAIRMAN CROSBY: We're trying to get  
7 everybody to speed up. Will you at least please  
8 listen to us?

9 COMMISSIONER STEBBINS: Motion to  
10 adjourn?

11 CHAIRMAN CROSBY: No. We have a  
12 Friday session available. It's on. I don't know  
13 that we absolutely have to have four or five of you  
14 there. But the meeting is on. At the moment it's  
15 scheduled from one to five, the same as the rest  
16 of the week. We may shorten it a little bit. But  
17 it is on. Motion to adjourn?

18 COMMISSIONER MCHUGH: So moved.

19 CHAIRMAN CROSBY: Second?

20 COMMISSIONER CAMERON: Second.

21 CHAIRMAN CROSBY: All in favor, aye.

22 COMMISSIONER STEBBINS: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER MCHUGH: Aye.

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COMMISSIONER CAMERON: Aye.

CHAIRMAN CROSBY: Thank you.

(Meeting adjourned at 4:46 p.m.)

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ATTACHMENTS:

1. Agenda
2. Key Policy Question #3
3. Key Policy Question #40
4. Key Policy Question #32
5. Key Policy Question #1
6. Key Policy Question #2
7. Key Policy Question #17
8. Key Policy Question #37
9. Key Policy Question #31

SPEAKERS:

Todd Grossman, Staff Attorney  
John Ziemba, Ombudsman  
  
Robert Carroll, Michael & Carroll  
Guy Michael, Michael & Carroll  
Fredric Gushin, Spectrum Gaming Group  
Stephen Ingis, Spectrum Gaming Group  
Michael Pollock, Spectrum Gaming Group



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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  
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I, Laurie J. Jordan, further certify I neither am  
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otherwise interested in the outcome of this  
action. Proceedings recorded by Verbatim means,  
and transcript produced from computer.

WITNESS MY HAND this 15th day of December 2012



LAURIE J. JORDAN

My Commission expires:

Notary Public

May 11, 2018



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