

1 THE COMMONWEALTH OF MASSACHUSETTS  
2 MASSACHUSETTS GAMING COMMISSION

3  
4 PUBLIC MEETING #74

5  
6 CHAIRMAN

7 Stephen P. Crosby

8  
9 COMMISSIONERS

10 Gayle Cameron

11 James F. McHugh

12 Bruce W. Stebbins

13 Enrique Zuniga

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16  
17 August 9, 2013, 9:30 a.m.

18 OFFICE OF THE DIVISION OF INSURANCE

19 First Floor, Hearing Room 1-E

20 1000 Washington Street

21 Boston, Massachusetts

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

CHAIRMAN CROSBY: I will call to order the 74th meeting of the Massachusetts Gaming Commission on Friday, August 9, 2013 at 9:30 in the morning. The second item of business is the approval of minutes, Commissioner McHugh?

COMMISSIONER MCHUGH: We have two sets of minutes, Mr. Chairman. The first is for the meeting of July 25. That was our regular meeting. The minutes are in the book. And unless there are corrections or additions or deletions suggested by any member of the Commission, I'd move their acceptance as in the book.

COMMISSIONER CAMERON: Second.

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

COMMISSIONER MCHUGH: Aye.

COMMISSIONER CAMERON: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER STEBBINS: Aye.

CHAIRMAN CROSBY: Opposed? The ayes

1 have it unanimously.

2 COMMISSIONER MCHUGH: The second is  
3 you'll recall that on July 26 that was the  
4 Friday, we had one agenda item meeting to  
5 approve the Town of Raynham's holding the  
6 referendum prior to the determination of  
7 suitability in the form of a notice that they  
8 were going to send to the citizens. So, the  
9 minutes are simply of that brief meeting. And  
10 I move that they be approved.

11 COMMISSIONER STEBBINS Second.

12 CHAIRMAN CROSBY: We could call this  
13 meeting blink.

14 COMMISSIONER MCHUGH: It was a blink  
15 meeting. That's right.

16 CHAIRMAN CROSBY: All in favor, aye.

17 COMMISSIONER MCHUGH: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER STEBBINS: Aye.

21 CHAIRMAN CROSBY: Opposed? The ayes  
22 have it unanimously. Just as a heads-up to the  
23 audience, we have a variety of regular topics  
24 administration, Racing, the ombudsman report,

1 some legal discussions and then at the end of  
2 the meeting, we are going to be going into  
3 executive session for our first time at which  
4 point everybody will have to leave and the  
5 cameras will leave and everything else. It's  
6 just the Commissioners and the appropriate  
7 people will stay. This is something we've  
8 never done before. So, I just wanted to give  
9 you a heads-up that that's coming.

10 Next item is the Racing Division.

11 -- No, sorry, administration, Executive  
12 Director Day.

13 MR. DAY: Thank you, Chairman  
14 Crosby, members of the Commission. Just a  
15 brief administrative report this morning.

16 At our last regular meeting, I had  
17 the pleasure of introducing David Acosta, our  
18 new Licensing Director, first Licensing  
19 Director, I guess. And today we are also  
20 fortunate, we've added to David's team by  
21 contracting with Kathy Baertsch. She comes to  
22 us from Montana. Kathy has 30 years of  
23 licensing experience, 21 in gaming. She had a  
24 central role in developing the state's

1 accounting and reporting system. She is past  
2 president of the North American Gaming  
3 Regulatory Association and was recognized by  
4 the Montana governor for excellence in  
5 performance.

6 I just thought I'd comment briefly  
7 about that addition to David's team. Kathy is  
8 stationed in the back.

9 CHAIRMAN CROSBY: Take a bow, Kathy.  
10 Stand up and say hello. Welcome, thank you.

11 MR. DAY: It's been a pretty busy  
12 time since we last met, but I've also had the  
13 opportunity to meet with the Massachusetts  
14 State Police Colonel and began developing our  
15 process and his staff to determine a little bit  
16 more clearly the future role of the State  
17 Police in gaming enforcement and regulation.

18 We've also been continuing  
19 interviews with our chief information officer  
20 -- to gain our chief information officer  
21 position. We are seeing the end. We are  
22 coming close. We have two next week to  
23 complete our initial screening and hope to  
24 identify finalists for the position at least by

1 the end of the month. We will also begin next  
2 week interviewing our three finalists for our  
3 CFAO, chief financial and accounting officer  
4 position next week as well.

5 And on top of that, we have here  
6 today -- we've selected our slot and casino  
7 application evaluation process coordinator. We  
8 are very excited about it. And I've asked  
9 Eileen Glovsky, who had a significant role in  
10 putting together procurement and herding the  
11 process along to introduce Pinck and Company.

12 MS. GLOVSKY: All right. Thank you.  
13 If I might just take a moment in advance, I  
14 just want to let everyone know where we stand  
15 on the procurements, because I know that that's  
16 important to Commission. Commissioner Zuniga  
17 will be talking about the financial advisor  
18 recommendation that has been completed. I'll  
19 be introducing Pinck for the project  
20 coordinator.

21 We are currently in process with two  
22 additional procurements, the building site  
23 design and mitigation services as well as the  
24 economic development. And our anticipation is

1 that the scoring and oral presentations will  
2 take place over the remainder of the month.  
3 Additionally, we are awaiting, as the 15th will  
4 be the deadline for document management  
5 platform responses to come in. So, we've been  
6 doing a lot of work on procurement.

7 With regards to the project  
8 coordinator services, there were two  
9 respondents that were selected for oral  
10 presentations. The scores after the oral  
11 presentations and the reviewing of the costs  
12 clearly indicated that Pinck and Company was  
13 the winner based on their composite score of 79  
14 out of 100 points.

15 During the presentation Jennifer and  
16 Pinck clearly demonstrated their understanding  
17 of the challenges of the tasks at hand and  
18 their commitment to think creatively to allow  
19 the Commission to meet the ambitious timelines.  
20 One of the reasons why I wanted to include the  
21 cover letter in the packet is I thought that  
22 they did a phenomenal job of explaining how  
23 well they understood what some of the  
24 challenges were that we were going to be facing

1 and the unique skill set that they brought to  
2 that.

3 Pinck has served the public-sector,  
4 institutional and not-for-profit clients since  
5 1998. They are a certified woman owned  
6 business. The team has deep experience as  
7 owner's project managers managing large complex  
8 projects in the public arena. They've done  
9 work for the School Building Authority, the  
10 Water Resources Authority as well as private  
11 clients.

12 The references that we checked for  
13 Pinck were clear that this is an organization  
14 that's capable of assisting the various  
15 evaluation teams in defining their milestones  
16 and ensuring that those milestones are met in a  
17 collaborative manner.

18 Jennifer will be leading the team  
19 and her staff on this project. And I will let  
20 her introduce herself a little bit as well as  
21 the team that will be working on it.

22 MS. PINCK: Thank you very much.  
23 I'm really pleased to be here. And we were  
24 thrilled to be selected. I think as Eileen



1 said and I believe the committee was left with  
2 the impression that we are really an ideal  
3 partner to work with the Mass. Gaming  
4 Commission.

5 I founded the firm in 1998 after  
6 many years the design and construction business  
7 to focus on owner's interests. And our  
8 philosophy is really one of openness,  
9 transparency and collaboration. And we believe  
10 that is the only way we can serve our owners is  
11 to be their true partner.

12 So, in your very ambitious endeavor  
13 to award the slot parlor license and the three  
14 resort casino licenses in the timeframe, I  
15 think we have -- I believe we have the skills  
16 and the capacity to do that.

17 I will be leading the team and have  
18 committed at least 20 to 25 percent of my time  
19 on average. I expect it to be more at the  
20 beginning. I have a senior project manager,  
21 Nancy Stack, who worked with me on the Big Dig  
22 who will be really the day-to-day person in  
23 charge and available to be fully committed and  
24 co-located at the Commission's office if that's

1 what we decide.

2 Supported by Margaret Wood and Larry  
3 Borins. Both of them are registered  
4 architects. Margaret has been with me 10  
5 years. She is very, very well respected in the  
6 architecture community. She served on many  
7 boards and the BSA and past president of the  
8 Massachusetts AIA and many, many others. She  
9 is very insightful. She loves to manage large  
10 complicated groups of people.

11 And then Larry Borins who is also an  
12 architect has been with me five years who will  
13 support in the rapid review and evaluation of  
14 procurements and other things as needed.

15 Later down the road, I've got plenty  
16 of staff for ongoing assignments. We also have  
17 another 15 people in the office at lower levels  
18 who can help smooth out the peaks that may  
19 occur as the endeavor gets underway.

20 We are really, really looking  
21 forward to working with you. And I think we  
22 bring tremendous experience understanding the  
23 nexus between the public and private sector and  
24 the interests of the entire Commonwealth of

1 Massachusetts.

2 CHAIRMAN CROSBY: Questions or  
3 comments? I am curious just off the top of  
4 your head how do you see this process going?  
5 We've all been waiting expectantly. We have  
6 the five Commissioners who have the five  
7 evaluation criteria areas. We've got  
8 consultants.

9 We are betwixt and between about  
10 exactly how this process -- How do you see this  
11 off the top of your head working? How do you  
12 us getting started?

13 MS. PINCK: I believe we need to  
14 understand some stuff about what you think how  
15 these five areas are going to be reviewed and  
16 evaluated, and who's the lead on each of them  
17 and how they interface.

18 What we had proposed in our response  
19 was develop a process that is well understood  
20 and detailed and provided as soon as the  
21 reviewers come on board. So, that we don't  
22 have to get up to speed on what the process is.  
23 That's the first thing. But that's easy to say  
24 we're going to develop a process. What should

1 that process be, I think it's developing the  
2 ranking criteria are really important. Because  
3 some of these are very objective. Either the  
4 sewer capacity is big enough or not. Some are  
5 very subjective. We like the design or we  
6 don't. So, I think understanding how the  
7 criteria that the legislation established and  
8 that you've adopted is number one important.

9 I think the dissemination of all of  
10 this material that is going to come in with  
11 these -- I expect these applications, if you  
12 actually put them on the floor, could be four  
13 feet high worth of paper. I think a strategic  
14 initial assessment by the team of these quickly  
15 is really important so that we just don't  
16 distribute it out for review and then, oh,  
17 that's in there? And find out that we hadn't  
18 thought ahead a little bit about what the big  
19 picture implications are of each of these  
20 applications.

21 Now, how do you do that quickly, I'm  
22 not exactly sure. What do we decide to look at  
23 first? What do we know is going to be really  
24 critical? And I do think it's site-specific.

1 So, understanding the locales is going to be  
2 important when we decide what element of the  
3 criteria is going to be critically important to  
4 understand and to review.

5 I think understanding where these  
6 criteria overlap and interface because it may  
7 be great on this side and not so good here and  
8 they are actually contradictory. So  
9 understanding where the nexus is on those,  
10 especially with respect to community interest.

11 I think it's going to be a very  
12 intensive initial effort to break down how to  
13 do this quickly. And we've given it a lot of  
14 thought. And our now first thoughts is really  
15 to get inside your heads and understand what  
16 have you thought about how you will do this.

17 Because we have seen and spent a  
18 long time studying the documents that are  
19 available on your website. And you've done a  
20 tremendous amount of work. But I can also tell  
21 that this next step still leaves a lot of room  
22 for, I would say, innovation and creativity to  
23 do it right, but to do it fast.

24 I hope that starts to answer the

1 question. It's really a big --

2 CHAIRMAN CROSBY: Two thoughts from  
3 my standpoint. One is, and I think you're  
4 getting this, we've got lots of people to  
5 contribute to the evaluation of the content,  
6 the substantive content.

7 The actual process of moving this  
8 from submission through review to decision-  
9 making, exactly how is that process flow going  
10 to work is one that I at least don't have  
11 figured out yet. And my sense is that's where  
12 we really need the help is on the process of  
13 it, less on the substantive content. We've got  
14 plenty of people who can help us on that side,  
15 one.

16 And two, I think the idea of  
17 brainstorming, which unfortunately is hard for  
18 us because we can only do it in a public  
19 meeting, but I think all of us would benefit  
20 from sitting down with a whiteboard and your  
21 staff and our people and maybe even some of our  
22 consultants and just brainstorming about this  
23 process. And then having you guys go off and  
24 draft something up.

1 MS. PINCK: I do think the process  
2 is the challenge. You're right. You have  
3 plenty of people to weigh in on things.

4 CHAIRMAN CROSBY: Right.

5 MS. PINCK: The weighing in wants to  
6 be in such a way it's an apples-to-apples  
7 comparison to the extent that it can be, but  
8 the process is really the challenge. That's  
9 what's been keeping me awake since Eileen  
10 called me.

11 CHAIRMAN CROSBY: Great, I love to  
12 hear that.

13 COMMISSIONER MCHUGH: Good, yes, we  
14 want everybody awake.

15 CHAIRMAN CROSBY: We want other  
16 people being anxious in the middle of the  
17 night.

18 MS. PINCK: It's a SWAT team kind of  
19 thing to figuring this out, because they show  
20 up, the applications, and what do you do with  
21 it? We need to really have that nailed.

22 CHAIRMAN CROSBY: Yes.

23 MR. DAY: Mr. Chairman, as a matter  
24 of fact it's a good spot because we have --

1 we're aggressively finding a meeting spot for  
2 Jennifer. And the other two Commissioners have  
3 been working extremely in the evaluation  
4 process.

5 Next week we plan on actually  
6 Jennifer's team being involved in the remaining  
7 selections for advisors. And as we move  
8 forward, we've got the September set -- we've  
9 got to have the training for the teams and have  
10 that prepared. And then as the process moves  
11 in, we've got a basic process, but of course,  
12 we didn't share that part with Jennifer during  
13 her bid process but we intend to do that next  
14 week.

15 We've got a structure started and I  
16 think we've got a good place to start. I think  
17 we all know that the process will be a  
18 challenge. We have an administrative screening  
19 that will start just after October 4. And  
20 David Acosta's group will have a week to put  
21 things together and move them to the evaluation  
22 teams. So, we're definitely looking forward to  
23 see how that process is going to work.

24 CHAIRMAN CROSBY: Good, yes. We are



1 too.

2 COMMISSIONER MCHUGH: Exciting.

3 CHAIRMAN CROSBY: Anything else?

4 Great. Thank you welcome. Looking forward to  
5 the process.

6 MS. PINCK: Thank you. Looking  
7 forward to working with you.

8 MR. DAY: If I could, Mr. Chairman,  
9 I'd like to move. The procurement team, as  
10 Eileen mentioned, has also finalized the  
11 recommendation for the financial advisor. And  
12 Commissioner Zuniga is going to present that  
13 recommendation. Thank you.

14 COMMISSIONER ZUNIGA: Thank you.  
15 Included in the packet, memorandum that  
16 summarizes the process that leads us now to a  
17 recommendation to select a financial advisor.

18 We received seven responses. We  
19 invited four firms to present oral  
20 presentations. And out of those four firms, we  
21 are recommending that the best firm be approved  
22 to be our financial advisor. We are also  
23 recommending that the remaining three firms be  
24 prequalified like we have discussed either for

1 additional services that may be required of the  
2 Commission or make them available to  
3 surrounding or host communities because a lot  
4 of their expertise is relevant, I think, to  
5 some of the mitigation discussions that may be  
6 taking place already.

7 I can continue giving highlights or  
8 take any questions. I think the memo  
9 summarizes what we took -- the process we took.

10 CHAIRMAN CROSBY: It looks like this  
11 is very, very Canadian intensive in their  
12 background's and I'm not sure whether what I'm  
13 about to ask matters or not. But do they also  
14 have experience, extensive experience in the  
15 States?

16 COMMISSIONER ZUNIGA: They have some  
17 experience with casino operations in the  
18 states, notably Philadelphia. One of the key  
19 points that the team felt was very important  
20 was that the bulk of their work in Canada has  
21 been exactly on the side of the table that we  
22 will have here of this Commission, in other  
23 words, on the side of governments, negotiating  
24 across the table from applicants.

1           They know many of our applicants  
2           because they are actually operating in the  
3           Canadian provinces. I believe six out of the  
4           11 applicants, 10 applicants they have dealt  
5           with in the past. Not doing work for them but  
6           doing work for the governments that are  
7           negotiating operating agreements, bidding and  
8           review processes. And I really think -- The  
9           team felt that that's directly relevant in  
10          terms of the experience. And they were very  
11          insightful in their response.

12                   CHAIRMAN CROSBY: I think people  
13          might be interested in who the procurement team  
14          was.

15                   COMMISSIONER ZUNIGA: The  
16          procurement team, Alan Levobidge who was the  
17          Commissioner of DOR volunteered time to do  
18          this. Ken Wissman, who is the chief investment  
19          officer of the School Building Authority. I  
20          know him personally, and has procured a number  
21          of bankers in his years of being treasurer of  
22          the MWRA also volunteered time to advise me and  
23          complement the procurement management team in  
24          the selection of this.

1                   CHAIRMAN CROSBY: I think you did a  
2 great job of putting together a team, a  
3 procurement team.

4                   COMMISSIONER ZUNIGA: Thank you with  
5 your help too Mr. Chairman, with Alan. HLT  
6 Advisory has many, many years directly relevant  
7 to gaming, hospitality. They are highly  
8 specialized in this field.

9                   They already started asking us  
10 questions relevant to the process, by the way,  
11 what we envision to be the license. Is it a  
12 one-page document or a big agreement, maybe  
13 something in between. What they've seen, and  
14 they've seen a number of different approaches  
15 from different provinces in Canada and some  
16 jurisdictions to the United States, are really  
17 important things for us to start considering.

18                  CHAIRMAN CROSBY: How do they bill  
19 us? Is it a transaction fee or is it an hourly  
20 rate?

21                  COMMISSIONER ZUNIGA: Their  
22 proposal, which was similar to most of the  
23 other responses with the exception of a firm  
24 that was proposing to bill hourly was on a per

1 applicant review.

2 CHAIRMAN CROSBY: So, a per  
3 transaction.

4 COMMISSIONER ZUNIGA: Per  
5 transaction, that's right. They understand the  
6 timeline that's associated with our review.  
7 So, I guess they can figure out that they have,  
8 like us, about 75 days for the review of slots  
9 parlors applicants and 100 days for the review  
10 of the other six casino applicants that come in  
11 a little later.

12 In particular, they propose that the  
13 first four reviews have a certain dollar  
14 amount. And that begins to slide down as  
15 additional reviews come in. So, they've done a  
16 bit of a sliding scale or a quantity discount,  
17 if you want to say it that way.

18 COMMISSIONER MCHUGH: These are  
19 pass-through costs, right?

20 COMMISSIONER ZUNIGA: That's  
21 correct. We intend to bill our applicants for  
22 those investigations.

23 COMMISSIONER MCHUGH: I think it's  
24 an excellent -- These people are great. They

1 are just exactly what we need. But I had two  
2 questions. They are both sidebar questions.  
3 They don't go to the merits of that. The first  
4 is why do we need to prequalify people for host  
5 and surrounding communities to use?

6 COMMISSIONER ZUNIGA: You may  
7 remember the discussions with Ombudsman Ziemba  
8 that as some host and surrounding communities  
9 are facing the need to evaluate their own  
10 processes that they could be bogged down by  
11 having to conduct a procurement on its own  
12 time.

13 COMMISSIONER MCHUGH: I see.

14 COMMISSIONER ZUNIGA: Maybe none of  
15 these firms would be hired by the local  
16 communities, but it's to help them speed up.

17 COMMISSIONER MCHUGH: Right, I see.

18 COMMISSIONER ZUNIGA: So, we decided  
19 to prequalify the four top firms, actually the  
20 three top firms.

21 I should note we're not necessarily  
22 making available HLT, our preferred firm, to  
23 surrounding communities and host communities.  
24 If we did that may or may not represent a bit

1 of conflict. I don't know.

2 COMMISSIONER MCHUGH: Right, right.

3 COMMISSIONER ZUNIGA: So, that the  
4 three firms that we have on, let's call it  
5 standby, are there for both in case we need an  
6 additional firm if anything happens if a  
7 conflict arises. We don't see any, but let's  
8 just say that we need to double up efforts or  
9 we need a second opinion on another matter, we  
10 could use any one of those three firms. And  
11 similarly, just like I just explained, any one  
12 of the host or surrounding communities could  
13 take this procurement and use any one of those  
14 three firms if they needed.

15 COMMISSIONER MCHUGH: Thanks.

16 CHAIRMAN CROSBY: Do you have  
17 another question?

18 COMMISSIONER MCHUGH: It's another  
19 sidebar question. I'll talk with Commissioner  
20 Zuniga off-line.

21 CHAIRMAN CROSBY: Okay. Anything  
22 else? I guess we don't need to vote. The  
23 procurement is done, right?

24 COMMISSIONER ZUNIGA: I do have a

1 recommendation for vote.

2 CHAIRMAN CROSBY: Okay, sorry.

3 COMMISSIONER ZUNIGA: I'll read it  
4 into the record. Our recommendation from the  
5 procurement management team is that the Gaming  
6 Commission accept the proposal submitted by HLT  
7 Advisory and pursue contract negotiations and  
8 detail scoping of the services described in the  
9 response dated June 28, 2013.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER MCHUGH: Second.

12 COMMISSIONER ZUNIGA: Should I do  
13 those two additional recommendations relative  
14 to the prequalification?

15 CHAIRMAN CROSBY: Yes.

16 COMMISSIONER ZUNIGA: Should I do  
17 them all together?

18 CHAIRMAN CROSBY: Yes, I guess.  
19 Sure.

20 COMMISSIONER ZUNIGA: Furthermore,  
21 the procurement management team recommends that  
22 the Gaming Commission prequalify the firms of  
23 Moelis and Company, Rubin Brown and Spectrum  
24 Gaming Capital to provide services to the



1 Commission if needed. And finally the  
2 procurement management team recommends that the  
3 Gaming Commission extend the prequalification  
4 of the same firms, Moelis, Rubin Brown and  
5 Spectrum Gaming Capital to provide services to  
6 any host and/or surrounding community that may  
7 so choose as part of their efforts to negotiate  
8 and/or evaluate mitigation agreements with  
9 applicants. All of these subject to executing  
10 a letter of agreement with the respective  
11 applicant.

12 CHAIRMAN CROSBY: Second?

13 COMMISSIONER STEBBINS: Second.

14 CHAIRMAN CROSBY: Any further  
15 discussion? All in favor, aye.

16 COMMISSIONER MCHUGH: Aye.

17 COMMISSIONER CAMERON: Aye.

18 COMMISSIONER ZUNIGA: Aye.

19 COMMISSIONER STEBBINS: Aye.

20 CHAIRMAN CROSBY: Opposed? The ayes  
21 have it unanimously.

22 I would note that our Director of  
23 Communications just arrived wearing something  
24 suspiciously close to jeans. I just want to

1 say I'm in favor of pushing that envelope as  
2 the person who lost the debate about jeans.

3 COMMISSIONER MCHUGH: Should the  
4 minutes reflect all this?

5 CHAIRMAN CROSBY: I think item  
6 number four is the Racing Division.

7 MR. DAY: That's correct, Mr.  
8 Chairman. I just wanted to mention, I haven't  
9 yet, I wanted to thank Commissioner Zuniga on  
10 the financial advisor process. But also we  
11 have selected our finalist for HR manager.  
12 That's going into the background process as  
13 well. And we will be issuing with DCAMM  
14 hopefully the RFP for new space by the end of  
15 the month.

16 CHAIRMAN CROSBY: Great. Director  
17 Durenberger?

18 DR. DURENBERGER: Good morning, Mr.  
19 Chairman, Commissioners.

20 CHAIRMAN CROSBY: Good morning.

21 COMMISSIONER MCHUGH: Good morning.

22 DR. DURENBERGER: A very brief  
23 administrative update today. It's actually not  
24 an administrative update as much as a horse

1 racing update. I just wanted to let the  
2 Commission know that a Massachusetts bred  
3 standardbred horse won the Hambletonian Stakes  
4 Race last weekend at the Meadowlands in New  
5 Jersey. This is a very big deal. The Racing  
6 Division staff would like to congratulate all  
7 of Royalty for Life's Massachusetts connections  
8 and fans.

9 Item (B), I believe we have a guest  
10 today with us from the Department of Revenue  
11 to discuss the state tax reporting and  
12 withholding requirements.

13 MS. BLUE: Commissioners, I would  
14 like to introduce Kevin Brown. Kevin Brown is  
15 the General Counsel of the Department of  
16 Revenue. At a previous Commission meeting, we  
17 discussed the change in the withholding  
18 language that was created when our statute was  
19 enacted. And we wanted to understand a little  
20 bit better how that worked and some of the  
21 background behind it.

22 About a week or so, two weeks ago we  
23 met with Mr. Brown and some of his staff. It  
24 was the executive director, the ombudsman and

1 members of the legal department. And we talked  
2 in broad general terms about the change and the  
3 impact that it has.

4 Mr. Brown can speak about this  
5 broadly. I want to let you know in advance  
6 that DOR didn't have a particularly active role  
7 in this legislation, but the Department of  
8 Revenue can talk about what the change does and  
9 withholding in general and kind of the process  
10 that goes with that. So, I would like to let  
11 Mr. Brown speak to that.

12 MR. BROWN: Mr. Chairman, members of  
13 the Commission, I am glad to have the  
14 opportunity to speak with you this morning.

15 As you understand, I was invited  
16 here by staff. And I'd like to essentially  
17 make myself available to you to try to answer  
18 questions you may have with regard to the  
19 income tax and withholding related to gaming  
20 and particularly to racing issues, which have  
21 come up recently.

22 I am aware you have a memo from  
23 Director Durenberger, which may have been from  
24 your last meeting, I'm not sure, with regard to

1 this issue. So, I can perhaps give some  
2 follow-up on that or a few thoughts.

3 So, I will go through my notes and  
4 give you sort of an overview of how this issue  
5 comes about, which I thought might be helpful.  
6 And I can take questions during, after or  
7 whatever you prefer. I don't have a strong  
8 opinion.

9 So, basically I want to talk about  
10 the statutory framework, what the law says as  
11 opposed to weighing in on whether the policy  
12 behind it is a good idea or not. That's sort  
13 of not the administrative role of the  
14 Department of Revenue. It's to administer and  
15 enforce the laws that we have.

16 So, the questions that have led to  
17 this here are withholding questions, but I was  
18 struck in seeing some of the articles in the  
19 paper and elsewhere that related to withholding  
20 on winnings at racetracks that was presented in  
21 something of a vacuum. Because withholding is  
22 really income tax phenomenon, if you will.  
23 It's driven by the fact, of course, that  
24 winnings are subject to the personal income tax

1 in Massachusetts, and also for federal purposes  
2 although there are calculation differences.

3 So, I'll talk a little bit about the  
4 income tax and the structure of that and then  
5 I'll shift over to the withholding.

6 Understanding income tax is really the first  
7 part of this. And the withholding is really a  
8 derivative.

9 So, as you know, Massachusetts has a  
10 personal income tax. It's 5.25 percent on most  
11 income. The important part to understand is  
12 that our tax is derivative in part from the  
13 Internal Revenue Code and the federal tax in  
14 that we look to the federal definitions of what  
15 income is. Then there are various adjustments  
16 that we make separately for state purposes by  
17 statute to reach to a Massachusetts  
18 calculation.

19 So, there are departures that become  
20 relevant here in calculating a Massachusetts  
21 income versus what will be taxable federally.  
22 Just as an example, you'll be familiar probably  
23 that you receive federal mortgage interest  
24 deduction for your residence for federal

1 purposes but not for Massachusetts purposes.

2 There are any number of similar departures.

3 And one becomes relevant here  
4 because in the case of winnings from wagering  
5 for federal purposes, you are generally allowed  
6 to deduct your losses up to the amount of your  
7 winnings. So, essentially offsetting your  
8 winnings. The Massachusetts laws for many  
9 years have disallowed that deduction.

10 So, we have a significant departure  
11 in the area of wagering income at the state  
12 level from the federal level. And the result  
13 is that you can have a state tax liability,  
14 income tax liability when there is none for  
15 federal purposes because of that calculation  
16 difference you don't get to offset your  
17 winnings with your losses.

18 That distinction goes very far back  
19 in our statutes. It may have gone back to the  
20 '73 era when the current version of income tax  
21 was enacted. But it's been out there a long  
22 time.

23 I would point out that the personal  
24 income tax is applicable potentially to both

1 residents who pay tax on all other income and  
2 to nonresidents who are required to pay  
3 Massachusetts tax to the extent that their  
4 income is so-called Massachusetts source  
5 income. It's sourced here for one reason or  
6 another. Most typically trade or business  
7 income, if you're engaged in business in the  
8 state, some piece of that may be taxed in  
9 Massachusetts.

10 Real estate gains or rental income  
11 from Massachusetts real estate is taxable here.  
12 And the statute specifically sources income  
13 from participation in lottery or wagering  
14 transactions also to Massachusetts.

15 So, for example, you know the  
16 Massachusetts lottery for many years that's  
17 been clearly Massachusetts source income. And  
18 if you have lottery winnings, the lottery  
19 withholds and you have a personal income tax  
20 liability in Massachusetts vis-à-vis that.

21 The 2011 Gaming Bill actually  
22 amended that provision and specifically  
23 expanded it to cover establishments licensed  
24 under 23K. So, there was intention to include



1 pretty much any form of gaming winnings, I  
2 think, in that provision.

3 An important point that I want to  
4 make, and this doesn't really come out in the  
5 memo that you received before is that the  
6 structure of the income taxes in several states  
7 is that they are generally speaking two levels  
8 of tax. The federal level of tax and the state  
9 level of tax. There are some states that don't  
10 have an income tax. So, in those situations  
11 there'd be only one.

12 But there should not be multiple  
13 levels of state taxation on any item of income.  
14 There's a credit system in place so that if you  
15 are responsible for -- Let's say you're  
16 domiciled in Rhode Island but you work in  
17 Massachusetts and have to pay tax on your  
18 earnings in Massachusetts, you will get a  
19 credit in Rhode Island for the Massachusetts  
20 tax that you pay and vice versa.

21 So, there is a credit system that  
22 goes in all of the states with income taxes  
23 such that there will only be one state tax  
24 applicable to any item of income. I would just

1 point out that that also comes into play with  
2 regard to Massachusetts taxing any wagering  
3 income. To the extent that there is a  
4 Massachusetts tax imposed upon that upon a  
5 nonresident, then the domicile state should be  
6 given a credit for that.

7 I think that it may be a little more  
8 complex because the calculation differences  
9 that I talked about earlier, but I just would  
10 clarify there should only be should be only two  
11 levels of tax, one state and one federal. And  
12 the question is which state is going to reach  
13 that wagering income. So, that's the  
14 background on the income tax.

15 So, let me shift over to  
16 withholding. Withholding you're familiar with  
17 from wage withholding.

18 COMMISSIONER MCHUGH: Can I just ask  
19 a question there?

20 MR. BROWN: Yes.

21 COMMISSIONER MCHUGH: Massachusetts  
22 has a five percent tax. If the domicile state  
23 has say a six and a half percent, you get the  
24 credit in the domicile state for the five

1 percent?

2 MR. BROWN: Yes.

3 COMMISSIONER MCHUGH: Do you then  
4 pay, typically the domicile state the  
5 additional one and a half percent?

6 MR. BROWN: Typically, yes.

7 COMMISSIONER MCHUGH: Okay, thanks.

8 MR. BROWN: And you end up with the  
9 same.

10 COMMISSIONER MCHUGH: Right.

11 MR. BROWN: So withholding is a  
12 compliance device. It relates to the fact that  
13 that there is liability on a certain sort of  
14 income.

15 Again, you'll be familiar with this  
16 with wage withholding. It is a mechanism to  
17 gain compliance with the tax law. To in some  
18 ways make it also easier on the taxpayer,  
19 although no one thinks of it that way. But  
20 where you see people get in trouble for not  
21 having paid their taxes is often with regard to  
22 income on which there was no withholding.

23 This is withholding from a third-  
24 party. So, that usually -- not guarantees but

1 improves compliance. It's distinguishable from  
2 reporting of the income because their  
3 withholding is actually taking, in this case  
4 five percent, withholding amount and paying  
5 that over to the state. It's an estimate. It  
6 is not designed to be an exact calculation of  
7 the tax amount.

8 In fact, the withholding rate is  
9 five percent even though the tax rate is 5 1/4.  
10 So, the withholding is claimed on the return at  
11 the end of the year. If you're overpaid, you  
12 get a refund. If you're underpaid, you pay the  
13 balance. We are familiar with this phenomenon.

14 Compliance rates are substantially  
15 higher where there is third-party withholding  
16 or reporting. The IRS has done studies on  
17 this. It's an effective way to ensure  
18 compliance with state or federal taxes.

19 In fact, in Massachusetts, the trend  
20 if anything has been to increase the areas in  
21 which there is withholding. It's not just wage  
22 withholding. There are also provisions for  
23 withholding for nonresident members of  
24 partnerships that are doing business in

1 Massachusetts, for entertainers that are in  
2 Massachusetts that are not having wage income.  
3 There are other examples and that's what I  
4 would say in general the trend.

5 This takes me to the 2011  
6 legislation with regard to gaming. That  
7 legislation did two significant things. One  
8 is, as I've mentioned previously, to clarify  
9 that all of these forms of gaming are subject  
10 to the Massachusetts tax for nonresidents. And  
11 number two to adjust the withholding rules.  
12 So, that the withholding rules were expanded  
13 and it's a somewhat complicated structure. We  
14 will require Massachusetts withholding on  
15 winnings to the extent that federal withholding  
16 is required, but then with adjustments meaning  
17 the state withholding kicks in at a lower  
18 level.

19 In other words, we have a \$600  
20 threshold, where the threshold federally may be  
21 \$5000 in different situations. It's also  
22 expressly applicable to slots, Keno and bingo  
23 even though there are federal exceptions for  
24 that. So, anyway, there is a departure. So,

1 you see state withholding required in  
2 situations where federal withholding would not  
3 be required simply by virtue of the amount of  
4 the winnings.

5 The other point to make, and this is  
6 critical here is there previously had been an  
7 exception for withholding for horse and dog  
8 racing and that was repealed with the 2011  
9 legislation.

10 So, just stepping back a bit, I  
11 actually was struck upon preparing these notes  
12 and being asked to speak this morning, usually  
13 I am asked to look at areas where there is  
14 uncertainty in the law. What I was struck by  
15 here in reviewing this material is that there  
16 seems to be very clear legislative direction as  
17 to the appropriate income tax and withholding  
18 provisions in the judgment of the Legislature  
19 as of 2011.

20 Whether you agree and think that  
21 that's good policy or don't and think that it's  
22 not policy, that's not what I'm trying to say.  
23 What I'm saying is that there seems to have  
24 been clear direction and contemplation in these

1 things.

2 Obviously, it's not my role to  
3 recommend that there should or shouldn't be  
4 changes. That's not where I'm coming from.  
5 But that may not obviously be the Commission's  
6 position or role.

7 I can pause and take questions. I  
8 did note there were some mechanical issues that  
9 are raised in the memo that you received in  
10 terms the calculation of the amount of winnings  
11 on which withholding will occur. And there was  
12 some description of those situations.

13 I do not really have enough  
14 background in these transactions to get into  
15 them with much depth. In fact, we really have  
16 not been receiving requests for guidance in  
17 this area until very recently. We were  
18 contacted by your staff just recently.

19 I will offer however that the  
20 description of the issue in these exotic wages  
21 and trying to figure out what your winnings are  
22 when there are certain multiple bets going on  
23 at one time, it seems to be parallel to a  
24 federal issue. I'll offer a letter here that

1 we just printed off of Lexus, which was a  
2 submission. Excuse me.

3 It was a submission to the IRS with  
4 regard to this issue -- And I am just trying  
5 to check my notes. -- from the National  
6 Thoroughbred Racing Association and the  
7 American Horse Counsel talking about the  
8 federal calculations in terms of how you  
9 determine winnings and what the appropriate  
10 level is such that in this case the federal  
11 reporting requirements would apply.

12 I'm just saying that this seems to  
13 be an issue that is existing at both federal  
14 and state level. And these comments to the IRS  
15 requesting for changes in the federal rules in  
16 this area for at least what I understand  
17 comparable reasons for what you heard earlier.  
18 So, I can provide that to you. Again, it's  
19 just a public document.

20 I'd be glad to try to respond to  
21 questions.

22 COMMISSIONER MCHUGH: In that regard  
23 and the subject you were just touching on, is  
24 the DOR likely to follow the federal resolution



1 of the issue on how to calculate the taxes due  
2 on exotic wages?

3 MR. BROWN: Yes. Again, we really  
4 have not gotten into this area deeply until  
5 recently. The reason that it's relevant is as  
6 I described earlier the withholding ties to  
7 when federal withholding is required on the  
8 wagering then with these Massachusetts  
9 adjustments. And the federal material we are  
10 looking at would tie to when federal holding is  
11 required and the calculation of their threshold  
12 amounts. So, we would be likely to follow  
13 that.

14 COMMISSIONER CAMERON: Mr. Brown,  
15 when you say there was clear contemplation by  
16 the Legislature with regard to this matter, do  
17 you say that because you are aware that this  
18 occurred or because the law was clearly  
19 written?

20 MR. BROWN: I don't say that because  
21 I was part of the discussion. Thank you for  
22 that. DOR was only indirectly involved with  
23 the bill. We were asked to review it at a  
24 couple of times by the administration. We gave

1        comments to the administration and finance,  
2        which one way or another may well have gotten  
3        back to legislators considering the matter.

4                What I'm saying is that there were  
5        specific legislative changes that related just  
6        to that very point.  If there was previously an  
7        exception for racing from withholding and that  
8        exception is deleted, I am assuming that that  
9        is a deliberate action.  It's very specific.  
10       So, I am taking that as contemplated and  
11       applying one withholding standard across all  
12       form of gaming winnings.  But that's not inside  
13       knowledge.  That's just reading the statute.

14                COMMISSIONER CAMERON:  Thank you.

15                CHAIRMAN CROSBY:  Others?

16                COMMISSIONER ZUNIGA:  Mr. Brown are  
17        you aware and I know you are not necessarily in  
18        a position to comment on policy, but are you  
19        aware of whether there was any study done or  
20        calculation or quantification of what this  
21        repeal of the exemption may ultimately do for  
22        the overall purpose of raising or collecting  
23        taxes?

24                MR. BROWN:  For this specific racing

1 exemption, no, I'm not familiar with that. I  
2 do not know of any.

3 COMMISSIONER ZUNIGA: One could  
4 argue, and I guess that's part of what's  
5 implicit in the memo, that removing the  
6 exemption may have a direct impact into the  
7 level of activity that takes place, especially  
8 from other state players. Is that a fair  
9 statement?

10 MR. BROWN: There's some logic to  
11 that. That's a very typical question in state  
12 tax policy that if you tax -- impose a tax on  
13 something, you may discourage it at some level  
14 and then there will be a debate as to how  
15 meaningful that difference is. It may be  
16 meaningful. And I don't suggest otherwise.

17 On the one hand, five percent is not  
18 a great deal. And on the other hand, and this  
19 is just from my personal observation, if you  
20 look at the sales tax holiday coming up and see  
21 the crowds of people that will go out to save  
22 their five percent, you can certainly see a  
23 tie.

24 The one thing that I would advance

1 as a policy point, which is I do this only  
2 because it's an administrative issue and  
3 something that I pointed out the staff before,  
4 is that if it is the intent to tax some of  
5 these winnings, particularly to nonresidents,  
6 there really needs to be withholding as a  
7 compliance method, because otherwise,  
8 practically speaking, the tax will not be paid.

9 Again, particularly with regard to  
10 nonresidents and given the Massachusetts  
11 discrepancies in calculation from the federal.  
12 I see those two choices as tied together.  
13 That's all I'm saying. I'm not saying that  
14 necessarily it's a right decision that this  
15 income should be taxed to nonresidents or that  
16 it should be calculated the way it is.

17 But if there are those policy  
18 decisions made and it's the intent of the state  
19 to follow through on them, then I think as a  
20 practical matter you need withholding in order  
21 to see compliance.

22 COMMISSIONER MCHUGH: Are you aware  
23 of any policy decisions in this area here or in  
24 other states, in which the policy is to tax the

1 activity but the policy judgment is that we're  
2 not going to withhold because to withhold would  
3 deter the activity that we're trying to tax?

4 MR. BROWN: Not specifically,  
5 although I can't rule out that people have had  
6 that reasoning. I think that what it suggests  
7 is some ambivalence as to the underlying  
8 decision as to impose a tax if that's the case.

9 COMMISSIONER ZUNIGA: I know this is  
10 not necessarily a question, but I would argue  
11 that the activity is already being taxed at 25  
12 percent or more, the activity of wagering. We  
13 are also talking about an additional tax that  
14 comes on the winnings.

15 COMMISSIONER MCHUGH: But that's  
16 still a debate about the wisdom of the tax not  
17 the enforcement.

18 COMMISSIONER ZUNIGA: Right. I know  
19 it's not a question for Mr. Brown.

20 CHAIRMAN CROSBY: Do you know how  
21 much this generates or is there an estimate, an  
22 expectation?

23 MR. BROWN: I do not. If you'd like  
24 some follow-up from DOR in terms of analysis, I

1 can see what we can do. There may have been  
2 some work done in terms of the original  
3 legislation in estimating what it would produce  
4 by way of revenue, but I'm not familiar.

5 CHAIRMAN CROSBY: As long as we are  
6 going to continue to pursue this, if there is  
7 anything that's available.

8 MR. BROWN: Yes. We have an office  
9 of tax policy analysis who is involved with  
10 revenue estimates. And what they have  
11 available on gaming legislation, I'm not sure.  
12 But I'll certainly follow up with that.

13 CHAIRMAN CROSBY: And the other, I  
14 was struck and I think others were too by this  
15 issue about whether you can offset winnings  
16 against losings or losings against winnings.  
17 And the feds. say yes and the state says no.

18 What are the philosophic  
19 underpinnings of the no? Where does that come  
20 from? How does one argue that there shouldn't  
21 be the offset?

22 MR. BROWN: I think that's a very  
23 good question. The offset, just in my personal  
24 opinion, seems equitable. But that has been

1 Massachusetts law for a very long time, going  
2 back well beyond my experience in this area and  
3 I am not aware of specific legislative history  
4 on it.

5 There is, by the way, a category in  
6 Massachusetts where you can offset. I don't  
7 know that it's intentional. But if you're in a  
8 trade or business, you are entitled to trade or  
9 business deductions for the Massachusetts  
10 personal income tax purposes and trade or  
11 business deductions if you are a professional  
12 gambler would include your losing bets.

13 A professional gambler for state tax  
14 purposes may offset losses with income. I'm  
15 glad to reach that in the conversation. There  
16 are those situations, but that is not the norm.

17 I do believe there were some  
18 proposals at the time the gaming legislation  
19 was considered to adjust that that were not  
20 adopted. I saw a reference to a floor  
21 amendment. I don't have complete knowledge of  
22 that. But no, I don't have a good answer for  
23 you.

24 CHAIRMAN CROSBY: So, there aren't

1 some competing schools of philosophic thought  
2 about some reason why this makes sense?

3 MR. BROWN: Not to my knowledge.

4 CHAIRMAN CROSBY: Any other?

5 COMMISSIONER ZUNIGA: You mentioned  
6 this briefly, but the transaction is really the  
7 question in my view because the example of the  
8 exotic wages is just one but it applies to many  
9 others in our realm here. Can I count my  
10 losses at the end of the day or after each  
11 transaction? That's something that we consider  
12 relevant to the activity that we're trying to  
13 promote. So, it's a rhetorical open question I  
14 suppose.

15 MR. BROWN: We would be glad to work  
16 with the Commissioners to try and develop the  
17 details of that. It's an interesting situation  
18 in that in general, we try to conform with  
19 federal methodology when we can.

20 When we have departures by statute  
21 from the methodology, it becomes tricky. But I  
22 understand the questions. Understanding of the  
23 particular transactions is at the fringe of my  
24 knowledge and that is where I think some



1 discussion as to what guidance DOR can give in  
2 these areas would be helpful.

3 COMMISSIONER ZUNIGA: What would be  
4 that mechanism working together towards issuing  
5 an advisory at some point or regulation?

6 MR. BROWN: Well, we issue public  
7 guidance. And I know there was one document  
8 following up with regard to the law changes on  
9 withholding. We can issue further public  
10 guidance with regard to calculation methods and  
11 have a conversation in that.

12 It's a public process. We put out  
13 public working drafts. We solicit comment.  
14 Obviously, we can work with Commission staff as  
15 you see appropriate.

16 COMMISSIONER MCHUGH: It seems to me  
17 that would be really helpful. As I think about  
18 it, if you take this to its logical extreme  
19 each time you push the button on a slot  
20 machine, it's a separate transaction.

21 COMMISSIONER ZUNIGA: Yes.

22 COMMISSIONER MCHUGH: And the  
23 calculation there could become nightmarish as  
24 well as enormously unsettling.

1 MR. BROWN: I agree with that point.  
2 That's not anything that the department has  
3 been out and auditing or enforcing along those  
4 lines, but I understand the logic to it, yes.

5 CHAIRMAN CROSBY: Yes. Do either of  
6 you have any questions for clarification or  
7 anything?

8 MS. BLUE: No. We'll work with DOR  
9 to try and get that guidance. We did ask them  
10 to do some additional reporting for us, and  
11 we've given them some information. And they  
12 are working on that for us.

13 CHAIRMAN CROSBY: I think we are  
14 interested. I think the Commission has  
15 generally indicated that both in terms of the  
16 disincentive issue but also just the equity of  
17 this structure is something that we are  
18 interested in considering weighing in on. So,  
19 we would like to pursue this.

20 COMMISSIONER ZUNIGA: And  
21 administration, what will be required of our  
22 gaming applicants in terms of recordkeeping and  
23 administration.

24 CHAIRMAN CROSBY: Right, that's what

1 I mean. Okay. Thank you very much, Mr. Brown.  
2 I appreciate you coming.

3 MR. BROWN: Thank you.

4 CHAIRMAN CROSBY: We will take a  
5 brief recess while we do whatever it is we have  
6 to do.

7 (A recess was taken)

8  
9 CHAIRMAN CROSBY: We will reconvene  
10 meeting number 74 and go back to Director  
11 Durenberger.

12 DR. DURENBERGER: Thank you, Mr.  
13 Chair. Item (C), you have before you a draft  
14 letter to the Local Government Advisory  
15 Council. These would be regarding amendments,  
16 upcoming amendments that we put before you to  
17 205 CMR 3.0 and 4.0. These are rules related  
18 to racing, harness racing and thoroughbred  
19 racing.

20 I'm getting quite a bit of feedback  
21 here.

22 CHAIRMAN CROSBY: We hear a little  
23 bit. It sounds okay. Are you all right?

24 VIDEOGRAPHER: I'm good. I'll turn

1       it down in the room.

2                   CHAIRMAN CROSBY:   Okay, try again.

3                   DR. DURENBERGER:   I will resume.

4       Last week the Racing Commissioners  
5       International met in Saratoga Springs.  It was  
6       a quarterly meeting.  And the model rules  
7       committee met and voted to put forward to the  
8       board some amendments to existing language in  
9       some of the model rules as they pertain to  
10      medication and veterinary practices.

11                  And also voted to adopt an entirely  
12      new provision that did go to the board of  
13      directors on Wednesday.  And that language was  
14      approved by the board, by the RCI Board.  The  
15      next on that would be for Racing Division staff  
16      to bring it to your attention and recommend  
17      that the Commission approve both the amendments  
18      and the adoption of new provision.

19                  So, the amendments to existing  
20      language are fairly minor.  The new provision  
21      is an interesting one.  I've kind of tease you  
22      about it at previous meetings.  It has to do  
23      with multiple medication violations.

24                  So, occupational licensees who have

1       been involved in multiple violations for  
2       medications within given periods of time will  
3       be assigned points to their license. Very  
4       similar, the analogy we use is to points on  
5       your driver's license. There is a series. The  
6       gravity of different offenses are assigned  
7       different points. And then there's a process  
8       by which a certain number of the more minor  
9       points can be expunged from the license if the  
10      licensee has a clean record for a period of  
11      time. So, that language did make it out of  
12      committee, did go to the board and was adopted.

13                So, I will have a redline to you of  
14      the changes to our regulations probably over  
15      the weekend or on Monday so you can start  
16      reviewing that.

17                In the meantime, to kick off our  
18      rulemaking process, we do send out that letter  
19      to the LGAC. So, the draft is here. And with  
20      your approval, we can remove the draft and send  
21      that letter on its way. Public hearing is  
22      scheduled for September 30, I believe at one  
23      o'clock at 84 State Street.

24                   CHAIRMAN CROSBY: Comments or

1 questions?

2 COMMISSIONER CAMERON: No. I think  
3 it's important that we stay up since we made  
4 the decision earlier to adopt as many of the  
5 model rules as was possible. To stay up with  
6 that process makes a lot of sense.

7 COMMISSIONER MCHUGH: I was at the  
8 meeting where this multiple violation rules was  
9 debated and I watched the debate and then at  
10 the results. And I am prepared to approve it.

11 But as a procedural matter, I  
12 wondered if we are not better off before we  
13 start the rulemaking process and scheduling  
14 things for hearings and telling others about  
15 the rulemaking process and the content of the  
16 anticipated rules, if the Commission saw the  
17 rules. We are now kicking off a process.  
18 We're setting a date for a hearing about rules  
19 that we haven't seen yet. That strikes me as  
20 problematic, frankly, just procedurally.

21 CHAIRMAN CROSBY: Just remind me  
22 procedurally how this would have been done on  
23 other.

24 COMMISSIONER MCHUGH: In the past,

1 we've had the draft rules. We've approved the  
2 draft rules and then we put in place this  
3 letter and the sequela. That gives us an  
4 opportunity, because we have had and we may not  
5 in this case, it may be straightforward, but we  
6 have had situations in which the draft rules  
7 have gone through a number of iterations before  
8 we reached the final rule. So, that's one  
9 thing.

10           Secondly, to tell and in this case  
11 -- Again, this is not so much devoted to this  
12 case as it is sort of a general procedure. --  
13 to tell the committee that these rules are  
14 going to have no impact on anything that they  
15 care about without knowing what the rules say,  
16 and without the Commission -- We're just  
17 sending this letter. -- being able to stand  
18 behind that strikes me as problematic.

19           So, this is something that's  
20 divorced from the content of this rule,  
21 perhaps. And perhaps we are all right to do it  
22 this way this time.

23           But I would much prefer a regular  
24 process in which we approve the rules before we

1 take this first step and set the process in  
2 motion including setting a hearing date.

3 We may be up against some deadlines  
4 that we have to do this and the like. And I'm  
5 not being critical. I'm just -- We're all  
6 feeling our way along here. But it's the way  
7 we've done it before. And I think we ought to  
8 stick with the plan.

9 DR. DURENBERGER: Commissioner  
10 McHugh, I think we have plenty of time on this  
11 rule.

12 COMMISSIONER ZUNIGA: I'm curious on  
13 that note. Is this part of the model rules  
14 that we have generally adopted before?

15 DR. DURENBERGER: Yes.

16 COMMISSIONER ZUNIGA: This is just a  
17 refinement of one of many?

18 MS. BLUE: There are a couple of  
19 refinements, amendments to existing language.  
20 There is an entirely new provision.

21 COMMISSIONER ZUNIGA: Okay. The  
22 comments are then are that much more relevant,  
23 not that they weren't. I'm sorry.

24 COMMISSIONER MCHUGH: No, no. I



1 understand this just a little riff.

2 COMMISSIONER ZUNIGA: The other  
3 question is relative to timeline, are they  
4 being drafted? You mentioned the recent  
5 meeting where this was being debated. Is there  
6 a process for additional debate or has this  
7 group already --

8 DR. DURENBERGER: The Racing  
9 Commissioners International Board of Directors  
10 have approved language as of last week. So,  
11 what we're doing is incorporating that into a  
12 redlined version of our own regs. So, the  
13 language is existing and we are not making  
14 amendments on that new provision. We are not  
15 making any tweaks, if you will, to fit the  
16 facts and circumstances of racing in  
17 Massachusetts. So, it would be a direct  
18 importation of the model rules language.

19 COMMISSIONER ZUNIGA: But the Racing  
20 Commissioners International is done with that?

21 MS. BLUE: They are, yes. It's  
22 finalized.

23 CHAIRMAN CROSBY: I think it's a  
24 very good point. I wonder, and this is just a

1 question, not a rhetorical question. Is it in  
2 the context of this particular situation sort  
3 of a process without substance since you  
4 started out by saying I heard the debate. I'm  
5 probably going to be in favor of this. We've  
6 made a point of identifying such things as  
7 these model rules as the best practice and  
8 routinely adopted it.

9 I guess is the sort of point of  
10 principle that vetting these in draft in  
11 advance of starting the process, which is a  
12 very important point of principle and something  
13 that's been a very critical part of our  
14 transparency and something from which we've  
15 benefited, I think. Is the principle of that  
16 greater than the real practical reality in this  
17 particular situation?

18 COMMISSIONER MCHUGH: I think the  
19 answer to that is probably is no. I think we  
20 are probably going to approve this. So,  
21 whatever we want to do is fine with me.

22 CHAIRMAN CROSBY: But in general.

23 COMMISSIONER MCHUGH: If you move --  
24 If you don't apply principle because it doesn't

1 matter then you start down a slippery slope.

2 DR. DURENBERGER: As a practical  
3 matter, there isn't any deadline. And there is  
4 no reason why we can't get the redline to you  
5 prior to the 8/22 meeting and do that.

6 CHAIRMAN CROSBY: Good. Then let's  
7 do do that. I think it's a very important  
8 point. And I think the fact both of  
9 transparency and in general substantive benefit  
10 that that kind of a process is very important.  
11 So, I think that's a really helpful suggestion.

12 COMMISSIONER MCHUGH: Thank you,  
13 Director Durenberger.

14 DR. DURENBERGER: Which brings us to  
15 item (D). Item (D) is a draft application for  
16 a license to conduct horseracing pursuant to  
17 the Massachusetts General Laws chapter 128A.  
18 In 128A, section 2, the Commission has the  
19 authority to require answers to some enumerated  
20 items and other questions as the Commission may  
21 prescribe.

22 The bulk of the questions in this  
23 application have appeared in previous years'  
24 applications. Last year when the Racing

1 Division staff inherited the applications,  
2 which are due October 1, we did make a handful  
3 of requests for some supplemental information.

4 This year we have incorporated those  
5 requests into the application expressly and we  
6 have added six new items, which I'd like to  
7 walk you through today. Other than the six new  
8 items, the rest of the questions have appeared  
9 previously. They may have appeared in a  
10 different order. We did do some restructuring.  
11 And I'm happy to answer questions about any  
12 items old that I can and any items new that I  
13 certainly can.

14 The first new item appears on page  
15 six, item number 23. We are requesting  
16 submission, a copy of all executed agreements  
17 with representative horsemen's organizations.  
18 One of our applicants submitted this with their  
19 application last year. The other provided it  
20 following our request for supplemental  
21 information. We've made it an express  
22 requirement because these agreements do go to,  
23 among other things, simulcasting. So, we  
24 thought that making it an expressed requirement

1 was appropriate.

2 Similarly, item number 24, the first  
3 half of that question has appeared in  
4 applications in years prior, but did not  
5 request copies of existing policies. One  
6 applicant did submit those last year. The  
7 other submitted following a supplemental  
8 request. So, we did make submission of those  
9 copies of existing policies an express  
10 requirement this year.

11 COMMISSIONER MCHUGH: Can I ask a  
12 question there?

13 DR. DURENBERGER: You can.

14 COMMISSIONER MCHUGH: Are the tracks  
15 required to carry all four of those?

16 DR. DURENBERGER: Well, the jockey  
17 insurance would be the running horseracing  
18 licensee. The driver's insurance would be the  
19 harness horseracing licensee, but the others  
20 yes.

21 COMMISSIONER MCHUGH: So, a no  
22 answer apart from the difference between  
23 jockeys and drivers is a disqualifying factor?

24 MS. BLUE: It would certainly invite

1 additional questions. And yes, we would tell  
2 them that they needed to get it. The tracks  
3 have to carry the workers' comp., for example,  
4 as well as the people who work at the track if  
5 they actually have employees. And that's been  
6 a subject that we've been working on during  
7 this season.

8 COMMISSIONER MCHUGH: Right. Okay.

9 DR. DURENBERGER: We have an  
10 amendment to number 25. The word kennels still  
11 appears. We'll be removing that in our final  
12 draft. Turning to page nine, item number 27.  
13 This a new substantive request that goes to  
14 business practices, audits and internal  
15 controls.

16 COMMISSIONER MCHUGH: I'm sorry?

17 DR. DURENBERGER: Number 27.

18 COMMISSIONER MCHUGH: Number 27,  
19 okay.

20 CHAIRMAN CROSBY: I think we know  
21 where that comes from.

22 DR. DURENBERGER: On page 10, item  
23 number 34, this is an entirely new question.  
24 These numbers, we see indications from the

1       Legislature that these things are important.  
2       And we see that because they appear in 128A,  
3       section 5(h)6 as it pertains to purse  
4       distributions, if in the event of any surplus  
5       in our budget. We see them again in the Gaming  
6       Act, section 60 as factors that the horseracing  
7       committee shall consider when they're looking  
8       at the racehorse development fund.

9               So, to the extent that they reflect  
10       economic value of the applicant to the  
11       Commonwealth, we thought that those numbers  
12       could be highlighted here as part of the  
13       application.

14               They probably don't add a lot to  
15       substance here when you don't have multiple  
16       entities competing for the same dates, but I  
17       thought it might be a nice way to highlight the  
18       economic value of the application to the  
19       Commonwealth.

20               CHAIRMAN CROSBY: And are those  
21       numbers relatively easy to come by?

22               DR. DURENBERGER: They are.

23               CHAIRMAN CROSBY: It's not something  
24       that's onerous to the applicant to come up

1 with?

2 DR. DURENBERGER: I'm welcome to  
3 consider arguments to that effect, but I think  
4 that they should be at the ready.

5 CHAIRMAN CROSBY: Okay.

6 COMMISSIONER ZUNIGA: I'm curious,  
7 the 2012 numbers is that mostly because by the  
8 time this application comes out, 2013 is not  
9 yet finished? So, it's looking back at a full  
10 year, the most recent one?

11 DR. DURENBERGER: Yes. The other  
12 way to do it would be an FY, but we did do  
13 calendar year.

14 COMMISSIONER MCHUGH: What does  
15 34(f) mean, occupational licenses attributable  
16 to the applicant?

17 DR. DURENBERGER: So, if you are  
18 participating in horseracing as an owner,  
19 trainer, jockey, driver, stable employee, any  
20 of the racing officials for example, that is a  
21 way to get at jobs. It's also revenue for the  
22 Commonwealth, because we do receive that money.  
23 So, it's a function of both employment and  
24 revenue to the Commonwealth.



1 COMMISSIONER MCHUGH: Okay, thanks.

2 DR. DURENBERGER: I am happy to go  
3 further with that.

4 COMMISSIONER MCHUGH: I had a number  
5 of minor questions, which I'll deal with at the  
6 end, but they're detail things. I don't think  
7 we need to try and write this thing in --

8 CHAIRMAN CROSBY: Committee.

9 COMMISSIONER MCHUGH: -- committee.  
10 So, I have a couple of questions, but they're  
11 detail questions.

12 DR. DURENBERGER: Okay. The next  
13 page, page 11 items 35 through 37. In recent  
14 years, a master list of simulcast imports and  
15 exports was included with each applicant's  
16 materials. Approval would then be given to the  
17 application pending completion of executed  
18 contracts and appropriate horsemen group  
19 approvals.

20 However, we did not seem to have a  
21 formal follow-up process, at least in recent  
22 years, to be in place within the agency. So,  
23 items 35 through 37 are intended to outline the  
24 expectations of Racing Division staff while

1 ensuring that all simulcast contracts are in  
2 compliance with state. And we also have  
3 federal law here, Interstate Horseracing Act.

4 So, what we've done is we've spread  
5 the burden. We recognize that there will be  
6 additional paperwork requirements on our  
7 applicants. So, we've staged, if you will,  
8 we've spread out the work over a period of some  
9 months.

10 Applicants now will submit their  
11 master list as they have in the past for  
12 conditional approval as they have in the past.  
13 We are in the process of drafting these two  
14 forms, the licensee request for simulcast  
15 import and licensee request for simulcast  
16 export. We will have those next week.

17 We've looked at several different  
18 industry examples that are in use by other  
19 racing commissions. And I found an example  
20 that I think is really efficient and very, very  
21 clear-cut both for the stakeholders for the  
22 licensees and for the Commission to review.  
23 So, that form will be finalized next week.

24 And then the expectations and the

1 timeline for the submission of all of those is  
2 staged. So, the imports, which when you are  
3 applying, you are importing signals say from  
4 January 1 to December 31. That list will be  
5 due at the end of November, which will still  
6 give the Commission 30 days to review those  
7 before the end of the calendar year.

8 And then the live racing, the export  
9 signals, so sending the signal from this track  
10 to other tracks and outlets in other areas  
11 we'll get those 30 days before they commence  
12 live racing, which still gives the Commission  
13 30 days to look at those. Rather than having  
14 everything due at one time with the  
15 application, we thought it was fair to spread  
16 the love, if you will there. I think the  
17 expectations and timeline for submission  
18 provides clarity for Racing Division staff, the  
19 licensees and the horsemen group stakeholders  
20 alike.

21 Item 37, it just highlights 205 CMR  
22 6.20, just general account wagering. That  
23 regulation has been in effect for some number  
24 of years, but it did not appear to be expressly

1 required that that documentation be submitted  
2 with the applications in years prior.

3 And finally, in item 38, some of  
4 this appeared in previous applications. And  
5 we've added some new language from the RCI  
6 model rules. And that actually will be  
7 incorporated in part of our Phase 4 rulemaking  
8 process this winter. But the majority of those  
9 questions have been seen before by the  
10 applicants.

11 So, I'm happy to answer detail  
12 questions, policy questions, whatever you like.

13 COMMISSIONER CAMERON: Director, I  
14 know we talked about this last year the fact  
15 that this application had not been modified or  
16 updated in a number of years. We made some  
17 very obvious changes last year because of a  
18 time issue of not having time to review the  
19 whole application.

20 It seems to me that this is a  
21 complete review. And that best new model  
22 rules, as well as other application from other  
23 racing commissions have been reviewed as far as  
24 language or questions that may be appropriate

1 that were not part of our process.

2 So, is this the total review or is  
3 this a work in progress, some changes here, not  
4 all? How would you describe this document?

5 DR. DURENBERGER: I think absolutely  
6 that this is a work in progress. There are how  
7 many items did we have, 38? Thirty some of  
8 which were brought forward previously. I think  
9 that as we go forward that duties of licensees  
10 that's something that we are looking at for our  
11 Phase 4 rulemaking process over the winter.

12 So, we are looking to revise our  
13 duties of licensees. And I think that next  
14 year's application for live dates in 2015 would  
15 reflect whatever regulatory changes we make  
16 over the winter. So, I think it's very much a  
17 work in progress. I think we brought forward  
18 what was there and we added some new.

19 COMMISSIONER CAMERON: Are we the  
20 first ones to see this document? Or has there  
21 been any input or opportunity for the tracks to  
22 see these changes and weigh in with the  
23 changes?

24 DR. DURENBERGER: There's been some

1 discussion of some the changes and expectations  
2 particularly regarding the simulcast approval.  
3 And there's been some discussion about the  
4 items that appeared in item number 34 appearing  
5 as well, but nothing formal.

6 CHAIRMAN CROSBY: But we haven't had  
7 a formal comment period, yet, which we talked  
8 about last time which I think is important.

9 I've heard you talk in other  
10 contexts about trying to remove impediments to  
11 applicants and to make it easier and to  
12 encourage people to come here. Does this fit  
13 in any way? Is this not continuum or is this a  
14 different topic from what you've been referring  
15 to when you talk about removing impediments for  
16 applicants?

17 DR. DURENBERGER: The context of  
18 removing the business impediments, I think, the  
19 majority of the time that we've discussed that  
20 has been in relation to the legislative report,  
21 the changing the review of the 128A and 128C, I  
22 think it was section 104 of the Gaming Act that  
23 mandate that we were given --

24 CHAIRMAN CROSBY: Right.

1 DR. DURENBERGER: -- in terms of  
2 reviewing the law. So, part of that 128D  
3 report that's probably the context where it's  
4 come up previously.

5 CHAIRMAN CROSBY: There's nothing  
6 here that -- This is pretty much standard  
7 operating procedure in best practice  
8 jurisdictions. If we looked at their  
9 application form, it would look very, very  
10 similar to this, I gather?

11 DR. DURENBERGER: It's interesting.  
12 We did a 38-state survey and pulled" the  
13 application procedure for live racing dates in  
14 all of those jurisdictions. And it is amazing  
15 or not amazing perhaps of the lack of  
16 uniformity in the license application process.

17 Part of that is colored by there are  
18 states that have multiple racetracks competing  
19 for dates, the same dates. So, we see that in  
20 a couple of states right now where there is  
21 significant angst over who gets what dates.  
22 So, I think that colors the application  
23 process. There are other states where there's  
24 only one track in town. So, I think part of

1 that is informed by the context of racing in  
2 that state.

3 The requirements that we've added  
4 are not unique to Massachusetts. We've seen  
5 them reflected in other applications, in  
6 applications that we think were good  
7 applications. We may have some surplus  
8 language here that could be removed.

9 CHAIRMAN CROSBY: What does that  
10 mean, like what?

11 DR. DURENBERGER: There may be some  
12 things in here that have been asked because  
13 they've always been asked but perhaps don't add  
14 substance to the application.

15 CHAIRMAN CROSBY: Which might be the  
16 kind of feedback you'd get from the public  
17 comment period too.

18 COMMISSIONER ZUNIGA: Or because  
19 they're in the statute, in the current statute  
20 128A or C.

21 DR. DURENBERGER: Expressly items  
22 one through seven are required by statute and  
23 that's it.

24 COMMISSIONER ZUNIGA: I was going to



1 talk about the \$125,000 bond. That amount is  
2 specifically in the statute.

3 DR. DURENBERGER: The amount is in  
4 the statute, yes, it is.

5 And I think we looked at increasing  
6 that in that 128A report.

7 COMMISSIONER STEBBINS: Just looking  
8 at some of the questions, you and I talked  
9 about some of the changes earlier, page eight  
10 letter (n), are all grounds in good order and  
11 properly maintained. Is that necessarily the  
12 applicants attesting to the fact that the  
13 grounds are safe?

14 It appears to me to be kind of a  
15 subjective throwaway question. I would see an  
16 inspector possibly answering that question more  
17 than the applicant. Then kind of finding a  
18 duplicative question on page seven letter (i).  
19 But again, as I generally looked over these two  
20 pages and maybe to the Chair's point of getting  
21 feedback from the applicants, how much of this  
22 stuff changes from year to year to year? And  
23 is it necessary to keep requiring the same  
24 questions about parking capacity and things

1 like that?

2 And maybe somehow encompass some of  
3 this information into what plans or upgrades or  
4 changes do they plan to make to the property.  
5 But everything else seems to be probably can  
6 just cut and paste from my application the  
7 previous year into this.

8 DR. DURENBERGER: Which is why we  
9 didn't think there was an additional burden on  
10 the applicant if we kept those questions at  
11 this point. But to your point about question,  
12 what big long question is this? This is item  
13 number 25, yes. So, some of the items in item  
14 number 25 to your point, yes. I think they're  
15 attestation statements.

16 Are all grounds in good order,  
17 properly maintained or are all buildings  
18 properly maintained. You could get at some of  
19 that as you had suggested at one point about  
20 asking the question have there been any  
21 building or code violations. So, that may be a  
22 substantive change that makes sense, gets at  
23 the same thing but it has some sort of  
24 documentation or backup for the answer as

1       opposed to a more subjective attestation.

2               COMMISSIONER MCHUGH:   Which nobody  
3 would answer no.

4               CHAIRMAN CROSBY:   Right.  What is  
5 the timeline?  When do you need your  
6 application form for the next meet?

7               DR. DURENBERGER:   So, the statute  
8 requires the response by October 1.

9               CHAIRMAN CROSBY:   The response to  
10 the application?

11              DR. DURENBERGER:   The response to  
12 the application.  So, we're entering a window  
13 of time where I would imagine our applicants  
14 are starting to look at compiling their  
15 information.

16              CHAIRMAN CROSBY:   Okay.  So, I think  
17 the idea of having a couple of weeks comment is  
18 important, but there's some interesting  
19 observations being made, the kind of points  
20 you're making.  And it sounds like Commissioner  
21 McHugh has a bunch too.

22              But it may be in the interest of  
23 time -- I'm not sure, do we want to spend a  
24 little more time not so much here, but maybe

1 here, but just over the course of the next  
2 three or four weeks or month to do a real  
3 perfecting draft and think through some of  
4 these issues that you all have raised? Or this  
5 is going to be very good and 95 percent where  
6 we want to go. Should we just go with this and  
7 let the perfecting take place in the next  
8 round? Aside from the public comment, which I  
9 think is a given, we should and will do that.

10 COMMISSIONER CAMERON: It would seem  
11 to me that right now during the peak of racing  
12 season with both tracks, there's an awful lot  
13 of work to be done by the racing staff. And  
14 that this would be a very good project to  
15 undertake during the dark months, which this  
16 year we had to fill with hiring staff and  
17 training staff making regulation changes. So,  
18 it's been a very busy time this year all  
19 around.

20 This would seem to me that rather  
21 than try to rush this now, this is a work in  
22 progress and that some good changes are made,  
23 but there are certainly more to make. That's  
24 just my thought on the timing.

1                   COMMISSIONER STEBBINS: I would  
2 agree with that. I think that some of the  
3 things that Director Durenberger has added to  
4 it are certainly well warranted and sufficient.  
5 It may be kind of, I don't want to categorize  
6 it as nit-picky, but some of the other things,  
7 which again, year to year is probably just  
8 general information that they cut and paste  
9 from one application to the other. It could be  
10 refined during that kind of dark time when the  
11 tracks are not in operation not doing their  
12 day-to-day business.

13                   COMMISSIONER MCHUGH: That would  
14 mean using last year's application again this  
15 year?

16                   CHAIRMAN CROSBY: No, no, using this  
17 one, but not going any further other than the  
18 public comment period.

19                   COMMISSIONER MCHUGH: Oh, I see. I  
20 misunderstood.

21                   CHAIRMAN CROSBY: Going with this  
22 one rather than tasking the staff with a really  
23 intensive next three weeks.

24                   COMMISSIONER MCHUGH: I agree with

1 that. There's some typos. There's some minor  
2 things that I'd like to mention off-line. But  
3 they're mechanical kinds of things and I think  
4 that we've all seen some of those. But apart  
5 from that, I think we ought to move forward  
6 with this. I agree.

7 CHAIRMAN CROSBY: Okay.

8 COMMISSIONER STEBBINS: Kudos to you  
9 for keeping us current and incorporating some  
10 of the new provisions. We need to have them.

11 CHAIRMAN CROSBY: We do, Director  
12 Driscoll want to make an appeal for comment on  
13 the form and most of our constituents are here  
14 in the room anyway. So, that you could then  
15 at our next meeting maybe finalize it,  
16 something like that. Go for a couple weeks and  
17 then finalize it at our next meeting and then  
18 the applicants would have the finals for  
19 September to get ready for October 1.

20 DR. DURENBERGER: If I may just make  
21 a comment. Very reluctant to revise the entire  
22 document given the very fluid and dynamic  
23 nature of horseracing in the industry right  
24 now, which is why we did not get to the meat of

1 all the questions.

2 It was what do we need to add in  
3 light of current circumstances. Then with the  
4 thought of doing the review over the winter in  
5 conjunct with some rulemaking process. If we  
6 open for public comment, I do fear that --  
7 because there's no doubt that substantive  
8 changes need to be made. So, if we go to  
9 public comment, I think we're going to do that  
10 anyway. I think if we go to public comment, I  
11 think we're going to be revising. Maybe we  
12 won't get any public comments. I don't know.

13 But I do think there's a danger if  
14 we start to open it, then we need to open it.  
15 And to the extent that that means sort of  
16 reworking the whole document --

17 COMMISSIONER CAMERON: But I think  
18 we've set that stage saying we intend to do  
19 that during the months where there's time to do  
20 that. So, I think with that understanding we  
21 do not have to take every comment and  
22 incorporate. It can be a communication where  
23 yes, we will be looking at this.

24 So, I don't think we have to be

1 fearful of comments that may be very good but  
2 we're just not able to address them until the  
3 staff has the time.

4 CHAIRMAN CROSBY: Right.

5 COMMISSIONER MCHUGH: I think that's  
6 absolutely correct. And we may in the public  
7 comment period see some things in here that  
8 none of us saw that are easily fixable and  
9 quickly fixable and that we all agree should be  
10 done right now.

11 DR. DURENBERGER: Okay.

12 CHAIRMAN CROSBY: I agree with that.  
13 Okay, anything else? Great, thank you.

14 COMMISSIONER MCHUGH: We want to do  
15 this -- If we want to approve this at our next  
16 meeting, which is the 22nd, I guess, right, we  
17 ought to have the comment period closed two or  
18 three days before that so that at least so that  
19 the staff can digest the comments, make the now  
20 changes, create the file for think about it  
21 later changes and come back with the final  
22 document for approval on the 22nd, right?

23 CHAIRMAN CROSBY: Yes.

24 COMMISSIONER MCHUGH: Okay.



1 DR. DURENBERGER: That would  
2 conclude the Racing Division report.

3 CHAIRMAN CROSBY: Thank you, very  
4 much.

5 COMMISSIONER CAMERON: Thank you.

6 CHAIRMAN CROSBY: General Counsel  
7 Blue, et al, and Deputy Counsel Grossman,  
8 General Counsel Grossman, you go boy.

9 MS. BLUE: The fun is just  
10 beginning.

11 CHAIRMAN CROSBY: Yes, right.

12 MS. BLUE: We are here today to talk  
13 to you about the next step in the regulations.  
14 And what we are discussing with you today is  
15 the priorities that you would like us to follow  
16 in terms of what we do in the next phase.

17 What you have in your package is  
18 basically, I think, all of the remaining  
19 regulations that need to be drafted. They will  
20 probably be covered in roughly two or three  
21 more phases. So, we have some ideas on what we  
22 think we should take up at the next go around,  
23 but we also want your guidance on where you  
24 want to go forward. Mr. Grossman will speak to

1 what we think comes next, and then we'll get  
2 started drafting after that.

3 CHAIRMAN CROSBY: Before you say  
4 that, tell us who all has weighed in on what  
5 you're about to recommend.

6 MR. GROSSMAN: Sure. What we have  
7 before you is essentially a roadmap. And what  
8 we'd like to do is sit down and talk about  
9 where this roadmap should take us.

10 To that end, we have begun  
11 communications with our gaming consultants to  
12 help us develop this. And they are working on  
13 some issues that I will touch upon in a moment  
14 and will have some answers for us in the very  
15 near future.

16 We're also fortunate, as we all  
17 know, to have as part of our full-time staff  
18 now two individuals Mr. Acosta and Mr. Vander  
19 Linden who are quite knowledgeable in their own  
20 respective areas and others. And it would  
21 certainly be beneficial to include them as a  
22 part of this process so that they can almost  
23 take the lead in developing their respective  
24 areas.

1           And certainly, we will work with  
2           them to help shepherd that process to make sure  
3           that within the areas of problem gaming and in  
4           licensing and in all of the other areas that  
5           those tentacles from those subjects matters  
6           reach out to that we have the best possible set  
7           of regulations for Massachusetts.

8           So, what we have set out to do then  
9           is first craft this grid, which is similar to  
10          the one we created in the last phase of  
11          regulations. I think this round of the  
12          regulatory process, though procedurally will be  
13          identical as far as filings with the Secretary  
14          of State and public hearings and things of that  
15          nature are concerned, has some distinctions  
16          from the first round -- It was actually the  
17          second round, the first one I was involved with  
18          -- where these regulations that we are working  
19          on now are not necessarily unique to  
20          Massachusetts. The last round were entirely  
21          unique to Massachusetts when it came to host  
22          community, surrounding communities, those types  
23          of agreements and issues of that nature.

24          Here the issues are slightly

1 different. There will be what we envision to  
2 be a slightly different drafting process  
3 employed here. And what we have asked our  
4 gaming consultants to do is to take a look at  
5 these issues and advise as to which  
6 jurisdictions may have the best set of  
7 regulations or guidelines for us to model our  
8 regulations after.

9           And they've begun that process and  
10 we hope to be able to sit down with them and  
11 get some clearer answers in the very near  
12 future. They have however, identified a few  
13 areas in which the Commission's guidance will  
14 be beneficial in the first instance before we  
15 sit down to try to draft regulations, and there  
16 may certainly be more.

17           So, our thought was that at some  
18 point, we can talk about them now if that is  
19 your preference, but what may be helpful would  
20 be for us to frame a couple of policy questions  
21 for the Commission to consider in the next  
22 couple of weeks, if we have time to do it. And  
23 they'll be something along the lines of the  
24 ones you've already considered.

1           One of them for example is what  
2           model of internal control regulations should we  
3           have? There are a couple of schools of thought  
4           as was pointed out by our consultants already.  
5           There's the New Jersey approach, which is a  
6           very comprehensive and detailed set of  
7           regulations governing everything relative to  
8           security, surveillance, operations of games and  
9           the like.

10           And then there's the Nevada  
11           approach, which is in its own right very  
12           prescriptive. It's not as if it's a  
13           performance-based type set of requirements  
14           where they leave the licensees on their own to  
15           come up with their own set of controls. But  
16           they're less specific than New Jersey.

17           In what appears to be the Nevada  
18           approach, I've only been able to look at it on  
19           a very kind of overview type level, there they  
20           say you have to have at least these controls in  
21           place. You submit to us your internal control  
22           system, and we'll tell you whether that's okay.  
23           As opposed to New Jersey, where they say you  
24           must have each of these controls in place.

1           So, that's an issue that I think the  
2 Commission will really have to discuss and wrap  
3 its arms around to figure out which approach  
4 will work better here. And my hope would be to  
5 be able to get you copies of these types of  
6 regulations so you could see precisely what we  
7 are talking about and what the effect would be.

8           By and large, I don't think the  
9 Massachusetts statutes get into any of these  
10 details. So, I think these decisions are  
11 really entirely up to the Commission. And it  
12 would certainly be helpful to have some  
13 consultant input on this. And I know Mr.  
14 Acosta is actually quite knowledgeable in this  
15 area as well.

16           So, hopefully maybe at the next  
17 meeting or the meeting after we can frame a  
18 couple of policy questions including the  
19 internal controls, rules of the specific games  
20 although we had that set up for the future.  
21 It's not an urgent issue. But whether you want  
22 to prescribe exactly how blackjack is played in  
23 Massachusetts or you want to tell the licensees  
24 that they just need to post what the rules are

1 so everyone knows what the rules are. Again,  
2 different jurisdictions handle that in  
3 different ways.

4 And there are certainly a few other  
5 issues that are likely to come up along those  
6 lines that we can present to you for some  
7 guidance, just so we can set out to draft the  
8 rules. Of course, we're not bound by that.  
9 You could always change your mind as to which  
10 direction we want to go in.

11 Those are some of the issues that  
12 have come up at this point. We've again  
13 provided this outline of where we'd like to go.  
14 I think even this outline will need a few  
15 tweaks here and there. It's intended to be a  
16 fluid document, but just I thought it was  
17 helpful the first time around to give us an  
18 overview as to where we are going here, and  
19 also, so everyone has an understanding of who  
20 is ultimately responsible for which sections.

21 So, to that end at this point if any  
22 of the Commissioners have any particular  
23 sections that you have an interest in being a  
24 part and developing at this stage, we would

1 welcome your input there or in the future. You  
2 certainly don't have to make that election  
3 right now. This is kind of the time to start  
4 thinking about those types of issues as well.  
5 That's pretty much where we are.

6 COMMISSIONER STEBBINS: A couple  
7 quick points. First of all, this is some good  
8 work. It's very comprehensive. It's organized  
9 well. I've expressed to Director Day I'm happy  
10 to be involved working with David on the  
11 licensing issue because I think that gets to  
12 obviously job creation and business impact.

13 Two quick notes on page 27, it's  
14 just a small tweak but under number seven,  
15 utilizing minority women and Veteran owned  
16 businesses. You excluded Veterans in there,  
17 but it's specific in the statute. Then looking  
18 on further where it gets to licensing of gaming  
19 schools, I would recommend moving that up.

20 We've already had an instance where  
21 the gaming school was looking to get licensed.  
22 I think we know the timeframe. It's probably  
23 closer to opening day of the casino, but I  
24 think there are enough good examples in



1 existing regulations from other jurisdictions.  
2 That would be a pretty easy piece to knock off  
3 and not keep any of these private ventures kind  
4 of hanging in limbo in terms of seeking a  
5 license to operate in Massachusetts. It's  
6 something you could probably put Ms. Griffin  
7 on.

8 MR. GROSSMAN: I think that's  
9 exactly right. And the question, the threshold  
10 question is whether you want to get into  
11 regulating them at all. Or just leave it to  
12 DPL here to regulate as a trade school, which  
13 some states do.

14 COMMISSIONER MCHUGH: I agree that  
15 we need to resolve this quickly. We've already  
16 had these discussions with DPL. I think there  
17 is a question as to whether or not we want to  
18 regulate the schools or whether we want to let  
19 DPL regulate the schools, and use a diploma  
20 from the schools or something else as a  
21 criterion for licensing. And perhaps the  
22 curriculum -- have something to say about the  
23 curriculum that's required.

24 But I think we really need to be

1 careful about, as we've discussed in the past,  
2 jumping full board into the licensing piece  
3 because that sets up a whole regulatory  
4 mechanism that ultimately would run in parallel  
5 with one that DPL already has pretty well  
6 established. But I think that ought to be a  
7 policy question that we decide early on. I  
8 would recommend that. I would like to have  
9 that discussion.

10 CHAIRMAN CROSBY: Other comments or  
11 observations?

12 There's a couple of different  
13 issues. One is the priorities of getting these  
14 done. It's a lot of work, obviously. And some  
15 of the stuff is more urgent than others. And  
16 this is probably self-evident and it's probably  
17 on Director Day's emerging critical path chart,  
18 but certainly employee licensing -- section C,  
19 employee licensing, B, vendor licensing, I,  
20 problem gaming for notice reasons and J, Region  
21 C modification, and as Commissioner Stebbins  
22 said D, gaming schools, those are ones that are  
23 going to be necessary to have resolved as soon  
24 as January 1 of next year.

1           Because the day we award a slot  
2           license is the day vendors, licenses,  
3           candidates for jobs, etc. will need to be in  
4           place. And Region C is obvious. And there may  
5           be others. I've just done sort of a quick  
6           review. It seems to me those really have to be  
7           done and get in the process quickly. That's  
8           one issue is scheduling the priorities of  
9           drafting.

10           The second then is the issue of  
11           where are there major policy questions where  
12           the Commission's deliberations need to precede  
13           the reg. writing? Again, like Commissioner  
14           Stebbins and Commissioner McHugh started  
15           talking about, there's the one we talked about  
16           on the street the other day. I can't even  
17           remember what that was.

18           MR. GROSSMAN: That was the internal  
19           control question.

20           CHAIRMAN CROSBY: Right. The nature  
21           of the internal controls, there's the issue of  
22           a lab. Do we want a lab? I think Director Day  
23           has kind of has a predisposition, which is not  
24           the same as the predisposition we've had. But

1 if we're going to have one, we need to know it  
2 pretty soon.

3 And then there were a series of  
4 questions, I think, left over from our other  
5 round of public policy questions, which we  
6 postponed. And those need to be resurfaced, if  
7 I'm not mistaken, right? There were a bunch of  
8 them that we didn't get to.

9 COMMISSIONER ZUNIGA: Some, I  
10 wouldn't characterize them as a bunch.

11 COMMISSIONER CAMERON: We thought  
12 they were better suited to go to this phase.

13 CHAIRMAN CROSBY: Whatever there  
14 were, however many of them there were, there  
15 were some. But I think a fairly systematic  
16 analysis of what are the big policy questions  
17 in each of these areas that really need to be  
18 decided before you do any real reg. writing is  
19 important.

20 Some of it will come to our own  
21 minds, but I think the consultants would be  
22 able to contribute to that. They contributed  
23 to the policy questions last time as well. So,  
24 I would say some kind of systematic

1 prioritization of drafting (A), and (B)  
2 prioritization of policy questions in front of  
3 us that we can deliberate on soon is important.

4 MR. GROSSMAN: Okay.

5 COMMISSIONER MCHUGH: A whole bunch  
6 of them in problem gaming as well in policy  
7 questions.

8 CHAIRMAN CROSBY: The problem gaming  
9 one is in one sense not so urgent time wise,  
10 but I think it's urgent from the standpoint of  
11 notice to the community that this is something  
12 that we care about and making very visible.  
13 So, it's urgent for a different reason.

14 COMMISSIONER ZUNIGA: And I would  
15 argue our research project that we have  
16 undertaken that some of it overlaps.

17 CHAIRMAN CROSBY: Right. Anybody  
18 else, other thoughts?

19 COMMISSIONER MCHUGH: No, I think  
20 this is a great start and a matter of detail.  
21 We've got regulations on roulette balls.

22 COMMISSIONER CAMERON: Do you have  
23 an opinion?

24 COMMISSIONER MCHUGH: I don't. I

1 don't have an opinion. I'm not sure there's a  
2 lot of -

3 CHAIRMAN CROSBY: I bet he will. I  
4 bet he will later on.

5 COMMISSIONER MCHUGH: I will.

6 CHAIRMAN CROSBY: Okay, great.  
7 Thank you.

8 COMMISSIONER CAMERON: Good work.

9 CHAIRMAN CROSBY: Ombudsman Ziemba,  
10 item number six.

11 MR. ZIEMBA: Thank you, Mr.  
12 Chairman, members of the Commission. So, today  
13 I was hoping to give you an update regarding  
14 community outreach efforts by all of our  
15 applicants and the status of host community  
16 agreements, scheduling referenda and technical  
17 assistance questions involving the RPA's.

18 First, we'll go into the status of  
19 host community agreements. I'll report that  
20 all Category 2 applicants have signed host  
21 community agreements, which is great because  
22 the deadline for signing them was this past  
23 Monday, I believe. So, it's good that none  
24 remain. Elections have been scheduled for each

1 of these. There is one scheduled for August 13  
2 in Raynham. Then we have several in September,  
3 Penn National September 21. And Cordish and  
4 MGE both have elections scheduled for September  
5 24.

6 For Category 1 applicants, three out  
7 of the --

8 CHAIRMAN CROSBY: Has there been a  
9 decision of what Plainville is going to do?

10 MR. ZIEMBA: I've read public  
11 reports that there's a meeting scheduled for  
12 Monday on whether not they want to proceed with  
13 the election or not.

14 Obviously, our regulations govern  
15 the ability of applicants to move toward the  
16 second phase of our licensing process. And a  
17 determination of suitability is a prerequisite  
18 toward that. But it's my understanding is that  
19 the town wants to consider whether or not to  
20 move forward on Monday.

21 CHAIRMAN CROSBY: Okay.

22 MR. ZIEMBA: For Category 1, three  
23 out of the six applicants have signed host  
24 community agreements at least as of yesterday,

1 to the best of my understanding. Wynn, MGM and  
2 Hard Rock have each signed agreements.

3 It's been reported that Suffolk is  
4 in negotiations. Foxwoods, Milford Board of  
5 Selectman just recently voted to move forward  
6 on host community agreement negotiations. And  
7 Mohegan, there have been public reports that a  
8 host community agreement should be executed  
9 within a matter of weeks, one to two weeks  
10 according to the town manager.

11 We recently sent an email to all  
12 Category 2 applicants reminding them of the  
13 Commission's requirement that an ENF  
14 certificate from the Secretary of Environmental  
15 Affairs is a prerequisite to our application.

16 I mention that because there is a  
17 very impending deadline for the submission of  
18 materials before -- in order to ensure that an  
19 ENF certificate can be achieved by our  
20 application deadline. August 15 is the next  
21 date by which all applicants will need to  
22 submit their paperwork to the Environmental  
23 Secretary. We note that Cordish, PPE Casino  
24 just recently filed.



1           There are other obviously some local  
2           approvals that are outstanding. Of note, in  
3           the newspapers, there's a zoning determination,  
4           which is a town meeting vote that follows on  
5           August 20. And as a reminder, there is a  
6           supermajority requirement for approval of  
7           zoning changes before town meeting and other  
8           bodies.

9           CHAIRMAN CROSBY: Is that it? If  
10          there's not a supermajority vote, if there's  
11          not a two-thirds vote, it's done, dead, there's  
12          no other mechanism?

13          MR. ZIEMBA: The statute says that  
14          there is a two-year period after a zoning  
15          change fails before a town meeting, unless  
16          there is a planning board approval. So, what  
17          that means is subject to some debate. But  
18          potentially, what could happen is that a  
19          community could go back to the planning board,  
20          get a planning board report that they are in  
21          favor of a zoning change and come back before  
22          that two-year period.

23          CHAIRMAN CROSBY: That's within our  
24          statute.

1 MR. ZIEMBA: No, that's within the  
2 zoning statute.

3 CHAIRMAN CROSBY: Oh, okay. That's  
4 the only appeal process in effect of the zoning  
5 decision?

6 MR. ZIEMBA: Right. And our  
7 regulation requires that they have zoning  
8 consistency as part of their application.

9 CHAIRMAN CROSBY: Right, right.

10 MR. ZIEMBA: And why we did that  
11 frankly, was because of the supermajority  
12 requirement that exists.

13 CHAIRMAN CROSBY: Right, right.

14 MR. ZIEMBA: As to surrounding  
15 community outreach, we've recently asked for a  
16 written narrative from all of our applicants.  
17 That's included in your packet. Applicants  
18 were asked to generally update the Commission  
19 on their outreach to potential surrounding  
20 communities. Defined rather broadly to include  
21 not only those committees that the applicant  
22 will likely determine to be a surrounding  
23 community but what outreach is going on  
24 regarding other communities which may be

1 interested in the developments.

2 And we asked them to specifically  
3 tell us about how they plan to utilize the  
4 services of regional planning agencies either  
5 individually or regionally.

6 Let me just briefly describe the  
7 difference between the two. As you know, the  
8 Commission has approved of a regional technical  
9 assistance program involving RPA's where we  
10 determined that there'd be great efficiencies  
11 for both applicants and communities in  
12 approaching technical assistance regionally.

13 But just as a community can ask an  
14 applicant for a private consultant to do  
15 technical assistance, there's nothing in our  
16 regulations that would prohibit them from  
17 utilizing a regional planning agency for their  
18 individual technical assistance needs. And  
19 there might be advantages to a community doing  
20 that because of procurement reasons as they're  
21 a public body, they don't have to have the lag  
22 time with procurement.

23 So, the reports spell out that two  
24 of our Category 1 applicants are planning to

1 utilize the services of the regional RPA  
2 approach. Milford has signed a letter of  
3 agreement and the contract documents are  
4 imminent.

5 And Palmer will begin its process  
6 soon after its host community agreement is  
7 executed. We have a revised scope that we  
8 forwarded to the applicant shortly of what we  
9 hope that the scope of services could include.

10 Some communities near the Wynn  
11 facility have had conversations with MAPC about  
12 utilizing its services. Wynn has reported that  
13 they do not expect to utilize the services of  
14 the RPA.

15 MGM has had discussions with a  
16 number of municipalities that support a  
17 regional approach. And MGM plans to discuss  
18 with the PVPC how such an approach could work.  
19 And hopefully, that will occur soon.

20 Hard Rock has had numerous  
21 conversations with the Commission and with the  
22 PVPC regarding the utilization of regional  
23 planning assistance and remains open to utilize  
24 the services of the PVPC if communities so

1        desire.  However, they have had active  
2        conversations with communities and plan to  
3        continue to do so.

4                Suffolk plans to work directly with  
5        potential surrounding communities and is  
6        reported that a number of the communities that  
7        they have spoken with desire to just work on  
8        their own or through their own teams rather  
9        than through the regional planning agency.

10                CHAIRMAN CROSBY:  Do you know --  
11        Suffolk in its write-up didn't say anything  
12        about surrounding communities other than they  
13        were talking with them.  Are they actually in  
14        discussions with specific surrounding  
15        communities, do you know?

16                MR. ZIEMBA:  Yes, they are.  And  
17        there have been some discussions about the  
18        technical assistance needs of some of those  
19        communities, whether or not they would utilize  
20        the RPA in the area.  And as of the latest  
21        date, I believe that they are going to use  
22        private resources rather than the regional  
23        planning agency, to my understanding.

24                In regard to the Category 2

1 applicants, we believe that Mass. Gaming and  
2 Entertainment has reported that they may have  
3 de minimis impact on potential surrounding  
4 communities, but they do plan to meet with the  
5 CMRPC shortly. I do want to note one  
6 correction from the report that they submitted.  
7 They noted that they had not been contacted by  
8 any communities. As of a day or so ago, they  
9 have been contacted by communities and plan to  
10 reach out to those.

11 Raynham Park plans to utilize the  
12 services of RPA's either on an individual  
13 approach or on a regional approach and has had  
14 at least one meeting with a community in tandem  
15 with the Commission and with the RPA on  
16 technical assistance.

17 Penn National and Cordish, according  
18 to their reports, do not plan to utilize the  
19 services of an RPA.

20 In general, across all Category 1  
21 and Category 2 applications, there's been a big  
22 strong uptick recently in communications and  
23 outreach to communities. As we discussed  
24 before, a lot of applicants have discussed that

1 they really didn't want to fully engage on the  
2 surrounding community question until after  
3 they've had substantial conversations or they  
4 reached agreement on their host community  
5 agreement.

6 Now that we have most of those  
7 concluded or nearly completed, there's been  
8 much more of an outreach. However, I will note  
9 that obviously we have a deadline that is  
10 rapidly approaching for the Category 2  
11 applicants. October 4 is right around the  
12 corner. So, that does provide us with a little  
13 bit of concern regarding the status of these  
14 conversations. Can they get these  
15 conversations in before that period, before the  
16 end of that period?

17 We've had a number of conversations  
18 with the applicants. We've expressed to them  
19 how important the outreach to communities is to  
20 the Commission. How this is going to be a  
21 significant factor in the reviews of each of  
22 one of their applications. And we urge them to  
23 not only contact those communities that they  
24 believe will be potential surrounding

1 communities but to be in contact with other  
2 communities so that they can understand the  
3 range of impacts or lack of impacts.

4 What we're concerned about is that  
5 communities at the end of the summer may  
6 potentially start focusing on this with the  
7 impending deadline. And that there will be a  
8 very substantial uptick of further conversation  
9 needed and potentially a lot of confusion at  
10 that late hour.

11 So, we are urging all applicants to  
12 do more substantial work with all communities,  
13 not just those communities that they believe  
14 are potential surrounding communities.

15 There are many studies that are in  
16 process at the local level. There are regional  
17 studies that have been contemplated by  
18 applicants that will be utilized both in the  
19 surrounding community discussions but also just  
20 in the interactions with the host communities  
21 and surrounding communities.

22 In addition, with the lateness of  
23 the hour of some of the Category 2 applicants,  
24 host community agreements some of them, some of



1 the local studies for the host community are  
2 still ongoing in regard to infrastructure and  
3 some of the other impacts. So, that has some  
4 impact on what you can discuss at the  
5 surrounding community level.

6 I do note that even though the short  
7 timetable causes some concern regarding the  
8 Category 2 applicants, by their nature the  
9 impacts that are to be expected with a Category  
10 2 applicant are far less than what one would  
11 expect with a Category 1 applicant.

12 For example, if you just take a look  
13 at some of the average trips that could be  
14 experienced at a Category 2 applicant, you  
15 could have the daily trips in the small  
16 thousands and the 4000, 5000, not small  
17 obviously to potential surrounding communities.  
18 But in comparison to the number of average  
19 trips for Category 1 facilities, which could  
20 reach 35,000 trips a day. It's a matter of  
21 scale between the two different classes of  
22 facilities.

23 Even the number of employees, the  
24 number of employees expected at Category 2

1 facilities can be 300, 400, 500. And the  
2 number of employees at a Category 1 facilities  
3 could be upwards of 4000 and more, which  
4 obviously has impacts on traffic and all the  
5 other concerns, housing concerns, etc.

6 So, even though the short timetable  
7 should cause us a little bit of concern, I do  
8 believe that the communities that are most  
9 likely to be impacted know that they are most  
10 likely to be impacted and have been energized  
11 to have those conversations with the  
12 applicants. But there may be other communities  
13 that might be impacted to a lesser degree that  
14 perhaps have not been as active as they might  
15 need to be given the shortness of the  
16 timetable.

17 One thing that I put before your  
18 consideration is that because of the short  
19 timetable, potentially what we might want to do  
20 is to send a notice to all communities to just  
21 urge them to be in contact with their  
22 applicants. And this follows similar guidance  
23 that the Commission has said verbally in the  
24 past.

1 I believe some of our  
2 communications, some of our written  
3 communications have urged all communities to  
4 try to understand impacts. But what we would  
5 like to do potentially would be to notify  
6 communities, remind them of the short timetable  
7 and give them the contact persons for each one  
8 of the facilities and urge them to contact them  
9 directly to understand both the impacts of the  
10 facility and potential lack of impacts of the  
11 facility so that everyone can be properly  
12 educated about the facilities.

13 Now, I will mention that we would  
14 need to be very careful that we do not create  
15 false expectations within those potential  
16 surrounding communities. It is very difficult  
17 to make any decisions on who would you send a  
18 notice to.

19 For example, what we would likely do  
20 is send a notice, because it is only a logical  
21 standard, be likely over inclusive to all  
22 geographically adjacent communities. By the  
23 placement of the facility, by the roadway  
24 configuration, it is likely that all geographic

1 facilities are not going to be surrounding  
2 communities to all facilities by its nature.

3 So, we would want to make sure in  
4 this type of a notice that we very clearly  
5 identify to communities that just because they  
6 are receiving this notice, just because they  
7 are being asked to contact the applicants that  
8 they would not be -- that they should not have  
9 any determination that they would become a  
10 surrounding community. That there is a process  
11 and that they should have these conversations  
12 to understand the impacts.

13 COMMISSIONER ZUNIGA: John, on that  
14 very note, it occurs to me that if we were to  
15 seek the help of the Mass. Municipal  
16 Association, for example, to help us remind  
17 maybe all of their membership, maybe that's  
18 over inclusive as it gets, that could be maybe  
19 one of a couple of ways to remind the general  
20 public that this is -- time is important.

21 MR. ZIEMBA: I think that's a good  
22 point. We've had active conversations with MMA  
23 throughout this whole process. We've had talks  
24 with them about the shortness of the process.

1 And they do a regular advisory to all members  
2 as well. We could do that.

3 One thing that for providing the  
4 contact information for each one of the  
5 communities, I wouldn't want to have a wide  
6 disbursal of that contact information to 351  
7 cities and towns. Just targeted obviously, to  
8 each one of the facilities so as not to swamp  
9 applicants with conversations that are not  
10 germane to their particular facility.

11 COMMISSIONER MCHUGH: The delicacy  
12 of the communication and the potential of  
13 misunderstandings is high. I am sure you'd be  
14 able to craft a letter. But picking up on  
15 Commissioner Zuniga's thought, is it possible  
16 to work through the RPA's and say have them  
17 include as part of their communication if you  
18 think you are a surrounding community or you  
19 anticipate you will seek to be a surrounding  
20 community, you should be now working with --  
21 and you can get the contact information by  
22 contacting you.

23 MR. ZIEMBA: That's basically the  
24 approach that we have been utilizing to date,

1 throughout our conversations and my verbal  
2 communications with cities and towns and RPA's  
3 as well. I think there's a general knowledge  
4 that people can contact us to provide that  
5 contact information.

6 Why I bring this obviously to the  
7 Commission, it's one of those decisions that  
8 could have serious unanticipated consequences  
9 where you might have a number of fights that  
10 might not be necessary.

11 But my concern is that given that  
12 it's the summer, given the shortness of the  
13 timetable that we could have a situation plague  
14 everyone right before the deadline where folks  
15 have said I never really received a contact  
16 from that applicant. And I don't really know  
17 what my rights are etc., etc.

18 Obviously, we've been sending out  
19 missives from the beginning of this process  
20 directly to communities. Our website has been  
21 available. We've done many, many regional  
22 approaches. And this is one additional  
23 protection that I think that may be in order.

24 But again, it could cause some

1 substantial difficulties on the other side  
2 where you might have communities that might not  
3 be tremendously impact feeling that they need  
4 to do something simply because they received a  
5 communication directly from the Commission  
6 asking them to do something.

7 COMMISSIONER MCHUGH: So, the  
8 problem is -- I think the problem is clearly  
9 there. But perhaps Commissioner Zuniga's  
10 suggestion would ameliorate that.

11 CHAIRMAN CROSBY: I like your  
12 suggestion of John crafting the letter  
13 properly, because I think that it's important  
14 that it come from us. Are there any  
15 surrounding communities agreements signed yet?

16 MR. ZIEMBA: Not to my knowledge.

17 CHAIRMAN CROSBY: And there's  
18 probably going to be 40 or something like that.  
19 There's not one signed yet.

20 COMMISSIONER ZUNIGA: Forty?

21 CHAIRMAN CROSBY: Or whatever there  
22 are.

23 COMMISSIONER MCHUGH: There' going  
24 to be a lot.

1                   CHAIRMAN CROSBY: There's going to  
2 be a lot. And it's going to put a huge monkey  
3 wrench in our project, in our process. So, I  
4 would be inclined towards carefully drafting  
5 the document to minimize the unintended  
6 consequences. I think coming from us to the  
7 persons of responsible positions in each of  
8 these towns is really important (A).

9                   And (B) it takes two to tango. I  
10 think we should do the same with the  
11 applicants. Probably be more direct with them.  
12 But I don't know whether it's an evaluation  
13 criteria or not. But if the applicant comes  
14 into us with a whole bunch of unresolved  
15 communities that have to go into arbitration or  
16 subsequent negotiations, we're going to say  
17 hey, that's not a very satisfactory situation.  
18 And I think they ought to know that.

19                   That's part of community support.  
20 If you've done your job to go out and make  
21 friends and influence people with your  
22 surrounding communities and you come in with  
23 your surrounding communities buttoned up that  
24 is a measure of your community support. And if



1 they come in without it buttoned up, that's a  
2 measure of the absence of same. So, I think we  
3 need to be pretty firm and pretty direct with  
4 both sides of the equation.

5 COMMISSIONER MCHUGH: I think that's  
6 right.

7 COMMISSIONER CAMERON: Part of the  
8 mitigation as well.

9 CHAIRMAN CROSBY: Yes, absolutely,  
10 right. Quality of mitigation, yes. So, they  
11 need to know that it matters to them as well as  
12 the surrounding communities need to know.

13 So, I think we have an evolving  
14 sense that we would encourage you to go ahead  
15 and be as clear and direct as you can, albeit  
16 being sensitive to the issues that people have  
17 raised.

18 MR. ZIEMBA: Okay. Good, thank you.

19 COMMISSIONER STEBBINS: John, quick  
20 question. You answered my one question on the  
21 ENF as it relates to the Category 2 applicants.  
22 Can you begin to even forecast a deadline for  
23 when our Category 1's are going to need to have  
24 their information into MEPA so they can begin

1 to work back from that date?

2 MR. ZIEMBA: Yes. I could do that  
3 and I could provide that to the Category 1's.

4 COMMISSIONER STEBBINS: The projects  
5 are obviously far more intense than the slots  
6 parlor and require a little bit more time.

7 MR. ZIEMBA: Correct. But the basic  
8 ENF filing requirement, it is basically as  
9 comprehensive or not as comprehensive as the  
10 applicant chooses it to be. There are some  
11 basic standards for the filing of the ENF, but  
12 it may not be as burdensome in some regards  
13 depending on how the applicant chooses to make  
14 that filing.

15 COMMISSIONER STEBBINS: And the  
16 level of detail that an applicant chooses to  
17 include or not include will be reflected in the  
18 ENF response because it will list all of MEPA's  
19 unanswered questions.

20 MR. ZIEMBA: That's right. And we  
21 have encouraged all of the applicants to be as  
22 inclusive as they can. Obviously, we have had  
23 a number of Category 1's already engaged in the  
24 ENF process Wynn, Suffolk, MGM, but there

1 remains some out there.

2 COMMISSIONER STEBBINS: And a quick  
3 question on one of the updates, in particular  
4 the one we got from Hard Rock. Down at the  
5 bottom, it talks about the establishment of  
6 regional partners fund whereby they're going to  
7 pay a certain percent of their gross gaming  
8 revenue to capital improvement projects into a  
9 fund that we would administer. Is that  
10 different than the community mitigation fund?  
11 Are they talking about a whole new entity?

12 MR. ZIEMBA: That's different. To  
13 my understanding that is different from the  
14 community mitigation fund. It would be  
15 separate and distinct, an add-on.

16 COMMISSIONER MCHUGH: Do we agree to  
17 that? Do we have a say in that?

18 MR. ZIEMBA: I think the agreement  
19 specifies to the degree that the Commission  
20 would agree to administrate that fund in the  
21 agreement. So, it remains obviously an open  
22 question.

23 The second matter that I bring to  
24 you is the West Springfield citizen notice,

1 which is included in your packet. Attorney  
2 Grossman and I have taken a look at the citizen  
3 notice. It is consistent with previous notices  
4 that the Commission has approved and is in  
5 conformity with 205 CMR 115.05 6(B) and  
6 therefore we recommend that you approve it  
7 subject to minor immaterial variations that  
8 could be approved by Executive Director Day and  
9 Counsel Blue.

10 CHAIRMAN CROSBY: So, we do need to  
11 vote for this?

12 MR. ZIEMBA: Yes.

13 CHAIRMAN CROSBY: Somebody want to  
14 do so?

15 COMMISSIONER MCHUGH: Sure. I move  
16 that we approve the proposed letter from the  
17 Mayor of West Springfield to the voters of West  
18 Springfield as set out in the materials in our  
19 packet with such minor and nonsubstantive  
20 changes as the Commission staff may deem  
21 necessary or appropriate.

22 COMMISSIONER CAMERON: Second.

23 CHAIRMAN CROSBY: Any other  
24 discussion? All in favor, aye.

1 COMMISSIONER MCHUGH: Aye.

2 COMMISSIONER CAMERON: Aye.

3 COMMISSIONER ZUNIGA: Aye.

4 COMMISSIONER STEBBINS: Aye.

5 CHAIRMAN CROSBY: Opposed? The ayes  
6 have it unanimously.

7 MR. ZIEMBA: Thank you.

8 CHAIRMAN CROSBY: Thank you,  
9 Ombudsman.

10 COMMISSIONER CAMERON: Thank you.

11 CHAIRMAN CROSBY: Item number seven,  
12 are there any other items that have popped up  
13 since we set the agenda that you'd like to put  
14 on the table?

15 We will then go to item number  
16 eight. The Commission will now go into an  
17 executive session pursuant to Mass. General  
18 Laws chapter 30A, section 21(a)(5) and 21(a)(7)  
19 and Mass. General Laws chapter 66 and Mass.  
20 General Laws chapter 4 section 7, sections  
21 26(f).

22 The Commission will not reconvene in  
23 open session at the end of the executive  
24 session. At the end of the executive session,

1 we will adjourn the overall meeting. Do I have  
2 a motion to go into executive session?

3 COMMISSIONER MCHUGH: So moved.

4 COMMISSIONER STEBBINS: Second.

5 CHAIRMAN CROSBY: I'd like to take a  
6 roll call vote of the Commission to go into  
7 executive session. Commissioner McHugh?

8 COMMISSIONER MCHUGH: Aye.

9 CHAIRMAN CROSBY: Commissioner  
10 Cameron?

11 COMMISSIONER CAMERON: Aye.

12 CHAIRMAN CROSBY: Commissioner  
13 Stebbins?

14 COMMISSIONER STEBBINS: Aye.

15 CHAIRMAN CROSBY: Commissioner  
16 Zuniga?

17 COMMISSIONER ZUNIGA: Aye.

18 CHAIRMAN CROSBY: And the Chair  
19 votes aye. Thank you. The Commission is now in  
20 executive session. All members of the public  
21 and any staff members not involved in the  
22 matters to be discussed are requested to leave  
23 the room. I'd ask that all video and audio  
24 recording and live streaming of the meeting be

1 shut off and the equipment removed from the  
2 room.

3

4 (Meeting moved to executive session at  
5 11:43 a.m.)

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1 ATTACHMENTS:

- 2
- 3 1. Massachusetts Gaming Commission August 9,  
4 2013 Notice of Meeting and Agenda
- 5 2. Massachusetts Gaming Commission July 25,  
6 2013 Meeting Minutes
- 7 3. Massachusetts Gaming Commission July 26,  
8 2013 Meeting Minutes
- 9 4. Pinck and Company Letter
- 10 5. Massachusetts Gaming Commission August 7,  
11 2013 Memorandum Regarding Recommendation  
12 to Select a Financial Advisor
- 13 6. Massachusetts Gaming Commission Racing  
14 Division August 9, 2013 Draft Letter to  
15 the Local Government Advisory Council  
16 Regarding Amendment of 205 CMR
- 17 7. Massachusetts Gaming Commission Draft  
18 Application for License to Hold or Conduct  
19 a Racing Meeting
- 20 8. Phase II (Parts 2 & 3) Regulations Grid
- 21 9. Status of Resort Casino Applicants  
22 Category 1 in Region A (Eastern Mass.)
- 23 10. Status of Resort Casino Applicants  
24 Category 1 in Region B (Western Mass.)



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ATTACHMENTS:

- 11. Timeline for Slots License
- 12. Massachusetts Gaming Commission August 7, 2013 Memorandum Regarding Update on Potential Surrounding Community Outreach
- 13. Citizen Notice to Voters of West Springfield

GUEST SPEAKERS:

Kevin Brown, Department of Revenue  
Jennifer Pinck, Pinck & Company

MASSACHUSETTS GAMING COMMISSION STAFF:

Catherine Blue, General Counsel  
Richard Day, Executive Director  
Dr. Jennifer Durenberger, Director of Racing  
Todd Grossman, Staff Attorney  
John Ziemba, Ombudsman

C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 10th day of August, 2013.



LAURIE J. JORDAN  
Notary Public

My Commission expires:  
May 11, 2018