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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #56

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

March 12, 2013, 1:00 p.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room E

1000 Washington Street

Boston, Massachusetts

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

CHAIRMAN CROSBY: I am pleased to call to order the 56th public meeting of the Mass. Gaming Commission on March 12, 2013. I don't think we have minutes to approve. So, we'll move onto the master schedule.

Are you there yet? I'm not sure there's too much to talk about, but we were still wrestling with issues having to do with the Category 2 license, and if you want to bring us up to speed?

COMMISSIONER ZUNIGA: What I can do before we get into that is point out that a couple of the key dates to the portion at the bottom here have been updated recently. The note is as per the discussion from the last meeting.

CHAIRMAN CROSBY: This is Phase-2 regulations?

COMMISSIONER ZUNIGA: This is Phase-2 regulations. We will meet the actual Friday when those regulations are submitted. And it is reflecting a slightly later but only by about a few days publishing of the regulations compared to the

1 previous update.

2 CHAIRMAN CROSBY: So, June 7 is the
3 final finished regs.?

4 COMMISSIONER ZUNIGA: Yes.

5 CHAIRMAN CROSBY: But people will have
6 access to them all the way along, right?

7 COMMISSIONER ZUNIGA: Right.

8 CHAIRMAN CROSBY: When do they first
9 get released to the public?

10 COMMISSIONER ZUNIGA: We have a period
11 between late March, the 30th, up until April 12 in
12 which all of these regulations will start
13 appearing. We talked about doing some perhaps on
14 a rolling basis.

15 The policies behind many of those have
16 already been in place. So, it's really ongoing.
17 But the two key dates here between March 30 and April
18 12, I would propose are important dates in terms of
19 reading actual regs.

20 CHAIRMAN CROSBY: And the May 3 public
21 hearing that would be for everything? There'll be
22 a single big hearing for final comments on
23 everything?

24 COMMISSIONER ZUNIGA: On the

1 regulations.

2 CHAIRMAN CROSBY: All of the regs. in
3 Phase-2, right.

4 COMMISSIONER ZUNIGA: Something we
5 haven't really reflected in this schedule is
6 something we started to refer to as Phase-2 phase
7 II and I think we should call it Phase-2B just so
8 to make sure we don't get a chuckle every time we
9 say Phase-2 phase II.

10 And if there are milestones soon after
11 to reflect Phase-2B, we should start incorporating
12 them in this schedule. But I suspect a lot of what
13 these drafts -- Depending on how we issue these
14 drafts will dictate to take a great degree that
15 Phase-2B document.

16 CHAIRMAN CROSBY: Right.

17 COMMISSIONER ZUNIGA: I can also speak
18 to the three scenarios, if you want me to, Mr.
19 Chairman, which we haven't --

20 CHAIRMAN CROSBY: If not the three
21 scenarios, at least the overall status of where we
22 stand on where the Category 2 date is today and where
23 it may go.

24 COMMISSIONER ZUNIGA: Right. The

1 Commission and the public will remember that this
2 is our current forecast and has been for a little
3 while in which we get all applications for the
4 Category 2, the portion at the bottom here is the
5 Category 2. Category 3 is outside of this screen.
6 -- I'm sorry, Category 1 is outside of this screen.

7 The current forecast is to have all
8 evaluations including for Category 2 submitted to
9 the Commission by October 5. We talked about the
10 scenarios, whether we could bring that date up a
11 little bit, if you will, to an earlier date. And
12 that has a real implication on the other dates,
13 which we started to get some feedback relative to
14 the execution of the host, surrounding community
15 agreements.

16 So, to the extent that we do that and
17 we have not yet decided on the scenarios, it'll have
18 implications later on. So, we are still
19 forecasting this decision by February 2.

20 CHAIRMAN CROSBY: December 2.

21 COMMISSIONER ZUNIGA: I'm sorry,
22 December 2. February '14 is Category 1.

23 CHAIRMAN CROSBY: So, for the time
24 being, December 2 stands as the targeted date for

1 awarding this Category 2 license. And we are still
2 in the process of seeing if we can't move that back.
3 Okay. Good. Anything else?

4 COMMISSIONER ZUNIGA: The last thing
5 is that we have only begun to think about in those
6 three scenarios the notion of the arbitration
7 process for the case of surrounding community
8 agreements not being executed. And the Commission
9 determining a surrounding community once the
10 deadline is for proposals are with the Commission.

11 So, that's a number of activities that
12 would start after the October 4 deadline. But we
13 haven't represented it in this schedule. We only
14 represented it in the scenarios that we discussed
15 last time.

16 CHAIRMAN CROSBY: Right. Okay. So,
17 we're hoping there won't be any surrounding
18 community debates.

19 Okay. Anything else? We're going to
20 be starting to add in -- Soon, we're going to be
21 starting to add in the regs. for Phase-2B getting
22 that scoped out up here pretty soon, but we'll get
23 to that. Okay. Anything else in administration?

24 COMMISSIONER ZUNIGA: I believe I

1 included one small item as part of this relative to
2 preapproval of an employment and labor counsel. I
3 have in the packet included a recommendation to
4 preapprove -- prequalify the firm of Morgan, Brown
5 and Joy as a labor and employment law firm for the
6 Commission.

7 What we currently have are only very
8 incidental, I would pose, charges if you will for
9 certain questions relative to employment law. But
10 I think that as we continue to ramp up with employees
11 and more staff, some of these questions will become
12 less incidental and we will in the cumulative get
13 to surpassing incidental purchase threshold, which
14 is why I have requested and obtained cost proposals
15 and statements of qualifications from firms that do
16 this kind of work.

17 And the firm of Morgan, Brown and Joy
18 is my recommendation for prequalification at this
19 point as they have submitted a statement of
20 qualifications with a lot of experience, especially
21 with agencies like the Gaming Commission in the
22 State here in Massachusetts.

23 CHAIRMAN CROSBY: And they were also
24 recommended, as one of the three that were

1 recommended by the State's HRD?

2 COMMISSIONER ZUNIGA: That's right.
3 They've done a lot of work with the Lottery, with
4 other agencies in our position. And they have
5 great references. They have no conflicts. So, we
6 think that this is a good firm to have as part of
7 our advisers.

8 CHAIRMAN CROSBY: Any comments on
9 that? Do you want to move with it?

10 COMMISSIONER ZUNIGA: If there's no
11 more comment, I'd move that the Gaming Commission
12 prequalify the law firm of Morgan, Brown and Joy as
13 its employment and labor counsel for miscellaneous
14 and ongoing advice relative to employment and labor
15 law for the Commission.

16 COMMISSIONER STEBBINS: Second.

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

19 COMMISSIONER STEBBINS: Aye.

20 COMMISSIONER ZUNIGA: Aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER CAMERON: Aye.

23 CHAIRMAN CROSBY: Opposed? The ayes
24 have it unanimously. Investigations and

1 Enforcement Bureau report, Director Wells is --

2 COMMISSIONER CAMERON: Director Wells
3 had a conflict this afternoon, actually working on
4 investigations. So, I was asked to give the
5 report, but it's a very limited report today.

6 The investigations are ongoing.

7 There's daily contact with the applicants, lots of
8 questions, lots of issues to consider, but they are
9 ongoing as we speak. And going -- I would not say
10 according plan, because there's always issues.

11 But the additional redaction is being handled as
12 well as the investigations themselves. So, that's
13 all I have, Mr. Chair.

14 CHAIRMAN CROSBY: We released the list
15 of all the 300 plus qualifiers that came from that
16 department and was released by our office. I guess
17 that's the only other development in that that we
18 released the last couple of days.

19 COMMISSIONER CAMERON: Yes.

20 CHAIRMAN CROSBY: Okay. Item five,
21 public education and information, our ombudsman.

22 MR. ZIEMBA: Thank you, Mr. Chairman.
23 We continue to have numerous conversations with
24 host communities and with applicants regarding the

1 potential RPA planning process. We anticipate
2 that we will have presentation to you on Thursday
3 with three RPA members that can give you a little
4 bit more detail about what our process is.

5 Other notable development is that we
6 have received now two requests for community
7 disbursements, one from the Town of Plainville and
8 one from the City of Everett. We are processing
9 those requests.

10 And what they involve is, because they
11 exceed \$50,000, they involve -- I'll work with the
12 developers in order to receive dollars so that we
13 can then in turn grant those out to the communities.

14 CHAIRMAN CROSBY: So, the RPAs will be
15 next Thursday which will also --

16 MR. ZIEMBA: No, this Thursday.

17 COMMISSIONER ZUNIGA: Day after
18 tomorrow.

19 CHAIRMAN CROSBY: Oh, the day after
20 tomorrow.

21 MR. ZIEMBA: Yes.

22 CHAIRMAN CROSBY: Oh, okay, good.
23 Okay, sorry.

24 MR. ZIEMBA: And that's what I have to

1 report.

2 CHAIRMAN CROSBY: We've been talking
3 about this on the issue of when if ever -- when we
4 will require that Category 2 applicants pick a
5 location --

6 MR. ZIEMBA: Yes.

7 CHAIRMAN CROSBY: -- and thus finalize
8 their qualifier list or maybe finalize their
9 qualifier list. Where are we in that conversation?

10 MR. ZIEMBA: Director Wells and I have
11 had the conversations with the four applicants for
12 Category 2 facilities. And they each have reported
13 to us where they are in the process.

14 What they need for additional
15 qualifiers, whether or not they'd be able to meet
16 any deadlines that we set for qualifiers and where
17 do they stand in their development process. So, we
18 met with representatives from each of the four
19 facilities and they gave us that information.

20 CHAIRMAN CROSBY: So, we have all of
21 the sites?

22 MR. ZIEMBA: No, no. We have met with
23 the representatives from each of the four
24 applicants. And they've told us where they are in

1 their site development process. But two have
2 identified sites, two do not have identified sites.

3 CHAIRMAN CROSBY: Right. So, where
4 are we in the process of deciding when we will
5 require that we be told?

6 MR. ZIEMBA: I think what we discussed
7 with them were two things. One, should there be a
8 deadline for -- should there be an additional
9 deadline for qualifiers? And one could be a
10 land-based site and whether or not they'd be able
11 to meet those deadlines for additional qualifiers.

12 Then the second thing that we discussed
13 was the aspirational September 1 deadline versus
14 our current deadline, which is in December. And
15 each of the applicants gave us the benefit of what
16 their plans would be based on where they are
17 currently in meeting those deadlines.

18 I'll give you a little bit of a flavor
19 of the conversations. The two applicants with the
20 identified sites, as I reported previously, they
21 both told us that they would be able to meet our
22 September 1 award deadline. It's sort of
23 instructive how they would be able to meet that
24 deadline. They would anticipate in order to meet

1 that deadline that they would probably need to have
2 their special election, their referendum on June
3 25, the special election date. Then in order to
4 meet that date, they would have enter into host
5 community agreements on or about April 24 or April
6 25, right about that time.

7 That would enable the Commission to
8 have at least a couple of months to evaluate
9 applications, go through any surrounding community
10 debates or resolutions of those disputes, potential
11 disputes.

12 So, the thing I took away from that is
13 that with those two applicants that are very much
14 ready to go that's a very quick timetable in order
15 for them to enter into a host community agreement.
16 And they report that it's very doable. And that's
17 after my conversations with some of those host
18 communities, I can see how that would definitely be
19 possible.

20 If one does not have a site, I can't
21 imagine how one would meet a September 1 date.
22 Because if you just take it to its logical
23 conclusion, host community agreement April 24, 25th
24 no identified site, really at different stages of

1 site plan review and then numerous conversations
2 that would need to take place at both the host
3 community level but then the surrounding community
4 level.

5 The surrounding community discussion,
6 it can take advantage of the time between the
7 announcement of the referendum and the 60 days for
8 the holding of the referendum. But for the host
9 community agreement that's a rather quick
10 timetable, April 24 or April 25 to meet the
11 September 1 date.

12 So, then based on some of the outlines
13 that we just saw, you have multiple different
14 scenarios. So, if you don't meet roughly the July
15 25 date, potentially one could have a summer
16 referendum. If you have a summer referendum, then
17 your dates for concluding a host community
18 agreement could occur a little bit later, May, June.

19 But I guess there's a policy question
20 on whether or not we would want to move ahead with
21 a summer election if that is okay. Obviously,
22 everybody doesn't take vacation at the same time.
23 Or whether or not that is less desirable.

24 If it's less desirable then after the

1 summer months of July and August then you have
2 basically a September referendum. And a September
3 referendum places you basically at our December 2
4 date that we've had on the books so far.

5 CHAIRMAN CROSBY: This ties to another
6 question, and if I'm jumping ahead here, somebody
7 please tell me, but I think this is floating around.
8 We and our bidders need to understand where we are
9 coming down on this.

10 We talked last week -- our last meeting
11 about whether or not we would have a policy, I think,
12 on whether an election could be set prior to a bidder
13 being qualified. And then we've sort of said
14 loosely that yes, we could. If they want to take
15 a risk, they could do that.

16 I think by your schedule, even the two
17 folks that have their sites identified now, they may
18 or may not be qualified by April 25. That's
19 probably a stretch. So, they would have to -- In
20 order to get the June 25 date, which would assure
21 September 1, they would have to set the referendum
22 prior to there being qualified bidders and we've
23 made up our minds.

24 So, maybe moving the date back, making

1 the date sooner for the license award sooner than
2 December 2, which is today's target date is
3 nonfunctional from any standpoint. So, we
4 shouldn't torture ourselves and keep pushing it.

5 But if we're going to keep that open as
6 an option, then we have to do a number of things
7 including make a decision on whether or not we can
8 select bidders -- set elections before bidders are
9 qualified (A). And (B) are we going to set a target
10 date -- We'd have to set a target date by which time
11 we would have to be told where the sites are going
12 to be.

13 COMMISSIONER MCHUGH: If we want to
14 keep that December 2 date as a real date, we have
15 got to have the surrounding community arbitration
16 process in by that date and soon enough for us to
17 award the license on that date. Because the way
18 this schedule is framed right now, the December 2
19 date does not take into account that arbitration
20 process, which is basically a seven- or an
21 eight-week process. So, that December 2 date
22 really has an outside date of sometime deep in
23 January. So, that's for starters.

24 It seems to me that we should -- not

1 today -- but we should soon decide on what we're
2 going to do insofar as the target date is concerned
3 and set a date by which the sites have to be
4 identified and we have to have the applications, a
5 deadline for the RFA-2 applications.

6 Otherwise, we are simply being
7 governed by the readiness of the applicants. And
8 we desire competition, which is a healthy thing.
9 We've been working on that for a long time. But
10 competition that never materializes into reality is
11 not helpful to the process, I think.

12 So, it seems to me within the next
13 couple of weeks we ought to coalesce around some
14 dates and communicate those dates to all of the
15 applicants and move forward from that basis.

16 CHAIRMAN CROSBY: What is your view at
17 this point on the issue of whether or not elections
18 could be set prior to bidders being approved?

19 COMMISSIONER MCHUGH: I think we ought
20 to allow that to happen in the interest of
21 efficiency. It is a risk. Everybody has to
22 understand that it's a risk, because the
23 qualification decision may not be made. But it
24 seems to me that they are -- the IEB process is

1 interactive enough --

2 COMMISSIONER CAMERON: Yes, it is.

3 COMMISSIONER MCHUGH: -- that
4 applicants are going to be able to predict with some
5 certainty where things are going and when they'll
6 be -- when an endpoint will be reached. So, that
7 reduces the risk of inherent in setting the advanced
8 date.

9 CHAIRMAN CROSBY: Okay. Does anybody
10 else have a strong feeling on that issue
11 particularly?

12 COMMISSIONER CAMERON: I agree with
13 Commissioner McHugh that we should allow them to set
14 the date, but obviously not have the referendum
15 until they have that information.

16 COMMISSIONER ZUNIGA: I agree as well.
17 And I think however we should, if nothing else,
18 reflect on the schedule what happens if somebody
19 runs that risk and materializes against them.
20 Let's say there's a scheduled election and the
21 applicant is then found unsuitable or suitable with
22 conditions, there is, if I remember correctly,
23 applicants will not be able to request another
24 election for some period of time.

1 CHAIRMAN CROSBY: If they lose the
2 election.

3 COMMISSIONER MCHUGH: If they lose the
4 election.

5 CHAIRMAN CROSBY: If they cancel the
6 election, I don't think that --

7 COMMISSIONER ZUNIGA: That doesn't
8 apply?

9 CHAIRMAN CROSBY: We'll double-check
10 that but I don't think that applies.

11 COMMISSIONER MCHUGH: It's a negative
12 vote that triggers the delay.

13 CHAIRMAN CROSBY: I'm okay with that
14 too. And I don't think we need to vote on that
15 because if we don't say anything, it won't be a rule.
16 So, that's fine.

17 But I do reinforce your comments. We
18 are on purpose keeping our deadlines flexible
19 because the greatest good here is optimal
20 competition. But at some point it becomes a
21 problem and it becomes inequitable to the folks who
22 are moving more quickly.

23 So, I think I agree whether it's a week
24 or two, but I don't think it ought to be much more

1 than that that we put a stake in that ground as to
2 when we need to know the sites and when applications
3 will have to be in. Okay. I guess that was it.
4 Thank you.

5 COMMISSIONER CAMERON: Thank you.

6 CHAIRMAN CROSBY: Preparation for
7 Region C, there's really nothing more to say than
8 what we've been saying before.

9 We do have a number of people who have
10 requested to speak. Any public official or
11 representative of an interested party is invited to
12 let us know if they want to speak on the website.
13 Everybody else is invited to comment. And we hope
14 that we'll have comments. That being on the issue
15 of our discussion on the 21st about whether or not
16 to open Region C to a commercial site or some other
17 action -- to commercial applications or some other
18 action. And I think that's it for public education
19 and information.

20 Regulation update, Commissioner
21 McHugh is that?

22 CHAIRMAN CROSBY: Yes. Let me just
23 give a quick update. The regulation writing
24 process is proceeding. Yesterday, we had a

1 meeting. I met with all of the consultants to do
2 a read through of the draft regulations that we have
3 now, corrections, synthesizing. That draft will
4 be distributed to you either today or tomorrow.

5 There are three sections of the
6 regulations that are placeholders only. One is the
7 evaluation criteria. Two is the evaluation
8 process. And three is the sort of hearing process
9 that we're going to use. Those are things we are
10 going to discuss at a non-regulation level over the
11 next few days. Then we can write regulations to fit
12 those in.

13 And then distribute that final draft to
14 everybody. And at some point, the week after next,
15 I think, we anticipate having a day or time, perhaps
16 even as part of this meeting, to go through the
17 regulations after you've had a chance to read them,
18 make sure we all approve them and meet the March 29
19 date for sending them to the Local Government
20 Advisory Committee. So, that's the plan.

21 Along the way, we'll get some other
22 outside advice on the content. And that outside
23 advice will be incorporated into the regs. as well.
24 So, that's the process anticipated.

1 CHAIRMAN CROSBY: Can you
2 characterize the meeting yesterday? Are we doing
3 well?

4 COMMISSIONER MCHUGH: Yes. Of all of
5 the sections that we looked at yesterday, we have
6 finished the work basically. That's done. So,
7 the draft you see next, which is in large part a
8 repetition of things you've already seen with some
9 changes to it. That's done, except insofar as
10 input from one outside agency is concerned. And I
11 suspect those advisories will be minor.

12 You'll see on the draft there are two
13 policy questions that remain to be answered. And
14 we talked about those a little bit at one of our
15 prior meetings. That is the extent to which we want
16 to regulate what's to happen if there are two
17 proposals in a given community.

18 Do we want require the elections be
19 held on the same day? If there are multiple host
20 communities that have to vote, do we want to require
21 those elections to be held on the same day? We
22 discussed that. And I think the general thoughts
23 were expressed, but we need to make sure that we
24 understand what we're going to do there. But

1 that's a simple policy decision and will not require
2 a big change in any regulation.

3 So, we're basically done. We've gone
4 as far as we can go until we do these next couple
5 of things.

6 CHAIRMAN CROSBY: We had said last
7 week that we would decide that question about if
8 there were two HCAs would we require -- that we would
9 decide that this week.

10 COMMISSIONER MCHUGH: Right, and we
11 can. We can to that today or we can do it Thursday.

12 CHAIRMAN CROSBY: Do you have an
13 opinion on that?

14 MR. ZIEMBA: I spoke to the City of
15 Springfield about that issue.

16 CHAIRMAN CROSBY: It's only
17 Springfield at the moment, but that could
18 conceivably change. Sorry, it's two sites.

19 COMMISSIONER MCHUGH: It's two sites.
20 We have two towns and two proposals in a single town
21 possibilities.

22 MR. ZIEMBA: The City of Springfield
23 reports that it is their intention to have the
24 election for both applicants on the same date, but

1 they did note that there's an issue within the
2 statute that it is up to the applicant at which time
3 they can request the referendum.

4 So, there is some statutory hurdles
5 that they would have to overcome. And that there
6 could also be an issue whereby if one applicant does
7 not proceed as quickly through our reviews, where
8 would that put the City in a position? What would
9 they be able to do if we were to approve one
10 applicant well before another applicant?

11 COMMISSIONER ZUNIGA: The Phase-1
12 review, John, suitability?

13 MR. ZIEMBA: Yes, if that were to be
14 delayed. But they reported it is every bit their
15 intention to host them on the same date.

16 CHAIRMAN CROSBY: Which they can
17 clearly do. I don't see any reason why they
18 couldn't make that a precondition of signing the
19 host community agreement.

20 MR. ZIEMBA: That could very well be
21 within their authority.

22 CHAIRMAN CROSBY: Even if we are
23 delayed, it seems to me that having them on the same
24 day and it sounds like Springfield agrees, but it

1 seems to me that's pretty important. It would be
2 wildly unfair. And if people were left to pick
3 their own days, we'd have all kinds of gamesmanship
4 about who goes first and so forth and so on.

5 So, it seems to me a pretty high
6 priority that high enough probably that we make it
7 a rule just for the record as it sounds like
8 Springfield's going to do it anyway.

9 MR. ZIEMBA: If we do make a rule then
10 we would have to be cognizant of the statutory
11 requirements that they must host the special
12 election within that 60- to 90-day period. And I
13 guess there could be a situation whereby that just
14 wouldn't work out. There is some flexibility
15 between 60 and 90 days.

16 CHAIRMAN CROSBY: Then they would be
17 in noncompliance with our rules. They wouldn't be
18 able to make their application.

19 COMMISSIONER MCHUGH: But it could be
20 that they can't do it because we haven't finished
21 ours.

22 CHAIRMAN CROSBY: No. Because we're
23 saying that they have to be at the same time. So,
24 if one isn't done, the other one has to wait.

1 COMMISSIONER MCHUGH: Oh, I see what
2 you're saying.

3 CHAIRMAN CROSBY: It seems to me it is
4 within our control. And if we assert our control,
5 it's within the community's control to make this
6 happen. And I think it's highly unlikely that
7 anybody would not be doing that anyway, but in the
8 unlikely event that that could happen, I think we
9 should preclude that.

10 COMMISSIONER ZUNIGA: I agree with
11 your point, Mr. Chairman. We're not dictating when
12 within the 60 to 90. That's a point of contention.
13 We would only be dictating that if you're going to
14 have more than one, you have to have them on the same
15 day, more than one host community agreements.

16 CHAIRMAN CROSBY: More than one
17 referendum, right. You're looking troubled.

18 MR. ZIEMBA: I'm just trying to do all
19 of the math here of when you get your host community
20 agreement versus our requirement that you cannot
21 have your referendum until after our reviews occur.
22 And then the community must hold the referendum
23 within 60 to 90 days after the request from the
24 developer. So, you're having multiple different

1 things happening at the same time, and whether or
2 not it may work out --

3 Say for example that we establish a
4 rule saying, just a blanket prohibition you cannot
5 have a referendum for more than one applicant at
6 different times. But we have not made our
7 determination that one is qualified. So, even
8 though a host community agreement has been executed
9 with the applicant that has qualified that
10 applicant could then make a request for a special
11 election. And would the city be within its
12 authority to not have an election depending upon
13 where we stand with our reviews of the scope on
14 licensing?

15 COMMISSIONER MCHUGH: A city could
16 control that by the date on which it signs the host
17 community agreement.

18 MR. ZIEMBA: Correct.

19 COMMISSIONER STEBBINS: The city has
20 some authority and control.

21 MR. ZIEMBA: Yes.

22 COMMISSIONER MCHUGH: The city is in
23 that position, they just say this is the agreement
24 we're going to do, we just wait until --

1 MR. ZIEMBA: What we just discussed
2 was that we are giving some flexibility to
3 communities to be able to predict the date upon
4 which we're going to qualify scope on licensees --
5 license applications.

6 So, communities maybe making a
7 prediction about when that's going to come. And if
8 it doesn't come, then you have a chicken and egg
9 thing. Because they can't call for the referendum
10 because they can't execute their host community
11 agreement. But we're saying don't execute your
12 host community agreement in order to have them on
13 the same date.

14 COMMISSIONER MCHUGH: Right.

15 MR. ZIEMBA: So, I'm just saying that
16 it is a little bit more complicated than --

17 CHAIRMAN CROSBY: I don't think it's
18 that complicated.

19 COMMISSIONER CAMERON: I don't
20 either.

21 CHAIRMAN CROSBY: I think you're over
22 complicating it in playing out the scenarios. But
23 I think the cities and -- If a host community says
24 to the two bidders one way or the other, a

1 precondition of us approving your community
2 agreement is that you will agree to whatever
3 mechanism we set up to hold your referendums on the
4 same day. And they say okay.

5 MR. ZIEMBA: But by law, it's the
6 execution of the host community agreement that
7 counts.

8 COMMISSIONER MCHUGH: So, they just
9 don't execute it.

10 COMMISSIONER ZUNIGA: They agree on it
11 on principle but they don't sign it until they have
12 both.

13 MR. ZIEMBA: But you cannot schedule
14 your referendum until you execute your host
15 community agreement.

16 COMMISSIONER ZUNIGA: That's right.

17 MR. ZIEMBA: Therefore in order to
18 avoid any issues, you could not execute your host
19 community agreement because we are allowing people
20 to go forward well before the Phase-1 qualification
21 comes in.

22 CHAIRMAN CROSBY: We're saying if a
23 community wants to do that, we're not sure it's a
24 good idea, but if a community wants to do that and

1 can, we're not going to bar it.

2 But this would be a situation where
3 they couldn't.

4 MR. ZIEMBA: They could not.

5 CHAIRMAN CROSBY: Just as a practical
6 matter, they couldn't, because they couldn't comply
7 with our rules as you're saying.

8 MR. ZIEMBA: Yes. Would the effect
9 that Springfield would not be able to host its
10 election until after our Phase-1 in that instance?

11 COMMISSIONER CAMERON: Not
12 necessarily.

13 CHAIRMAN CROSBY: What was that? I
14 didn't understand.

15 COMMISSIONER MCHUGH: I don't
16 understand the question.

17 MR. ZIEMBA: What you just said, Mr.
18 Chairman, was that we are allowing communities to
19 move forward on scheduling their referendums.

20 CHAIRMAN CROSBY: Preapproval of the
21 bidders --

22 MR. ZIEMBA: Preapproval of the
23 bidders, but we've also noted that --

24 CHAIRMAN CROSBY: -- where they can

1 and where they choose in their judgment they want
2 to, albeit it's a risk.

3 MR. ZIEMBA: Albeit it's a risk. But
4 then we also have a situation that it is the
5 execution of an agreement that is the precursor to
6 whether or not they can go ahead and have their
7 referendum.

8 We just said a few minutes ago that one
9 way to control whether or not they would have
10 referendums on the same date is that they would
11 withhold upon the execution of those agreements.
12 But in order to withhold upon the execution of those
13 agreements, then they could not schedule a
14 referendum.

15 CHAIRMAN CROSBY: Right.

16 MR. ZIEMBA: So, we are in effect
17 saying that in order to comply with our rule that
18 they could not go forward and have an early
19 referendum --

20 CHAIRMAN CROSBY: -- if it turns out
21 that we have a bidder who's not approved and in our
22 iterative process with the town and the bidder we
23 can't give them a high degree of comfort that it'll
24 get done, if all of those things happen, yes, it will

1 come to that. So, that would be a situation where
2 they could not schedule in advance.

3 COMMISSIONER MCHUGH: And if they
4 scheduled in advance on the anticipation that
5 things were done that would be one of the situations
6 that would require them to reschedule if it didn't
7 happen. That was part of the risk.

8 CHAIRMAN CROSBY: I'm thinking that
9 maybe what you're concerned about, the issue that's
10 at the back of your mind is Springfield is hoping
11 to get this done on June 25.

12 MR. ZIEMBA: Correct.

13 CHAIRMAN CROSBY: And the likelihood
14 that we will have both of their approvals done, both
15 of their bidders qualified by April 25 is probably
16 next to zero.

17 So, if they want to go for June 25,
18 which they think they can, this rule will maybe make
19 them face the unlikelihood of June 25, which they
20 aren't at the moment facing, right?

21 MR. ZIEMBA: Yes.

22 CHAIRMAN CROSBY: But I think that's
23 all to the good. Because for Category 1 referenda
24 to be held, particularly in a community where there

1 are two major proposals, to be held concomitant with
2 the Kerry special election just seems to me to be
3 highly unlikely. It's not impossible. Things
4 happen. But it seems highly unlikely. That's 40
5 days. We'd have to be done with our background
6 investigations for two companies 40 days from
7 today.

8 COMMISSIONER MCHUGH: That will not be
9 done. The deadlines for our investigators are not
10 until the beginning of June.

11 MR. ZIEMBA: But previously we said
12 you can go ahead and schedule your referendum upon
13 the conclusion of your host community agreement
14 before that date.

15 COMMISSIONER MCHUGH: Correct.

16 MR. ZIEMBA: Which would make it
17 possible.

18 CHAIRMAN CROSBY: Right.

19 MR. ZIEMBA: But if they cannot
20 execute their host community agreements in order to
21 make sure that they have applicants going before the
22 referendum at the same time, then they would not be
23 able to meet that date.

24 COMMISSIONER MCHUGH: But we've

1 always said you could schedule the host community
2 agreement election before the approval, before the
3 Phase-1 approval --

4 MR. ZIEMBA: Correct.

5 COMMISSIONER MCHUGH: -- recognizing
6 the risk that the approval would it be done in time
7 to allow you to have the election. You just heard
8 it's not going to be done. So, as a practical
9 matter, they can't do it.

10 MR. ZIEMBA: It would not be done by
11 April 25. But our reviews could very well be done
12 by June 2, 4, 5, 10, 12, which is before the actual
13 referendum date.

14 CHAIRMAN CROSBY: What Springfield is
15 probably thinking is we know we probably won't be
16 done by April 25, a really good chance we'll be done
17 by June 25. We really want to hold the election on
18 June 25. So, in our mind's eye they're thinking
19 we'll probably go ahead and take a shot and
20 schedule.

21 If that happened under this new
22 scenario, there would be one possible wrinkle.
23 They sign both host community agreements. They
24 both agree to pick the election the same date, which

1 is June 25. One of the gets approved, one of them
2 doesn't.

3 If under that situation we have the
4 authority to stop the election for the one who was
5 approved and therefore could comply with the law
6 that says the election is set by a time of your
7 choice after the signing? Would we be forced to
8 breach our own rule that we would let one go forward?

9 COMMISSIONER ZUNIGA: Perhaps this is
10 what you alluded to. But the Commission could
11 control at least to some degree via the IEB, I guess
12 the IEB could control in the case of Springfield to
13 make the determination of suitability of both
14 applicants on the same day.

15 CHAIRMAN CROSBY: That's true. I
16 didn't think about that.

17 MR. ZIEMBA: Yes and potentially --

18 COMMISSIONER MCHUGH: Just release
19 the results.

20 COMMISSIONER ZUNIGA: Just release --

21 CHAIRMAN CROSBY: Only we will know.

22 MR. ZIEMBA: Potentially, I keep
23 focusing on the host --

24 COMMISSIONER CAMERON: And just a

1 recommendation to the Commission, obviously.

2 CHAIRMAN CROSBY: Right.

3 MR. ZIEMBA: I keep on focusing on the
4 execution of the host community agreement.

5 Perhaps there's some other agreement that the
6 applicants could agree to not request the
7 referendum until --

8 COMMISSIONER STEBBINS: Because
9 that's the other trigger is even though the
10 community agreement is signed, nothing gets
11 scheduled until the request comes from the
12 applicant to the community and say now I want to
13 schedule my election.

14 MR. ZIEMBA: Correct. And we said
15 previously that you can control that request by
16 controlling when they do - by the city controlling
17 when they do their host community agreement.

18 COMMISSIONER STEBBINS: Right.

19 COMMISSIONER MCHUGH: But you're
20 suggesting that a term of the host community
21 agreement is, both host community agreements is
22 that they'll jointly request an election on the same
23 day.

24 COMMISSIONER STEBBINS: Possibly.

1 MR. ZIEMBA: That could be a condition
2 of the host community agreement or another
3 instrument that governs it so that you don't get
4 into complications that I think I'm thinking about
5 potentially.

6 CHAIRMAN CROSBY: This conversation
7 is perfect evidence of why some of Mark Arsenault's
8 from the Globe's compatriots said every time he came
9 back from one of our meetings he was comatose.

10 COMMISSIONER ZUNIGA: That doesn't
11 include us.

12 CHAIRMAN CROSBY: But I think the
13 bottom line is we can -- There's a way for this to
14 be managed, even in the difficult situation of
15 Springfield. As you're saying, it takes a little
16 care. And I realize that Springfield and it's not
17 only Springfield are still holding out the hope that
18 they can have an election on June 25, which is
19 probably a long shot but more power to them. We'll
20 do everything we can to enable them to comply.

21 MR. ZIEMBA: And I believe they've
22 only said June in their RFPs that they've issued to
23 date. June 25 is --

24 CHAIRMAN CROSBY: Right. But in

1 their thought -- I think we know what their thought
2 process is.

3 COMMISSIONER STEBBINS: They're
4 probably trying to catch people before they
5 disappear in July and August.

6 CHAIRMAN CROSBY: And it's not just
7 Springfield, it's other communities as well.

8 Having said all that, I think we agree
9 with the officials in Springfield right now that
10 it's important that the elections be held on the
11 same day. So, one way or another I think it's
12 important for us to state that as a matter policy
13 and then we can figure out how to work it out.

14 MR. ZIEMBA: Yes.

15 CHAIRMAN CROSBY: Does somebody want
16 to put that into a motion? I think that is
17 something we should vote on.

18 COMMISSIONER MCHUGH: What?

19 CHAIRMAN CROSBY: We'd require that in
20 the case of two HCA referenda in the same city that
21 they be held on the same day.

22 COMMISSIONER MCHUGH: That we require
23 that.

24 CHAIRMAN CROSBY: That we would

1 require that.

2 COMMISSIONER MCHUGH: That means that
3 we would write a regulation that said that. That
4 would be we'd answer the policy question and put it
5 in a reg.

6 So, I would move then that the
7 Commission require that multiple host community --
8 elections for multiple host community agreements in
9 the same city or town be held on the same day.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER ZUNIGA: Second.

12 CHAIRMAN CROSBY: More discussion?

13 All in favor, aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 COMMISSIONER CAMERON: Aye.

18 CHAIRMAN CROSBY: Opposed? The ayes
19 have it unanimously. John, before you go.

20 COMMISSIONER MCHUGH: The other piece
21 is a little more complicated. That is do we
22 similarly require that if a host community
23 agreement must be approved by the voters of two
24 towns that both of those elections have to be held

1 on the same day? That's more complicated because
2 we would be requiring two sovereigns to agree. And
3 that gets very dicey if not beyond our powers, it
4 seems to me.

5 COMMISSIONER ZUNIGA: I would agree
6 with that. That would be impractical for us to make
7 that requirement in my opinion.

8 CHAIRMAN CROSBY: Set that aside for a
9 moment. What are the pros and cons? Does it
10 matter from a public-policy standpoint one way or
11 the other? Are we invested in any equity one way
12 or the other?

13 COMMISSIONER MCHUGH: I think we're
14 not, unlike the situation of the two applicants in
15 the same city or town where a staggered election
16 could hugely favor one over the other.

17 The two adjoining towns voting on the
18 same proposal, the timing of the election really
19 doesn't affect the outcome. There's no staging of
20 things. There's nothing to be gained by going
21 first or second. So, it seems to me that there's
22 no interest that the Commission has to in ensuring
23 the integrity of the election from the staging.

24 CHAIRMAN CROSBY: I can imagine a

1 thought process that might go on. But I think that
2 is between the host community and the bidder.
3 They're going to be negotiating the host community
4 agreement.

5 COMMISSIONER ZUNIGA: Well, in this
6 case it's the host communities, two communities.

7 CHAIRMAN CROSBY: I understand. But
8 with each one, you could imagine a scenario where
9 there was a strong bunch of people in community X
10 that really didn't want it even though there was a
11 host community agreement. They somehow or other
12 negotiate to get the date postponed to when turnout
13 would be lower.

14 Whereas in community Y it's a higher
15 turnout and they don't care. But that's not our
16 problem. There's nothing inequitable about that.
17 That's within the authority of the communities, the
18 community leaderships to negotiate with the
19 bidders. So, it doesn't go to the integrity or
20 equity of the process, which the previous question
21 did, I thought.

22 Anybody disagree with that? Okay.
23 So, I think we don't need to do anything on that
24 because doing nothing --

1 COMMISSIONER MCHUGH: Doing nothing
2 just lets them do whatever they want to do.

3 CHAIRMAN CROSBY: Right. Okay.
4 Just one sec. We also had a note last week that we
5 would decide today on the issue of whether to
6 require disclosure of anything of value. -- or
7 request disclosure of requests for as well as
8 delivery of anything of value.

9 We asked for comments. It was posted
10 that we were asking for comments. We didn't get any
11 comments. But that's another one that we talked
12 about quite a bit off and on. And we had set today
13 as a decision. I'd be inclined to make that
14 decision unless for some reason not to.

15 COMMISSIONER MCHUGH: We have
16 discussed it a number of times. And I second your
17 thought that we ought to decide it today. And that
18 we ought to do it. And that we ought to do it in
19 the same way we've done political contributions,
20 which is to require disclosure from November 21,
21 2011 until the date the application is filed as part
22 of the application.

23 CHAIRMAN CROSBY: Of any requests for
24 or delivery of anything of value to --

1 COMMISSIONER MCHUGH: -- the official
2 of a host or surrounding community or a host or
3 surrounding community.

4 CHAIRMAN CROSBY: What about just
5 institutions, an official, a town or individuals or
6 entities within the community?

7 Because one of these we talked about
8 before is the fact that right now there is an
9 opportunity to disadvantage the bidders because
10 people come to them with their hand out and say you'd
11 like me to be on your side. Why don't you make a
12 contribution to my crumbling nonprofit building.

13 COMMISSIONER MCHUGH: That request
14 would have to be reported.

15 CHAIRMAN CROSBY: Right. That's what
16 you're saying, we're including that?

17 COMMISSIONER MCHUGH: Right.

18 CHAIRMAN CROSBY: So, it's not just
19 officials or the town itself, the community itself.
20 It would also be entities and individuals within the
21 town.

22 COMMISSIONER MCHUGH: No, I'm sorry.

23 CHAIRMAN CROSBY: So, if the church
24 came to you and said we want a contribution for our

1 annual Christmas dinner from you Mr. Bidder, should
2 we require that to be disclosed or not?

3 COMMISSIONER MCHUGH: I don't think we
4 should. I don't think the church people, powerful
5 as they may be in other realms, have any control over
6 what happens to the application. And this is
7 designed to prevent under color of authority or
8 color of power, somebody from putting an unfair
9 squeeze on an applicant. Maybe there are
10 situations in which that's not so.

11 COMMISSIONER CAMERON: Could a leader
12 of a large group influence the vote, a union for
13 example?

14 COMMISSIONER MCHUGH: Sure, a church.

15 COMMISSIONER CAMERON: A church.

16 CHAIRMAN CROSBY: I could be persuaded
17 different ways on this. But it does feel to me and
18 we've heard -- As we've traveled around, we hear
19 talk about this that there are in many communities
20 -- There's nothing wrong with it. But the bidders
21 are doing good works in the community in order to
22 win friends. That's fine totally legit.

23 And many people in the communities are
24 coming to the bidders knowing that they want to make

1 friends by doing good works and are asking for
2 support. And that creates an appearance problem.

3 If NGO X announces that it gets a bunch
4 of money from bidder Y, everybody says oh, yeah, you
5 know what that means. I mean there's an appearance
6 problem, at least an appearance problem. And we're
7 not saying you can't do it. All we're saying is
8 that the public has a right to know it. And that
9 in requiring that the public know it, there is some
10 cleansing effect.

11 COMMISSIONER MCHUGH: Thinking about
12 what we heard this morning, you could also turn that
13 around a bit and say that it is that kind of
14 disclosure is useful to demonstrate the ties
15 between the applicant and community organizations,
16 the degree to which the applicant is supporting the
17 community organizations.

18 We heard this morning from one of the
19 speakers, Mr. Rooney perhaps, saying that one of the
20 mechanisms for evaluating promises would be to see
21 the extent to which the promises are part of not
22 mitigation but the business model of the entity
23 that's making the promises. And a track record of
24 support of community organizations might be part of

1 that.

2 So, that there may be two reasons, both
3 the prophylactic reason and a business model tied
4 to the community reason for requiring disclosures
5 of any contributions that were made or requests that
6 were made.

7 COMMISSIONER ZUNIGA: I just think
8 that the easier division, it is in my view, division
9 is on contributions that are made. That's pretty
10 straightforward.

11 COMMISSIONER MCHUGH: Things of
12 value.

13 COMMISSIONER ZUNIGA: Yes. And I
14 think it's really just an administrative exercise
15 to try to figure out whether somebody has -- an
16 organization has a lot of power or none at all. But
17 I think simple disclosure benefits the public
18 interest.

19 The other piece, the one trying to
20 require that every request is disclosed, whether it
21 was followed with a contribution or not may become
22 a very impractical exercise depending on just the
23 amount of requests in my view, maybe not.

24 CHAIRMAN CROSBY: Considering the

1 21,000 pages that they've already put together, I
2 don't think this will put much of a burden on them.

3 COMMISSIONER STEBBINS: It might be
4 adding another 5000 pages.

5 CHAIRMAN CROSBY: Right.

6 COMMISSIONER ZUNIGA: I draw the
7 distinction in the actual contributions where I
8 think it's easier for us to request that disclosure.
9 I think there's a clear benefit. I am less sure
10 about the benefit of just trying to keep track of
11 all the single requests that anybody gets at any
12 given time. They have bigger things to keep track
13 of.

14 COMMISSIONER STEBBINS: I would
15 agree, picking up on Commissioner McHugh's point.
16 I think there's relevance as we consider evaluation
17 criteria to somebody who's demonstrating a
18 partnership or a good-faith effort that they're
19 going to improve relative to workforce development
20 in giving the community college -- whatever
21 investments and contributions they're making.
22 Because some they're going to want to reflect and
23 say we're demonstrating our good faith on X-Y-Z
24 evaluation criteria because we cut a check.

1 We've also stepped up and tried to support
2 organizations. Community, here's a check.

3 I think to Commissioner Zuniga's
4 point, asking them for every request they get,
5 whether it's a formal request on a piece of paper
6 or they run into an executive at some public event
7 who says, hey, hope you can come to our dinner. Is
8 that considered a request?

9 I think for transparency purposes
10 because it will reflect on our evaluation criteria
11 to some extent, documenting where they've actually
12 cut a check or made an investment I think is helpful
13 information to have because I think it lends itself
14 to the transparency as well.

15 The other contribution information
16 about whether they donated to political candidates,
17 political officeholders, we know that there's a
18 period of in which there's an outright ban. So, we
19 hope that isn't happening in that intervening
20 applicant period. And certainly documentation is
21 there through Campaign and Political Finance of any
22 contributions made before that point.

23 CHAIRMAN CROSBY: Take the easy
24 prophylactic case that city counselor X goes to a

1 bidder and says this is my favorite charity. I'd
2 like to have you give them some money. If we
3 require that bidder X disclose that, that's going
4 to make it a little trickier for that city councilor
5 to make that request.

6 And everybody knows that if the bidders
7 play by the rules, these things are going to be on
8 the table. It seems to me that that is -- It's less
9 dramatic if it's just a nonprofit knows that they're
10 vulnerable because they're looking for votes and
11 they go to them and try to squeeze them for 10-grand.
12 That's less obviously a problem. I happen to think
13 that's a problem. And in this case, I'd want to
14 protect the bidders by giving them the obligation
15 to tell us.

16 But the easier case is the public
17 official asking for a contribution to a charity in
18 effect on his behalf.

19 COMMISSIONER CAMERON: Or to make a
20 hire.

21 CHAIRMAN CROSBY: Or hire, anything of
22 value, absolutely, hire my cousin's wife.

23 COMMISSIONER MCHUGH: We got four,
24 maybe six categories.

1 COMMISSIONER STEBBINS: Uh-oh.

2 COMMISSIONER MCHUGH: But I think we
3 can narrow this down. We've got political
4 contributions within the period. They should be
5 reported, right?

6 Requests for political contributions
7 within the period, they should be reported.

8 Things of value given to a municipal
9 official or a host or surrounding community within
10 the period, given, they should be reported.

11 Requests by a public official for a
12 contribution of a thing of value to a host or
13 surrounding community within the period should be
14 reported.

15 COMMISSIONER STEBBINS: Read that
16 last one back.

17 COMMISSIONER MCHUGH: Requests by a
18 public official for a contribution of a thing of
19 value to a host or surrounding community within the
20 period.

21 CHAIRMAN CROSBY: Not to the community
22 but to anybody.

23 COMMISSIONER MCHUGH: Any request by a
24 public official for a thing of value to be donated

1 to a -- all right, I accept that modification, for
2 a donation of anything of value to anybody within
3 the period, they should be reported.

4 Then what we were talking about is
5 donations of a thing of value to any entity or
6 individual in a host or surrounding community.
7 Does everybody agree that that should be reported?

8 COMMISSIONER STEBBINS: That the
9 applicant has made.

10 COMMISSIONER MCHUGH: That the
11 applicant's made. All of this is either requests
12 to the applicant or the applicant making it. Does
13 everybody agree that that should be reported?
14 Anything of value given by an applicant to anybody
15 in a host or surrounding community since November
16 21, 2011.

17 CHAIRMAN CROSBY: Yes.

18 COMMISSIONER MCHUGH: And then the
19 last one is any request by anybody in a host and
20 surrounding community for a donation of anything of
21 value since November 21, 2011. And there I sense
22 that there is a strong negative feeling. And I join
23 that strong negative feeling.

24 COMMISSIONER ZUNIGA: That's my

1 point.

2 COMMISSIONER STEBBINS: I don't know,
3 the Chairman just made a pretty convincing
4 argument.

5 CHAIRMAN CROSBY: Joe Smith goes to
6 the applicant and says I'm good friends with
7 councilor Y. I'd like you to give money to
8 councilor Y's favorite charity.

9 That would be under my model that would
10 be disclosed. If we don't support that that would
11 not be disclosed.

12 COMMISSIONER MCHUGH: That's right.
13 And your model would lead us to the leader of the
14 parish saying to somebody in a position come on over
15 to our fund-raising dinner tonight.

16 CHAIRMAN CROSBY: Buy a ticket, yes.

17 COMMISSIONER ZUNIGA: I would argue
18 that your example really falls in the second
19 category where a public official is part of it.
20 Whether it's indirectly or directly, I think that's
21 a distinction. If it's on behalf of somebody, on
22 behalf of councilor X who happens to be the
23 brother-in-law, it's still councilor X.

24 CHAIRMAN CROSBY: Now you're making

1 the bidder be a prosecutor trying to figure out
2 who's doing what to whom, whose brother is this guy.

3 COMMISSIONER CAMERON: In many cases
4 it is not the public official who makes the ask.

5 CHAIRMAN CROSBY: Right. And you
6 don't know for sure whether the public official
7 knows the ask is being made, arrange that it be made.

8 COMMISSIONER CAMERON: That's what
9 wiretaps are for.

10 CHAIRMAN CROSBY: It sounds like we're
11 getting carried away here, and I'm sorry to say
12 we're not. This stuff happens all the time. The
13 consequence of this participatory, locally
14 controlled process that we are a part of and that
15 we admire and that we think is good is that it has
16 lots of players and lots of opportunity for a
17 marginal player to screw up the works everybody else
18 by doing something stupid. And the more that we can
19 do that puts the heat on marginal players to mind
20 their Ps and Qs, the better off we all are.

21 COMMISSIONER ZUNIGA: I would like to
22 think that the applicants would be in the best
23 position than anyone else to try to read and
24 understand whether the request comes from, directly

1 or indirectly, somebody in a position of power in
2 the realm of a public official. And that we leave
3 that alone.

4 CHAIRMAN CROSBY: I'm sorry. I
5 wasn't laughing at you. I was laughing at the
6 wiretap comment.

7 COMMISSIONER ZUNIGA: And we can just
8 put it out there to say bidders when you feel,
9 applicants, when you feel that you are being asked
10 for something of value --

11 CHAIRMAN CROSBY: Why are you
12 resistant to the idea of having them just report it
13 automatically?

14 COMMISSIONER ZUNIGA: Report
15 everything?

16 CHAIRMAN CROSBY: Yes.

17 COMMISSIONER ZUNIGA: I think it can
18 become unwieldy and too burdensome
19 administratively. But maybe I'm getting a little
20 carried away. I don't know.

21 COMMISSIONER STEBBINS: Do we give the
22 bidder -- I think getting back to the Chairman's
23 point -- a way of protecting themselves in this
24 process. Do we give the bidder the tool of saying

1 I can't cut a check unless I get an official
2 documented request. And that regulation, is that
3 in itself enough to scare somebody who's trying
4 wield some influence unduly enough of a hands-off
5 approach? I don't know. The bidder has to back up
6 every check I cut with the actual request. I don't
7 know.

8 COMMISSIONER ZUNIGA: Another
9 mechanism is to establish thresholds. Anything of
10 value is defined by some threshold that could get
11 to making sure that there's not an undue burden
12 administratively. Other laws do that.

13 CHAIRMAN CROSBY: I wouldn't have a
14 problem in defining like to say a full- or part-time
15 job or something over \$100 or something. I
16 wouldn't have a problem with that if that made a
17 difference. So, if somebody says come to my church
18 cookout which is \$15, you don't have to report that.
19 I wouldn't have any problem with that.

20 COMMISSIONER STEBBINS: Could you
21 repeat the first two or three categories? You may
22 have added some since then.

23 COMMISSIONER MCHUGH: No, no. I
24 stuck to six.

1 CHAIRMAN CROSBY: You added wiretaps.

2 COMMISSIONER MCHUGH: Yes. Once I
3 heard about the wiretaps, I decided not to go any
4 further.

5 Any political contributions made
6 within the period. The period is since November
7 21, 2011. Any requests for political
8 contributions within the period. Anything of
9 value donated to a person or entity in a host
10 community or surrounding community within the
11 period. Any request by a public official for a
12 donation of a thing of value within a host or
13 surrounding community during the period. And I
14 actually combined two in that one, two categories
15 in that one.

16 And then the final one, now I've got
17 five, is any request by anybody for donation of a
18 thing of value to a person or entity within a host
19 or surrounding community within the period has to
20 be reported.

21 COMMISSIONER STEBBINS: That first
22 one though on the political candidate asking for a
23 donation after November --

24 COMMISSIONER MCHUGH: -- 21, 2011,

1 that we've already decided.

2 COMMISSIONER CAMERON: I had a
3 question about --

4 COMMISSIONER MCHUGH: Did you finish?

5 COMMISSIONER STEBBINS: No.
6 Obviously, they can't donate anything after they
7 filed their application on January 15. They're not
8 allowed to make a contribution during the applicant
9 time period.

10 COMMISSIONER MCHUGH: That's right.
11 But that doesn't mean an accident didn't happen.

12 COMMISSIONER STEBBINS: In terms of
13 our data collection, OCPF would have anything that
14 was donated to a political candidate already on
15 record for that period.

16 COMMISSIONER MCHUGH: Theoretically,
17 they would. So, all we're asking is that that same
18 information be included in the application.

19 COMMISSIONER STEBBINS: Right.

20 COMMISSIONER CAMERON: Is there any
21 issue with going back? Is that a problem in any way
22 either remembering or changing the rules now? Is
23 that problematic?

24 COMMISSIONER MCHUGH: Insofar as

1 donations are concerned, I think we've had that --
2 political contributions, we've had that around for
3 a long time in one fashion or another. As a matter
4 of fact, that's in the regulations we promulgated
5 earlier. And the November 21, 2011 date is in the
6 Phase-1 regulations.

7 COMMISSIONER STEBBINS: That's a
8 simple matter of they already would have had to
9 report that anyway. So, it's compiling
10 contributions and reports.

11 COMMISSIONER CAMERON: With regard to
12 a political. I'm talking about all of the other
13 categories.

14 CHAIRMAN CROSBY: She's talking about
15 everything else. Any contributions, any jobs or
16 money, they can figure those out. That's no
17 problem. Obviously, going back for a year and a
18 half for requests, they're going to miss some small
19 stuff.

20 We're not setting up something where
21 we're going to penalize bidders here. This is not
22 something where we're going to look for enforcing
23 and then go penalize them because they missed
24 somebody. This is just a disclosure, a good-faith

1 disclosure effort that does give some disclosure to
2 the public, and I think in a way some protection to
3 the bidders.

4 COMMISSIONER MCHUGH: We are going to
5 potentially -- The applicants are going to be
6 required to disclose this information under the
7 pains and penalties of perjury. Forgetting does
8 not violate that. But a question always arises as
9 to whether it was a forget or a willful omission.
10 So, there is a consequence to the look-back
11 provision.

12 COMMISSIONER CAMERON: Very similar
13 to the investigations undertaking.

14 COMMISSIONER MCHUGH: Right, right.

15 CHAIRMAN CROSBY: There's an
16 ombudsman and two or three lawyers on staff
17 wandering around here. If anybody's got opinions
18 on this, please pitch in.

19 MR. ZIEMBA: I've got some questions
20 on the breadth of the categories, for example
21 requests that are made of public officials for
22 anything of value. Would that include anything
23 that would be requested as part of the mitigation
24 agreements?

1 If any city councilor asked for one
2 topic or another is that excluded? It is a request
3 for contribution to a community, requests from
4 private entities if an applicant shows up at a
5 public meeting and 100 people show up and they each
6 ask for something with some of the officials there,
7 does that count as a request?

8 CHAIRMAN CROSBY: A legitimate
9 mitigation initiative.

10 MR. ZIEMBA: I guess my point is
11 similar to my point earlier, it gets rather complex
12 when you're trying to actually write the rules so
13 that you are not over inclusive or you do not include
14 things that I think we would all think are
15 legitimate things that no one could be expected to
16 write down 150 requests that are made in a half an
17 hour.

18 CHAIRMAN CROSBY: And if we do this, my
19 suggestion would be that we agree in principle to
20 adopt such a rule. And then ask someone like a
21 former appellate court judge to draft one up or
22 maybe a General Counsel to draft one up.

23 COMMISSIONER MCHUGH: I think a
24 General Counsel would be an excellent idea.

1 CHAIRMAN CROSBY: I've got to get in
2 the habit of switching out now. Get ready,
3 Catherine.

4 MS. BLUE: I'm ready.

5 CHAIRMAN CROSBY: Because you're
6 right. This is complicated. This is more
7 complicated even than the other one. So, we're
8 talking about in principle here. We're not talking
9 about the exact language. We'll settle on the
10 exact language. But maybe it's worth deciding
11 either by consensus or vote if we need it that we
12 agree or don't on principle. Then we can ask
13 General Counsel to draft something.

14 Are we okay to go forward? Are you all
15 right with going forward to get something drafted
16 up and take a look at it?

17 COMMISSIONER STEBBINS: Yes.

18 COMMISSIONER ZUNIGA: Yes.

19 CHAIRMAN CROSBY: So, let's do it that
20 way and we'll try to nail this next week.

21 COMMISSIONER MCHUGH: Wait a minute,
22 wait a minute, time out.

23 COMMISSIONER ZUNIGA: Part of the
24 principle includes having some --

1 CHAIRMAN CROSBY: -- definition of
2 things of value.

3 COMMISSIONER ZUNIGA: Right, and
4 being sensitive to what administrative burden we
5 may or may impose by including --

6 CHAIRMAN CROSBY: -- including the
7 points that John said, right.

8 COMMISSIONER MCHUGH: Well, all
9 right. Is everybody comfortable in principle with
10 the omnibus requirement for disclosure of any
11 request by anyone in any host and surrounding
12 community anything of value since November 21,
13 2011? I for one am not.

14 CHAIRMAN CROSBY: Subject to a
15 limiting definition of thing of value and subject
16 to a limiting in the ordinary course of mitigation
17 negotiations or something like that.

18 COMMISSIONER MCHUGH: Yes, even with
19 those two limitations, I am not comfortable with the
20 breadth of that.

21 COMMISSIONER ZUNIGA: Me neither.

22 CHAIRMAN CROSBY: Which end did you
23 drop out, the wiretaps?

24 COMMISSIONER MCHUGH: The wiretaps.

1 I think that's too broad a -- I guess the
2 qualification would be if the value of the thing of
3 value was sufficiently high.

4 It's one thing to ask for a \$10,000 gift
5 and another thing to ask for -- to use two extremes
6 -- buying a ticket to the church fundraiser. So,
7 maybe I ought to just withhold that until we see what
8 the regulation looks like.

9 CHAIRMAN CROSBY: Or give a
10 suggestion. Where would you draw that line?

11 COMMISSIONER MCHUGH: Something that
12 somebody would remember and think remarkable. In
13 this context, it seems to me it's got to be in the
14 multiple thousand dollar range.

15 CHAIRMAN CROSBY: Well, if it were
16 \$1000, Spiro Agnew went to jail for \$6000.

17 COMMISSIONER MCHUGH: In 1975,
18 inflation.

19 CHAIRMAN CROSBY: \$15,000 now, right?
20 Well, \$1000 to an individual would be a lot of money.

21 COMMISSIONER MCHUGH: That's why I say
22 I would just like to see the regulation. Let's just
23 see what we do.

24 CHAIRMAN CROSBY: Let's challenge our

1 General Counsel, see what she can come up with.

2 COMMISSIONER STEBBINS: I think
3 there's lots of information that an applicant or
4 another public records source is already going to
5 have available to us. And it's easy to offer up.
6 And I think we've separated it out mitigation
7 proposal and mitigation agreement requests.

8 I would like defined, to your point Mr.
9 Chairman, some way to capture what are pressure
10 point requests or political influence requests.

11 CHAIRMAN CROSBY: There are two sides
12 to the equation. One is a kind of buying of
13 influence that if it isn't illegal, is at least
14 unseemly and the public ought to know about it on
15 the one hand.

16 And on the other is a taking advantage
17 of the bidders' vulnerability right now in a way
18 which may not be illegal but is at least unseemly.
19 And if there were a way to get at both of those two
20 unseemly activities, I'd be happy. But I realize
21 it's easier said than done.

22 COMMISSIONER STEBBINS: Yes. I can
23 see it playing out lots of different ways. I can
24 see a bidder actually reluctant to offer up that

1 type of information for jeopardizing their own
2 chances.

3 CHAIRMAN CROSBY: All right. We'll
4 table this until next week. If anybody out there
5 has thoughts, we're interested, including if you
6 think we're wrestling with something we don't need
7 to wrestle with.

8 Okay. I think that was everything for
9 regulation update, schedule update. You've spoken
10 to that as well. Thank you, John.

11 Racing Division, how are you?

12 DR. DURENBERGER: I'm good. Good
13 afternoon, Mr. Chair, Commissioners.

14 CHAIRMAN CROSBY: You look like you
15 got some sun.

16 DR. DURENBERGER: It's warm in the
17 back of the room. I don't really have much of an
18 administrative update this afternoon.

19 I do have a correction for the record
20 something that I talked to you about on the 55th
21 public meeting, a week and a half ago. That was to
22 do with our rulemaking process. I was reminded
23 after that meeting that our rules actually in the
24 Racing Division do not take effect upon the

1 traditional rulemaking process in Massachusetts.

2 So, there is an additional statutory
3 requirement that the old Racing Commission and now
4 the Gaming Commission has to comply with as part of
5 the rulemaking process. So, essentially what
6 happens is rather than after you approve the
7 regulations, file them with the Secretary of the
8 Commonwealth, and having them published in the
9 Register, we actually have to file with the clerk
10 of the Senate. So, it adds some time onto our
11 rulemaking process.

12 They have the opportunity -- It goes to
13 the Joint Committee on Government Regulations for
14 review. And then they have the opportunity to
15 disapprove. So, they can do that. If not, within
16 60 days then these rules would take effect.

17 So, that puts us out into the live
18 racing season. So, the choice has to be made
19 whether or not -- I make the recommendation to you
20 to adopt our rules on an emergency basis. The
21 provision still retains that and in fact is explicit
22 in the ability of the Commission to adopt rules on
23 an emergency basis to protect the health or safety
24 of the public, participants or animals. And I do

1 think that these medication and veterinary practice
2 regulations I think falls squarely within that
3 category.

4 And we have followed the rulemaking
5 process. So, this is not -- We haven't shortcut,
6 taking any shortcuts there. We've had the public
7 hearing on the 25th. We had a public comment
8 period.

9 So, to avoid the disruption to the
10 industry that would occur if these rules went to in
11 effect in the middle of a race meet, I guess I would
12 recommend that when I bring them to you on Thursday
13 that they be adopted on an emergency basis.

14 So, I wanted to correct the record and
15 I will be making that recommendation to you
16 Thursday. But we do have that additional statutory
17 requirement that I wanted to correct.

18 CHAIRMAN CROSBY: Okay.

19 DR. DURENBERGER: Then a timeline
20 correction. We were also going to bring Phase-2
21 rules to you, introduce those to you on Thursday.
22 And at the request of Counsel, we have backed off
23 on two weeks for that. And those are going to be
24 rules that have to do with safety equipment, for

1 example, best practices that primarily affect
2 Suffolk Downs.

3 These are basically amendments to
4 rules that are in existence. There are model rules
5 that have already previously been adopted. And
6 this is just bringing them up to date.

7 Because the changes -- They change on
8 a periodic basis yearly, even sometimes quarterly.
9 So, basically these are just incorporations of the
10 latest versions of those. But that's going to be
11 pushed back two weeks.

12 Which brings us to the section 104
13 legislative review and what we hope may be the
14 conclusion of this process. In the packet we've
15 got a proposed chapter, which in-house we are
16 calling 128D. And that's a chapter that was
17 available. That was our working title, a copy of
18 the report which you've seen before. And then the
19 last comment that we received dated March 5 from the
20 New England Horsemen's Benevolent and Protective
21 Association, which is a thoroughbred stakeholder
22 group, is included there as well.

23 I don't know exactly how you want to
24 proceed on this. Certainly, you've spent quite a

1 bit of time with the report. You've had the chapter
2 before you for some time. So, Danielle and I are
3 happy to answer questions about any or all of the
4 documents.

5 COMMISSIONER MCHUGH: Could you
6 explain what the premium -- I read the Horsemen's
7 letter. Could you explain what the essence of that
8 controversy is?

9 DR. DURENBERGER: Danielle?

10 COMMISSIONER MCHUGH: Let me make my
11 question more specific. The role that the premiums
12 play in affecting the life of the owners, which is
13 the gravamen of their concerns as a practical
14 matter. I understand the legislation, but just as
15 a practical matter how that works.

16 MS. HOLMES: Right now the amount paid
17 in premiums go to the purse account, which
18 essentially goes back to the owners and the horsemen
19 of the horses. No other jurisdiction that we can
20 find has these premiums mandated in their statute.
21 And it was our position that with the money that
22 would be contributed from gaming that it'll more
23 than account for the amounts that are seen in the
24 premium structure now.

1 There's a little bit of contention with
2 the different premiums that are paid between the
3 different tracks. And there's certain tracks have
4 exceptions to when they have to pay premiums and
5 when they don't have to pay premiums. So, the
6 horsemen have proposed that there's a flat premium
7 rate with no exceptions.

8 But based on our research between the
9 other jurisdictions that don't mandate a premium
10 via statute at all, it was our proposal that we do
11 away with the premium structure. And the purse
12 funding will be accounted for with the influx of the
13 gaming money.

14 DR. DURENBERGER: And I would add to
15 that that it seems to me, and I'm sure there's many
16 people in the room that would perhaps concur with
17 this that that does seem to be one of the perennial
18 bones of contention when the statute get re-upped,
19 essentially.

20 And the current structure is that there
21 exists these premiums that have been negotiated.
22 And then there are exemptions to premiums. So,
23 depending on when you're simulcasting, you may or
24 may not be up paying the premiums. So, it seems as

1 though it's a significant bone of contention.

2 Speaking on the thoroughbred side, we
3 did just run some numbers and the contributions that
4 we have in terms of what the premiums give to the
5 overnight purse structure on a yearly basis really
6 account for three or four days of live racing out
7 of 100. So, we do feel that it's been superseded
8 by the money that's going to be in the development
9 fund.

10 CHAIRMAN CROSBY: It's superseded,
11 I'll take that at face value.

12 DR. DURENBERGER: It's still real
13 money.

14 CHAIRMAN CROSBY: It's money. So, it
15 was going to be 100, now it's going to be 100 less
16 some small part of 100. And is there a good that's
17 accomplished? I know there is. What is the good
18 that is accomplished by eliminating the purses as
19 an addition -- I'm sorry, the premiums as an
20 addition to the purses?

21 DR. DURENBERGER: Elegance I think in
22 a word.

23 COMMISSIONER CAMERON: Explain that
24 further.

1 CHAIRMAN CROSBY: Use a word the
2 horsemen would like a little better.

3 DR. DURENBERGER: Use a word the
4 horsemen would like a little better. I'm not sure
5 that I have in my vocabulary what they would be
6 seeking for. I mean, you've read the documents.

7 COMMISSIONER ZUNIGA: Simplicity
8 maybe.

9 DR. DURENBERGER: If there are other
10 models that we could point to and say actually this
11 is common or this something that other states have
12 used. And along the way Massachusetts has sort
13 followed the lead or even at one time this was common
14 and we just haven't revisited the issue, we don't
15 find an analogous structure anywhere.

16 Purse accounts are handled differently
17 in other jurisdictions. We don't find an analogy
18 anywhere that we can to point that says it's working
19 there.

20 What we hear and what you'll see in the
21 written submissions that are attached to the report
22 are that this is a bone of contention for all sides.
23 And it seems like a way to simplify.

24 COMMISSIONER MCHUGH: It's a bone of

1 contention in that each time the negotiations occur
2 the parties to the negotiation have different ideas
3 as to what the outcome should be?

4 DR. DURENBERGER: It seems to be the
5 case. I have not participated in any of these New
6 Year's Eve sessions, but they seem be the thing of
7 legend.

8 COMMISSIONER MCHUGH: But what's
9 wrong with that? Intrinsically, what's wrong with
10 that?

11 DR. DURENBERGER: Intrinsically,
12 there probably isn't. It's an interesting point.
13 It's sort of the beauty of the democratic process.

14 COMMISSIONER MCHUGH: Right.

15 DR. DURENBERGER: So, I take your
16 point.

17 CHAIRMAN CROSBY: Or you could
18 standardize it and have a premium structure that is
19 negotiated once and lasts for 20 years and take care
20 of the same issue.

21 I don't feel like I have the
22 competence, the knowledge to really argue this
23 point one way or the other. And I think there is
24 something to be said for streamlining, clarifying,

1 simplifying and making more elegant. And I know
2 what you mean by elegant. And I think it's a
3 perfectly good choice of words. I think it makes
4 all of the sense in the world.

5 On the other hand, in my child-like
6 understanding of the horse economics, the purse is
7 the kind of the sinequan non of what will make the
8 industry survive or not. And if there are
9 relatively painless ways, albeit inelegant but
10 painless to enhance the amount of money in the
11 purses, maybe there's a public policy good to be
12 said for that.

13 I respect you guys. And I think you've
14 done a tremendous amount of work. And I know you've
15 reached out to the community to talk about it a lot.
16 And I'm inclined to go with what you think.

17 But if I were in a legislative hearing
18 and I were debating the point, I'd have a hard time,
19 as Commissioner McHugh said, arguing for the
20 intrinsic value of this simplification
21 clarification over the intrinsic value of putting
22 more money in the purses and what that might do for
23 the racehorse industry in this State.

24 DR. DURENBERGER: There are other ways

1 that you can put money into the purses. You can
2 increase percentages that go to the racehorse
3 development fund. For example, the statute
4 actually says a minimum. So, provided that a
5 minimum of the 7b simulcasting monies, a minimum of
6 10 percent go to the racehorse development fund.
7 So, there are other ways that you can combat that
8 to make sure that the purse structure is something
9 that is sustainable for the industry.

10 CHAIRMAN CROSBY: Right.

11 COMMISSIONER CAMERON: The other
12 stakeholders' comments on this particular issue?

13 DR. DURENBERGER: Not since the report
14 has come out.

15 COMMISSIONER CAMERON: So, just the
16 one stakeholder had a comment to the contrary with
17 this recommendation?

18 DR. DURENBERGER: And I would,
19 actually if I could, just address that comment.
20 Just something, a point on the first page where HBPA
21 objects to being referred to as beneficiaries.

22 Just for the record, the reason that we
23 use that term is that when we looked at the statute
24 and what would replace existing statute, we wanted

1 to make sure that we made a list of beneficiaries.
2 So in other words, where do the different funds go,
3 all of the statutory distributions, and who are the
4 beneficiaries of those.

5 So, it certainly wasn't meant in any
6 pejorative sense. It was merely that we wanted to
7 account for everybody who was getting a piece of the
8 pot, for example. We wanted to make sure that all
9 of those were accounted for. That was the origin
10 of the term beneficiary, which they found
11 objectionable and I understand.

12 COMMISSIONER ZUNIGA: Would they
13 prefer winners?

14 DR. DURENBERGER: Certainly,
15 stakeholders. Absolutely stakeholders and
16 absolutely the participants that make the show go
17 on.

18 CHAIRMAN CROSBY: I think they were
19 oversensitive on that point. There's another
20 point in there that David said. There's an
21 assertion that your facts are wrong. That there
22 aren't any other models. Do you remember that
23 sentence?

24 DR. DURENBERGER: Yes. I think

1 Danielle had notes on that.

2 MR. HOLMES: The rebating and the
3 credit wagering?

4 CHAIRMAN CROSBY: Right.

5 MS. HOLMES: The horsemen had asserted
6 that the other states that we looked at, their
7 models for rebating and wagering on credit were
8 in-line with the current system in Massachusetts,
9 which I guess we just found to be untrue.

10 We found no other state that expressly
11 prohibits rebating. We found a handful, I think
12 two of the states that they had listed that prohibit
13 wagering on credit. We have listed in the chart
14 that was put together that none of these other
15 states or most of those states don't expressly
16 prohibit it as Massachusetts does in the statute.
17 In light of not having a prohibition, then
18 essentially they should be allowed to wager on
19 credit or have rebating going on in those states.

20 So, the horsemen said in their report
21 that those states were in line with what is
22 currently going on in Massachusetts. But we found
23 that to not be true.

24 COMMISSIONER CAMERON: So, you're

1 recommending best practices in the industry?

2 MS. HOLMES: Correct.

3 CHAIRMAN CROSBY: Right. Anybody
4 else?

5 COMMISSIONER MCHUGH: This is simply a
6 recommendation to the Legislature. There'll be a
7 legislative proceeding up there. The Legislature
8 can make its judgment. This is what we're
9 recommending. I, like you Mr. Chairman, I'm
10 equivocal on that, but this reflects a lot of hard
11 work and thinking. And I'm prepared to support it.

12 There's one technical thing and I
13 apologize for not bringing this up earlier. But
14 section 20 of the proposed the legislation simply
15 says that any reference anyplace else to 128A or C
16 should be deemed to be a reference to this chapter.
17 That as a technical matter won't work, because if
18 this is passed, it'll have to be passed as part of
19 the laborious process of going through the General
20 Laws and making the changes. And this kind of a
21 general reference isn't going to work.

22 So, I'd recommend you just delete that.
23 And let this move forward without section 20 in it.
24 And if this is ultimately passed, then that

1 laborious process of making all of the other
2 references in other parts of the statute will have
3 to be undertaken and we can do that as well. I can
4 explain further if anybody wants, but it seems to
5 me it's just a technical issue.

6 COMMISSIONER ZUNIGA: I actually have
7 two comments on the proposed statute. And I talked
8 to you briefly just yesterday. But I wanted to talk
9 about them here.

10 Section 5b, the assessment of
11 operations of Commission. Towards the middle it
12 goes on to say where the Commission is authorized
13 to make assessments each fiscal year on the licensee
14 conducting racing meetings shall not exceed
15 \$750,000, which you corroborated that that was
16 language from the previous statute.

17 And the actual numerical ceiling may
18 make sense in my view in a system where you're
19 reauthorizing a statute every two years. And that
20 given that number could always be revisited.

21 DR. DURENBERGER: Yes.

22 COMMISSIONER ZUNIGA: But since our
23 recommendation here is one of having a statute
24 that's in play for a number of years, I wonder

1 whether we should change that absolute number for
2 something that is either a percentage like in other
3 places either of amounts wagered, the purses, etc.
4 or at the discretion of the Commission in other ways
5 like the Gaming statute allows us when it comes to
6 gaming.

7 DR. DURENBERGER: I had two thoughts
8 on that subsequent to our conversation. And one is
9 that these sort of hard numbers are kind of littered
10 throughout the statute, and I presume other
11 statutes in the General Laws -- other laws as well.

12 Your point is well taken. And I think
13 I'm not a legislative expert, but it seems like
14 there are two approaches to that. And one would be
15 if you could tie it into some sort of, as you said,
16 either a percentage or to some sort of index, but
17 that kind of becomes a little unwieldy I would
18 imagine.

19 The other, as you suggested, would be
20 to have the language be as from time to time as the
21 Commission deems appropriate and does it in
22 regulation. But this is a pretty substantial
23 number.

24 So, for example at Suffolk this is a

1 daily assessment. I think it's like \$1300. At
2 Plainridge, it's \$500 a day times 365 days. This
3 is pretty big money. And I think that to protect
4 people on the paying end of it, having something
5 other than a nebula from time as the Commission
6 deems appropriate. I don't like that approach.

7 Whether you can tie it into some sort
8 of percentage or handle as you say, I think that's
9 a very interesting approach.

10 Those numbers appear in a number of
11 different places. There's daily license fees.
12 There is the bond requirement. There's a number of
13 places in this statute and I suspect others where
14 those hard numbers do appear. So, your point is
15 taken right. If they haven't been revisited since
16 1999, for example, are they good numbers for the
17 industry to be using? I wish I had a perfect
18 solution for that. I don't.

19 CHAIRMAN CROSBY: Have we got
20 suggestions or ideas?

21 COMMISSIONER ZUNIGA: My suggestion
22 would be to move away from an absolute number. But
23 I know that's not just the only one, but the one that
24 caught my eye.

1 DR. DURENBERGER: It's a big one.

2 COMMISSIONER ZUNIGA: It's a big one.

3 I don't know how long it would be even with the
4 potential for increased activity in the short
5 future when that would be a concern.

6 CHAIRMAN CROSBY: There's two things.
7 There's plenty of legislation state and federal and
8 everywhere that that happens. You put in numbers
9 and they just sit there for a long, long time. Gas
10 tax for example goes down every year. So, I don't
11 think it's all that big a deal to do it. When the
12 Legislature in its wisdom thinks it's time to
13 revisit it, it gets revisited. And if they don't
14 think it's time to revisit, it doesn't.

15 But having said that, I also don't
16 think there would be anything wrong with saying that
17 the Commission can amend it. You know the process
18 we are all going through. We're not going to
19 willy-nilly shoot ourselves in the foot. And who
20 better to make that decision through an open,
21 participatory process with the industry than the
22 Commission.

23 So, I probably think if I had to pick
24 a solution, I'd pick that one. Maybe you fix it for

1 a period of time and then say after which time --

2 COMMISSIONER MCHUGH: What about
3 adjusting it for inflation? That's another way of
4 handling the same thing. There's not too many
5 statutes that we have that do that. And they do --
6 You're right, they do sit around for ages and get
7 wildly out of tune. And then there's a huge fight
8 to get it adjusted. So, one way or the other.

9 CHAIRMAN CROSBY: We have some horse
10 racing people here. Anybody want to volunteer an
11 opinion? You mean you weren't hanging on our every
12 word, Gary?

13 MR. PIONTKOWSKI: I just got something
14 I've got to deal with.

15 CHAIRMAN CROSBY: Did you hear this
16 issue we were talking about?

17 MR. PIONTKOWSKI: About the
18 simulcasting?

19 CHAIRMAN CROSBY: No. Say again the
20 number, the 750 --

21 COMMISSIONER ZUNIGA: \$750,000
22 assessment.

23 DR. DURENBERGER: Yes, the
24 assessment.

1 MR. O'TOOLE: If I could key off of
2 Commissioner Zuniga's comment using a model where
3 it adjusts and then play off of Commissioner McHugh
4 where he said for inflation. Inflation in this
5 particular case would be inflation downward because
6 of the handles have dwindled. So, our business is
7 actually overpaying now than it has in the past 10
8 years, 15 years as our handle has dwindled.

9 So, to the point of the assessments and
10 fees, we are still paying those fees, but we're not
11 handling the same amount of money. So, it would
12 make perfect sense to combine both of those ideas.

13 But other than inflation -- Inflation
14 in my opinion would be -- an inflation would be
15 downward. There wouldn't be inflation as the
16 dollar is today but the inflation is --

17 CHAIRMAN CROSBY: So, it wouldn't be
18 inflation, it'd be a percent of handle.

19 MR. O'TOOLE: A decrease.

20 COMMISSIONER MCHUGH: Percent of
21 handle is what I was talking about, our cost and the
22 consumer price index.

23 COMMISSIONER ZUNIGA: That's a very
24 important point, absolute numbers cut both ways.

1 They price you if you're up or downward. So, my
2 point was it's relative to the notion of absolute
3 numbers.

4 CHAIRMAN CROSBY: Thank you. Does
5 anybody have --

6 COMMISSIONER ZUNIGA: I have another
7 comment also.

8 CHAIRMAN CROSBY: No, no.

9 COMMISSIONER STEBBINS: We've got to
10 resolve this problem.

11 CHAIRMAN CROSBY: You've already
12 raised one mess here. We've got to figure out this
13 mess first. So, the problem would be if we dealt
14 with the issue that this was raised and the handle
15 shrinking, so would our operating budget.

16 DR. DURENBERGER: The existing
17 language and we did carry it forward is that that's
18 a cap that that assessment shall not exceed
19 \$750,000.

20 COMMISSIONER MCHUGH: So, we have an
21 opportunity to adjust it downward if (A) our
22 expenses go down and (B) the handle goes down.

23 DR. DURENBERGER: With this language,
24 yes.

1 CHAIRMAN CROSBY: And what's the
2 assessment been?

3 DR. DURENBERGER: It's been 750 and
4 each track shares proportionate to their handle.

5 CHAIRMAN CROSBY: I don't know.

6 COMMISSIONER MCHUGH: Do we know why
7 it stayed at 750? Is that what it really costs?
8 Does it cost us more to regulate this than the 750?

9 DR. DURENBERGER: There's been a small
10 surplus in years past, but there's also been a
11 number of operational vacancies. So, racing has
12 been revenue neutral, more or less, with a small
13 percentage.

14 COMMISSIONER MCHUGH: You mean the
15 racing expenses?

16 DR. DURENBERGER: Yes.

17 CHAIRMAN CROSBY: It seems to me that
18 it is appropriately placed in the Commission's
19 hands, and working with our partner industry. If
20 the industry continues to have problems, then we're
21 all going to have problems. We all got to figure
22 out how to address them.

23 If we can control our costs and thus
24 reduce the assessment, that's fine. If we can't

1 and the industry becomes nonviable, then we got to
2 deal with that.

3 But I can't think of a better place --
4 Or if things get better with the new purse money and
5 so forth then we're all to the good. I actually
6 think it is appropriately in the Commission to make
7 this judgment.

8 It would be done through this same kind
9 of process with our industry. So, I think I would
10 come back to saying of all of the choices, my
11 preference would be to have -- not so much my
12 preference, what I think the most appropriate
13 place, the most appropriate process is to put that
14 in the hands of the Commission on some kind of a
15 routine basis.

16 COMMISSIONER ZUNIGA: Can I also draw
17 parallel to the Gaming Act for example. The Gaming
18 Act does give us the flexibility of having two
19 sources. One that's set in statute by the
20 assessment per slot machine. That has a stated
21 number, but also our ability to assess from time to
22 time our own costs.

23 So, the two I would imagine can work
24 together in perpetuity to whatever changing

1 conditions. And perhaps to the prior points made
2 here before, if it's only one element that's an
3 absolute number, it diminishes the ability to react
4 to those changing conditions, because it would
5 require a change in statute.

6 I know that's to a great degree what
7 you're saying. And it sounds like you and I are
8 agreeing. But I wanted to draw that distinction,
9 which is not currently present in some of the
10 numbers here that are in absolute terms.

11 CHAIRMAN CROSBY: And I think rather
12 than either a CPI or a percent of handle, which is
13 again a fixed scenario that may not adapt to the
14 circumstances that we just heard.

15 The Commission will be sitting there in
16 an organic interactive way, watching the industry,
17 seeing how it's going, talking with our partners in
18 the industry and trying to figure out ways to
19 maximize the revenues to our expenses without
20 hurting the industry. That's what we're here for.
21 So, I can't think of a better solution than that.

22 COMMISSIONER MCHUGH: I have no
23 concerns about us. But we're not going to be here
24 forever, our successors could -- And that creates

1 a scenario in which we could -- a commission, not
2 we, a commission could set a fee, a regulation fee
3 that would be unbearable by the or severely impinge
4 on the ability of the tracks to operate efficiently.

5 COMMISSIONER ZUNIGA: But they would
6 do that at their own peril. It would also be the
7 same way for us.

8 CHAIRMAN CROSBY: Well, we're limited
9 in that we can only assess up to our operating costs.
10 So, we'd deal with that if the assessment were up
11 to not to exceed our operating costs for the
12 division.

13 COMMISSIONER MCHUGH: But our
14 operating costs could become bloated.

15 CHAIRMAN CROSBY: But then the
16 industry goes to the Legislature and says you've got
17 to hammer these guys because they're not playing
18 fair. Look at these numbers. That would be the
19 corrective.

20 COMMISSIONER MCHUGH: That's the way
21 it's always suppose to work.

22 CHAIRMAN CROSBY: The way it's
23 supposed to work is we don't bloat our numbers.

24 COMMISSIONER MCHUGH: I know, I know,

1 but that's the way the remedy is supposed to work.

2 CHAIRMAN CROSBY: Right. We can
3 abuse any system you give us, but I think assuming
4 good-faith --

5 COMMISSIONER MCHUGH: Efficiency more
6 than good-faith.

7 CHAIRMAN CROSBY: Right. Do we have a
8 consensus? Do we want to talk any further about
9 changing this one clause to accommodate
10 Commissioner Zuniga's point? It sounds like we're
11 all pretty much in agreement.

12 COMMISSIONER MCHUGH: What we'd have
13 to do technically is to strike out the proviso. If
14 we were to put it totally in the hands of the
15 Commission, we would strike out that proviso, which
16 takes the cap.

17 DR. DURENBERGER: Or pursuant to the
18 conversation that I was just hearing, currently
19 this \$750,000 which we don't exceed is probably if
20 I had to guess, it's somewhere in the range of about
21 70 percent of the Commission's operating budget.
22 Do you want to either strike the proviso or putting
23 in some percentage, shall not exceed X percentage
24 of the Commission's operating cost?

1 CHAIRMAN CROSBY: Where does the other
2 30 percent come from of the operating budget?

3 DR. DURENBERGER: From occupational
4 license fees, fines, there's other commissions,
5 licenses.

6 CHAIRMAN CROSBY: Which together with
7 other license fees shall not exceed the operating
8 budget.

9 DR. DURENBERGER: This may not be
10 language to make on-the-fly, if I may.

11 COMMISSIONER MCHUGH: I think if we
12 agree in principle that we should not have a cap,
13 then that ought to go back to be thought through
14 again, because it's not simply striking the
15 proviso. Because striking the proviso immediately
16 gives us the power to go to the extra 30 percent,
17 which is counterproductive. We don't want that.
18 And we don't want anybody to have that.

19 CHAIRMAN CROSBY: So, what we're
20 really saying is that we don't want the cap, but we
21 also do want the authority properly contained to
22 assess up to our operating expenses in this and
23 other sources. So, we got to figure out how to
24 write this.

1 COMMISSIONER MCHUGH: Right. If we
2 agree on this in principle.

3 COMMISSIONER CAMERON: Director where
4 does a change at this date -- Where are we in the
5 timeframe to keep this going so that we have this
6 -- so that we have a this new chapter in place, where
7 are we there?

8 DR. DURENBERGER: I think putting
9 forth the most solid recommendation that we could
10 to the Legislature takes priority over whether it
11 takes another week or two. I don't want trying to
12 achieve perfection to getting away with what's
13 possible. We could sit here and try to make it
14 perfect. We could do that for the rest of the year.

15 But I think that these are some
16 significant issues that worth revisit. They're
17 worth revisiting for a number of reasons. And if
18 that takes another couple weeks, I think --

19 COMMISSIONER MCHUGH: We are looking
20 at something that is designed to go into effect
21 after July 31, 2014, right?

22 DR. DURENBERGER: Well, the
23 Legislature would have to take it up.

24 COMMISSIONER MCHUGH: I understand

1 that. That's the thrust of this.

2 DR. DURENBERGER: Yes.

3 COMMISSIONER CAMERON: So, we have the
4 time to be thoughtful about this.

5 DR. DURENBERGER: Yes.

6 CHAIRMAN CROSBY: Shall we just leave
7 it the sense of the Commission -- You said you have
8 another point?

9 COMMISSION ZUNIGA: I had another one,
10 hopefully a lot minor, just one more. Section 6,
11 128D 6 relative to records and books of wagers, the
12 third sentence third line starts with the Commission
13 or its duly authorized representatives shall at all
14 reasonable times have access to the records and
15 books of any licensee.

16 I would be in favor of striking out
17 reasonable and just give the Commission the ability
18 to access at all times. It doesn't mean that we
19 will access them. I know that part of the language
20 here is to be reasonable. But I would also like us
21 to preserve the discretion that at any time whether
22 that's three days in a row and not having to be
23 spaced by reasonability.

24 COMMISSIONER MCHUGH: So, you want us

1 to have access at unreasonable times?

2 COMMISSIONER ZUNIGA: No, at all
3 times.

4 CHAIRMAN CROSBY: But we would have it
5 at all times.

6 COMMISSIONER ZUNIGA: Actually
7 doesn't mean that we would exercise it.

8 COMMISSIONER MCHUGH: Right.

9 COMMISSIONER ZUNIGA: Here's a
10 particular piece that I'm thinking about. I know
11 that there's electronic monitoring systems that
12 could effectively give us access at all times. And
13 if this language would preclude that kind of
14 monitoring system that's where I'm coming from.

15 CHAIRMAN CROSBY: I would say in that
16 context, it would be reasonable to have it be
17 electronic at all times. The context defines
18 reasonable to have protection. If you got somebody
19 running out the backdoor at 3:00 a.m. with a bag of
20 cash, it's reasonable to go in at 3:00 a.m. in the
21 morning. But it wouldn't be reasonable to go in at
22 3:00 a.m. in the morning most of the time.

23 I think reasonable -- We're not looking
24 for the opportunity to go in at 3:00 a.m. without

1 any cause. But I think reasonable is always
2 determined in the context of the circumstances. I
3 don't know. You probably studied this wording.

4 COMMISSIONER MCHUGH: I agree with
5 that. Reasonableness is defined by the
6 circumstances. And I think this gives us adequate
7 protection without giving us permission to be
8 overbearing on the licensee. I think that's why
9 they put the word reasonable in there.

10 COMMISSIONER ZUNIGA: That was
11 quicker.

12 CHAIRMAN CROSBY: Those are good ones.
13 That was a gravy one. Okay. How about if we leave
14 as a sense of the meeting that we are fully in favor,
15 anxious to move forward as quickly as possible with
16 the exception of revisiting that language pursuant
17 to the couple of points, sort of consensus points
18 we've made here.

19 DR. DURENBERGER: And the section 20.

20 COMMISSIONER MCHUGH: Right.

21 CHAIRMAN CROSBY: Right. Okay.

22 DR. DURENBERGER: Excellent.

23 COMMISSIONER MCHUGH: Thank you.

24 That's a lot of very thoughtful work that went into

1 this.

2 CHAIRMAN CROSBY: Sure is.

3 COMMISSIONER CAMERON: Thank you.

4 Thank your teams as well.

5 CHAIRMAN CROSBY: Let's take a break.

6

7 (A recess was taken)

8

9 CHAIRMAN CROSBY: Let's reconvene.

10 On the research agenda, item eight, all we have to
11 say is that at four o'clock we have a conference call
12 to get more advice on helping us make the decision
13 on which of the RFPs responding to our very big
14 research proposal and we hope that after this
15 conference call we will have enough data to make the
16 decision. But we're trying like hell to get it done
17 this week.

18 On the evaluation criteria, we put it
19 on the agenda so that if we had time we could start.
20 But I think everybody is feeling like, if I read that
21 face correctly --

22 COMMISSIONER CAMERON: Mr. Chair,
23 you're reading it well.

24 CHAIRMAN CROSBY: It's been a long day

1 starting at 8:30. So, unless there is anything
2 else on the agenda, let's have a motion to adjourn.

3 COMMISSIONER MCHUGH: So moved.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER CAMERON: Second.

6 CHAIRMAN CROSBY: All in favor, aye.

7 COMMISSIONER STEBBINS: Aye.

8 COMMISSIONER ZUNIGA: Aye.

9 COMMISSIONER MCHUGH: Aye.

10 COMMISSIONER CAMERON: Aye.

11 CHAIRMAN CROSBY: Thank you all.

12 Thank you all very much.

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14 (Meeting adjourned at 3:00 p.m.)
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ATTACHMENTS:

1. Massachusetts Gaming Commission March 12, 2013 Notice of Meeting and Agenda
2. March 6, 2013 Massachusetts Gaming Commission Memorandum Re: Recommendation to Prequalify Morgan, Brown & Joy as Labor and Employment Law Firm
3. March 12, 2013 Massachusetts Gaming Commission Memorandum Re: Correction to Rulemaking Process Timeline for Racing Division
4. March 5, 2013 Letter from New England Horsemen's Benevolent and Protective Association, Inc.
5. Proposed New Chapter 128D - Horse Racing Meetings and Simulcast Wagering
6. Report of the Massachusetts Gaming Commission to the Senate and House of Representatives Pursuant to Chapter 194, Section 104, of the Acts of 2011

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SPEAKERS:

Dr. Jennifer Durenberger, Director Racing Division

Danielle Holmes, Staff Attorney

Steve O'Toole, General Manager Plainridge Racecourse

John Ziemba, Ombudsman

C E R T I F I C A T E

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

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

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

WITNESS MY HAND this 15th day of March



A handwritten signature in black ink that reads "Laurie J. Jordan".

LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018