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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #184

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

Lloyd Macdonald

Bruce W. Stebbins

Enrique Zuniga

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March 24, 2016 10:00 a.m.- 12:50 p.m.

MASSACHUSETTS GAMING COMMISSION

101 Federal Street, 12th Floor

Boston, Massachusetts

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

CHAIRMAN CROSBY: We are ready to call to order the 184th meeting of the Massachusetts Gaming Commission at 101 Federal Street at 10:00 on March 24.

Our first and principle item of business is led off by our Ombudsman, Mr. Ziembra.

MR. ZIEMBA: Good morning, Mr. Chairman, Commissioners. Commissioners, today we'll hear from petitioners from Mass Gaming and Entertainment in response to the presentation the Commission received on March 15, 2016 regarding the planned Wampanoag tribal casino in Taunton.

The Commission has repeatedly noted that information regarding the proposed Taunton facility would be important to its evaluation process in Region C. Information provided by MG&E today will also be an important part of the Commission's Region C evaluation.

To put this in context, as the Commission is fully aware the Commission's

1 current plan and policy, a policy it has  
2 applied in all licensing decisions thus far, is  
3 that it'll make a determination of whether to  
4 issue a license only after its review of the  
5 full gaming application and then only if it's  
6 review shows that issuance of a license would  
7 be beneficial to the Commonwealth given the  
8 totality of the then existing and foreseeable  
9 economic circumstances.

10 For the Region C review, this  
11 totality would include the potential for  
12 competition by a tribal casino. Our review  
13 process will include a careful evaluation of  
14 the status of competition in the region and the  
15 impact a commercial facility would have in the  
16 region and in the Commonwealth.

17 Following today's presentation, the  
18 Commission plans to conclude the host community  
19 hearing in Brockton on Monday, March 28.  
20 Members of the public and interested parties  
21 are invited to provide the Commission with the  
22 opportunity to hear any comments related to  
23 events occurring since the opening of this host  
24 community hearing on March 1.

1                   Such new events would include but  
2 not be limited to today's meeting and the  
3 information presented at today's meeting. I  
4 note that those wishing to provide comment may  
5 also do so in writing to the Commission by  
6 sending an email to MGCcomments@state.ma.us  
7 with MG&E Brockton in the subject line. All  
8 comments received via email will be made public  
9 and distributed to the Commission for its  
10 review.

11                   In regard to the public hearing, I  
12 note that we did receive materials over the  
13 last couple of days from the MG&E team. It is  
14 likely that the Commission has not been able to  
15 fully evaluate all of those filings. So, the  
16 Commission may ask a number of questions today  
17 of the panel but it is likely that questions  
18 may spring into Monday as well.

19                   With that as a context, I welcome  
20 John Donnelly of Donnelly Clark and Mr. Neil  
21 Bluhm, Chairman of Rush Street Gaming to  
22 introduce the panel today and to begin their  
23 presentation.

24                   MR. DONNELLY: Good morning, thank

1 you. John Donnelly, Donnelly and Clark. I  
2 thank you for the opportunity to present again  
3 today. We plan today to respond to some recent  
4 issues that have been or some recent comments  
5 that have been made regarding our project, to  
6 bring the Commission up-to-date on the current  
7 status of the project and to introduce some new  
8 ideas, notions and findings that we've  
9 discovered in the course of this process.

10 Today speaking to you will be people  
11 you have met before, but we promise not to  
12 retread old ground. Number one speaker will be  
13 David Tennant who is the co-chair of the Indian  
14 Law and Gaming practice of Nixon Peabody and  
15 also and kind of importantly the head of its  
16 appellate practice. And Nixon Peabody as you  
17 know is a large firm which has a large office  
18 in Boston.

19 Second with me and right next to me  
20 is Michael Soll, President of the Innovation  
21 Group. Let me go back to David. David sent  
22 one of those letters that's before the  
23 Commission. The Innovation Group also  
24 submitted some information to you.

1                   The Innovation Group has appeared  
2 many times before you in the past. I'll take  
3 an opportunity to give you some of their  
4 credentials because I know Michael and his  
5 predecessor. I've used them in other  
6 presentations as experts in other matters.

7                   There's been a lot of talk about the  
8 gravity model. And everyone in this room is  
9 familiar with it because every time we're at  
10 the Gaming Commission, it's discussed. It was  
11 the Innovation Group that didn't invent the  
12 model itself, but were the first group to take  
13 that model and apply it to gaming.

14                  I've heard Michael's predecessor  
15 talk about on many occasions, they took the  
16 gravity model which was a transportation model  
17 and applied it to gaming to analyze and project  
18 forward what kind of revenues could be expected  
19 in a certain area or region. So, to the extent  
20 that others are presenting gravity models, they  
21 are standing on the shoulders of what the  
22 Innovation Group innovated, if you will.

23                  They've represented a number of  
24 governmental agencies and private entities.

1 And importantly they've represented over 100  
2 Indian tribes and continue to do so as well as  
3 other foreign nations.

4 Finally, Neil Bluhm who has  
5 presented to you many times is becoming a  
6 citizen here, I think. Neil is the Chairman of  
7 Rush Street Gaming which is the parent company  
8 of all the entities that operate gaming in the  
9 United States and parent of Mass Gaming and  
10 Entertainment.

11 At the end of the presentation by  
12 these three presenters, we plan to cede some  
13 time to Adam Bond who is also in the room who  
14 is a Middleborough attorney and who represents  
15 the citizens group that has filed litigation  
16 regarding the land in trust issue and other  
17 issues. And Adam will present at the end of  
18 the three presenters. With that I will call  
19 David Tennant.

20 MR. TENNANT: Good morning, Chairman  
21 Crosby thank you for the opportunity to speak  
22 to you this morning. What I would like to do  
23 with the time that I have is to address four  
24 points to briefly touch on some of the comments

1 about the Commission's authority to issue a  
2 license in Region C.

3 I'd like to spend some time talking  
4 about the new development as far as the second  
5 compact not being a legally effective and valid  
6 agreement. The third point would be to talk  
7 about the Carcieri issue and the comments that  
8 the outside counsel for the Mashpees made at  
9 the March 15 hearing.

10 And then finally to talk about the  
11 different timelines that attach, one to the  
12 citizens lawsuit in federal court that's  
13 already been filed, and then any type of legal  
14 action that the Mashpees might take against the  
15 Commission.

16 As we indicated in our letter those  
17 are very, very different timelines. And any  
18 type of quid pro quo that the Tribe is thinking  
19 they can jam up this proceeding with that type  
20 of legal action that they're not comparable.  
21 But we will address these in turn.

22 I'd like to talk to start briefly  
23 with the Commission's authority to act.  
24 Obviously, there was very careful analysis by

1 Commissioner McHugh in December 2012. That was  
2 at a critical time after two significant  
3 events. One was the First Circuit's decision  
4 in KG Urban which said very clearly that there  
5 could not be any type of prolonged set-aside.

6 That there could not be from a  
7 constitutional perspective anything beyond some  
8 type, as the Commission used the wording, a  
9 fair shot or a leg up. That that had to be a  
10 limited, time-limited type of advantage.

11 And then of course that decision was  
12 in August 2012. The Secretary of the Interior  
13 then in October 2012 disapproved, thoroughly  
14 repudiated the first compact. Those two events  
15 clearly signaled to Commissioner McHugh and the  
16 other members of the Commission that there was  
17 a real problem with events -- with the  
18 developments in Region C and exactly the type  
19 of prolonged delays could occur.

20 That the tight deadlines in the  
21 statute, the Expanded Gaming Act 91E those were  
22 going to be blown by and certainly from I think  
23 a strict reading of 91E that you would have the  
24 straight triggering authority to go ahead and

1 issue the RFA in April 2013 because of the  
2 failure to actually have a compact in place.

3 That first compact was a complete  
4 legal on nullity. So, even though it has been  
5 legislatively approved in Massachusetts in July  
6 2012, it never took effect. So, from the  
7 standpoint of really straight up reading of  
8 91E, I think the triggering authority was there  
9 as a straight up matter. Even if it wasn't for  
10 whatever reasons exactly precisely triggered,  
11 the Commission clearly had the discretionary  
12 authority to act at that time for all of the  
13 reasons that Commissioner McHugh indicated.

14 Obviously, the Commission has  
15 consistently and thoroughly restated and said  
16 that this authority exists. And really I don't  
17 think there's any need to re-plow that  
18 authority. It's spelled out in our letter.  
19 The issue is fully framed.

20 One thing I would like to talk about  
21 though is the Mashpee's heavy reliance on part  
22 2.6, which is part of the compact that is  
23 easily dispensed with for any number of  
24 reasons. Setting aside for the moment that the

1 compact itself is entirely of no validity.

2 Part 2.6 is within part 2 which says  
3 this is offered for background only. So, it's  
4 not even a substantive provision. And then  
5 there are as we indicated in our letter a  
6 number of reasons why it just doesn't work the  
7 way the Mashpee say part 2.6 works.

8 For one, it adds language that isn't  
9 present in 91E. If it was supposed to be a  
10 fair transcription, which that is what the  
11 compact says, it's just saying here this is  
12 what 91E says. It's not even purporting to  
13 change it. It just says we're incorporating  
14 91E into the compact. And it does so  
15 inaccurately. It puts in expressed prohibitory  
16 language that you don't see in 91E. So, it's  
17 just a wrong transcription.

18 Then to the extent that there was  
19 any validity to that part anyway, you can't  
20 have by an executive contract that isn't a part  
21 of a session law that doesn't go through the  
22 House and all the formal procedures, you can't  
23 just have an executive contract that gets  
24 legislatively approved trumping, overruling and

1 adding all kinds of terms to 91E. Of course,  
2 there was not any type of process followed  
3 within the Legislature to modify or amend 91E  
4 at the time that the compact was approved.

5           And again, there's even another  
6 layer of why 2.6 is no barrier because 2.6 only  
7 talks about the reference to the RFA issuing as  
8 a trigger. And that to the extent there even  
9 was any type of limitation on the RFA  
10 triggering -- This Commission dealt with this  
11 back in April 2013. Here it is in 2016, three  
12 years later and clearly has the authority to  
13 move past any type of limitation that existed  
14 at the time.

15           If I could now just go straight into  
16 the validity of the compact. We've laid out in  
17 our letter precisely why we believe the compact  
18 is of absolutely no legal effect by its own  
19 terms. And if I could point you to page 12 of  
20 our letter. I'll just quote what is the  
21 provision within the compact that makes this  
22 second compact invalid as a matter of law.

23           Reading it, quoting it "this compact  
24 shall become effective upon the publication of

1 notice of approval by the United States  
2 Secretary of the Interior in the Federal  
3 Register in accordance with 25 U.S.C. §§  
4 2710(d)(3)(B) and 2710(d)(8)(D)."

5           And there are various statutory  
6 sections at play here. And I think the easiest  
7 way to refer to them are by the last letters.  
8 There's a (B) and a (D) referenced in part 22.  
9 What is significant is that a (C) is not  
10 present there. And I'm going to try to help  
11 the Commission by walking through what is the  
12 distinction between these different statutory  
13 provisions regarding the Secretary acting on  
14 compacts that are submitted to it for approval.

15           There are basically two critically  
16 different paths that the Secretary of the  
17 Interior can follow. It can issue what is  
18 called a notice of approval. That is a full-on  
19 approval and that is under the (B) authority.  
20 That is something that has to happen within the  
21 45-day review period that the Secretary has.

22           And as we've indicated by quoting  
23 the Assistant Secretary in his testimony in  
24 2014 before the Senate committee, having the

1 Secretary actually formally, officially,  
2 affirmatively approve a compact within that 45-  
3 day review period has significant legal  
4 consequences. It means the Secretary is  
5 vouching for the compact that it's legal under  
6 IGRA and other federal laws.

7           It carries with it necessarily the  
8 secretarial's findings in that regard. And if  
9 you were to have any challenge in a court over  
10 the enforceability of the compact, a  
11 secretarially, officially, affirmatively  
12 endorsed compact vouched for under this  
13 provision where it is published as a notice of  
14 approval in the Federal Register under the (B)  
15 that carries with it all of the findings that  
16 we talked about.

17           Chevron deference, you've heard  
18 about that from the Mashpee outside counsel in  
19 terms of the deference that would be showed to  
20 the Secretary with respect to the record of  
21 decision to take land into trust.

22           Well, it's a universal principle of  
23 reviewing agency determinations at the federal  
24 level. And that deference would attach to the

1 Secretary's formal finding that the compact  
2 satisfies IGRA and other federal laws.

3 We cited a case where it's not even  
4 -- wasn't even necessarily clear what a court  
5 could do if they didn't have that type of  
6 finding.

7 So, let's talk about the alternative  
8 decision path, what could happen outside of  
9 that 45-day review period? That is exactly  
10 what happened here. It's a totally different  
11 decision path. The Secretary said here, I am  
12 not going to make any decision. This is a  
13 hands off. There are problems with it.

14 I'm not going to disapprove it  
15 again, because we don't like to disapprove  
16 these things. But I'm going to punt it. I'm  
17 going to kick it back to the parties and the  
18 courts to determine whether this is an  
19 enforceable agreement.

20 It's a fundamentally different kind  
21 of authority that is coming from the Secretary.  
22 In fact, it's no authority at all other than  
23 it's deemed approved by operation of law. When  
24 the Secretary does nothing, it's deemed

1 approved to the extent it is consistent with  
2 IGRA.

3           So, it's not any type of finding  
4 whatsoever that it actually satisfies IGRA.  
5 And you wind up with instead of the secretarial  
6 findings that get judicial deferred to, you  
7 have a complete open book. And it would be up  
8 to the parties and the courts to figure out  
9 what does this document mean.

10           And why this is significant, you  
11 heard the Mashpees talk about the compact being  
12 a historical document. That it's something  
13 that is reflecting the long history of the  
14 peoples and the Commonwealth in coming  
15 together. If you are having a major public  
16 compact that is being legislatively approved in  
17 Massachusetts, and the Governor is signing it  
18 here, the parties sure want to have this  
19 historical document bearing the formal,  
20 official, affirmative seal of approval of the  
21 Secretary vouching for its legality.

22           And not to have all of that effort  
23 squandered and put into this highly inferior  
24 category where it's just kicked back to the

1 parties. In the words of the Secretary punted,  
2 punted back to the parties for them to figure  
3 out whether it's legal or not.

4 The parties here specifically called  
5 out the approval process that is the formal  
6 official seal of approval, vouched for and  
7 publication as a notice of approval in the  
8 Federal Register.

9 What they got instead was this no  
10 action within the 45-day period, no statement  
11 of approval. And instead a notice of taking  
12 effect, a notice of taking effect is the (C)  
13 option in the statute. And that just says, as  
14 I've indicated that it doesn't have any force  
15 of findings of the Secretary. It is only  
16 taking effect by operation of law, subject to  
17 the parties figuring out whether it is lawfully  
18 enforced or not.

19 So, it's a highly, highly, highly  
20 diminished deemed approved secretarial  
21 inaction. It's not what the parties bargained  
22 for. And it was clearly a very important  
23 consideration. It was present both in the  
24 first compact and the second compact and was

1 what the parties necessarily wanted to have  
2 reflected their intentions to have a formal  
3 endorsement by the Secretary. For a critical  
4 document like this with all this public and  
5 political implications, the last thing you want  
6 is the Secretary basically punting on it and  
7 saying well, you figure it out.

8           There's an awful lot that's riding  
9 on the compact, and the parties understood  
10 that. And it was up to the parties to secure  
11 from the Secretary the formal, official,  
12 vouched for notice of approval. And they  
13 didn't get it. So, under part 22 the compact  
14 never took effect by its own terms. The only  
15 way the compact could ever take legal effect  
16 was upon the publication of the notice of  
17 approval.

18           So, that leaves the proceedings here  
19 in a potentially different light. Obviously,  
20 for purposes of the narrow question of the  
21 arguments the Mashpees have raised about the  
22 Commission's authority, the compact disappears  
23 entirely. It has no valid force or effect in  
24 all of those arguments which weren't winning

1 anyway. Those disappear.

2 But the bigger question, of course,  
3 is what does it mean to have now a proposed  
4 tribal casino in Taunton that doesn't have in  
5 2016 the basic essential building block of a  
6 state tribal gaming compact? From our  
7 perspective it certainly puts the tribal casino  
8 into a highly doubtful category.

9 We're talking about it's already  
10 resting on an infirm foundation with the land  
11 into trust decision for all of the reasons  
12 we've indicated. And I'll address that in a  
13 little bit. That's one necessary leg of a  
14 stool that is totally infirm.

15 And now the compact which is an  
16 essential component that everybody thought was  
17 in place isn't in place. What does that mean?  
18 We are talking about having to renegotiate the  
19 Mashpees and the Governor have to renegotiate  
20 the compact. Is there even the political will  
21 to do that? We have a new governor. There's a  
22 new legislature.

23 What would be the terms that would  
24 change? Would that be acceptable? Could they

1 even get the Secretary with another go-round to  
2 get the formal approval that is obviously  
3 excellent policy? You want that. Would it  
4 make sense for the Legislature and the Governor  
5 just to say we don't need that type of formal  
6 official vouching from the Secretary? We'll  
7 take our chances with a deemed approved  
8 compact. That's a political question.

9           But we are raising these because  
10 these are important questions. We don't have  
11 answers. Obviously, the parties to the compact  
12 -- We're not parties to the compact. The  
13 Commission isn't a party to the compact. But  
14 it clearly has significant implications that  
15 adds to the clouds, the doubts, the questions  
16 of doubt the ability of the Mashpees to ever do  
17 anything with a tribal casino in Taunton.

18           They can't operate a casino without  
19 a state tribal compact that authorizes them to  
20 do class III gaming under IGRA, which is the  
21 casino type of table games and slots. That's  
22 the whole point of having the Taunton casino.  
23 And they can't do it without the state tribal  
24 gaming compact.

1                   So, that's kind of the new  
2 development. Certainly, I'll move onto my  
3 other comments but I wanted to give the  
4 Commission an opportunity since this is new.

5                   COMMISSIONER MACDONALD: Before you  
6 do, I have a couple questions, one in  
7 particular on this issue of the apparent  
8 failure by the Secretary to formally approve.  
9 Just to make an observation with regard to the  
10 first topic, namely the power of the Commission  
11 to proceed with the Region C.

12                   I think, I'm just speaking  
13 personally here obviously, but I think you are  
14 entirely right on that. I've reviewed the  
15 compact, the statute and the prior statements  
16 of my predecessor. And I've said any number of  
17 times I am no Jim McHugh, but I think that his  
18 analysis was completely on point. So, I have  
19 no issues with regard to that.

20                   But the second argument that you  
21 just made on the issue of the approval by the  
22 Secretary, it strikes me, and this is not a  
23 reflection on your position, it's kind of a  
24 gotcha situation that kind of regardless of

1 what the language of the compact was, everybody  
2 has proceeded, until we received this recent  
3 filing by MG&E, on the assumption that the  
4 compact was a valid compact.

5 I hear you saying that by virtue of  
6 the failure of the Secretary to have  
7 affirmatively endorsed it that it's in a kind  
8 of a second-rate status. But there appears to  
9 be no question but that the Secretary  
10 thereafter proceeded on the assumption that it  
11 was a valid compact. And the assumption upon  
12 which the record of decision of the Secretary  
13 that concluded with the land in trust decision  
14 by the Department was that there was a valid  
15 compact.

16 So, if that is a matter of record,  
17 isn't that sufficient alternatively is there  
18 not a ready fix here by the Secretary?

19 MR. TENNANT: Let me address the  
20 last part in terms of is this readily fixed.  
21 If you view this as not a type of technical  
22 failing on the part of the Secretary but there  
23 are fundamentally two decision paths. And the  
24 parties bargained for one specific decision

1 path and they got the other.

2 Obviously, parties can act without  
3 having an enforceable agreement. A private  
4 party in contract can just say well, we don't  
5 care whether it's enforceable, whether an  
6 expressed condition precedent occurred. And  
7 that's what this is, the part 22 requiring a  
8 notice of publication of approval as an  
9 expressed condition precedent.

10 So, under the law straight up, it  
11 didn't take effect. The parties just basically  
12 act outside of contract. Could they just  
13 pretend -- basically adopt it and be bound by  
14 estoppel principles. I would never advise one  
15 of our clients to do that. And when you're  
16 talking about public entities -- I mean, this  
17 is the Governor; it's the Commonwealth.

18 It's the whole political process  
19 here that really wants to have a compact that  
20 has a secretarial's approval that's befitted  
21 its historical nature. And they put that into  
22 the compact that it's up to the parties. It's  
23 really not up to the Secretary. The Secretary  
24 can't do anything to change the terms of the

1 compact. The parties can change the compact  
2 and try to get the Secretary to approve it.

3 But there isn't anything from the  
4 standpoint -- The Secretary couldn't pull back  
5 the decision and say oh, I really meant to give  
6 it formal approval, because the Secretary sent  
7 along a letter saying why the Secretary didn't  
8 feel it was a compact that the Secretary could  
9 approve.

10 There were deficiencies. There were  
11 aspects of it that gave the Secretary serious  
12 pause about whether those terms were  
13 enforceable under IGRA. And the Secretary  
14 specifically said I am not going to approve  
15 this in light of those concerns.

16 Now could those stated concerns be  
17 addressed and could the parties renegotiate and  
18 could they re-present it to the Governor and  
19 could the Legislature do that? Sure. But is  
20 there political will? How long would that  
21 take? And I don't believe there is any  
22 secretarial fix that can be done.

23 And in terms of a gotcha, just in  
24 terms of how this came up from our end, I have

1 been focused on the record of decision,  
2 challenging that. The compact was always at  
3 the periphery in terms of the legal issues that  
4 we were looking at.

5           It was only in response to the  
6 Mashpee's heavy reliance on part 2.6 where they  
7 are basically riding that as hard as they can,  
8 as far as they can that I really went back to  
9 the compact and looked at all of its  
10 provisions. And then we identified the part 22  
11 as being an expressed condition precedent that  
12 you know what, the Secretary never issued the  
13 kind of approval that was required by the  
14 parties. And that this isn't some type of oh,  
15 gee, it's a fair equivalent.

16           It's a fundamentally different kind  
17 of action by the Secretary. It's inaction,  
18 deemed approved and then gets tossed back, in  
19 the words of the Secretary, punted back to the  
20 parties and the courts because the Secretary  
21 isn't standing behind it.

22           Obviously, it's for others, the  
23 parties to the compact and their lawyers. But  
24 as a matter of public policy, I would think

1 that the Commonwealth, the Governor, people who  
2 are representing the people of the Commonwealth  
3 of Massachusetts would want to have a state  
4 tribal gaming compact officially approved by  
5 the Secretary and not kicked back.

6 CHAIRMAN CROSBY: Anybody else?  
7 This is new to us. We'll be thinking about it.  
8 There may be other folks who end up being the  
9 resolvers of it.

10 But I certainly understand, and that  
11 seems substantive and interesting, the  
12 distinction between the two kinds of approval.  
13 You make clear points that make sense on that  
14 and that seemed substantive.

15 But whether the drafter of the  
16 compact, and sort of like Commissioner  
17 Macdonald is saying, inadvertently neglected to  
18 mention the two possibilities of approval, it's  
19 hard to believe that the drafters of the  
20 compact would've thought that they wouldn't  
21 consider the compact approved if it had been  
22 approved by this passage of laws as opposed to  
23 the notice of approval.

24 Section 2.6 is clear evidence that

1 the drafters of the compact weren't totally  
2 buttoned up. We agree with you completely that  
3 2.6 flat out misconstrues what 91E says,  
4 boldly, baldly. And it seems like maybe it was  
5 the same kind of inadvertence.

6 To harp on the distinction between  
7 the kinds of approval as a substantive  
8 difference that's real. Whether the failure of  
9 the compact to acknowledge this sort of  
10 technical other alternative approval, whether  
11 that's substantive or not I have a real  
12 question.

13 MR. TENNANT: If I could just make  
14 one comment on that. Certainly, if we were  
15 advising any of our clients in this area, we  
16 would always say get the secretarial approval  
17 because it has all of the -- It's not just  
18 belts and suspenders, it's the essential  
19 secretarial finding that keeps you out of being  
20 -- you're basically in a purgatory where it's  
21 kicked back to you and you don't know what you  
22 have until there's a lawsuit. And parties  
23 intentionally and knowingly agree to do that to  
24 get that secretarial approval.

1                   And I think the fair reading is  
2 whatever craftsmanship problems there are in  
3 the compact that they intentionally not only  
4 stated that a notice of approval had to be  
5 provided by the Secretary for the compact to  
6 become effective but they did not cite, they  
7 eliminated, omitted any reference to the  
8 alternative of notice of taking effect which is  
9 very different verbiage. And they omitted the  
10 actual underlying statute, (C) statute that  
11 provides for the notice of taking effect.

12                   So, I think the logical analysis  
13 would be, and obviously the parties because  
14 they were represented I believe by able  
15 counsel, and I believe the record would show  
16 that they fully understood and knew exactly  
17 what they were bargaining for by putting in or  
18 getting secretarial formal official approval,  
19 notice of approval and leaving out of the  
20 compact this other lesser point.

21                   COMMISSIONER ZUNIGA: Mr. Tennant  
22 help me understand. Who would have standing in  
23 an interest to sue besides the parties, besides  
24 the Commonwealth and the Mashpee on the

1 validity of the compact?

2 MR. TENNANT: An excellent question.  
3 I don't know the standing rules in the  
4 Commonwealth of Massachusetts, but citizens I  
5 would imagine who are impacted by this. It's  
6 not a remote type of injury if they are being  
7 impacted by it.

8 So, I would think that there are  
9 essentially intended third-party beneficiaries,  
10 people who are -- Just from the biggest picture  
11 perspective, this was supposed to be this  
12 historical agreement that was bringing together  
13 the Commonwealth and the Mashpees for the  
14 benefit of the people of the Commonwealth.  
15 This was a big deal.

16 And I would think that anybody who  
17 was supposed to benefit from that, and I think  
18 that's people of the Commonwealth that they  
19 would certainly have a right to complain.  
20 Again, I am not vouching on the standing issues  
21 under Massachusetts law. I'm not a  
22 Massachusetts lawyer.

23 COMMISSIONER STEBBINS: Turning and  
24 looking at the material you provided, give me

1 an idea in a broader context of how often this  
2 action or in this case inaction by the  
3 Secretary has been used most recently.

4 MR. TENNANT: About 22 percent of  
5 the time I think is what the Secretary in his  
6 comments to the Congress indicated. That they  
7 really don't like to disapprove. That  
8 indicates just how bad the first compact was.  
9 They will let fly, let go by inaction a lot of  
10 stuff.

11 So, when the first compact got  
12 rejected, disapproved that was a thorough  
13 repudiation of all of its terms. But they let  
14 the compacts go about a quarter of the time.

15 CHAIRMAN CROSBY: We have the  
16 Secretary's letter that accompanied the  
17 approval by passage of law?

18 COMMISSIONER ZUNIGA: The record of  
19 decision?

20 CHAIRMAN CROSBY: No, not the record  
21 of decision. Well, I don't know if it's in the  
22 record of decision -- No, not the record of  
23 decision, the deemed approval of the compact,  
24 you refereed to the Secretary's letter.

1                   MR. TENNANT: It's a notice of  
2 taking effect that was issued January 20-  
3 something. It took effect February 3.

4                   CHAIRMAN CROSBY: And you referred  
5 to a Secretary's letter that accompanied that.

6                   MR. TENNANT: Right. It was  
7 published in the Federal Register. What the  
8 secretary typically does --

9                   CHAIRMAN CROSBY: Hang on. Do we  
10 have that?

11                  MS. BLUE: We either have it or can  
12 find it. It would've been a public notice. We  
13 do certainly have the letter from the Secretary  
14 where they disapproved the first compact which  
15 is quite detailed.

16                  CHAIRMAN CROSBY: We can get the  
17 other one right? Okay. Anything else on this  
18 one?

19                  COMMISSIONER MACDONALD: Just  
20 following up a little bit. Just to clarify my  
21 understanding of it that the requirement of a  
22 compact, what's the origin of that? Is it in  
23 the Indian Gaming Regulatory Act?

24                  MR. TENNANT: Yes.

1                   COMMISSIONER MACDONALD: So that as  
2 a condition of a tribe being permitted to have  
3 a gaming license pursuant to a land in trust  
4 decision, there must be a compact that has been  
5 entered into by the state and the tribe?

6                   MR. TENNANT: Correct, for class III  
7 gaming.

8                   CHAIRMAN CROSBY: For what we think  
9 of as traditional casino gaming. They have a  
10 right to do so-called Indian gaming without a  
11 compact --

12                  MR. TENNANT: Correct.

13                  CHAIRMAN CROSBY: -- which to many  
14 people, Indian gaming is indistinguishable from  
15 what we refer to as casino gaming. So, they  
16 don't need a compact. They can do a casino in  
17 Taunton with or without a compact, but it  
18 limits the nature of the gaming ---

19                  MR. TENNANT: It substantially  
20 limits. It's really bingo style. And there  
21 are variations of slots that have been  
22 conformed to basically have a bingo type  
23 internal operation. But it fundamentally  
24 limits what they can do.

1                   And it completely changes their  
2 whole business plan. The whole reason to build  
3 this casino initially as a full resort casino,  
4 obviously, you heard how it's been scaled back,  
5 but even in its scaled-back version, it's  
6 supposed to be a full casino offering table  
7 games, roulette, baccarat, slots, the whole  
8 nine yards.

9                   COMMISSIONER MACDONALD: But it is a  
10 requirement of the Indian Gaming Regulatory  
11 Act, the enforcement of which comes within the  
12 jurisdiction of the Department of the Interior?

13                  MR. TENNANT: That's correct.

14                  COMMISSIONER MACDONALD: And that  
15 the Secretary through its record of decision,  
16 voluminous record decision -- I guess you're  
17 going to be addressing that shortly, but did  
18 the Secretary in your mind give expression  
19 either in the record of decision or in any  
20 other form of having doubts about the  
21 sufficiency of the compact?

22                  MR. TENNANT: No. Basically when  
23 you say doubts about the sufficiency, the  
24 sufficiency in terms of well, we've given it

1 this lesser status. We've punted it, we've  
2 kicked it back. It's effective as a matter of  
3 federal law.

4           So, it would allow the Mashpees as a  
5 matter of federal law to meet their IGRA  
6 requirements for class III. What we're saying  
7 is that as a matter of state law because an  
8 expressed condition precedent that the parties  
9 chose, expressly adopted never occurred. The  
10 compact never took effect. That's not for the  
11 Secretary to figure out. That's for some other  
12 body to determine.

13           CHAIRMAN CROSBY: Anybody else?  
14 Next up.

15           MR. TENNANT: Just briefly on  
16 Carcieri. We heard from Arlinda Locklear on  
17 March 15 in terms of the Carcieri issue and  
18 whether it presented a significant hurdle for  
19 the Mashpees. And there were questions from  
20 Commissioner Macdonald in terms of if now means  
21 now doesn't such mean such.

22           Basically asking Ms. Locklear if  
23 there were any differences between the  
24 historical circumstances of the Narragansetts

1 in Rhode Island who were subject of the  
2 Carcieri decision and the Mashpees in  
3 Massachusetts. Never got anything close to a  
4 substantive response.

5           What Mashpee's counsel has stated  
6 before and stated there was the Secretary  
7 issued a lengthy decision. The courts will  
8 review it deferentially and basically  
9 deference, deference, deference. No  
10 substantive defense on the merits as to whether  
11 the language of the IRA can actually be twisted  
12 in the way that the Secretary has done here.

13           There's really been no response on  
14 the merits. And it's just back to well this is  
15 a matter of deference. We would point out  
16 obviously, in the Carcieri case there actually  
17 was a 70-year history of the courts basically  
18 misreading now to mean now or hereafter.

19           And even in that context with the  
20 ability of the parties to point to that  
21 practice, the Supreme Court said no. You just  
22 read the IRA the way it is written. And now  
23 means now.

24           There isn't a 70-year history of the

1 Secretary misreading of a category II  
2 definition of Indian. This is fresh, out-of-  
3 the-box, unprecedented, new. And it deserves  
4 absolutely zero deference and we believe will  
5 receive believe will receive zero deference in  
6 its judicial review because it represents a  
7 rejection of the plain reading of the IRA.

8           In fact, in the record of decision  
9 the Secretary even says if you read this  
10 literally, but then the Secretary says you  
11 can't read it literally because it would render  
12 the class II definition of Indian as surplus.  
13 It would render it meaningless.

14           And that's where we come back with  
15 no, not at all. We have the contemporaneous  
16 record from Commissioner Collier, the  
17 Commissioner of Indian Affairs at the time.  
18 And it's basically saying class II, category II  
19 definition of Indian has a very limited range.

20           It's to collect people who are such  
21 members refers to the members up above in the  
22 category I. And it just means we are picking  
23 up people who aren't enrolled yet in those  
24 recognized tribes that are under federal

1 jurisdiction. It would be the children who are  
2 too young to actually make it onto tribal  
3 rolls.

4           And there were times when Indians  
5 from different reservations would come onto  
6 other reservations and they might join up and  
7 be deemed part of the reservation but not  
8 reflected on the tribal roll.

9           So, this was just a way to basically  
10 true-up the federal government's records on who  
11 was enrolled as a member of a recognized tribe  
12 under federal jurisdiction. So, it is not,  
13 even by the contemporaneous records, any type  
14 of larger category.

15           And the suggestion by the Mashpees  
16 that it is open-ended and should be deemed to  
17 include people who weren't born in 1934, Native  
18 Americans who were living on reservations but  
19 were under state jurisdiction that's an open-  
20 ended obligation that had nothing to do with  
21 what the Secretary was trying to actually do in  
22 1934, which was to define and actually limit,  
23 identify for purposes of registering Indians  
24 under the IRA okay, who's in. Who is in now?

1                   And it was an effort to collect  
2 again kind of a catchall the children and other  
3 members who weren't already registered with the  
4 tribes.

5                   So, it's basically as we see it the  
6 Mashpees have -- They're not the ones defending  
7 the record of decision but they have very great  
8 concern that the record of decision will be  
9 overturned. It's basically Carcieri 2 with the  
10 benefit of Carcieri saying you read the IRA  
11 literally. And you don't go into these  
12 detours.

13                   So, we think that we are going to  
14 ultimately prevail on the record of decision,  
15 the challenge will succeed. But even if it  
16 didn't, just the kind of challenge that -- if  
17 you read the citizens' complaint, it's a  
18 challenge that is a very long horizon, a  
19 distant one. The Carcieri case was over 10  
20 years. I'm not saying this challenge will go  
21 that long but it's certainly by conservative  
22 estimate a four- to five-year process.

23                   It could well go to the Supreme  
24 Court again in light of the unprecedented

1 nature of the contentions here by the  
2 Secretary. And we really think that it's again  
3 ultimately going to come out in our favor many  
4 years down the road.

5           If I could just sum up, there are  
6 these serious legal questions about the  
7 Mashpee's proposal to go forward with the  
8 tribal casino in Taunton. It's not just the  
9 infirm foundation of the land into trust  
10 decision, which is palpably objectionable. And  
11 certainly anybody in this room could read the  
12 statute and read Carcieri and go why are we  
13 even here?

14           But obviously, the Secretary has  
15 staked out a very aggressive position. And  
16 it's going to be seriously challenged. We hope  
17 successfully so in the lower court. And if not  
18 there, the intermediate court. And if not  
19 there in the Supreme Court.

20           So, we have that infirm legal  
21 foundation now multiplied by the questions  
22 about the gaming compact. If there is in fact  
23 a need to get that renegotiated and back to the  
24 Governor and the Legislature and back to the

1 Secretary, that's a whole other additional  
2 layer of delay and uncertainty because with a  
3 change in who's in the position of governor and  
4 the change in the Legislature, I certainly  
5 don't know whether this is in any way an easy  
6 matter and a slam-dunk to get it fixed.

7 I think it's fair to say that it's  
8 going to take many years for the cloud, and now  
9 I think it's multiple clouds that are hanging  
10 over the Taunton casino to lift, if ever. If  
11 anything, I think that the issue about the  
12 gaming compact not being valid, we are talking  
13 about something that we are five years past the  
14 enactment of the Expanded Gaming Act and four  
15 and half years after the Tribe was supposed to  
16 have the first compact approved, and that basic  
17 component is missing. So, we think that puts  
18 kind of an exclamation mark on the question  
19 mark that is the Tribe's very uncertain  
20 prospects in Taunton. Thank you.

21 COMMISSIONER ZUNIGA: Mr. Tennant,  
22 couldn't the Tribe continue to build and  
23 operate a casino until any one of these courts  
24 decides to put an injunction on the project,

1 let's say?

2 MR. TENNANT: The Mashpees to the  
3 extent that they have the financial resources  
4 and people who are willing to take that kind of  
5 risk, sure.

6 COMMISSIONER MACDONALD: I have just  
7 a further question. As reflected by my  
8 questioning of Attorney Locklear at the Mashpee  
9 hearing a couple of weeks ago, I have read with  
10 interest the Carcieri decision and some other  
11 cases raising issues under the land in trust  
12 procedure.

13 Again, speaking personally, I think  
14 you have a very plausible position here in  
15 light of the kind of categorical nature of the  
16 application of the so-called plain meaning rule  
17 of statutory construction that the Supreme  
18 Court in Carcieri followed.

19 But predicting what the Supreme  
20 Court would do under a different set of  
21 circumstances is inherently difficult, but here  
22 made even more so by the circumstance that this  
23 was a -- Justice Thomas's decision was joined  
24 by four other members of the court. And one of

1 those four other members, and a very  
2 influential member, namely Justice Scalia has  
3 now passed on.

4           So, what do you think the impact  
5 might be of the uncertainty introduced by the  
6 circumstance that the composition of the  
7 highest court in the land to which this issue  
8 may very well ultimately be presented has  
9 changed materially?

10           MR. TENNANT: I appreciate,  
11 Commissioner Macdonald, your comment about  
12 Justice Scalia, obviously. I actually had an  
13 opportunity to meet him and talk with him about  
14 the city of Sherrill versus the Oneidas case.  
15 He is influential, but I would think that the  
16 First Circuit reading the Carcieri decision  
17 would understand that the law is the law. And  
18 that it doesn't depend upon the current makeup  
19 of the Supreme Court.

20           If it gets to the Supreme Court,  
21 obviously the composition of the court is very  
22 important. And there are members of the court  
23 who are more receptive to the now means now and  
24 such means such kind of plain meaning

1 arguments.

2 I'd like to think that actually even  
3 if you get past the kind of literal meaning and  
4 look at the legislative history, and in a  
5 particular Commissioner Collier's comments that  
6 you are basically back into understanding  
7 really what the IRA definition of Indian was  
8 intended to do.

9 And you also have -- This is spelled  
10 out in the citizens' complaint. There's a  
11 whole series of Department of the Interior and  
12 also Department of Health interpretations of  
13 the statutory definition of Indian. And they  
14 all go the plain meaning route. So, there is  
15 case law. There are administrative decisions.

16 Everybody, and we cite the United  
17 States versus John case as a footnote in our  
18 latest letter. Basically, anybody who reads  
19 the statute who isn't statutorily basically  
20 committed to helping the constituent Native  
21 American population, anybody who is looking at  
22 it objectively is reading it the way we are.

23 And obviously it will be up to the  
24 courts to vindicate our position or to reject

1 it. And we like our chances.

2 CHAIRMAN CROSBY: Okay. Anything  
3 else?

4 COMMISSIONER ZUNIGA: Yes. You  
5 mentioned earlier a consideration on the  
6 question that I asked would be the higher risk  
7 and higher cost of capital, let's say, for  
8 proceeding at risk with some uncertainty  
9 because of all these reasons.

10 But under that scenario, wouldn't  
11 the Mashpee have extra money available if we  
12 were to award a license on that region, a whole  
13 17 percent that is now no longer?

14 MR. TENNANT: I'm going to leave the  
15 business modeling and bottom-line analysis to  
16 others. I'm just a lawyer.

17 COMMISSIONER ZUNIGA: Okay.

18 MR. BLUHM: I am going to address  
19 that in my comments, but before I even get to  
20 them I can say that the actions of Genting in  
21 significantly reducing the amount of money that  
22 would be invested in phase 1, and drastically  
23 making that phase 1 much smaller and less money  
24 indicates to me, and it's frankly a rational

1 decision on their part that they are very  
2 nervous that this case will go against them,  
3 and they'll end up with no casino.

4           That's why they have said that we  
5 are going to --- that phase 1 is financed.  
6 They never got into specifics how. Made it  
7 clear that phase 2, etc., later phases are not  
8 yet financed. They hope to get other parties  
9 involved. And the size of phase 1 has been  
10 dramatically reduced from what they proposed a  
11 few years ago for phase 1.

12           They actually reduced the amount of  
13 gaming positions by 45 percent. And there's no  
14 parking garage. There is less work on  
15 infrastructure and traffic. There is no hotel.  
16 They were supposed to have 10 retail spots, now  
17 they have one sundry spot.

18           So, what they've done clearly is  
19 say, look, this thing may go against us.  
20 There's a real risk here. So, we want to  
21 reduce the amount of capital to the minimum if  
22 we have to put up money to get this started.

23           And they can change their mind  
24 anytime and do nothing if they ultimately

1 decide. They have a very loose agreement with  
2 the city. But their actions speak louder than  
3 words. And they are going after a very small  
4 investment.

5           There are rumors that they are  
6 talking to the city about trying to do  
7 something in an old warehouse and have been  
8 negotiating with the city to do that which  
9 would involve even less money.

10           But the phase 1 they are now  
11 proposing doesn't resemble in any way the plan  
12 that was originally presented. That must be  
13 because they think there is huge risk here.  
14 And I said to you when I was here last time, I  
15 am not questioning Genting's financial  
16 resources. But that it was not rational in  
17 light of the risk that this binary decision  
18 that they can't have the land in trust that a  
19 bank or Genting would want to ask a lot of  
20 money on that.

21           That is exactly what is happening  
22 assuming they move forward with their  
23 drastically scaled down phase 1. They seem to  
24 be conceding that there is big risk.

1                   Anybody anyone talks to about this  
2 land in trust issue will say my God, how did  
3 they come up with this decision? We all know  
4 that the Department of Interior and the Bureau  
5 of Indian Affairs is trying to help Native  
6 Americans. We know that but they have to do it  
7 within the law.

8                   And when you look at the language in  
9 the statute and referring to such members,  
10 which to me is clear as day. And anyone I've  
11 asked says the same thing. I don't see how  
12 this will stand up either at the lower court,  
13 the appellate court or ultimately the Supreme  
14 Court. There's a huge risk.

15                   And that's why this project has been  
16 downsized dramatically because of this economic  
17 risk, assuming they move forward with phase 1.  
18 Remember that they are not your jurisdiction.  
19 They are here to talk to you about whether you  
20 should be issuing a license to us.

21                   If they decide they want to change  
22 it, it's between them and the city. And their  
23 contract with the city gives them enormous  
24 rights to do whatever they want. They can walk

1 for a nominal, relatively nominal amount of  
2 money. And they have all sorts of provisions  
3 in their agreement. So, I don't know what  
4 they'll do but I do know that they are now  
5 proposing a drastically smaller project.

6           COMMISSIONER ZUNIGA: Doesn't that  
7 sort of -- Couldn't that also cut both ways in  
8 the sense that the flexibility that they have  
9 by building the most profitable piece of the  
10 project in a scaled down version gives them  
11 again the opportunity to get cash flow upfront,  
12 if you will. Couldn't that also be to some of  
13 their benefit?

14           MR. BLUHM: Yes, Sir. I think that  
15 there is a possibility that they might move  
16 forward. They said they would. I'm not  
17 questioning that necessarily but I am saying  
18 that if they don't want to they don't have to.

19           And they are addressing you not as  
20 their regulator. When I address you, I am  
21 addressing you as my potential regulator. And  
22 I'm regulated in other major states, New York,  
23 Illinois, Pennsylvania. I know that the Chief  
24 made references I have thick skin that I may be

1 lying. I don't lie. But I certainly won't be  
2 lying to my regulator who if I get a license  
3 will beholden to and be straightforward and  
4 truthful for the entire period that we are in  
5 business together.

6 And that's the way I have conducted  
7 myself in New York, Pennsylvania, Illinois, the  
8 province of Ontario, etc. And I'm sure in your  
9 due diligence you checked that out. I have  
10 thick skin. They can say what they want about  
11 me, but I am pointing out that you don't  
12 regulate these folks.

13 But this is a massively scaled down  
14 project. And it must be because of the concern  
15 that it may be overturned. They don't know  
16 when. It could be sooner rather than later.

17 COMMISSIONER CAMERON: Mr. Bluhm, so  
18 you believe the risk is because of land in  
19 trust and not another casino 17 miles down the  
20 road?

21 MR. BLUHM: I believe I am going to  
22 get to that in great detail. I believe in the  
23 numbers of the Innovation Group and others that  
24 we've presented to you that they will have a

1 significant reduction in their income if  
2 there's two. But that the amount that they  
3 have proposed of their reduction versus ours  
4 makes no economic sense.

5 And I'm going to spend a lot of time  
6 discussing that. And we have an expert from  
7 the Innovation Group who is going to be doing  
8 that. But I want to make it clear, their  
9 income will go down if there's two as will ours  
10 but they will still be a profitable casino even  
11 under our numbers if there's two casinos.

12 CHAIRMAN CROSBY: Why don't we take  
13 a quick break. We're going to go to the  
14 Innovation Group next. So, why don't we take a  
15 quick break. It's been almost two hours.  
16 We'll be back in five minutes or so. One hour,  
17 sorry.

18  
19 (A recess was taken)

20  
21 CHAIRMAN CROSBY: We are reconvening  
22 public meeting 184 and we will return to Mr.  
23 Bluhm's next presenter.

24 MR. SOLL: Thank you, Commission.

1 Thank you. I will take us from the laws of men  
2 and women to the laws of nature and gravity for  
3 a little while. And I hope to be brief. And  
4 we made a concerted effort not to go into the  
5 large amount of detail that you've been  
6 presented previously on the modeling and on the  
7 numbers, but some very new succinct points  
8 today for the most part.

9           So, I was asked by our client Mass  
10 Gaming to evaluate as the focal point the  
11 December 2015 Spectrum competitive analysis  
12 which was presented with the attorneys letters  
13 received in anticipation of their last session.

14           We have presented to you and  
15 delivered on Tuesday what we have called the  
16 Gaming Revenue and Tax Impact Analysis, Region  
17 C Massachusetts. I would certainly not be  
18 surprised if there hasn't been time to fully  
19 absorb and interpret it. The key points will  
20 be revealed in the presentation today. And you  
21 have the letter itself in the file, the report.

22           Essentially, the Spectrum report,  
23 the Spectrum Gaming report that has been used  
24 to look at --

1                   CHAIRMAN CROSBY: Excuse me, what  
2 was the date of that report?

3                   MR. SOLL: It's December 2015. I  
4 don't think it had a date on it but I'll check  
5 for you in a moment.

6                   The key aspects of that report by  
7 Spectrum look at scenarios largely with Taunton  
8 and Brockton operating in concert in the  
9 region, and then drill down to the effects on  
10 Taunton from having a new competitor in the  
11 region.

12                   There are many areas that were  
13 covered, but they fall into three major  
14 categories. And I'll speak to those three  
15 categories today. First being the nature of  
16 the Spectrum forecast itself, so the financial  
17 forecast, the revenue forecast for the region.

18                   The second area will be about the  
19 examples that are used to back that revenue  
20 forecast, primarily tribal scenarios in other  
21 states. And the third area, which is very  
22 brief, touches on some economic impact  
23 implications.

24                   So, the first slide that we have up

1 is Spectrum's unsound forecast. The gaming  
2 revenue forecast offered by Spectrum is not  
3 credible. It defies the laws of gravity to  
4 award a lower market share to Brockton which  
5 has a superior location.

6 So, if you look at the charts on  
7 this slide, they are very telling. On the left  
8 we have a pie chart showing Spectrum's revenue  
9 forecast for Region C with both properties  
10 operating.

11 The two slices of the pie there on  
12 the left represent Taunton at \$365 million in  
13 gravity model gaming revenue. On the right  
14 Brockton, Spectrum's forecast for Brockton at  
15 \$263 million of gravity model gaming revenue.  
16 Although the percentages are not there,  
17 Spectrum is essentially assigning a 58 percent  
18 market share to Taunton versus a 42 percent  
19 market share to Brockton.

20 The gravity model essentially in  
21 this case is telling Spectrum, or its use of  
22 the gravity model is implying that the property  
23 that is farther away from population base with  
24 less gravitational pull is going to pull

1 further from the main population base.

2           If you look to the right side the  
3 slide are the Innovation Group numbers which  
4 are consistent with the numbers that we've been  
5 using, which show the same dynamic although  
6 with Taunton at \$229 million of revenue and  
7 Brockton at \$304 million in revenue, gravity  
8 model revenue. And I would point out that a  
9 much more logical and plausible case would be  
10 the 57 percent market share that we are  
11 implying Brockton would absorb relative to a 43  
12 percent market share in Taunton. Both a lot of  
13 revenue, both are very viable, but  
14 proportionately counterintuitive to say that a  
15 farther property will this easily outperform a  
16 property closer to the population base

17           COMMISSIONER ZUNIGA: Mr. Soll, in  
18 the case of the Spectrum report, one cannot  
19 ascertain the size and scope of the property  
20 that they assigned to Taunton, correct?

21           MR. SOLL: To Taunton?

22           COMMISSIONER ZUNIGA: To Taunton.

23           MR. BLUHM: All the work we did, and  
24 I'm going to get to that in detail when he's

1 done, was not just them, with other firms,  
2 assumed the original proposal which was almost  
3 double the amount of gaming positions they are  
4 now proposing for phase 1. And we never know  
5 whether any additional phases will ever get  
6 done.

7 COMMISSIONER ZUNIGA: Let's come  
8 back to that then.

9 MR. BLUHM: But we are assuming for  
10 these numbers that they have a large casino.

11 MR. SOLL: It was plan as of the  
12 time that we did out last -- it would've been  
13 commensurate with our November presentation in  
14 terms of their scope.

15 COMMISSIONER ZUNIGA: \$500 million  
16 or so.

17 MR. SOLL: \$500 million. We don't  
18 know what they build. By the way, two other  
19 points I'll make before I go into the  
20 presentation further, they did not provide a  
21 Brockton only scenario. So, we've had to work  
22 around that a little bit.

23 Just to reiterate, this is gravity  
24 model revenue. Spectrum had elected not to

1 layer in what we all now know out of market  
2 revenue, tourist type revenue and said that  
3 it's essentially the same because of those  
4 operating what we have. We don't agree with  
5 that but we had to have an apples to apples  
6 comparison. So, it's all gravity model  
7 revenue.

8 COMMISSIONER ZUNIGA: But the  
9 gravity model depends on the size of the  
10 property. That's one of the key inputs.

11 MR. SOLL: The size is a factor, the  
12 draw of the size, but it is also mitigated by  
13 six or in some case seven other weighting  
14 factors based on the quality of the operator,  
15 the brand, roadway conditions, access, things  
16 like that. But you are correct that size is a  
17 starting point.

18 MR. BLUHM: Just to make it clear,  
19 we are using all of our numbers we are assuming  
20 that they end up with the original proposal of  
21 3000 slots, 150 tables 40 poker, a major hotel,  
22 lots of retail. That's what they originally  
23 proposed. And all of these numbers are numbers  
24 we originally ran. We haven't assumed they are

1 doing worse because they downsized for phase 1.

2 MR. SOLL: I would also point out  
3 that if you add these two pie charts together,  
4 the overall implication of the Region C revenue  
5 in total under the Spectrum forecast is \$628  
6 million in gravity model revenue. On the right  
7 side if you add the two pieced of pie together,  
8 we're at \$533 million. So, we're actually  
9 using a more conservative overall forecast for  
10 Region C in the first place.

11 The next slide, slide three  
12 essentially just summarizes our conversation we  
13 just had. Access to the population is the  
14 primary force behind the casino's market  
15 potential. Marketing spend and payout  
16 advantages and yes, size of the property,  
17 position of the property can all counteract  
18 gravity as variables. But they are secondary  
19 to access to the population to a relatively  
20 similar property.

21 COMMISSIONER MACDONALD: Can I just  
22 ask you this? As you know, I am new to the  
23 game here, so to speak. Is the most  
24 significant variable in the gravity model,

1 physical proximity to population?

2 MR. SOLL: It is.

3 COMMISSIONER STEBBINS: Does the  
4 gravity model in that case take into  
5 consideration the casino in Region A?

6 MR. SOLL: Sorry that last part?

7 COMMISSIONER STEBBINS: Does it take  
8 into consideration Region A is fully up and  
9 operating?

10 MR. SOLL: Yes.

11 CHAIRMAN CROSBY: You may be getting  
12 to this but there's a massive variable in the  
13 tax rates or lack thereof, which is not  
14 typically in your situation. When you're doing  
15 a competitive analysis, you're usually  
16 comparing relatively similar regulatory  
17 environments to one another. How do you factor  
18 that in? Or is this coming to you Mr. Bluhm?

19 MR. BLUHM: We have factored that  
20 into our analysis. There is great detail about  
21 other markets, etc.

22 MR. SOLL: And I'll hit it kind of  
23 formally, but the simple answer is that extra  
24 income they have, they're allowed different

1 things they can do with it.

2           The goal is always to bring as much  
3 as possible to profit so you're balancing that  
4 against potentially spending more marketing,  
5 potentially buying business which has no  
6 economic impact by the way per se. You can  
7 enhance your property and build extra capital.  
8 You can make your financing package more  
9 attractive. But they're all nuances and noise  
10 compared to the big picture of getting people  
11 from a convenient location to a properly built  
12 attractive casino.

13           The next slide, which I've got up  
14 here, slide four, and I'll explain what's in  
15 the bar graphs, but Spectrum's  
16 disproportionately high GGR forecast for  
17 Taunton overstates their gaming tax. And  
18 logically in converse the artificially low GGR  
19 estimate for Brockton understates gaming tax.

20           So, when we roll up the entire taxes  
21 to the Commonwealth what you see in the bar  
22 chart to the right, under the Spectrum model,  
23 on the left side we have a blue bar that is  
24 total state tax revenue under a Taunton only

1 scenario of \$356 million. In Spectrum's  
2 opinion or in their math with Taunton and  
3 Brockton together falling to \$328 million. So,  
4 almost a \$30 million decrease they're telling  
5 you in what's coming into the Commonwealth's  
6 coffers under that scenario.

7 COMMISSIONER ZUNIGA: That's gaming  
8 tax that's not gaming revenue?

9 MR. SOLL: Correct. It's gaming tax  
10 for all the properties in the Commonwealth, all  
11 three regions. I know it's a little confusing.

12 On the right, when you use our  
13 numbers, which haven't changed for the purposes  
14 of this presentation, they're the numbers that  
15 we've been using, we actually show a \$6 million  
16 increase in total revenue to the Commonwealth,  
17 tax revenue to the Commonwealth with all of the  
18 properties up and running.

19 MR. BLUHM: Just to clarify, this  
20 assumes all of the other facilities in the  
21 Commonwealth the Wynn project, MGM as well as  
22 Plainridge, which is already operating, and  
23 ourselves and Taunton. I reiterate we did not  
24 downsize the Taunton operation for the smaller

1 project. We assume the old project.

2 MR. SOLL: I'm going to move to the  
3 next slide, the bottom line analysis. If the  
4 Spectrum forecast is to be believed, the  
5 Taunton casino would be better off in scenario  
6 two with Taunton and Brockton operating.

7 The Innovation Group estimates  
8 actually that EBITDA would be \$15 million  
9 higher profit, \$15 million higher under the  
10 scenario with both properties operating.

11 And I think this chart, which I'm  
12 going to try and describe very carefully will  
13 answer some of your other questions about what  
14 to do with the extra fat as it were, of paying  
15 a lower tax rate or a zero tax rate.

16 In this chart, both of these columns  
17 seek to present a mini pro forma, you've seen  
18 detailed pro formas in all of the submittals,  
19 but a mini pro forma showing revenue and EBITDA  
20 for Taunton only. However, in scenario one, it  
21 shows Taunton as if it were Taunton operating  
22 alone in Region C. Column two, scenario two  
23 shows Taunton but with the competition with  
24 Brockton.

1                   So, the first thing I'll point out  
2 is they're only showing a 12 percent revenue  
3 difference as a result of us or Mass Gaming  
4 being open to in the region. That's the \$414.2  
5 million relative to \$364.5 million.

6                   The second thing I would point out  
7 is one of the more important factors to think  
8 about is the marketing budget. With found  
9 money in terms of tax relief, will they be able  
10 to spend more to market? And the answer is  
11 absolutely they will. But there are limits on  
12 what is logical in terms of what we call buying  
13 business in the industry.

14                   And for the Commonwealth's purposes,  
15 when a lot of that is done through free  
16 promotions and found money within the property,  
17 there is no economic impact associated with it.  
18 It's essentially just taking profit and giving  
19 it back to players to incentivize them to come  
20 down. It's not buying ads. It is basically  
21 buying business.

22                   You'll see we gave a 20 percent  
23 increase to that marketing budget. That is  
24 consistent with what we have seen happen in

1 similarly competitive situations. We haven't  
2 seen people doubling their marketing budget.  
3 We haven't seen people even raising it by 25 or  
4 30 percent. It is tempered for a reason. You  
5 are still trying to maximize the bottom line.

6 We move to the next line item, other  
7 expenses. You'll see the other expenses  
8 actually go down. Each property is operating  
9 at a lower volume of revenue individually.  
10 Therefore, some of your expenses on a  
11 percentage basis and on a real basis change  
12 because you're serving less guests. You have  
13 less variable costs. Your fixed costs are the  
14 same. Your variable costs will shift.

15 Finally, on the net effect of these  
16 differences in marketing spend and other spend  
17 is about a 3.4 percent change in expense. So,  
18 if you look at the final second-to-last row,  
19 gaming tax and similar to we have obviously  
20 removed the gaming tax, which would no longer  
21 be in the equation. And we result in the  
22 comparison of profitability.

23 So, under scenario one with Taunton  
24 operating alone in Region C, we're showing \$175

1 million in EBIDTA or profit before taxes and  
2 depreciation and amortization. And on scenario  
3 two, we're actually showing \$190 million in  
4 EBITDA.

5 So, by Spectrum's own numbers, they  
6 actually show their client doing better with us  
7 operating in the market.

8 COMMISSIONER ZUNIGA: Can I ask a  
9 question? If this is the case, shouldn't  
10 Spectrum be advising their client to let the  
11 Commission issue a license?

12 MR. BLUHM: Yes. And they don't  
13 believe these numbers. They are not  
14 believable. And I'm going to get into those in  
15 more detail. They can't possibly believe that  
16 their business goes down 12 percent and our  
17 business goes down a massive amount if there's  
18 two casinos when we are 17 miles closer to the  
19 mass, to the big population in Boston.

20 And I am putting up my money, my  
21 grandchildren's money. I've been in the real  
22 estate business for 45 years picking locations.  
23 We've opened many casinos. They're all  
24 profitable. They don't believe -- If we

1 believed the Spectrum numbers, I wouldn't be  
2 here because they basically have said that we  
3 will be destroyed and they'll hardly be touched  
4 if we have two casinos.

5           And they've done that to show that  
6 the Commonwealth makes less money because when  
7 our revenue goes down we pay taxes at 25  
8 percent. And their numbers are not believable,  
9 the Spectrum numbers. And I'm going to get  
10 into that in much more detail when he is done.

11           You've asked the absolute correct  
12 question, Sir. It's the heart of my analysis  
13 that they can't believe these numbers.

14           MR. SOLL: In summary for the first  
15 area, which is the forecast and on slide six,  
16 there are many reasons to doubt the consistency  
17 and the credibility of the Spectrum analysis.  
18 The analysis claims that Taunton can overcome  
19 the laws of gravity by buying customers. We  
20 believe this is a very dubious premise and a  
21 fundamentally flawed starting point for what  
22 will happen on the waterfall if a low revenue.

23           So, I'm going to keep moving now  
24 into the second area, which is the examples.

1 So, all of these assumptions made in the  
2 Spectrum report hinge upon examples in two  
3 primary states, New York and Florida.

4 In both cases, what Spectrum has set  
5 out to do is to say that tribes in those states  
6 with lower tax rates as they believe they would  
7 be in Region C in Massachusetts are  
8 outcompeting their commercial competitors  
9 because they have a lower tax rate, which seems  
10 logical on the face.

11 But in fact, in each state the  
12 dynamics at work are counter to that math. And  
13 I'm going to explain in three different areas.  
14 First of all, the analogy they are drawing  
15 between the commercial and tribal properties in  
16 the area of product and offering are very  
17 different.

18 In Florida, they're trying to tell  
19 us that the Seminole Tribe because of their  
20 lower tax rate, an effective tax rate of 12  
21 percent relative to the pari-mutuel slot  
22 facility tax rate of 35 percent is able to be  
23 so much more successful.

24 But living in the middle of the

1 state and having studied it and worked for both  
2 of those client groups, I can tell you that the  
3 key factors are about the size and scale and  
4 scope of the physical plant and the amenities  
5 and the existence of table games. Along the  
6 existence of table games in those properties as  
7 you can see when you look at Twin River  
8 relative to say Plainridge are a completely  
9 different offering.

10 In New York State, we have a similar  
11 situation the Seneca Tribe, also a client of  
12 ours, has a full-scale offering. The Spectrum  
13 report is comparing that to highly taxed pari-  
14 mutuel properties largely in the New York metro  
15 area which have only slot machines and don't  
16 have table games.

17 In terms of the locations themselves  
18 and proximity, we've got in the Florida case  
19 similar locations for pari-mutuel facilities  
20 and the Seminole properties. Most populations in  
21 South Florida can get to a property that is  
22 owned by the tribe or a property that's in a  
23 pari-mutuel facility as easy as one another.  
24 So, there is no distance factor as there is in

1 Massachusetts.

2                   And finally and importantly,  
3 incredibly left out of the equation is the  
4 difference of smoking laws in each case.  
5 Spectrum fails to acknowledge that the slot  
6 facilities in Florida and New York are subject  
7 to smoking bans where the tribal casinos allow  
8 smoking. Effectively giving them up to 24 to  
9 36 percent advantage over the smoke-free  
10 competitors.

11                   This omission in itself undermines,  
12 we believe, the entire discussion of Florida  
13 and New York. The smoking advantage thankfully  
14 will not apply in Region C. Both properties  
15 will be non-smoking.

16                   COMMISSIONER CAMERON: Can I ask a  
17 question about that? Where does the 24 to 36  
18 number -- is that a number that you, the  
19 Innovation Group, conducted a study and came up  
20 with those numbers?

21                   MR. SOLL: Yes. The numbers based  
22 on the impact and then the replacement of  
23 revenue to a smoking environment that we've  
24 measured since Delaware, the first state to

1 outlaw smoking over I think 18 years ago. So,  
2 we've measured it globally, the US and Asia,  
3 everywhere. And the range of the impact  
4 directly on property is about 12 to 18 percent.

5 COMMISSIONER CAMERON: When was that  
6 study done?

7 MR. SOLL: The Dover Downs study  
8 would have been -- I'll have the look. It was  
9 literally more than 15 years ago. We also have  
10 benchmarking though much more current that we  
11 can present as an exhibit to the Commission.

12 COMMISSIONER CAMERON: Thank you.

13 MR. SOLL: Before we leave the idea  
14 of the comparison between tribal and non-tribal  
15 properties, turning to slide nine, there is a  
16 more comparable example right here in  
17 Massachusetts.

18 Twin River faces a huge tax  
19 advantage (SIC) relative to the tribal casinos  
20 in Connecticut that's 60 percent versus 25  
21 percent on slots and on tables 17 percent at  
22 Twin River versus zero on table games for the  
23 Connecticut tribes. Despite this disadvantage,  
24 it competes very effectively, Twin River, in

1 the market.

2           Just think about the distance  
3 differential and the difference between a 60  
4 percent tax rate and a 25 percent tax rate and  
5 a 17 percent tax rate and a zero percent tax  
6 rate. They're not able to defy the laws of  
7 gravity even with those disadvantages in terms  
8 of people picking a more proximate full  
9 offering.

10           And the third area really is about  
11 economic impacts. I have just a few things to  
12 say about it. The only thing you'll notice  
13 covered in the Spectrum report, and I think it  
14 was for a reason, on economic impact  
15 differential was paying lip service, which it  
16 had to that you would have more direct jobs in  
17 the region with the second property, 1500, 1800  
18 more. But they simply dismissed it as being  
19 only one factor as if it is not an important  
20 factor.

21           To us it's the most important  
22 factor. But beyond that, they've also failed  
23 to talk about spinoff effect, which you've  
24 heard about ad nauseum through this whole

1 process. The jobs on top of the direct  
2 operating jobs, the construction jobs, the 2000  
3 construction jobs and the nearly double  
4 construction and operating jobs impacted in the  
5 spinoff effect of those jobs in the economy.  
6 So, that's been ignored very simply in the  
7 analysis.

8           And in our measurements, \$30  
9 million, \$28 million actually of nongaming tax  
10 revenue spent at the amenities, the food and  
11 beverage restaurants, hotel taxes that accrue  
12 to the Commonwealth from the second property in  
13 the region that they are silent on.

14           And the \$85 million of upfront  
15 payments being paid by Mass Gaming that would  
16 not be paid by the Tribe.

17           To sum up economic impacts on slide  
18 11, while cannibalization would reduce the  
19 economic impacts at an individual casino,  
20 Region C as a whole would see increased  
21 employment and increased purchases of goods and  
22 services by the casino. The casino resort GGR  
23 in Region C is estimated to increase by 60  
24 percent by our measure, 52 percent by

1 Spectrum's measure. In either case, which has  
2 to set off new impacts in their spinoff effect.  
3 Finally, the fiscal impacts from sales of other  
4 nongaming taxes operations in Brockton are  
5 estimated to be over \$28 million.

6 Before Mr. Bluhm goes into a little  
7 bit of the analysis that our competitors did  
8 for him at other points in time, I'll just  
9 reiterate the three areas, counterintuitive  
10 application of the gravity model by Spectrum,  
11 which is an inaccurate representation of the  
12 tax impacts on the Commonwealth.

13 Secondly, irrelevant comparisons in  
14 Florida and New York, better comparison here  
15 closer to home. Thirdly, significant  
16 additional economic impact as a result of  
17 another property, very logical.

18 MR. BLUHM: Chairman Crosby and  
19 members of the Commission, thanks for giving me  
20 a chance to talk to you again. It's not the  
21 first time but I am still struggling with  
22 pronouncing the name of the city of Taunton  
23 with my Midwest accent. And I apologize. I  
24 keep trying and I keep failing.

1                   First, I want to start with giving  
2 you some additional reasons why the Innovation  
3 numbers we believe are accurate and the  
4 Spectrum numbers don't make any sense. As part  
5 of our normal due diligence process before we  
6 decide to pursue a particular casino  
7 development at a particular location, we often  
8 obtain different expert opinions as to the  
9 projected revenues.

10                   As I've said, we invest our own  
11 capital. We are not a public company that has  
12 to make deals to grow. I'm investing my money.  
13 But I'm mainly doing this for my grandchildren.  
14 We want to make sure we are right. We don't  
15 want to lose money.

16                   So, in this case when we started  
17 looking at this site, in addition to talking to  
18 Innovation, we retained another study from  
19 Maxim Strategy, a well-recognized firm, to do  
20 an analysis of the Brockton site, and in  
21 particular, what the impact would be on our  
22 earnings if there was also a facility up and  
23 running in Taunton.

24                   Importantly, we did this in December

1 2014, shortly before we were introduced to the  
2 Brockton site when I started looking at it with  
3 our team and met our partner George Carney who  
4 owned the site. So, importantly, these studies  
5 were not done to present to you all. We were  
6 doing this to figure out whether we wanted to  
7 do this deal.

8           And we had another site or two that  
9 we were looking at. And we were comparing it.  
10 But we were nervous about the other sites that  
11 they were much closer to the Taunton site than  
12 Brockton which had the advantage of being 17  
13 miles away and closer to the population base.

14           In addition, we were talking to  
15 ClearVest, our potential partner who is our  
16 partner in Des Plaines in Chicago about another  
17 project that they had worked with us on. So,  
18 we invited them to look at this project with us  
19 because we felt some obligation to do so.

20           And they on their own -- They're an  
21 investment firm with extensive experience. --  
22 hired a third firm called Leisure Dynamics to  
23 do the same study in December 2014 for them to  
24 decide whether they wanted to do this deal,

1 whether it made economic sense.

2 Maxim's numbers and Leisure all came  
3 in in the same ballpark as the Innovation  
4 numbers. Again, this was done in 2014. Maxim  
5 predicted \$277 million of revenue for Brockton.  
6 And Leisure predicted \$315 million. These were  
7 all by the way comparable gravity numbers that  
8 we're using.

9 Secondly, this is the point made  
10 earlier, we were assuming that Taunton would  
11 have the much bigger facility that they had  
12 proposed then, not the smaller phase 1 now.  
13 The average of all of these together is \$304  
14 million. Spectrum's what we consider outlier  
15 number was \$263 million, as you've heard, which  
16 is 12 percent less than the average of all  
17 three projections that we had that were much  
18 closer to one another.

19 Most importantly, the average  
20 percentage drop for Brockton's gross revenue,  
21 if there is also a Taunton casino, based on the  
22 analysis of the three firms, was 19 percent.  
23 So, everybody said if there is a casino in  
24 Taunton, on average the three of us said that

1 it would be 19 percent drop in our revenue.

2           Spectrum's analysis would have  
3 Brockton's revenue dropping 37 percent if there  
4 were a competing casino in Taunton, while they  
5 said Taunton's revenue dropped only 12 percent.

6           I have to tell you it makes no  
7 sense. We are 17 miles closer to Boston and  
8 that's where the lion's share of South Boston  
9 and much more population is going to come from.  
10 Again, all of these assumed a much bigger  
11 casino.

12           Further to illustrate that our  
13 projections are not overly optimistic, the  
14 average of the three projections for Brockton  
15 alone was actually lower than Spectrum's  
16 projection for Taunton alone. That's just not  
17 possible because assuming none of the tax  
18 issues, they are 17 miles away further to the  
19 south where there is far less population.

20           I think I said earlier, I've been in  
21 the real estate a long time. I've looked at  
22 all. I went to their site. I went to our  
23 site. I went with our people. And we are  
24 convinced that we have a much better site. And

1 we're going to do more business than they are  
2 because we are right off the route and it's  
3 just going to work.

4           Again, these numbers all were done,  
5 the other two guys were all done with having  
6 nothing to do with any presentation. They were  
7 done back in 2014 to see if we wanted to do a  
8 deal.

9           The second point that I wanted to  
10 make, which has already been made by the  
11 distinguished Commissioner, which is an  
12 absolutely logical conclusion. Our actions are  
13 supporting our belief in the Innovation  
14 numbers. As I said before, if we believed in  
15 the Spectrum's low numbers for Brockton and  
16 high revenue numbers for Taunton when there are  
17 two casinos, I wouldn't be here.

18           It wouldn't be a good investment for  
19 us. Conversely, if the Tribe and Genting  
20 really believe the Spectrum numbers as you said  
21 Sir, they should welcome a Brockton casino  
22 since they'd make more money when they are  
23 paying a zero tax rate. If the opposite is  
24 true, they are opposing it as a practical

1 matter, they must believe in the Innovation  
2 numbers supported by the other firms.

3           Let me give you a very simple  
4 example because Innovation went through  
5 marketing costs and everything else. It's very  
6 simple. If you start out with \$100 and they  
7 said, Spectrum, that they would lose 12  
8 percent. So it's \$12. So, you would lose \$12  
9 of income. But you don't say pay 17 percent  
10 taxes on the \$100, so you save 17. You're \$5  
11 ahead. So, you've got more money to spend. I  
12 don't know why they are out here trying to  
13 convince you otherwise not to give us a  
14 license.

15           Their 12 percent drop in revenue is  
16 really so much lower than what they proposed  
17 for us that it's the astronomically frankly I  
18 think ridiculous.

19           Using Innovation's numbers which  
20 they used for us and what we relied on, Taunton  
21 would have a much larger drop in revenue, 31  
22 percent. Their EBITDA would drop by 40 percent  
23 on our numbers if there are two casinos. So,  
24 there would be a significant hit to them as it

1 would be to us.

2 40 percent drop in EBITDA rather  
3 than an increase. And that's why the Tribe is  
4 opposing our casino.

5 But it's important to note that we  
6 ran numbers using Innovation's numbers. So,  
7 how much money would the Tribe make, because I  
8 have said before that the Tribe if there's two  
9 casinos would still have a successful casino.  
10 It would not be as successful as if they are  
11 the only be one of course. But they will still  
12 make, based upon our numbers, the Innovation  
13 numbers, over \$100 million of EBITDA. So, they  
14 are not destroyed but they wouldn't have a  
15 monopoly. There would be two casinos.

16 So, the bottom line is, I don't  
17 believe the Spectrum numbers make any sense.  
18 And I don't believe the Genting or the Tribe  
19 believe or they wouldn't be here fighting us  
20 because they would do just fine if you believe  
21 those numbers.

22 So, let's spend just one minute.

23 I've already covered --

24 CHAIRMAN CROSBY: Excuse me, while

1 you're on the EBITDA question, would you just  
2 say again your numbers suggest that the  
3 difference -- what is the drop in your EBITDA  
4 between your standalone and competing with  
5 Taunton?

6 MR. BLUHM: For us?

7 CHAIRMAN CROSBY: For you.

8 MR. BLUHM: For Taunton it would  
9 drop about 40 percent.

10 CHAIRMAN CROSBY: For Taunton drops  
11 40 percent? I mean your EBITDA.

12 MR. BLUHM: I was just saying, they  
13 drop about 40 percent. We will drop from about  
14 \$130- or 40 million to somewhere around \$100  
15 million. So, we drop also.

16 CHAIRMAN CROSBY: Something like 130  
17 to 100.

18 MR. BLUHM: Yes, I don't remember.  
19 Do you have the exact number?

20 CHAIRMAN CROSBY: If that's ballpark  
21 that's fine.

22 MR. BLUHM: Yes, a ballpark number.  
23 We were in that range. That's in the materials  
24 we sent to you. So, we get hit and they get

1 it. But their numbers were they don't get hit  
2 at all or they lose 12 percent which is way  
3 less than any of our other assumptions and they  
4 don't have to pay tax.

5 Let me talk for a minute about their  
6 plans, which I have already spoken about.  
7 First and foremost let me say this. Under  
8 their new phase 1, assuming that they actually  
9 do that, you end up with a facility that is  
10 nothing that was originally intended in the  
11 legislation of the Commonwealth.

12 You were supposed to have a full-  
13 service casino resort to create jobs and  
14 economic development. And phase 1 is a shadow  
15 of that. I don't know whether they'd ever have  
16 a phase 2 and three, etc.

17 We are starting out with the full  
18 project. And as I said earlier, they've done  
19 that because number one, they can do what they  
20 want. They are not under your jurisdiction.

21 And number two, economically they  
22 cannot take the chance that it will ultimately  
23 be decided that they can't have a casino.

24 So, the bottom line is and your

1 ultimate decision is what makes the most sense  
2 for the Commonwealth. That's your decision.

3           So, in conclusion let me just say a  
4 couple of things. I don't want to repeat too  
5 much of what you've heard, but I think we can  
6 all agree that you have a right to issue a  
7 casino. You made that decision a long time  
8 ago. I think it is totally clear both that  
9 there is no prohibition on you doing so. And  
10 even if there was, the various timetables have  
11 already elapsed for you to do so.

12           And there are many, many reasons why  
13 the land in trust decision is very  
14 questionable, particularly the Carcier  
15 language regardless of which court has to look  
16 at this.

17           A new issue has been raised today by  
18 us about the compact. I think it just throws  
19 another area into question here. We were  
20 convinced of our position before we discovered  
21 this. We recently discovered it. I think that  
22 when you look at the compact itself and you  
23 look at the sections of the Act that they refer  
24 to, it's very clear that they did not meet

1 their own condition precedent to that compact  
2 becoming effective.

3           And as our attorney has pointed out,  
4 it's not a technical difference. There's a  
5 real legal distinction between effective by  
6 operation of the 45 days passing with nothing  
7 happening or them actually giving a notice of  
8 approval in the Federal Register. Again, by  
9 the way, I've asked this of more than just one  
10 attorney with gaming experience and got the  
11 same reaction.

12           But when you get right down to this,  
13 you have to decide whether granting Brockton a  
14 license is in the best interest of the  
15 Commonwealth. We think it clearly is.

16           When you look at this situation, you  
17 basically have two choices. If you award us a  
18 license, you will certainly have one casino  
19 that's us up and operating with all of the  
20 whistles with it that we said we're going to  
21 do. There's no phases. It's going to be  
22 hotel, etc. We have shown you that if we alone  
23 are the only casino, you are going to make \$71  
24 million a year more.

1           In addition, this is going to be an  
2 enormous, enormous benefit to the city of  
3 Brockton that needs this money as much as  
4 anybody for all the reasons you've heard from  
5 the mayor. And if you ultimately have two  
6 casinos because it's ultimately determined that  
7 land may be in trust, you're going to have two  
8 successful casinos that are both going to make  
9 in the area of \$100 million. And you're going  
10 to have twice as much jobs and twice as many  
11 economic improvements.

12           And our numbers show that you will  
13 \$6 million or \$7 million more if you have two  
14 casinos than if you have Taunton alone. And I  
15 should point out that both the statute and the  
16 compact, which we now say isn't even effective,  
17 and it was in both compacts, made it clear that  
18 there was anticipation that there could be two  
19 casinos, a commercial and Taunton in Region C.  
20 There were various provisions dealing with that  
21 where they don't pay tax if that happened.

22           Your other alternative is you don't  
23 issue a license to us. First, you put a stake  
24 in the heart of Brockton. That is a town -- a

1 city that really needs it. It's a large city  
2 in your Commonwealth. It's minority majority.  
3 And they are in desperate need of economic  
4 development. And this is a perfect place to do  
5 it.

6 We all know that the land in trust  
7 decision may be reversed in which case you'll  
8 have no casino. You'll have no revenue, no  
9 jobs after that happens. And for sure, you  
10 know there is going to be litigation that's  
11 going to go on for a long period of time.

12 So, when I look at the risk and the  
13 possible pluses and minuses, I must say, it  
14 seems to me that it is a much safer and surer  
15 bet to have two casinos. And our numbers  
16 supported by three other firms and our own  
17 money on the line would indicate that if you  
18 have two casinos, we don't think you're going  
19 to have any kind of disaster. That this market  
20 is not oversaturated and there's enough room  
21 for us to have reasonably successful casinos.

22 We are both much better off  
23 economically if we're alone. That's obvious.  
24 Everyone would like to have a monopoly. But I

1 think there is not much risk in giving us the  
2 casino. And you're taking a huge risk where  
3 you have no control over what the Tribe and  
4 Genting ultimately decide to do in light of the  
5 citizens' lawsuit and maybe other lawsuits.

6 So, you have to make the decision.  
7 You're intelligent people. And we hope you  
8 will make what we think is the correct decision  
9 and the best in the interest of the  
10 Commonwealth.

11 That covers our comments. I believe  
12 the next person is the Tribe's -- I mean --

13 MR. DONNELLY: Yes, unless there are  
14 any questions.

15 CHAIRMAN CROSBY: Let's see if we  
16 have any questions for Mr. Bluhm anybody?

17 COMMISSIONER ZUNIGA: One question.  
18 Is it at least possible or feasible that if the  
19 Tribe -- for the Tribe to come in with what I  
20 might call a category killer, a billion dollars  
21 like they say up front embolden by let's say  
22 what they say now understand that it is in  
23 their interest to have another casino there  
24 because of the differential, I know it's very

1 hard to predict their thinking or their actions  
2 after, especially by you, but is that at least  
3 a possibility that would factor into some of  
4 the numbers that Spectrum comes up with with a  
5 much bigger property perhaps a much bigger  
6 creating revenue?

7 MR. BLUHM: Sir, we ran all of our  
8 numbers assuming that they did their large  
9 casino. And our numbers are comparable. We  
10 are doing something very similar, the number of  
11 gaming positions, etc. But we assumed that  
12 they did the full casino with the hotel and  
13 everything else.

14 But we picked this site and are  
15 prepared to invest up to \$700 million roughly  
16 is our estimate in our project because of our  
17 location. We think we will build a very nice  
18 project and we will do good job of running it.  
19 And we are confident that we can compete with  
20 their major casino.

21 My only point was that that's our  
22 assumption for all of our numbers. I wouldn't  
23 be here if I thought that we couldn't be  
24 successful. As I said, our projections are

1 that we would do somewhere around \$100 million  
2 plus in that range or slightly over if there  
3 are two. Just as that's about what we thought  
4 they would do. Always we think we'll do more  
5 business than that because of our location, but  
6 their facility won't be any nicer we don't feel  
7 than ours. In fact, we think ours will be  
8 better for the market.

9 My point about their phase 1 was  
10 simply that we don't know if they'll ever get  
11 beyond phase 1. I think you had pointed out  
12 that well what if they run this thing during  
13 this period or something and make some money  
14 during this period. And it may well be what  
15 they're thinking if they do the smaller  
16 property.

17 But that means that during this  
18 period, we would have an even bigger advantage  
19 over them because we would have a much nicer  
20 facility. So, if this thing went on for a  
21 period of years, we would be doing better.  
22 They wouldn't be paying taxes and they'll do  
23 okay. They'll have a much smaller investment.

24 Remember that when they talk about

1 their investment, they're including all of the  
2 money that they've spent to date, which has  
3 really nothing to do with the development of  
4 this project. They don't have the requirement  
5 that they spend a certain amount of money on  
6 their project under a statute like we do.

7           The statute says we have to spend a  
8 certain amount of money on the real project.  
9 They don't have that. So, they've spent -- I  
10 don't know, but there are rumors that they've  
11 spent a lot of money already, giving money to  
12 the Tribe, etc.

13           In any event, we are convinced ours  
14 will be successful. Our project will be  
15 physically as nice as theirs. We don't develop  
16 inferior projects. We develop nice projects.  
17 We compete with all kinds of other operators.  
18 We compete with non-smoking in Des Plaines in  
19 Indiana.

20           I can tell you the table games  
21 versus slots only is enormous difference. We  
22 opened our casino in Philadelphia with just  
23 slots. -- I meant in Pittsburgh, I'm sorry,  
24 with just slots. When we were able to put in

1 tables, not only did we get table revenue  
2 increase, but our slots increased dramatically  
3 because you get companion people coming in.  
4 Say the man wants to play the tables and his  
5 wife or girlfriend wants to play slots. And  
6 our slot business ramped up tremendously as of  
7 course we now have tables because they changed  
8 the law to allow tables after we opened.

9 COMMISSIONER ZUNIGA: Thank you.

10 CHAIRMAN CROSBY: This is a little  
11 bit obscure, but as I think about how we're  
12 going to weigh out the rights and the equities  
13 and the economics on this. If you were awarded  
14 a commercial license and the Tribe elected not  
15 to go forward with a casino, it would be worth  
16 somewhere in the neighborhood of \$30 million a  
17 year to you in EBITDA.

18 Would you consider mitigating, using  
19 some of that EBITDA to mitigate the loss to the  
20 Tribe at least until a court case deprived them  
21 of the right to have a casino?

22 MR. BLUHM: We actually under our  
23 agreement with the city of Brockton pay the  
24 city of Brockton more because they have a

1 percentage of our gross with a minimum. The  
2 city of Brockton would get more. But we  
3 certainly weren't intending to subsidize the  
4 Tribe.

5 CHAIRMAN CROSBY: I know you weren't  
6 intending to, but you pointed out that there's  
7 a \$30 million benefit to you if they don't go  
8 forward. There's also obviously a loss to them  
9 if they don't go forward. Would you consider?

10 MR. BLUHM: They say they're going  
11 forward. They say they are starting phase 1.  
12 And it would only be determined that it's not  
13 legal for them to go forward that they  
14 shouldn't have had their land in trust. And  
15 that's a decision in the federal courts.

16 CHAIRMAN CROSBY: Right. But my  
17 question is would you consider using some of  
18 that \$30 million to mitigate the cost to them  
19 -- the loss to them if that circumstance  
20 transpired?

21 MR. BLUHM: I guess I could consider  
22 it, but I certainly couldn't commit to it.

23 CHIARMAN CROSBY: No, I understand  
24 that.

1                   MR. BLUHM: We certainly would be  
2 making more charitable contributions as we  
3 always would do as our property is more  
4 successful.

5                   CHAIRMAN CROSBY: Okay. Anybody  
6 else?

7                   COMMISSIONER MACDONALD: It's just a  
8 question of detail, Mr. Bluhm. On the scaled-  
9 down size of the Taunton project, it was  
10 described to us a couple of weeks ago that  
11 they're now going to do phase 1, phase 2, phase  
12 3, I have to say that I haven't drilled into  
13 the numbers, but are you representing to us  
14 that your review of their phase 1 plan results  
15 in a reduction on the order of 45 percent of  
16 gaming positions?

17                   MR. BLUHM: 45 percent of gaming  
18 positions, yes. And let me try to take you  
19 through it. They originally proposed, I think  
20 -- Their current proposal is 1941 positions, I  
21 believe and 60 tables. Tables usually count  
22 for six times each one. So, if you add those  
23 together, their old proposal -- I have all the  
24 exact numbers here. -- which was they had their

1 original proposal -- Right now it's 1941 slots  
2 and 60 table games and one retail shop.

3           Their proposal in 2012 was 3000  
4 slots, 150 table games. So, that's time six,  
5 so that's 39 -- 3000 plus 900 for the table  
6 games plus 40 poker tables that's also six  
7 that's 240. So, if you add that altogether and  
8 compare that to the current which is 1941 slots  
9 and 60 table games -- Remember multiply six  
10 times 60 for tables. -- you'll find out that  
11 they dropped the number of gaming positions by  
12 roughly 44, 45 percent.

13           COMMISSIONER ZUNIGA: And that 19-  
14 and 60 tables number is their phase 1? Remind  
15 me.

16           MR. BLUHM: Yes, that's the current  
17 phase 1 I just presented to you.

18           COMMISSIONER MACDONALD: The way  
19 that I understood it was that in phase 1 they  
20 were going to basically build out the gaming  
21 floor but not build out the hotel.

22           CHAIRMAN CROSBY: Half of the gaming  
23 floor.

24           COMMISSIONER MACDONALD: I had

1 thought it was the whole gaming floor.

2 COMMISSIONER ZUNIGA: Two-thirds.

3 COMMISSIONER MACDONALD: Two-thirds  
4 of the gaming floor, okay.

5 MR. BLUHM: But it's about 55  
6 percent of the number of gaming positions. We  
7 are back to the point, why are they cutting it  
8 down? The market hasn't changed. It's because  
9 of the fear of the lawsuit.

10 CHAIRMAN CROSBY: Okay. Next up?

11 MR. DONNELLY: As noted, we are  
12 going to cede some of our time to Mr. Bond.  
13 And I'll move out so he can sit here and have a  
14 microphone.

15 MR. BLUHM: I should point out that  
16 Mr. Bond represents the citizens group. He  
17 does not represent us nor is he speaking on our  
18 behalf.

19 CHAIRMAN CROSBY: Except that he's  
20 paid for by you.

21 MR. BLUHM: We do contribute to the  
22 Tribe -- I mean to the citizens group who in  
23 turn is paying his bills with our money and  
24 they attempt to raise some of their own. I

1 don't know how much they've raised on their  
2 own. I'm not suggesting he's not. We are part  
3 of it.

4 CHAIRMAN CROSBY: I understand.

5 MR. BOND: Commissioners, my name is  
6 Adam Bond. I am an attorney in Middleborough  
7 representing the plaintiffs in the suit that  
8 was filed against the Department of the  
9 Interior concerning the record of decision  
10 taking land into trust for the Mashpee  
11 Wampanoag, a decision which violates the plain  
12 language of the IRA and directly contradicts  
13 the Congressional intent of the IRA.

14 One of the reasons to address the  
15 Commission is to try and clarify a few things  
16 both historically and currently that may be of  
17 some assistance to you.

18 I've been involved with the  
19 Massachusetts gaming issues, the Indian gaming  
20 issues and the Mashpee Wampanoag Tribe for  
21 almost a decade. A lot of this that is going  
22 on currently had its genesis in January 2007  
23 when I was a selectman in Middleborough. And  
24 we tasked the town manager to see if the

1 Mashpee Wampanoag Tribe had any interest in  
2 siting a casino in Middleborough.

3           At the time, I was not pro-casino or  
4 anti-casino. Like this Commission, I was  
5 looking out the best interest of Middleborough  
6 in the same way you folks are looking out for  
7 Region C and you're looking out for the  
8 Commonwealth's interests.

9           In researching the matter at the  
10 time, the law to me was unclear whether the  
11 Mashpee Wampanoag Tribe would actually qualify  
12 for land in trust. This is all pre-Carcieri.  
13 But in discussions with the Tribe both publicly  
14 and privately, the Tribe warned the board of  
15 selectmen that it was inevitable that land into  
16 trust would occur. And if there was no  
17 agreement, the town would get zero, nothing.

18           So, based on my analysis I concluded  
19 that having an agreement for the town was the  
20 only real choice available in the decision  
21 tree. My decision tree was if the federal  
22 government followed the law and denied land  
23 into trust, then the town was safe because we  
24 had an agreement but we just wasted time

1 creating it. If the federal government made a  
2 jurisdictional grab and violated the law and  
3 granted land into trust, we would similarly be  
4 safe because we would have an intergovernmental  
5 agreement.

6 I then shut my practice down for one  
7 week and participated in the negotiation of the  
8 first intergovernmental agreement between the  
9 Mashpee Wampanoag Tribe and Middleborough,  
10 which I believe was the first one that was done  
11 in the state.

12 When it was completed there were a  
13 number of people that indicated that it was one  
14 of the most lucrative intergovernmental  
15 agreements in the country with very good  
16 protections for the town and its people with  
17 regard to expansion by the Tribe and economics.

18 On July 28 of that year, I was also  
19 involved in the largest town meeting in New  
20 England history which was outside on a really  
21 hot day with a lot of people passing out where  
22 they voted to approve that particular IGA.

23 Now, I first dealt with the Mashpee  
24 Wampanoag tribal Chairman Glenn Marshall who

1 throughout '07 and '08 continued to tell the  
2 people of Middleborough and myself that a  
3 casino would be built in 18 months. After Glen  
4 Marshall was forced to step down as chairman in  
5 August '07, I then began to deal with Mashpee  
6 Wampanoag tribal chairman Shawn Hendricks who  
7 in '08 or '09 in that timeframe also claimed a  
8 casino would be built in less than two years.

9           After Shawn Hendricks stepped down,  
10 I then dealt with the current chairman, Cedric  
11 Cromwell, who persistently told the board of  
12 selectmen that a casino was imminent in less  
13 than two years.

14           In 2009, the U.S. Supreme Court  
15 decided the Carcierri case, which made it  
16 crystal clear the Mashpee Wampanoag Tribe like  
17 the Narragansett Tribe in Rhode Island could  
18 not lawfully be granted land into trust as they  
19 were not the federal jurisdiction in 1934.

20           Very quickly after that the Mashpee  
21 Wampanoag Tribe picked up and pulled out to  
22 find a new location. They split with their  
23 backers Waldman and Kerzner and moved on to  
24 different waters where they finally came to

1 land in Taunton.

2           Due to my experience with the  
3 Mashpee Wampanoag Tribe in Middleborough and my  
4 continued involvement in the Indian gaming laws  
5 and the Massachusetts gaming issues, the  
6 current plaintiffs that are in this suit came  
7 to me and asked me for my assistance.

8           On a pro bono basis, I provided them  
9 with interpretations of the severely discounted  
10 and watered down IGA that got entered into in  
11 Taunton, because that's when they came to me.  
12 They said we have this IGA. We don't know what  
13 we are doing here. Can you help us sort of  
14 analyze it?

15           Well, to an interesting point, which  
16 I think is relevant here, the Taunton IGA when  
17 I looked at it essentially what the tribal  
18 representative did was take the Middleborough  
19 IGA including the font and the formatting, went  
20 through it and stripped out significant money  
21 provisions and stripped out significant  
22 protective provisions that we had built into  
23 our agreement. And then essentially provided  
24 it to Taunton on a fill or kill basis or a take

1 it or leave it basis. And I was at a lot of  
2 these hearings where the take it or leave it  
3 was certainly amplified.

4 But significant to this  
5 conversation, under the IGA with Taunton, the  
6 Mashpee Wampanoag Tribe really has no  
7 obligation to Taunton to complete the project.  
8 The Mashpee Wampanoag can build a small piece  
9 and never get to the other pieces. And this  
10 was done through an expansive definition of  
11 force majeure.

12 And for those of us that aren't  
13 lawyers, force majeure usually means act of  
14 God, tree falls on your house, somebody goes on  
15 strike, an act of war and terrorism. This  
16 force majeure includes the following as part of  
17 force majeure "adverse economic events or  
18 circumstances which impact business generally."

19 As a lawyer, which I am, I would  
20 have difficulty being on the other side of this  
21 type of language, because it wouldn't really  
22 create much of an obligation. But this  
23 definition is so broad that it almost makes the  
24 section 2, section 2 in the IGA the duty to

1 compete and illusory promise because all  
2 they've got to say is economically we can't do  
3 it.

4 But in any event, going back to the  
5 services I was providing for the plaintiffs, I  
6 spoke at many gatherings to explain the IGA  
7 provisions. I attended municipal hearings.  
8 And I raised many of the issues that are  
9 contained in the current complaint. I've been  
10 with these plaintiffs for years. I'm loyal to  
11 these plaintiffs. And we are in this fight  
12 together regardless of the economics. I'm  
13 already committed to it.

14 As Attorney Tennant said, this  
15 litigation is likely to go to the United State  
16 Supreme Court. So, what's a little  
17 Middleborough lawyer doing going to the United  
18 States Supreme Court, can I handle it. Well, I  
19 wasn't always in Middleborough.

20 I spent the first 15 years of my  
21 career on Wall Street working for first such as  
22 Shearman and Sterling, Coudert Brothers and my  
23 own partnership. And this case is not beyond  
24 my skills.

1                   I've appeared before the U.S.  
2 Supreme Court and I did so in '97 in a case  
3 against the federal government where an agency  
4 was attempting a similar jurisdictional grab.  
5 The alleged experts when we picked up this case  
6 lamented over Chevron deference and actually  
7 predicted that our claims would go to cede.

8                   Indeed here I believe at the March  
9 15 hear, Attorney Locklear relied on Chevron  
10 deference. I believe she said it at least four  
11 or five times during her presentation. She was  
12 using that to write the epitaph of our suit. I  
13 note that she was also quoted in other papers  
14 as saying that this decision is not  
15 bulletproof. So, there's somewhat of a  
16 dichotomy there.

17                   But despite Chevron deference, we  
18 reversed the agency's jurisdictional grab in a  
19 nine-nothing decision from the United States  
20 Supreme Court. And in fact, Justice Scalia was  
21 so irritated by the government's  
22 misinterpretation of its own statute that he  
23 wrote a concurring opinion that he wasn't sure  
24 why this got the U.S. Supreme Court when the

1 language of the agency and position of the  
2 agency was "unnatural and in clear violation of  
3 the congressional intent." That's what he  
4 said.

5           Having been to the U.S. Supreme  
6 Court on the merits in an analogous case, I  
7 can tell you with certainty that while Chevron  
8 deference is a factor to be considered, it is  
9 certainly not insurmountable. I'm living proof  
10 of that. And it certainly is not an absolute  
11 impediment to victory in this case.

12           It short, I'm not abandoning my  
13 plaintiffs. And I have the knowledge and  
14 experience to win the case which I believe will  
15 be governed by reading comprehension not  
16 statutory interpretation since the language in  
17 issue is plain and thus statutory  
18 interpretation is inappropriate.

19           As to my plaintiffs, they are highly  
20 motivated to pursue their remedies. We have 20  
21 plus plaintiffs, 20 plus plaintiffs -- Say that  
22 10 times. -- with families and homes in the  
23 East Taunton area where the casino is to be  
24 built. These homes are the largest investments

1 these plaintiffs have. And their future value  
2 now is in question with the LIT decision.

3 The plaintiffs have a fairly rural  
4 way of life and some have had it that way for  
5 generations. None of these plaintiffs have a  
6 desire to pull up stakes and move. In fact,  
7 some of them don't have the economic  
8 wherewithal to do so. The impact on these  
9 plaintiffs of the record of decision is that  
10 the character of East Taunton will be indelibly  
11 and forever changed without hope of reversal.

12 And the plaintiffs will be living  
13 next to a sovereign enterprise in which they  
14 have no ability to control the impact of that  
15 enterprise on them through their own local  
16 representatives.

17 Thus, the plaintiffs have an  
18 unwavering and ardent determination to protect  
19 their homes against federal overreach and will  
20 do so to the completion of the litigation  
21 process. These plaintiffs have actively been  
22 raising funds both before Mr. Bluhm and  
23 continue to do so now and will continue to do  
24 so if Mr. Bluhm leaves.

1                   One of the really important things  
2 to address is Mr. Bluhm and his people didn't  
3 come to us. We were hitting the phones. This  
4 record of decision came out. We had to do  
5 something to ramp this up. We went to them and  
6 we asked them. And they were kind enough to  
7 give assistance.

8                   In fact, it was Mr. Bluhm's people  
9 who said they wanted that out front. They  
10 didn't want to hide it. They wanted it out  
11 front. Let the issue be there, whatever  
12 anybody wants to make of it. Unfortunately,  
13 some people have made the wrong issue out of  
14 it.

15                   Let me assure you, I am an attorney  
16 admitted in, I believe, currently three states.  
17 And all of them say the same thing. While I'm  
18 appreciative of the funding provided by Mass  
19 Gaming and Entertainment at our request, I am  
20 only beholdng to my plaintiffs under the code  
21 of professional responsibility of the state of  
22 Massachusetts. I am beholdng to them morally  
23 and legally.

24                   Whoever helps fund the suit is

1 irrelevant when it comes to the client's  
2 interest. They have a goal. At the moment,  
3 maybe goals align. Tomorrow maybe goals go  
4 different ways, so be it. My clients get their  
5 goals satisfied.

6 I and the plaintiffs are involved in  
7 this matter to resolve our dispute with the  
8 federal government. That's the other thing. I  
9 don't have a problem neither do my plaintiffs  
10 with sovereignty. We don't have a problem with  
11 land into trust. Go right ahead, as long as  
12 you do so within the balance of the law that  
13 Congress that sent out. Put it where you are  
14 allowed to not where you are not. And that's  
15 what this suit is about. It's our federal  
16 government has done wrong by us and we need to  
17 correct that.

18 Finally, what happens between the  
19 Massachusetts Gaming Commission and the  
20 Brockton casino interest is between the  
21 Massachusetts Gaming Commission and the  
22 Brockton casino interest.

23 Although we do understand quite  
24 cleanly and clearly that our current litigation

1 as well as any future litigations are going to  
2 have an impact on what goes on in Region C and  
3 any decision, which is why I thank you very  
4 much for allowing me to address you and give  
5 you some insight as to what's going on with the  
6 plaintiff's suit. Thank you.

7 COMMISSIONER MACDONALD: Thank you.

8 CHAIRMAN CROSBY: Thank you. Any  
9 questions? Is that it?

10 MR. BLUHM: That's it. I didn't  
11 know what he was going to say. Thank you. In  
12 fact, this is the first time I think we've met.

13 COMMISSIONER MACDONALD: I might  
14 just ask Mr. Bond, what is that case that you  
15 were referring to that was 9-0?

16 MR. BOND: It was Dunn versus CFTC  
17 which is the Commodities Future Trading  
18 Commission was attempting to gain jurisdiction  
19 over off exchange foreign currency trading.  
20 When they did so, they basically ignored the  
21 Treasury amendment which gave that jurisdiction  
22 to the SEC.

23 COMMISSIONER MACDONALD: Were you  
24 involved in that as --

1                   MR. BOND: I appeared with my  
2 partner. My partner argued. I watched him  
3 sweat bullets during that, but it was a  
4 wonderful experience. We went all the way. I  
5 was involved in briefing and working on that  
6 project from soup all the way to nuts.

7                   COMMISSIONER MACDONALD: Maybe you  
8 could provide staff with the cite on it,  
9 because I'd be interested in reading it.

10                  MR. BOND: Fair enough, I will do  
11 so.

12                  CHAIRMAN CROSBY: All right. Are  
13 you guys done? Did you have more?

14                  MR. BLUHM: No, that's it. We  
15 wanted to keep it brief and not rehash all the  
16 numbers that we presented to you in the past.

17                  CHAIRMAN CROSBY: Anything else on  
18 this item from Commissioners? Thank you very  
19 much for coming back.

20                  MR. BLUHM: Thank you.

21                  MR. BEDROSIAN: Mr. Chairman, I  
22 think they're both relatively quick.

23                  CHAIRMAN CROSBY: Yes, I think we  
24 might as well plow through.

1                   COMMISSIONER ZUNIGA: We'll take  
2 five minutes.

3  
4                   (A recess was taken)

5  
6                   CHAIRMAN CROSBY: We are ready to  
7 reconvene meeting 184 at about 12:20. Next is  
8 item 3. The Executive Director, I believe, is  
9 passing the baton directly to Commissioner  
10 Zuniga.

11                  MR. BEDROSIAN: Correct.

12                  COMMISSIONER ZUNIGA: Thank you. I  
13 just wanted to provide the Commission a little  
14 update on what I found to be a very interesting  
15 and important part of my job as Treasurer to  
16 understand what goes on at the property in  
17 Plainridge relative to information on the  
18 activity and the money, if you will, that gets  
19 collected.

20                  Commissioners might remember that  
21 there's three sources of important information  
22 here that are at play. We have a central  
23 monitoring system, as you know, that has been  
24 now in effect for a few weeks and operating

1 really well and satisfactory.

2           There's a house system that belongs  
3 to Penn that does a lot of the slots  
4 accounting. These two systems, the central  
5 monitoring system and the house system are  
6 designed to be independent of each other. And  
7 then there's of course the cash that gets  
8 picked up, counted and sent away, if you will,  
9 as the days progress.

10           In an ideal world, all of these  
11 systems need to be the same, with the  
12 information in any one of these needs to be the  
13 same. But there are discrepancies that happen  
14 from time to time. And part of the role that  
15 our revenue people under Derek for example and  
16 the role of others at IEB, the gaming agents,  
17 play in terms of understanding those  
18 discrepancies, explaining them, accounting for  
19 them is critical. It's very much a very  
20 important piece of what we do.

21           So, I wanted to give you the big  
22 update is that those discrepancies have been  
23 decreasing significantly all as part of the  
24 implementation of the central monitoring

1 system, the refining of the internal controls,  
2 the procedures that we conduct, the procedures  
3 that we cause the casino to conduct. And  
4 perhaps more importantly understanding those  
5 differences, where they come from and what to  
6 do to anticipate and account for this critical  
7 piece of what we do.

8           So, I wanted to just give you an  
9 example. The update is I'm very encouraged  
10 that these discrepancies are very small when  
11 they are. They can be explained fully. They  
12 have also caused our team to have fine-tune our  
13 best practices, if you will. It's a couple of  
14 lessons learned. I will speak to a couple.

15           But it's something that I think is a  
16 great development. We have a full central  
17 monitoring system and its associated procedures  
18 really up and working.

19           So, I might be a little vague in  
20 terms of details because some of what happens  
21 in the role in what we do dovetails into their  
22 own internal controls of the casino. We've  
23 agreed that the details of the internal  
24 controls are subject to the confidentiality

1 agreement that we have with the casino. But  
2 just wanted to give you a couple of examples as  
3 to where those discrepancies originate just to  
4 keep you up-to-date.

5           So, for example the floor gets  
6 picked up at different times not fully, the  
7 cash.

8           COMMISSIONER CAMERON: You've been  
9 in this business a while, Commissioner. You  
10 understand the lingo. For those who may not  
11 know what the floor being picked up means.

12           COMMISSIONER ZUNIGA: The cash gets  
13 picked from the boxes. The slot machines have  
14 boxes that when they pick them up they replace  
15 them by empty ones. But not every slot machine  
16 gets picked up every day, let me just put it  
17 like that. And there's certain hours when  
18 there is very low activity when that happens,  
19 and it doesn't happen right away. There's a  
20 team of people that goes from area to area.

21           Sometimes the most simple activity  
22 that needs to be accounted for -- There's also  
23 another thing. The day ends and this is a  
24 statutory end to the day at 5:59 a.m. There's

1 a statutory minute -- a.m.

2 CHAIRMAN CROSBY: At 12:59 --

3 COMMISSIONER ZUNIGA: -- 5:59, at  
4 6:00 a.m. the day ends. And we collect the  
5 daily tax etc., etc. The crews begin picking  
6 up the different boxes before and after that  
7 time for logistical reasons. They don't pick  
8 up the entire floor for practical purposes.  
9 There needs to be an accounting of certain  
10 activities that might happen before something  
11 or after any one of these times when let's say  
12 a slot machine gets picked up. The meter is  
13 read. The cash is now safeguarded.

14 There could be somebody that comes  
15 in after the fact and plays that machine that  
16 play needs to be accounted for in some form or  
17 fashion. Because on the accounting and  
18 corroboration with our central monitoring  
19 system there is activity that has happened that  
20 again just needs to be accounted for.

21 So, there's timing differences that  
22 need to be again explained. By way of other  
23 examples, there is a fair amount of change in  
24 location and denomination that happens in the

1 gaming industry. I initially thought that once  
2 they set the floor that's going to be there for  
3 a while. Not only do they change the  
4 denominations of certain games, they introduce  
5 new ones, decide to move them in proximity to  
6 other areas, etc. And that is really going to  
7 be going on quite a bit to some regularity.

8           When that happens, any of those  
9 moves need to be accounted for. This is one of  
10 the lessons that we learned. In our central  
11 monitoring system, we initially identified each  
12 of these assets by location. Whereas a more  
13 robust and now identification is a special  
14 asset number so that when the casino was moving  
15 one slot machine to another, there had to be an  
16 accounting for the activity that took place for  
17 this machine over here and the activity that  
18 then started from the same machine in a  
19 different location.

20           You can imagine that if during all  
21 of that the floor was being picked up in one  
22 area and not another all of that again has to  
23 be accounted for.

24           I can answer questions if you want

1 but that's a big source of understanding  
2 discrepancies in doing asset management, which  
3 is something that we have to do as part of our  
4 procedures.

5           COMMISSIONER MACDONALD: Enrique,  
6 can I ask on that. Is the discrepancy, the  
7 scenario of the discrepancy that you're  
8 describing here with reference to the slot  
9 machines and the official day end of 5:59, is  
10 it that the central monitoring system picks up  
11 the data at a different point in time or  
12 somehow is not geographically parallel,  
13 geographically consistent with the house system  
14 that Plainridge is applying or what?

15           COMMISSIONER ZUNIGA: The central  
16 monitoring system reads the activity at all  
17 times. There's periods. There's a read into  
18 the meter that happens periodically let's say  
19 at all times. There is a difference in time  
20 but let's not worry about that difference.

21           What needs to be accounted for is if  
22 a system reads that the meter said something,  
23 the box gets picked up. Somebody in finance  
24 here or at the casino want to compare the cash

1 to the activity, there may be some activity  
2 that belongs on the next day because that  
3 machine has already been picked up at let's say  
4 4:34 in the morning before the actual cutoff  
5 date.

6 All that there is is -- This is  
7 perhaps what happens by the reality of knowing  
8 everything about the casino at all times. If  
9 we were auditing only let's say 10 percent of  
10 the activity like we would do under a different  
11 -- under a manual system, a lot of this would  
12 be corrected by first looking at what's the  
13 cash and then testing procedures associated  
14 with it.

15 Do you want to expand on any of that  
16 Derek?

17 MR. LENNON: Yes. So, to get to the  
18 base of your question, what you're talking  
19 about is you've got a system generated report  
20 that grabs the meters from end of day to the  
21 end of day -- beginning of day to end of day,  
22 takes a variance between those and says this is  
23 what should be sitting in the box.

24 What Enrique is talking about is the

1 slot drop process to grab six or 700 machines  
2 can't all happen at 5:59. So, their system  
3 does a combination between grabbing actuals of  
4 when the box is pulled so you can get the cash  
5 count on those meters to the boxes that weren't  
6 dropped, the machines that weren't dropped  
7 estimates and pull those together. Our system  
8 is pulling all estimates end of day.

9           So, what we've done for now until we  
10 can pull in, and this is part of our phase 2  
11 development with the CMS getting the actual  
12 meters at the time that the cash box is pulled  
13 or within a reasonable amount of time, I think  
14 within a three-minute window. What we're doing  
15 right now is taking a look at the end of day  
16 reports, the end of day figuring out what the  
17 estimate differences are where the machines are  
18 that Enrique said we can take a look at.

19           Once again that's a limitation that  
20 we have to work within the system. Their  
21 system estimates what's on the floor by drop  
22 locations. So, if you a pull machine that was  
23 in a spot that was supposed to be dropped one  
24 day and move it to a spot that wasn't supposed

1 to be dropped the next day, you're going to  
2 have conflicting meter numbers there.

3           So, you have to kind of walk back  
4 the process where was this machine before. The  
5 CMS is similar to that however what Enrique  
6 talked about is we're adding another field in  
7 that we'll be able to just track the actual  
8 asset so that we can keep the meters consistent  
9 and see what that asset should have generated  
10 for the day.

11           So, there are a lot of fine points  
12 of trying to balance actual to estimates. PPC  
13 even has problems when they pull their actual  
14 meter -- what their estimated meters are for  
15 that actual cash count where they have to pull  
16 back the slot variance.

17           And they'll have their slot teams  
18 investigate was a ticket miscounted here? Was  
19 there a counterfeit? Was there money found  
20 inside the machine that shouldn't have been  
21 credited to it? So, there are all kinds of  
22 different variances that go into it.

23           What we found is that having the two  
24 systems take a look side-by-side first and say

1 was there something that went wrong with the  
2 meters? Or is it something that physically the  
3 gaming agents have to go out and take a look  
4 at? Was there money left -- has helped  
5 drastically.

6 COMMISSIONER ZUNIGA: That was going  
7 to be one of the other examples is that there's  
8 instances where let's say a patron tries to  
9 cash out multiple tickets and one of them gets  
10 stuck in the machine. And that patron gets  
11 some cash, but doesn't fully understand that  
12 there was a short in terms of money might end  
13 up leaving the kiosk or what have you.

14 That differential, let's say a  
15 ticket stuck in the middle of the machine, is  
16 going to surface up as a discrepancy. And  
17 there's a separate procedure for that money.  
18 That money is not yet part of the gross gaming  
19 revenues. It has up to a year to be returned,  
20 to be claimed by a customer who lost it.

21 So, back to where the procedures in  
22 terms of what we do overlap with other  
23 procedures, and that ticket let's say needs to  
24 be pulled out of the count and be placed in --

1 remind me what's the name?

2 MR. LENNON: Unclaimed tickets or  
3 lost tickets because it never incremented a  
4 meter. So, if you look at gross gaming  
5 revenue, once again that's play minus win. So,  
6 if it never made its way into there and it's  
7 just sitting by the side, it was cash that was  
8 never played.

9 COMMISSIONER MACDONALD: Derek is  
10 the house system significantly more manually  
11 based than our system?

12 MR. LENNON: No. There are small  
13 differences in how it generates its reports.  
14 There are a few more manual things that they  
15 have to do as far as bypassing meters that our  
16 system catches. But you have to remember, our  
17 system is built just for gross gaming revenue.  
18 Their system is built for -- While our system  
19 tracks assets where it goes on the floor,  
20 theirs is built for patrons. Theirs is built  
21 for all of the different functions that a  
22 casino person on the floor would do.

23 Not just that you have a slot person  
24 who is overriding. You have manual jackpot

1 payouts. You have error payouts that they have  
2 to process as manual and it all comes back to  
3 the accounting.

4 So, while they do have some  
5 limitation, it's built more for the day-to-day  
6 operations. And ours is built just mainly for  
7 tracking those meters. So, we get a better  
8 read for that purpose.

9 COMMISSIONER ZUNIGA: By the way,  
10 the system of record is the central monitoring  
11 system. If there is ever an unexplained  
12 discrepancy, the tax is based on what our  
13 system says. And there's a process for a  
14 monthly reconciliation and even before that  
15 where PPC can say here is what happened with  
16 this discrepancy, etc. and can issue a credit,  
17 if you will.

18 The convergence of those two systems  
19 has been very good in terms of understanding  
20 there's real redundancy here on a system that  
21 we feel is working really well, the CMS.

22 CHAIRMAN CROSBY: Is there anything  
23 -- As you've gone through this process does  
24 anything trouble you? Your net I gather is

1 that this is working pretty well. You feel  
2 good about it. Do you see any system weakness,  
3 institutional weakness, personal weakness? Is  
4 there anything that troubles you?

5 COMMISSIONER ZUNIGA: No, no. I  
6 think having the in-house knowledge here which  
7 we've done, part of me understanding this is  
8 wanting to know what's under that black box, if  
9 you will, at a high level. We have not just  
10 Derek but a number of people under him that  
11 understand the reports that can be generated  
12 that understand how to read them, how to  
13 reconcile them.

14 From a risk mitigation standpoint it  
15 is important that we have that capability here  
16 that we continuously learn lessons as how we  
17 prepare additional properties.

18 I'm still very looking forward how  
19 there's going to be whole new procedure, if you  
20 will, associated with this relative to table  
21 games, because there is no such thing as a wire  
22 that goes and reads meters. There are systems  
23 that rate players, as I understand them, and  
24 understand and approximate the level of

1 activity that a player brings to each one of  
2 the tables but setting up, refining and  
3 building up procedures around that is going to  
4 be something in the next phase, if you will.

5 I think the central monitoring  
6 system story is a very good one in the sense of  
7 how we have now taken what capabilities are out  
8 there and fine-tune to them to again explain  
9 the differences that come from time to time.

10 CHAIRMAN CROSBY: Anybody else?  
11 Thank you, Commissioner, Director. Next is  
12 item 4, our Director of Workforce, Supplier and  
13 Diversity Development, Director Griffin.

14 MS. GRIFFIN: I am here to update  
15 you on a new opportunity that the Commission  
16 has released a request for responses in order  
17 to optimize the outcomes for the diversity  
18 goals that are outlined in the expanded gaming  
19 law related specifically to the contracting  
20 goals of the casino.

21 We are entertaining proposals that  
22 focus on planning grants or grants for the  
23 expansion of business technical assistance  
24 programs that can demonstrate that they are

1 focusing on one of the targeted areas of the  
2 diversity programs.

3 We are considering awarding grants  
4 totaling up to \$100,000 total statewide and  
5 dedicating \$20,000 of that for smaller  
6 grassroots and innovative or promising  
7 programs.

8 COMMISSIONER MACDONALD: Is that  
9 \$100,000 total?

10 MS. GRIFFIN: It is total statewide.

11 COMMISSIONER MACDONALD: That's not  
12 a lid on a particular grant.

13 MS. GRIFFIN: It is funding intended  
14 to supplement existing programs mostly. It  
15 probably isn't enough to create a new program,  
16 but it is likely enough for a planning grant if  
17 you are thinking about establishing a program.  
18 So, Massachusetts based not-for-profit  
19 organizations, public or quasi-public entities  
20 are eligible.

21 We have added a second bidders  
22 conference on March 29 here in this very same  
23 room at 2:00. So, if there are entities that  
24 are interested and want to come or we will have

1 remote access as well for those from the  
2 western part of the state.

3 CHAIRMAN CROSBY: You had one on the  
4 21st?

5 MS. GRIFFIN: Yes. And that  
6 snowstorm, it wasn't much snow but it was  
7 enough to keep people I guess from attending.  
8 Although we have had expressions of interest.

9 So, responses are due April 13,  
10 which is a Wednesday. So, I just wanted to  
11 update you on that new development and also  
12 update the public.

13 CHAIRMAN CROSBY: In your mind's  
14 eye, do you have a sense of how many you would  
15 like to award? Do you have a sense of what the  
16 magnitude of these would be?

17 MS. GRIFFIN: Chairman Crosby, I  
18 think it depends on the type of organization  
19 that applies and the size. I'll give you an  
20 idea that one area that we have found -- We  
21 haven't found many organizations that  
22 specifically focus on veteran-owned businesses.  
23 So, that's potentially an area where an  
24 organization that does work with veteran

1 businesses or works with other businesses that  
2 could potentially focus on that area. It's  
3 just an idea.

4 COMMISSIONER ZUNIGA: Is it possible  
5 that some of this technical assistance may be  
6 eventually used for helping small business  
7 let's say navigate and comply with the  
8 licensing process?

9 MS. GRIFFIN: That could very well  
10 be part of the proposal and I would think very  
11 helpful to businesses.

12 COMMISSIONER ZUNIGA: Because I  
13 would love for us to see what we could do  
14 internally before we got to that point in terms  
15 of simplification, explaining, educating our  
16 own licensing process. I know there's only so  
17 much time that we have, but I think there is  
18 more effect, if we can concentrate on this type  
19 of processes that we set up for the likes of  
20 small diverse businesses.

21 MS. GRIFFIN: Absolutely.

22 CHAIRMAN CROSBY: Anybody else?

23 COMMISSIONER MACDONALD: Jill, I  
24 have a little difficulty kind of making

1 concrete what is being described here. Could  
2 you describe a scenario of a type of  
3 organization that would come to compete for  
4 these grants? And what type of services would  
5 they be looking to provide or whatever?

6 MS. GRIFFIN: Potentially, a  
7 chamber, we have nonprofits across the state  
8 that focus on supporting small businesses with  
9 technical assistance ranging from helping them  
10 establish joint ventures, to work to expand  
11 their capacity to work with large  
12 organizations, to providing financing and maybe  
13 helping them with getting them prepared for  
14 financing so that they can obtain a loan to  
15 expand their capacity to work with larger  
16 contractors.

17 Those types of organizations exist.  
18 And we've worked with many of them and are in  
19 communication with many of those types of  
20 organizations.

21 COMMISSIONER MACDONALD: It strikes  
22 me that \$100,000 won't go very far.

23 MS. GRIFFIN: Exactly.

24 COMMISSIONER MACDONALD: So, are you

1 basically anticipating that we're talking about  
2 maybe \$2500, \$3000 which would provide funds to  
3 hire a specialist for a certain number of hours  
4 to be able to address licensing procedures or  
5 accounting conventions or whatever?

6 MS. GRIFFIN: That's it exactly. A  
7 couple of grants or even four different grants  
8 or whatever probably isn't enough to establish  
9 a new program but it could be enough for  
10 example to hire specialists in certain topical  
11 areas that might supplement an existing program  
12 just as you suggested.

13 CHAIRMAN CROSBY: This is similar to  
14 the attempt we made in the Plainville area,  
15 right? And we actually got nobody to come  
16 forward.

17 MS. GRIFFIN: Actually, we did have  
18 a chamber. We had to put the RFP out twice.  
19 But we did have a chamber that offered  
20 technical assistance and programs, yes.

21 CHAIRMAN CROSBY: Okay. Good.

22 COMMISSIONER STEBBINS: One of the  
23 conversations Jill and I had when thinking  
24 about this program is I've always suggested

1 that Jill and Paul and licensing be attached  
2 somewhat at the hip, going out and talking to  
3 businesses and explaining the licensing  
4 process.

5 We had a visit the other day with a  
6 local Boston company who we were able to  
7 demystify some of the licensing parameters for  
8 him. But also tying into all of this we'll be  
9 bringing our licensees to the table so that we  
10 are conveying the right expectations from our  
11 licensees to these businesses as part of the  
12 capacity building of these obviously smaller,  
13 more diverse businesses.

14 CHAIRMAN CROSBY: Anything else?  
15 All set.

16 MS. GRIFFIN: Thank you.

17 CHAIRMAN CROSBY: Any other  
18 business? Do I have a motion to adjourn?

19 COMMISSIONER CAMERON: So moved.

20 CHAIRMAN CROSBY: All in favor, aye.

21 COMMISSIONER MACDONALD: Aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER STEBBINS: Aye.

1                   CHAIRMAN CROSBY: The ayes have it  
2 unanimously. Thank you all.

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4                   (Meeting adjourned at 12:50 p.m.)  
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1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission March  
3 24, 2016 Notice of Meeting and Agenda  
4 2. Mass Gaming and Entertainment Presentation  
5 3. Massachusetts Gaming Commission Diversity  
6 Goal/Business Technical assistance Grants  
7

8 GUEST SPEAKERS:

9 On behalf of Mass Gaming and Entertainment:

10 Neil Bluhm, Rush Street Gaming

11 David Tennant, Nixon Peabody

12 John Donnelly, Esq.

13

14 Adam Bond, Esq.

15

16

17 MASSACHUSETTS GAMING COMMISSION STAFF:

18 Ed Bedrosian, Executive Director

19 Catherine Blue, General Counsel

20 Jill Griffin, Director of Workforce, Supplier

21 and Diversity Development

22 Derek Lennon, CFAO

23 John Ziemba, Ombudsman

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 25th day of March, 2016.



LAURIE J. JORDAN  
Notary Public

My Commission expires:  
May 11, 2018