

1 COMMONWEALTH OF MASSACHUSETTS  
2 MASSACHUSETTS GAMING COMMISSION

3  
4 PUBLIC MEETING #77  
5 (VOLUME 2 OF 2)  
6

7 CHAIRMAN

8 Stephen P. Crosby  
9

10 COMMISSIONERS

11 Gayle Cameron

12 James F. McHugh

13 Bruce W. Stebbins

14 Enrique Zuniga  
15  
16  
17

18 September 19, 2013

19 BOSTON CONVENTION AND EXHIBITION CENTER

20 415 Summer Street, Room 109-A

21 Boston, Massachusetts  
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P R O C E E D I N G S

CHAIRMAN CROSBY: Good morning everybody. My apologies for being late. Let's see now, we will call to order the 77th public meeting of the Massachusetts Gaming Commission on September 19, 2013. And we will begin with approval of the minutes. Commissioner McHugh.

COMMISSIONER MCHUGH: The minutes, Mr. Chairman and colleagues, are in the book. There are two sets of minutes, one for September 4 and one for September 6. I move the first of those, the September 4, minutes, I move that they be adopted as contained in the book. If there's any corrections other than typos, I welcome comment on that.

CHAIRMAN CROSBY: Second?

COMMISSIONER STEBBINS: Second.

CHAIRMAN CROSBY: Any discussion about the minutes? All in favor? Aye?

COMMISSIONER CAMERON: Aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER STEBBINS: Aye.

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COMMISSIONER ZUNIGA: Aye.

CHAIRMAN CROSBY: All opposed.  
The Ayes have it unanimously.

COMMISSIONER MCHUGH: And the  
September 6 minutes are also in the book. I  
make the same motion, i.e., that they be  
approved. If there are any typos, I'd be  
happy to accept those. Other substance we  
can talk about. But otherwise I move their  
admission as printed in the book.

CHAIRMAN CROSBY: Second?

COMMISSIONER CAMERON: Second.

CHAIRMAN CROSBY: All in favor?

COMMISSIONER ZUNIGA: I'm sorry, were  
those included in the book?

CHAIRMAN CROSBY: Yeah.

COMMISSIONER CAMERON: Mm-hm.

CHAIRMAN CROSBY: They -- 2B -- 2A,  
sorry. No, 2B.

COMMISSIONER MCHUGH: I thought they  
were.

COMMISSIONER CAMERON: 4th and the  
6th.

COMMISSIONER MCHUGH: They're combined.

1 COMMISSIONER CAMERON: They're  
2 combined.

3 COMMISSIONER MCHUGH: Sorry. They're  
4 a single document. So, it's the 6th portion  
5 of the 4th minutes. I guess I could have  
6 done this --

7 COMMISSIONER CAMERON: In one.

8 COMMISSIONER MCHUGH: -- together, but  
9 I didn't.

10 CHAIRMAN CROSBY: Should I go out and  
11 start over? I'll go out and come back in the  
12 room. I'd like to call to order, the 77th  
13 meeting.

14 COMMISSIONER CAMERON: I second.

15 COMMISSIONER ZUNIGA: It's really one  
16 set of minutes, right?

17 COMMISSIONER MCHUGH: Yeah.

18 COMMISSIONER CAMERON: For both dates.

19 COMMISSIONER MCHUGH: For both dates.  
20 All right. So, let me -- let me start over  
21 again.

22 CHAIRMAN CROSBY: Let's start over  
23 again.

24 COMMISSIONER MCHUGH: The minutes for

1 the 4th and the 6th are in the book. I move  
2 their adoption as printed in unified fashion  
3 in the book.

4 CHAIRMAN CROSBY: Do we have a second?

5 COMMISSIONER STEBBINS: Second.

6 CHAIRMAN CROSBY: Any discussion? All  
7 in favor say aye.

8 COMMISSIONER STEBBINS: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER MCHUGH: Aye.

12 CHAIRMAN CROSBY: All opposed? Okay.  
13 We are on our way. We are going then to  
14 Executive Director Day for item number three,  
15 Administration.

16 DIRECTOR DAY: Good morning, Chairman  
17 Crosby, members of the Commission.

18 CHAIRMAN CROSBY: Good morning.

19 DIRECTOR DAY: I'm sorry I missed  
20 yesterday and I'm glad to be back here this  
21 morning. I wanted to go through, we've been,  
22 as you know, fairly busy at the -- around the  
23 Agency.

24 I'll start with we've completed

1 renovations to our office space to  
2 accommodate our licensing staff in  
3 preparation for processing of the slot  
4 applications that we anticipate on October  
5 4th. Staff will be moving into the new space  
6 next week. And I'll talk a little bit more  
7 about the evaluation process later on this  
8 morning.

9 Licensing staff have also been very  
10 busy identifying licensing database providers  
11 that can supply us with a system needed to  
12 support their licensing effort by January.  
13 Because of the time constraints, the  
14 procurement will be restricted to two vendors  
15 that -- that present implementation strategy  
16 with business partners, both being on the  
17 State contract. I call MGC Procurements, the  
18 response will be required -- will require  
19 detailed information about implementation or  
20 include penalties for late delivery, and will  
21 be awarded to the vendor most advantageous to  
22 the Commission. And also, with the  
23 assistance of -- the Massachusetts IT and  
24 ANF, we have identified and will have in

1 place a temporary document management  
2 solution to process applications and the  
3 evaluation team's work. We have completed  
4 work with DCAN to develop and post an RFP for  
5 a larger office space location that will  
6 eventually accommodate headquarters staff of  
7 approximately 100.

8 Our workforce supplier and diversity  
9 development director just completed an  
10 inaugural meeting of the statewide task force  
11 designed to strengthen our efforts to support  
12 positive impact by the casinos here in  
13 Massachusetts.

14 I might -- might add, though, that we  
15 had an excellent turnout and was very  
16 appreciative to see the support. We have  
17 also selected our human resources manager,  
18 who will start on October 7th, and  
19 immediately begin to help us with hiring,  
20 policy evaluation and classification.

21 Our selection for CFAO has -- has been  
22 completed -- has completed the background and  
23 am in the process of identifying a start  
24 date. We have also identified our top CIO

1 applicants and are beginning their  
2 backgrounds.

3 In addition, we are in the final  
4 stages of hiring accounting and reception  
5 staff.

6 Our Investigations and Enforcement  
7 Bureau is working to conclude license  
8 suitability investigations and we anticipate  
9 the first reports in early October for the  
10 casino proposals. This means the Commission  
11 will be completing suitability hearings while  
12 it evaluates slot applications.

13 We are continuing discussions with the  
14 Massachusetts State Police about roles in  
15 staffing, and Director Wells will have some  
16 additional information later on in -- this  
17 morning.

18 My licensing director also led a team  
19 to Ohio to complete a week of gaming  
20 enforcement training. We appreciate the Ohio  
21 Casino Control's willingness to invite us and  
22 allow us to take advantage of their training.  
23 And I understand the class was interesting  
24 and beneficial to our staff.

1                   And with our horse racing staff, have  
2                   also developed a revised license application  
3                   and is preparing to receive applications for  
4                   license in October, onsite hearings later  
5                   that month, and back to the Commission for  
6                   consideration in November.

7                   That's the administrative part in my  
8                   report. And then I would like to talk about  
9                   the evaluation process. Mr. Chairman, if you  
10                  wouldn't mind, if I could go ahead with an  
11                  update on the evaluation process. And there  
12                  are three topics that I wanted to discuss  
13                  with the Commission in particular. One of  
14                  those are the rating question, and then we  
15                  can hit that with the rest of the others.

16                  CHAIRMAN CROSBY: If you don't mind, I  
17                  was not satisfied with these and rewrote  
18                  them, another draft, last night, which is  
19                  just being typed up. So, if you could just  
20                  wait for a few minutes or do whatever other  
21                  topics first and then come back to the  
22                  ratings.

23                  DIRECTOR DAY: That -- that will work  
24                  very well.

1 CHAIRMAN CROSBY: Okay.

2 DIRECTOR DAY: Those bullets have had  
3 numerous revisions, so I think that purpose  
4 what really points out is that the Commission  
5 itself had not collectively looked and  
6 decided on what the ratings should be, and  
7 that's the purpose of talking about it here  
8 this morning.

9 Let me update the evaluation process  
10 briefly. Applications for slot parlor  
11 license of course are due on October 4th.  
12 The team of staff have been meeting with  
13 applicants to answer questions they may have  
14 about the applications to prepare for their  
15 actual submittal. We have developed an  
16 evaluation process designed to result in an  
17 award of a license in December of this year.  
18 I'd like to note that the actual timing of an  
19 award of a license will likely be connected  
20 to successful determination of surrounding  
21 communities.

22 The process will involve five  
23 evaluation teams, each led by a Commissioner.  
24 Each team will identify findings and ratings

1 relating to the five areas of application,  
2 including the general section or what's  
3 unique about the proposal, also referred to  
4 as the wow factor; finance; building and site  
5 design; economic development; and mitigation.  
6 And during the process, Commissioners will  
7 also hold public input meetings and host  
8 community hearings. Reports from the  
9 evaluation teams are anticipated the second  
10 week of December. In preparation for this  
11 process we have completed procurement of  
12 subject matter experts and a project  
13 coordinator to manage the process.

14 Jennifer Pinck has joined me and is  
15 across from me here today. As we move  
16 through this discussion, she would be happy  
17 to entertain any questions that the  
18 Commission might have.

19 The Commissioners have selected team  
20 members and we have completed training for  
21 those working on the evaluation. In addition  
22 to ensure we are ready to begin the  
23 evaluation by the end of next week, each  
24 Commissioner will have held training meetings

1 with their evaluation teams. The evaluation  
2 process itself will begin October 7th after  
3 applications are submitted when our licensing  
4 staff will review the applications to  
5 determine if they are administratively  
6 complete, and proceed with the process where  
7 it's necessary to obtain missing information.

8 Applicants are now invited and will  
9 be, if we haven't done it formally, invited  
10 to a 90 minute informational presentation to  
11 the Commission on October 7th. And we  
12 anticipate applications will be forwarded by  
13 the licensing group to the evaluation teams  
14 on October 14th.

15 As we went through the construction  
16 and -- and the development of that process,  
17 as is not too unusual, it's a new process, so  
18 we've continued to identify questions,  
19 particularly those that should be reviewed,  
20 need discussion and possible decision with  
21 the Commission.

22 There are three questions, at least  
23 that I have. And we'll see how it goes from  
24 there. One is dealing with the rating

1 definition, I'll just take that one last if  
2 that's all right. The other one is about  
3 suitability reports, which I want to talk  
4 about briefly and make sure we have the  
5 correct understanding. And then the third  
6 one is about questions or additional  
7 information that we may be willing to accept.

8 So, the first one I'll deal with is  
9 suitability.

10 COMMISSIONER MCHUGH: Could I  
11 interrupt just for a second. Did I  
12 understand you correctly to say that the  
13 applications would be forwarded to the five  
14 teams on the 14th of October?

15 DIRECTOR DAY: The seven days --  
16 hopefully I got the right -- right date in my  
17 process. The licenses will get to licensing  
18 for review on the 7th.

19 COMMISSIONER MCHUGH: Right.

20 DIRECTOR DAY: After five days of  
21 review, essentially that week of review, then  
22 the next Monday they will be forwarded to the  
23 evaluation teams.

24 COMMISSIONER MCHUGH: Okay. So -- so,

1 the -- the administrative review is going to  
2 take place before they go to the evaluation  
3 teams. If we -- we --

4 DIRECTOR DAY: Commissioner McHugh,  
5 that is correct, yes.

6 COMMISSIONER MCHUGH: I had meeting  
7 --

8 CHAIRMAN CROSBY: Okay. Let me just  
9 --

10 COMMISSIONER MCHUGH: -- the other day  
11 and I think we misunderstood that. So, I  
12 want to correct that. I misunderstood that.

13 CHAIRMAN CROSBY: I may have done --  
14 so say that one more time. So, it would go  
15 to the evaluation teams on what date?

16 DIRECTOR DAY: If I -- if I have it  
17 right on my calendar there, it should be  
18 October 14th. The Monday, a week from when  
19 -- October 7th the next Monday.

20 COMMISSIONER MCHUGH: That's the 14th.

21 DIRECTOR DAY: The 14th.

22 CHAIRMAN CROSBY: Okay, that -- okay,  
23 that works.

24 DIRECTOR DAY: And the idea is --

1 CHAIRMAN CROSBY: My first meeting is  
2 on the 18th, I think, right?

3 MS. PINCK: Yes, I think our  
4 assumption when we developed the draft  
5 schedule for the training was to -- slightly  
6 different from Mr. Day's, which was to make  
7 them available right away for people just to  
8 peruse. But that the deep investigation  
9 should wait until the administrative review  
10 is complete. So, it may be mincing words to  
11 say they are available on a 4th or 7th versus  
12 the 14th. But initially that was our  
13 thought, our assumption.

14 DIRECTOR DAY: And that -- I think  
15 we're -- the question that is of course when  
16 the licensing as they review them, we want to  
17 make sure that the application material is  
18 complete as we forward it.

19 COMMISSIONER MCHUGH: Right.

20 DIRECTOR DAY: And have at least  
21 communicated with the applicants before we  
22 forward that on, particularly if there's  
23 material deficiencies. So, the end result is  
24 I'm using Monday the 14th. We hope that

1                   actually that will be a lot sooner.  But  
2                   we'll see what the applications look like  
3                   when they get in.

4                   CHAIRMAN CROSBY:  Okay.  Because I was  
5                   -- because I -- the first -- the first  
6                   meeting of my group is that week.  But I  
7                   think it's the Friday of that week.

8                   MS. PINCK:  I believe it is.

9                   CHAIRMAN CROSBY:  So, that would be  
10                  okay.

11                  COMMISSIONER MCHUGH:  So, that's  
12                  really no later than the 14th will they be --

13                  DIRECTOR DAY:  That would be correct,  
14                  correct.

15                  COMMISSIONER MCHUGH:  Okay.

16                  DIRECTOR DAY:  And always no later,  
17                  but if, the -- the -- that's the plan.  We  
18                  have -- we haven't seen the material yet, so  
19                  it will be interesting.

20                  COMMISSIONER MCHUGH:  Right.

21                  DIRECTOR DAY:  And I know I've had  
22                  discussions with the licensing group, I know  
23                  they are -- are or will be ready to do their  
24                  part of the task when we get there.  I'm real

1 confident of that.

2 COMMISSIONER MCHUGH: Right. Okay.

3 COMMISSIONER ZUNIGA: I have a -- I  
4 have a question. Something you mentioned  
5 before. We've been getting questions from  
6 applicants relative to the submission of  
7 these, and completion of some of these  
8 applications. Will you speak a little bit  
9 about pending questions later?

10 DIRECTOR DAY: Thank you, Commissioner  
11 Zuniga. Yes, the -- I mentioned this in my  
12 initial comments. We have a team of staff  
13 that have been meeting with applicants who  
14 wish to take advantage of that to review any  
15 questions they may have, and talk about what  
16 the appropriate direction might be. And we  
17 have a list of questions the applicants have  
18 asked and we -- Ombudsman Ziemba will -- will  
19 be talking about that later on this morning.

20 COMMISSIONER ZUNIGA: Okay.

21 CHAIRMAN CROSBY: Okay.

22 DIRECTOR DAY: So, let me talk about  
23 suitability. We have also had a lot of  
24 discussions that the Commission suitability

1 decisions and any updates identified by IAB  
2 will become part of the record for  
3 consideration during this evaluation process.  
4 What we really haven't done much of is -- is  
5 make sure we're -- that's a collective  
6 understanding. And then also discuss where  
7 that may take place. And so leastways I  
8 don't recall we have determined how this will  
9 occur. So, again, the idea, the question  
10 here is the suitability decisions that the  
11 Commissioners' reports and the decisions of  
12 the Commission enters, and any updates that  
13 may come in between now and then that the IAB  
14 feels is important to the process, how will  
15 or when will those be considered. Suggest,  
16 just a suggestion that's come up during the  
17 discussion that after the evaluation reports,  
18 the suitability reports and any necessary  
19 updates become part of the information  
20 considered by the Commission.

21 So, what that would mean is once the  
22 reports have been provided by the evaluation  
23 teams and the Commission takes those into  
24 consideration, the Commission would also, as

1 a body, consider the suitability reports and  
2 any updates there might be.

3 And I'm checking to see if that --

4 CHAIRMAN CROSBY: So, that would --  
5 that would be outside of the five team  
6 evaluation process. That would be something  
7 that when the evaluation gets rolled up and  
8 comes to the Commission for final discussion,  
9 that the suitability reports would be then  
10 factored into the process.

11 DIRECTOR DAY: That's a recommendation  
12 at --

13 CHAIRMAN CROSBY: Right, right.

14 DIRECTOR DAY: -- at this point is  
15 that, and because it's a -- full Commission  
16 has decided on the outcome of those  
17 suitability reports --

18 CHAIRMAN CROSBY: Right.

19 DIRECTOR DAY: -- it seems appropriate  
20 that that be the Commission's purview.

21 CHAIRMAN CROSBY: Yeah, that seems  
22 right.

23 MR. ZIEMBA: Just, gentlemen, one  
24 caveat to that. One of the evaluation teams,

1 the financial evaluation teams, there's a  
2 question in our Application 217 that bears on  
3 updates regarding financial suitability and  
4 asks the applicants to provide updates. So,  
5 that would be part of the financial advisory  
6 team evaluation.

7 CHAIRMAN CROSBY: All right.

8 MR. ZIEMBA: That subset of  
9 qualifications.

10 CHAIRMAN CROSBY: All right. Okay.  
11 Thank you, John.

12 COMMISSIONER MCHUGH: As always, from  
13 that, we -- we would -- we would look again  
14 at the -- at the evaluations at the stage  
15 when we were making the final decision. And  
16 the evaluation teams wouldn't participate in  
17 that review.

18 CHAIRMAN CROSBY: You said the  
19 evaluations, you mean the suitability.

20 COMMISSIONER MCHUGH: I mean the  
21 suitability.

22 DIRECTOR DAY: Yes, that's correct.  
23 That is the idea that --

24 COMMISSIONER MCHUGH: I agree.

1                   DIRECTOR DAY:  There's been a lot of  
2                   discussion that's important that those  
3                   suitability reports be considered --

4                   COMMISSIONER MCHUGH:  Right.

5                   DIRECTOR DAY:  -- in the Commission's  
6                   final decision.  I'm just trying to  
7                   reemphasize where that would occur and how it  
8                   would occur.

9                   CHAIRMAN CROSBY:  Well, it's also  
10                  important, it re-raises a very substantive  
11                  point that we don't want to get lost in the  
12                  shuffle, which is there are degrees of  
13                  suitability.  You know, we have decided that  
14                  if there is a minimal standard that people  
15                  have to get over, but you can be very  
16                  suitable and you could be barely suitable.  
17                  And that that will ultimately be a  
18                  consideration in the overall evaluation  
19                  process.  Which is the reason why you're  
20                  reminding us this, that they will come back  
21                  into the process.

22                  DIRECTOR DAY:  Thank you, Mr.  
23                  Chairman.  The other question has actually  
24                  been somewhat, it has been sort of

1           problematic back and forth. So, there may be  
2           debate amongst us here at the -- at the table  
3           as well. What it is is that the thought  
4           process that involves, we have the formal  
5           process up front where the licensing group  
6           will go through the applications, they'll  
7           identify missing information. We have the  
8           seven and fourteen days from non-material and  
9           material -- material and non-material  
10          questions that may be revised or identified.  
11          The licensing group goes ahead and asks those  
12          questions, gets the information back,  
13          includes that with the appropriate spot in  
14          the applications, forwards it on to the  
15          evaluation teams. So, that process is pretty  
16          -- pretty clear at this point.

17                 And as we move forward, I think it's  
18                 really important to the process that -- that  
19                 we emphasize and only allow for really very  
20                 narrow opportunities for additional  
21                 information as we move forward in the process  
22                 in order to ensure fairness of the  
23                 application and consistency of how they are  
24                 treated. But it does raise the question as

1 the evaluation teams begin their process.  
2 We're not asking our license team to go  
3 through the detail of every attachment and  
4 those kind of things that are there. The  
5 evaluation teams may come up with needed  
6 clarification or a missing item that wasn't  
7 -- that wasn't observed before.

8 At this point, the thought process for  
9 what they call non-substantive material  
10 would be that those requests would be tracked  
11 and -- by Jennifer Pinck and her associates.  
12 And at some point, Jennifer and I would  
13 review those requests for additional  
14 information. The idea of the review is just  
15 to make sure that we are not allowing  
16 improvement in the application by our  
17 response, trying to keep true to the idea  
18 that applicants need to make sure they put in  
19 a great effort to submit complete  
20 information.

21 And then if we were in agreement that  
22 those were non-substantive and didn't  
23 improve the application, we would request  
24 that additional information. What that

1 leaves is that there may be substantive  
2 questions that the evaluation team has. It's  
3 at least in the though process, it's very  
4 difficult, but the original design in the  
5 process was if there was such a thing that  
6 the Commissioners, those questions would go  
7 to the Commissioners. The Commissioners  
8 would decide whether or not to ask those  
9 types of questions at the host community  
10 agreements. So, again there's debate about,  
11 well, just exactly how that occurs, but at  
12 least the idea that I put out there is the  
13 that Chair of the particular evaluation  
14 committee, the Commissioner would be in the  
15 best position to actually decide which  
16 questions come forth at the host community  
17 agreement per their evaluation team. Yes?

18 COMMISSIONER ZUNIGA: Did you mention  
19 host community agreement and meant to say  
20 team meeting?

21 DIRECTOR DAY: I should have said host  
22 community hearing.

23 COMMISSIONER ZUNIGA: Oh.

24 DIRECTOR DAY: Yes.

1 COMMISSIONER ZUNIGA: Thank you.

2 DIRECTOR DAY: That's --

3 COMMISSIONER MCHUGH: So, that the  
4 question is whether we first raise those  
5 questions at the host community meeting.

6 DIRECTOR DAY: Correct.

7 COMMISSIONER MCHUGH: Or the statutory  
8 hearing.

9 COMMISSIONER DAY: And -- or should  
10 they be -- excuse me --

11 COMMISSIONER MCHUGH: Or should they -  
12 -

13 DIRECTOR DAY: Or should they be  
14 raised at all, or --

15 COMMISSIONER MCHUGH: Should they be  
16 raised at all or should they be in some  
17 fashion raised earlier.

18 DIRECTOR DAY: Correct.

19 COMMISSIONER MCHUGH: Yeah.

20 COMMISSIONER ZUNIGA: Substantive  
21 questions, that is.

22 DIRECTOR DAY: Substantive -- I think  
23 non-substantive, we can use, unless the  
24 Commission wants to change that process I

1 talked about. But for those kind of things,  
2 it seems we can go ahead and follow through  
3 with that information, being very restrictive  
4 on it. But substantive, we --

5 COMMISSIONER ZUNIGA: And the  
6 threshold is something that improves the  
7 application, that's a substantive -- that's a  
8 substantive question, the response -- the  
9 response of which would improve the  
10 application; is that -- is that a fair  
11 statement?

12 MS. PINCK: Well, I think something  
13 that would improve or something that perhaps  
14 reviewers on the evaluation team were not  
15 entirely convinced of but seem to be integral  
16 to the applicant's proposal. I'll throw out  
17 a fictitious example, perhaps where an  
18 applicant says they're going to deal with a  
19 traffic condition by building something.  
20 That actually would be really great, but the  
21 team might think I don't think you could do  
22 that within the time frame between the  
23 approvals, and permitting, and construction  
24 or whatever. And but absent that proposal,

1           you might think that's a pretty good one.  
2           So, you, and I think that might end up in  
3           Commissioner McHugh's category, might  
4           suggest -- might suggest that, or he might be  
5           wanting to ask that at that Commission  
6           meetings and the host communities, that you  
7           said that you go you're going to do this but  
8           we don't think it's credible. So, how would  
9           you do it. That might be one. I mean, it's  
10          -- it's -- where I think the credibility of a  
11          response or the practicality of a response,  
12          or the benefit of a response --

13                   COMMISSIONER MCCHUGH: It may be hard  
14          to set a hard and fast rule in advance  
15          without looking at the substance of the  
16          question. But it occurs to me, and I think  
17          this arose in our meeting the other day, as  
18          it probably did with other meetings, that if  
19          we're going to ask a question, the first  
20          question is do we -- do we ask it at all.  
21          And if the answer to that is yes, is it the  
22          kind of question that requires some thought  
23          and study in order for there to be an  
24          effective and sensible response.

1                   And if it -- if the answer to that  
2                   second question is yes, it seems to me we  
3                   ought to ask it before the host community  
4                   statutory hearing. Because otherwise we're  
5                   going to catch people off guard with things  
6                   perhaps that are complicated that they  
7                   haven't thought about. So, I don't know the  
8                   --

9                   CHAIRMAN CROSBY: Are you saying that  
10                  -- and that -- so everybody would have -- the  
11                  bidders would have notice, so that at the  
12                  host community agreement -- at the host  
13                  committee meeting they would respond to these  
14                  questions?

15                 COMMISSIONER MCHUGH: Well, I -- I  
16                 don't know, Mr. Chairman whether -- whether  
17                 -- I certainly would ask those kinds of  
18                 questions, ask the question before the --  
19                 before the statutory hearing. Whether we  
20                 wanted an answer before the statutory  
21                 hearing, so that we could ask any follow-up  
22                 questions is another case --

23                 CHAIRMAN CROSBY: Okay.

24                 COMMISSIONER MCHUGH: -- but -- but I

1 do think advance notice would be -- would be  
2 important for those kinds of what's the  
3 process for going through all that. I -- I  
4 don't have answer to that.

5 COMMISSIONER CAMERON: Isn't it  
6 incumbent upon them to be very thorough their  
7 answers, to lay out that they've already, you  
8 know, started the approval process, that this  
9 is the time frame and these are the reasons  
10 why they believe they can do it in that time.  
11 Isn't it incumbent upon them to do that ahead  
12 of time, so that we are not left with, we  
13 don't know, can they do it, if they do it.  
14 And I just wonder if we're giving someone an  
15 advantage by going back where someone else  
16 may have been very thorough in their  
17 response, and it does not leave us that open  
18 ended question. Just --

19 COMMISSIONER MCHUGH: Suppose for  
20 example, I mean, I think that's a really good  
21 point. But suppose, for example, that they  
22 -- Jennifer's point, there is -- there is a  
23 piece of the application that says we're  
24 going to put an overpass over the -- over

1 Route 93, and everybody looks at it and says  
2 how are you going to do this, this is federal  
3 territory. And they didn't put that in  
4 there, but in fact they've already contacted  
5 somebody in Washington and they have an  
6 approval in hand.

7 COMMISSIONER CAMERON: They didn't put  
8 it in there.

9 COMMISSIONER MCHUGH: Why would we  
10 reject the, you know, that might be fatal to  
11 the application. Why would we reject it when  
12 they have the thing in hand. They've already  
13 done the homework and they've got the --  
14 they've got the thing in hand.

15 CHAIRMAN CROSBY: I think we're  
16 talking about the threshold question. And I  
17 -- I'm torn myself. I think it's sort of  
18 like, you know, you should --

19 COMMISSIONER MCHUGH: Right.

20 CHAIRMAN CROSBY: -- you -- one -- one  
21 approach would be, as Commissioner Cameron is  
22 saying is you are limited to, as they say,  
23 the four corners of the document. It is  
24 incumbent upon the bidders to make it clear

1 and if -- that we don't know whether they can  
2 get something built in time that's going to  
3 be a demerit in the evaluation process.

4 The alternative approach, however, is  
5 you want to provide the flexibility, you want  
6 the maximum opportunity for the best  
7 proposals to be made. You don't want to --  
8 it have to -- degrade a -- degrade an  
9 evaluation or potentially lose somebody for  
10 something that's kind of a technicality or  
11 readily explained. So, I mean I think -- I  
12 think -- I think that's a -- that's a  
13 legitimate, very different legitimate --

14 COMMISSIONER MCHUGH: Right.

15 CHAIRMAN CROSBY: -- difference of  
16 opinion about how to approach this. And I --  
17 I'm not a hundred percent sure myself.

18 COMMISSIONER ZUNIGA: I would be in  
19 favor of giving ourselves the flexibility to  
20 ask that question. However substantive the  
21 answers may or may not be, because we may not  
22 know until we get those instances in front of  
23 us.

24 In addition, I really like the idea of

1 the host community hearing, you know, prior  
2 that moment be -- either prior or at, be the  
3 -- be the time when that gets fleshed out one  
4 way or another, gets represented to us and  
5 the public, I think in -- in to a great  
6 degree, the purpose of the host community  
7 hearing may have been designed, I mean, I  
8 wasn't there when they designed it. But may  
9 have been designed for that very purpose, to  
10 flesh out or validate what may be something  
11 that needs to be validated at that time. So  
12 --

13 COMMISSIONER STEBBINS: I think  
14 there's a balance as -- as I've kind of  
15 thought through this process, I'd agree with  
16 Commissioner Cameron, we're not looking for  
17 people to be able to go back and oh, yeah, I  
18 forgot to fill that in, so I'll do it now.  
19 We are looking for applicants to make very  
20 thorough presentations and thorough  
21 applications, provide as much detail as  
22 possible.

23 I actually envision questions that  
24 might come about as very few in number. But

1 I think giving the applicants a chance to  
2 know what those questions might be in advance  
3 of a community hearing, or a host community  
4 hearing where not only we'll have the  
5 opportunity to hear the reply, but folks in  
6 the host community, whether they're the local  
7 officials or the citizenry at large to hear  
8 those responses, I think to your point, would  
9 be a good exercise. I just don't -- if the  
10 applicants do their job well, I would fully  
11 expect that there will be a limited number of  
12 follow-up questions.

13 COMMISSIONER MCHUGH: If we --

14 CHAIRMAN CROSBY: But you think we  
15 should admit the follow-up questions if  
16 necessary?

17 COMMISSIONER STEBBINS: Yes.

18 COMMISSIONER MCHUGH: If we -- if we  
19 looked at questions that we collectively had,  
20 and thought about questions that might  
21 require some reflection, we could notify them  
22 in advance of the hearing that we were going  
23 to do that, but use the hearing as the  
24 vehicle for getting the answers, that would

1 cut down on the -- on the sort of fluid  
2 nature of the application. This is really --  
3 the application is really it. We're  
4 inevitably going to have questions, a lot of  
5 questions at the hearings for the applicant,  
6 the host community, the surrounding  
7 communities. And those that were important,  
8 those that might require some reflection, we  
9 could ask in advance.

10 CHAIRMAN CROSBY: Yeah --

11 COMMISSIONER MCHUGH: I'm just  
12 wondering about you -- you then get into  
13 problems with that, as well. I'm just  
14 worried about -- about having legitimate  
15 questions and having questions that can't be  
16 answered at the hearing, and so we don't get  
17 the benefit of the thought --

18 CHAIRMAN CROSBY: But you're -- your  
19 question -- assuming that we are going to ask  
20 the questions. What's the process for asking  
21 questions? Is the threshold question should  
22 we be able to ask questions, which is what I  
23 think we have a difference of opinion on.

24 COMMISSIONER MCHUGH: Well, but --

1 -- well, I mean, that -- that -- pretty --  
2 gets pretty fundamental, because what's the  
3 --

4 CHAIRMAN CROSBY: Yeah.

5 COMMISSIONER MCHUGH: -- what's the --  
6 what's the host community hearing about. We  
7 can't ask questions.

8 CHAIRMAN CROSBY: But Commissioner  
9 Cameron was suggesting that that be the --  
10 the case.

11 COMMISSIONER MCHUGH: Well, I didn't  
12 -- were you -- were you suggesting that we  
13 can't ask questions at the host community  
14 hearing?

15 COMMISSIONER CAMERON: I was  
16 suggesting that if the team -- if the answer  
17 isn't comprehensive, if it leaves us with  
18 well, I don't know if they can do that, or I,  
19 you know, it's not clear that they've spoken  
20 to anyone in the federal government about  
21 this, and it just doesn't seem that experts  
22 tell us, this is -- this is really not  
23 feasible, are we giving them a chance. Where  
24 someone else's application is very complete

1 in terms of time line and everything. And  
2 we're giving them a chance to improve their  
3 answer because they weren't complete the  
4 first time, I have an issue with that. In  
5 listening to Commissioner Stebbins, maybe it  
6 makes sense to have a couple of limited  
7 questions that -- that we could take into  
8 consideration and maybe the same thing where  
9 you say what they should have included that  
10 the first time. Just --

11 COMMISSIONER MCHUGH: But -- but I  
12 think we need to come to -- come to some kind  
13 of a resolution to take that example if you  
14 can't have the -- at the hearings, say to  
15 somebody we don't understand how you're going  
16 to do this. Could you expand on what you've  
17 said. It seems to me that's what the host  
18 community hearing is all about.

19 COMMISSIONER ZUNIGA: I'm going to  
20 liken it to the notice of adjudicatory  
21 hearings that we send out on the suitability  
22 reports and suitability hearings. The IAB  
23 does send a notice telling them this is  
24 specifically what the Commission wants to

1 hear about or what we want to hear about.  
2 There could be a parallel to -- in  
3 preparation for the host community hearing,  
4 some -- something like that. The team, you  
5 know, looked at your review and, you know,  
6 some of these questions have a level of  
7 subjectivity, we want to hear more about A,  
8 B, or C. So -- so that we make the most of  
9 the host community meeting.

10 COMMISSIONER MCHUGH: All right.

11 COMMISSIONER ZUNIGA: I know it's  
12 hard, we talk about the tail ends, when  
13 something is grossly missing for example,  
14 sure, that could represent some level of  
15 unfairness say to the bidders who complete  
16 and have a much more robust application. But  
17 I -- I think that would be self evident. And  
18 if that -- if that was the case -- and that,  
19 if that's discussed in the -- in the hearing,  
20 then I think the goal has been achieved.

21 COMMISSIONER MCHUGH: That's  
22 interesting.

23 CHAIRMAN CROSBY: I'm evolving that  
24 way, too. I started out kind of leaning

1           towards what you were originally thinking.  
2           But I don't -- I think we're in the business  
3           hear of maximizing these proposals. We  
4           clearly -- we do not want to give somebody an  
5           unfair advantage. We don't want to give  
6           somebody who has failed to do the job an  
7           opportunity to cure it. But we do want an  
8           opportunity to really flesh these out and  
9           make sure we're getting the best -- our own  
10          comprehension, our best understanding of  
11          what's going on and the best presentations  
12          these folks can make. And I think if we are  
13          careful about it, and we'll pool our  
14          questions and think about it, and we'll check  
15          with lawyers and make sure we're not, you  
16          know, sort of overstepping. But I think I  
17          end up agreeing with that. That -- and if --  
18          and if there's an issue, if some of us feel  
19          like hey, we shouldn't ask that, these folks  
20          failed, they just dropped the ball, we don't  
21          want to give them a chance to cure, we'll  
22          discuss that amongst ourselves and work it  
23          out. And if we --

24                            COMMISSIONER ZUNIGA: And if --

1 CHAIRMAN CROSBY: Sorry.

2 COMMISSIONER ZUNIGA: And perhaps --  
3 I'm sorry to jump ahead. But perhaps if the  
4 team says this is insufficient rating on this  
5 question, then you know --

6 CHAIRMAN STEBBINS: There's no point  
7 getting --

8 COMMISSIONER ZUNIGA: -- there's no  
9 point in trying to hear about it in the host  
10 committee meetings.

11 CHAIRMAN CROSBY: Right.

12 COMMISSIONER STEBBINS: And I think,  
13 too, it would echo back to I think  
14 Commissioner Cameron's concern is I don't  
15 want to give someone an unfair advantage to  
16 sweeten the pot in the application when they  
17 really should have been doing their homework  
18 off the bat. But I think we may be best  
19 served by airing these questions. And I like  
20 the idea of, you know, following the  
21 procedures we've taken with our suitability  
22 hearings to give the applicant a chance to  
23 understand what we're going to ask. But  
24 doing this in the confines of the host

1 community hearing may be able enough to send  
2 a message to the community as to our  
3 transparency first and foremost, but also to  
4 the fact that they can potentially see how  
5 we're predisposed to rule on an application.  
6 And they'll know why because they'll hear the  
7 response or the lack of a response from the  
8 applicant to some pretty specific questions.

9 COMMISSIONER CAMERON: So, we wouldn't  
10 be completing our application review until  
11 after, I'm trying to think of the time line  
12 there. Until after the -- the hearing,  
13 correct?

14 COMMISSIONER STEBBINS: Right.

15 COMMISSIONER CAMERON: And that would  
16 be incumbent for all of the team members to  
17 be at that hearing I suspect. If that's what  
18 we're saying.

19 CHAIRMAN CROSBY: No.

20 COMMISSIONER CAMERON: No?

21 CHAIRMAN CROSBY: No, not really. I  
22 mean I think -- I think that and for the most  
23 part, which by this time the ball is pretty  
24 much the Commissioners' -- Commission's

1 court. And, you know, the evaluations may  
2 have generated questions, you know, I don't  
3 know. But -- but we will now be -- because  
4 those are the ones that all Commissioners  
5 attend. These aren't just information  
6 gathering, these are -- all five  
7 Commissioners attend. And we're getting down  
8 to the short strokes on our -- our decision-  
9 making process.

10 COMMISSIONER CAMERON: But the form  
11 would be done then. So, someone that didn't  
12 -- we didn't think something was reasonable  
13 maybe -- or we had real questions about  
14 whether it was doable, maybe they --

15 CHAIRMAN CROSBY: Or use your -- like  
16 -- like use the flyover case --

17 COMMISSIONER CAMERON: -- so it may  
18 have been just as sufficient, and that work  
19 is done. But we're just going to ask a  
20 question and receive additional information.

21 DIRECTOR DAY: Commissioners, if I  
22 might, I -- because I -- from our training,  
23 now we also the -- we're targeting the host  
24 community hearings in the early part of

1 November. The idea has been that the  
2 evaluation teams would be involved in those,  
3 generating those questions, if that's the way  
4 we went. And then the evaluation teams for  
5 those who could would actually attend the  
6 host community agreements -- I keep saying  
7 agreements, host community hearings because  
8 the evaluation committee reports really  
9 weren't anticipated until toward the end of  
10 November. That's when the teams would give  
11 all consideration, the public input, meeting  
12 information that we're going to have  
13 transcribed. What they've done so far, until  
14 the host community hearings, information that  
15 the host community hearings, and then at that  
16 point they would assemble their reports and  
17 make -- end up with a final report to the  
18 Commissioners in December. So, we were  
19 trying to, at least in the original design  
20 trying to make sure that the teams had the  
21 full ability to consider all the information  
22 before they entered their --

23 CHAIRMAN CROSBY: So, that -- so, I  
24 was mistaken. And I think the way the you're

1 saying it is -- makes more sense and deals  
2 with your concern. What I said is wrong,  
3 what Rick said is right, and that deals with  
4 your issue.

5 So, I think we're -- seems like we're  
6 pretty well at a consensus, that you know, if  
7 -- I think we will understand the difference.  
8 I think clarifying the flyover ramp is  
9 something which, in my opinion, we've kind of  
10 moved to decide we do -- we would want to  
11 clarify the flyover ramp.

12 We aren't going to permit somebody to  
13 move their annual fee from 15,000,000 to  
14 20,000,000. And I think we'll be able to  
15 tell the difference between sweetening the  
16 pot and simply getting a full understanding  
17 of what a proposal is really all about.

18 MS. PINCK: I would agree.

19 DIRECTOR DAY: One of the -- one of  
20 the -- and I don't want to delay this too  
21 much, but I want to make sure that we are  
22 clear on the how. So, the evaluation, it  
23 seems like to me, the best way for that work,  
24 it really would be a process. The evaluation

1 team Chairs would need to make a decision on  
2 whether that goes to the host community --  
3 goes to the question at the host community  
4 hearing. It seems like that's about the best  
5 way to do it because the Commissioners won't  
6 have an opportunity to debate that in public,  
7 at least that I can see. And on the other  
8 hand, someone needs to be involved to make  
9 that kind of a decision that that's an item  
10 that should go forward. Unless there's  
11 something else, another process out there, but  
12 it seems like to me that's about the only way  
13 to be consistent about it.

14 COMMISSIONER ZUNIGA: I would agree  
15 with that.

16 COMMISSIONER MCHUGH: I would agree  
17 with that. But -- but I also would -- would  
18 welcome a written description of all of this,  
19 so that we could take another look at it to  
20 make sure that we have the same understanding  
21 of what's going to happen.

22 CHAIRMAN CROSBY: I agree with that.

23 COMMISSIONER CAMERON: That would be  
24 helpful.

1 CHAIRMAN CROSBY: And so the bidders  
2 do, too.

3 COMMISSIONER CAMERON: Right.

4 CHAIRMAN CROSBY: Yeah, I agree.

5 DIRECTOR DAY: And if I heard  
6 correctly, part of that was that the -- if  
7 there are substantive questions, those  
8 questions be identified by the Chairs of the  
9 committees. They would be submitted to the  
10 applicant in advance.

11 CHAIRMAN CROSBY: In advance of the  
12 host --

13 COMMISSIONER MCHUGH: In the mechanism  
14 of sort of the prehearing conference that Mr.  
15 Zuniga was talking about.

16 COMMISSIONER CAMERON: Prehearing  
17 conference?

18 COMMISSIONER MCHUGH: Prehearing style  
19 -- prehearing conference style. I think I got  
20 the message --

21 COMMISSIONER MCHUGH: Prehearing  
22 correspondence.

23 COMMISSIONER ZUNIGA: Prehearing  
24 conference, this is what we would like to

1 hear.

2 MS. PINCK: So, I would expect that  
3 list of questions or concerns to be  
4 deliverable from each team?

5 COMMISSIONER ZUNIGA: Yes.

6 COMMISSIONER MCHUGH: Right.

7 CHAIRMAN CROSBY: Prior to these  
8 prehearing conferences.

9 MS. PINCK: Exactly.

10 COMMISSIONER MCHUGH: It may be, might  
11 it not that there are, because the parties  
12 that host community hearing are the applicant,  
13 the host community, the surrounding  
14 communities, and the live -- impacted live  
15 entertainment industries, it may be that we  
16 have to take into account questions that they  
17 have in some fashion for each other. So, that  
18 they -- so that we really have a prehearing  
19 conference agenda that takes into account -- I  
20 just throw that out. I don't know whether  
21 that's a -- but it seems to me we should think  
22 that through to make sure we -- we understand  
23 that is part of the prehearing agenda as well.

24 COMMISSIONER ZUNIGA: Well, it occurs

1 to me that as soon as the public side of the  
2 applications are made public, the interested  
3 parties, you know, would look at that. If we  
4 keep our current approach of being open to  
5 receipt of public comments during the period  
6 of evaluation prior to the host community  
7 hearing, one would hope we would get some of  
8 those questions from interested parties like  
9 impacted live entertainment venues.

10 COMMISSIONER MCHUGH: Fully, fully  
11 agree but -- but the -- but the -- those four  
12 entities, the other three entities are going  
13 to have a seat at the table. They're going to  
14 have the right to be heard at the hearing.

15 COMMISSIONER ZUNIGA: Right.

16 COMMISSIONER MCHUGH: And the  
17 individuals from whom we get comments, we may  
18 use the comments as part of our questioning,  
19 are not going to have a seat at the table.  
20 And so that the -- those surrounding  
21 communities and others may have specific  
22 questions that it also would be helpful to  
23 them to have the applicant think about, just  
24 as advance notice would be helpful to us.

1 Sort of a special category.

2 We ought to think through a process,  
3 it seems to me, where they can let us know  
4 those things, so that we can put them on a  
5 prehearing agenda.

6 COMMISSIONER ZUNIGA: Maybe a simple  
7 milestone deadline or something like that, X  
8 days prior to the hearing.

9 MS. PINCK: And I think our schedule  
10 is showing that November 7th we anticipated  
11 that we would need to cut off something, some  
12 process a couple weeks ahead of those, so that  
13 you could be prepared as well as the  
14 applicants. We'll define that. We'll draft  
15 all this up.

16 DIRECTOR DAY: I think -- I think  
17 we've got enough to try a written draft of the  
18 procedure.

19 Any other questions on -- I think  
20 we've got suitability and additional  
21 information on applications or application  
22 questions.

23 The next topic was the rating  
24 definition. And I just want to -- I just want

1 to -- go ahead.

2 CHAIRMAN CROSBY: I was just going to  
3 say that there's a draft coming, but I know it  
4 disappeared a minute ago and I don't know  
5 where it is, with copies coming back.

6 COMMISSIONER MCHUGH: I have one other  
7 question that I wanted to ask here that came  
8 up again at our meeting the other day. And  
9 that is that -- that we were working at our  
10 meeting under the assumption that we would  
11 follow the evaluation process laid out in the  
12 initial training session that really had four  
13 components.

14 It had the filling out of an  
15 evaluation sheet by each of the evaluators who  
16 was going to evaluate that section. In our  
17 case for example the engineers won't fill out  
18 the architecture. But anyway, whoever was  
19 going to evaluate a given section would fill  
20 out the rating sheet. Then, at a meeting, the  
21 consensus rating sheet would be filled out for  
22 each of the questions. And then at a meeting  
23 that those consensus ratings would be rolled  
24 up into a rating for an applicant. And that

1 rating for the applicant with the backup that  
2 would be forwarded to the Commission for  
3 formulation of the Commission's ultimate  
4 discussion. That was our understanding of the  
5 way the training was laid out.

6 There was a suggestion at our meeting  
7 that that first step, the creation of ratings  
8 by the individual raters would not be part of  
9 the process, that the raters would simply come  
10 in and at a meeting of the rating team,  
11 evaluation team, verbalize what their ratings  
12 or opinions were. And then the group would  
13 come to a consensus rating and that would be  
14 the first document in the process. That's  
15 brought me as troublesome, or troublesome I  
16 guess, particularly since we're not asking the  
17 evaluators to make the kind of recommendation  
18 that they normally make in a peer review  
19 process. And particularly since I thought we  
20 created this system in order to maximize  
21 transparency, and the ability to trace back  
22 the ratings all the way to their source. So,  
23 I just wanted to put that on the table and I  
24 told the team that I would.

1                   CHAIRMAN CROSBY: I agree with you. I  
2 think that first -- that first -- it isn't  
3 just the rating, it's the why of the rating,  
4 too.

5                   COMMISSIONER MCHUGH: The why.

6                   CHAIRMAN CROSBY: And -- and I believe  
7 our group is anticipating that before we get  
8 together, we would circulate everybody's  
9 ratings to one another, so that you will have  
10 seen that why, not only what rating other  
11 people assigned but why. And everybody would  
12 have had a chance to think about that before  
13 we come to the meeting to try to come to a  
14 consensus rating. So, I think that's an  
15 important step for lots of reasons.

16                  COMMISSIONER CAMERON: Yeah, and our  
17 group had the opposite opinion, our four group  
18 members, that that step could be problematic.  
19 And that if someone wasn't understanding the  
20 question the same way it -- just to have a  
21 written record of that early on or look at  
22 this group is always following this lead, or  
23 we thought it made more sense to of course  
24 look at it individually, have our own thoughts

1 on it individually, but it really was the  
2 group consensus of that rating that really was  
3 the documentation. Very similar to how we've  
4 done our procurements, you know, it's the same  
5 -- same process. There's one rating and it  
6 really is the consensus of the -- the -- team  
7 members.

8 CHAIRMAN CROSBY: But the procurement  
9 rating follows on the individuals having done  
10 a rating, and then you bring in your  
11 individual ratings --

12 COMMISSIONER CAMERON: But that's not  
13 part of the documentation that stays with the  
14 process.

15 CHAIRMAN CROSBY: So, you're concerned  
16 just about the documentation?

17 COMMISSIONER CAMERON: Well, no, I  
18 just think it's not just -- it just, to us it  
19 made sense to obviously read it, have an idea  
20 of where we were going, but that -- that  
21 conversation in the meeting in about, okay,  
22 this is what I see, did you see this  
23 differently. That consensus -- or -- or the  
24 bullets were really important pieces where you

1           you get the individual opinions. You know, we  
2           thought that was an important piece of the  
3           documentation, strong bullets. But  
4           individual, you know, very good versus  
5           sufficient. And, you know, then what is that  
6           because maybe you had three sufficients, and  
7           those three realized they totally missed  
8           something, and then the overall score is going  
9           to be very good, well, how did that happen.  
10          You have three insufficients and you end up  
11          with a very good. But that fourth member of  
12          the, you know, committee was the one that said  
13          wait a minute, wait a minute you missed this  
14          whole piece. And that's critical, oh, my God,  
15          you're right.

16                   CHAIRMAN CROSBY: But --

17                   COMMISSIONER CAMERON: That's why we  
18                   thought scoring it too early could be a  
19                   problem for that particular reason, and that  
20                   --

21                   CHAIRMAN CROSBY: But it sounds like  
22                   you're talking, you're -- you are saying that  
23                   from your example, that each individual would  
24                   go through and do their individual ratings and

1 then they would come --

2 COMMISSIONER CAMERON: In an informal  
3 way. It's not a document that would be  
4 submitted --

5 CHAIRMAN CROSBY: But that's my point,  
6 you're not saying they shouldn't do individual  
7 ratings. It sounds like you're objecting to  
8 the paper trail. Is that -- is that how I  
9 understand that?

10 COMMISSIONER CAMERON: Well, I -- it's  
11 not just the paper trail, it's the ability to  
12 look at the process and say that makes no  
13 sense. You had three sufficients and you end  
14 up with a very good. So, I just -- it's just  
15 the idea of the consensus we thought was  
16 really important for the documentation, and  
17 the bullets were really important.

18 So, there may not be a total  
19 consensus, but that would be reflected in a  
20 bullet. So that's -- that's where we thought  
21 the process made the most sense and supported  
22 what we're trying to do.

23 COMMISSIONER ZUNIGA: Well, to  
24 balance, I would agree with Commissioner

1 Cameron actually. I -- the approach in the  
2 procurements that we conduct is that up until  
3 the time that the procurement management team  
4 comes to talk about it and really deliberate  
5 about it, all of that documentation is their  
6 notes --

7 COMMISSIONER CAMERON: Work product.

8 COMMISSIONER ZUNIGA: -- their  
9 personal notes.

10 Now, the team will produce a work  
11 product and all of that is very important.  
12 And it should be as documented as possible, as  
13 detailed as possible. But it represents then  
14 the work product of the discussions that took  
15 into account multiple different points of  
16 view, etcetera. So, that -- that was my  
17 assumption initially when we -- when we  
18 started seeing the forms. I can think of  
19 scenarios where given the makeup of these  
20 teams, somebody could look back at the -- at  
21 the documentation and draw the wrong  
22 conclusion. I suppose there's a cure for  
23 that, but, you know, more documentation. But  
24 I -- I would agree with the general --

1                   CHAIRMAN CROSBY:  You've got two  
2                   different topics going on.  One is what do you  
3                   want in the record, and second is what is the  
4                   process for decision-making.  And it sounds  
5                   like what the process for decision-making, we  
6                   all agree, everybody should have an individual  
7                   -- individual opportunity to discuss and then  
8                   there -- that everybody gets together.

9                   And I might emphasize that -- the need  
10                  for consensus a little differently.  But  
11                  fundamentally we get together and try to come  
12                  to a consensus.  It seems like we're clear on  
13                  that.

14                 But I hear the two of you talking  
15                 about the documentation, that you're -- you're  
16                 concerned, and I think that you should speak  
17                 to this Catherine, because we talked about  
18                 this, about, you know, what -- what is the  
19                 public records dimension of that first  
20                 document as we've understood it so far.

21                 MS. BLUE:  I think the first document  
22                 in the way I recall our discussion in the  
23                 training would be a public record.  We've  
24                 talked a lot about people having notes that

1 are their own. And those would not be -- in  
2 listening to the conversation, there has to be  
3 some mechanism for folks to have their  
4 thoughts about each individual question on  
5 paper somewhere. Because the questions are  
6 complicated and they probably have a lot of  
7 thoughts and questions as they go through it.

8 So, I think one of the purposes of  
9 that first document would be at a minimum to  
10 get those thoughts there. Now, whether folks  
11 do or don't fill in the rating that goes there  
12 I think is a different question. But I do  
13 think you need that first -- that first piece  
14 of paper, and I think you need to be able to  
15 get down what that evaluator thinks on that  
16 piece of paper. That's going to inform the  
17 conversation amongst the larger group. And I  
18 don't -- I'm -- if it's a public record, I  
19 think that's okay. We, you know, that's fine.  
20 So --

21 CHAIRMAN CROSBY: And the theoretical  
22 danger that I gather I'm understanding is  
23 somebody doesn't like a decision, they get all  
24 the paperwork, they go back to the initial

1 forms, some critical variable, question 7A  
2 looked like it had a five to one assessment  
3 against something. And the one ends up  
4 winning, and somebody claims what happened  
5 here.

6 Let's assume for the sake of  
7 discussion that that's a realistic  
8 possibility. I think there is a -- there is a  
9 cure for that. I think there is a protection  
10 for that. And I think we've talked about  
11 this. You're going to be the note keeper, you  
12 know, your group is going to be the note  
13 keeper. When -- if that were to happen, and  
14 it could easily for just exactly the reasons  
15 you say, there will be a record of that  
16 conversation that will say the -- the group  
17 discussed and because the one was -- was  
18 somebody who knew much more about traffic  
19 engineering than the other four, the other  
20 four said oh, yeah, no, I get it, you're  
21 right. And that will be -- that will be in  
22 the record if anybody cares to dig that deep.

23 MR. MCHUGH: I -- I -- just in  
24 addition to that, it seems to me that the same

1 scenario could happen at every level.

2 CHAIRMAN CROSBY: Yes.

3 MR. MCHUGH: We can get a rating at  
4 that first level in which one of the -- the  
5 first level that would be documented under the  
6 scenario the consensus rating was the first  
7 piece of paper in the record that had five  
8 outstandings and one -- and then somebody else  
9 gets the highest rating at the next level.  
10 And -- and the highest ratings at the next  
11 level, which are the consensus levels for the  
12 overall application in each of the categories  
13 can come to us as Commissioners and we can  
14 pick one that had a high rating in one area,  
15 and only an adequate rating, and everybody  
16 else only had an adequate rating. We could  
17 pick one of the adequate ratings, so the  
18 problem permeates the entire process.

19 So, and the integrity of the process  
20 depends on the discussion, the notes and the  
21 little writeups to go with the bullets. And  
22 it seems to me the transparency's stated by  
23 going all the way back.

24 COMMISSIONER ZUNIGA: Well, there's --

1                   there's a risk with -- when -- when an  
2                   individual knows that all of their individual  
3                   notes are going to be public --

4                   CHAIRMAN CROSBY: They are.

5                   COMMISSIONER ZUNIGA: There's a  
6                   risk.

7                   CHAIRMAN CROSBY: Let me just make  
8                   sure I understand what she was saying. The  
9                   rating sheet would be public, the individual  
10                  notes specifically would be not.

11                  COMMISSIONER ZUNIGA: Point well  
12                  taken. When an individual knows that the  
13                  individual rating sheet is going to be public,  
14                  there could be a scenario where consciously or  
15                  not, they err on the side of -- on the safe  
16                  side of shying away from underrating or  
17                  overrating, and we get a lot of ratings in the  
18                  middle. That's a -- that's a risk. I've seen  
19                  it happen.

20                  And my, you know, again it seems like  
21                  we have a nice, healthy division here, but  
22                  which is important for our process. But it's  
23                  one thing that I would note.

24                  MS. PINCK: Maybe we should request

1           that the evaluators provide bullet points and  
2           not a rating, and then the evaluation team  
3           actually rates based on all of the input from  
4           the evaluators.

5                   CHAIRMAN CROSBY:  Would you say that  
6           -- I mean, Commissioner McHugh points out that  
7           the same exact thing can happen in every  
8           stage, including when it gets to the  
9           Commissioners.

10                   MS. PINCK:  Mm-hm.

11                   CHAIRMAN CROSBY:  Now, you could --  
12           you can easily have a consensus, you know,  
13           four out of five, somebody's outstanding, that  
14           sounds like a vote is going to -- the winner  
15           is going to be whoever gets four out of of  
16           outstandings, and the Commissioners get  
17           together and say you know what, the guy the  
18           one was the winner.  So -- so the only logical  
19           consistency is to drop the rating system that  
20           we've been talking about for a month now.

21                   MS. PINCK:  I think in order to avoid  
22           the scenario that you're talking about, one  
23           would have to have established some very clear  
24           and consistent criteria on how to evaluate

1           this question, very. So, we know what is  
2           good, we know what is great, we know -- and it  
3           would be very numerical, which I think is  
4           going to be very, very hard to apply to the  
5           questions, particularly in category one and  
6           category four. Two and three, I think is much  
7           -- is little bit easier. There's going to be  
8           some subjective analysis of whether how many  
9           jobs are created or revenue is created, which  
10          is better. But I think it's going to be a lot  
11          harder in the subjective categories to have --  
12          it would have been impossible to develop that  
13          criteria to rate.

14                 CHAIRMAN CROSBY: Just, I mean in the  
15                 spirit of compromise, is there -- could we  
16                 legitimately make the first four, maybe change  
17                 it somewhat and make that a personal  
18                 worksheet, that is -- that is the personal  
19                 worksheet of the personal evaluators. What  
20                 they have on it is up to them, and is not a  
21                 public record. And that --

22                 MS. PINCK: That --

23                 CHAIRMAN CROSBY: -- and would address  
24                 -- if we could do that legitimately and then

1 from that point forward they become public  
2 records, but each individual evaluator's notes  
3 and individual ratings that they bring to the  
4 conversation, which then start -- becomes --  
5 that conversation becomes public. Can we do  
6 that?

7 COMMISSIONER MCHUGH: Before we --  
8 before we answer the legal question, let me  
9 just put another issue on the table. I would  
10 really like to come to the conversation  
11 informed as to what the evaluator, the  
12 individual evaluators have thought. I think  
13 that -- and maybe I'm driven by, not the fact  
14 that we've had 79 questions of varying degrees  
15 of complexity, that's part of it, Frank. But  
16 I would really like to come, and I that we  
17 would all benefit from coming to the table  
18 with the sheets from the other people in hand,  
19 so that we can spend some time saying for  
20 example, I didn't look at -- I didn't see the  
21 answer this way, let me take a look at it  
22 again so I can come to the discussion prepared  
23 to discuss and debate in an intelligent  
24 fashion. I think it's critically important,

1 particularly given the time that we have to  
2 evaluate these applications to be as informed  
3 as we possibly can by the time we get to that  
4 conversation. And that means earlier  
5 circulation of some of something. Maybe it  
6 doesn't have to have the rating on it. I  
7 submit that it should have, but maybe it  
8 doesn't have to have a rating. But I think  
9 that first piece would be an enormously  
10 helpful aid, and if it's circulated and it's a  
11 public record, and I just -- I'm not --

12 CHAIRMAN CROSBY: I agree, I mean, and  
13 I -- in our group, we talked and I was a  
14 little bit concerned about the consensus that  
15 -- because I fear that in the consensus step,  
16 you start to merge, everybody starts to merge  
17 towards the lowest common denominator and you  
18 drive out of the consensus steps, you drive  
19 out innovation, you drive out differentiation.  
20 You force people to come to a middle ground.  
21 And if you can happily come to a middle  
22 ground, fine. But if you can't, I -- I said  
23 to our group we're not going to --

24 COMMISSIONER MCHUGH: Right.

1                   CHAIRMAN CROSBY:  -- this is -- the  
2                   objective here is not to come to a consensus,  
3                   the objective is to determine whether there's  
4                   a consensus.  And if there is, to document  
5                   that, and if there isn't, to document that.

6                   So, from -- I agree with you.  I mean  
7                   as a Commissioner, I would be interested in  
8                   seeing those original works, you know, and,  
9                   you know, what -- why there wasn't a  
10                  consensus, and, you know, what the outlier  
11                  view was that kept it from getting to a  
12                  consensus.

13                  So, it sounds like -- it sounds like  
14                  the issue that we need to think about, and  
15                  maybe we can cop out on this one for a few  
16                  minutes was -- is to have somebody -- you guys  
17                  think a little bit about, you know, really  
18                  substantively how vulnerable are we.  This is  
19                  really talking about a litigation mitigation  
20                  strategy.  How substantively vulnerable are we  
21                  if we have that first stage of review be a  
22                  part of the public record, and just have you  
23                  guys think about it for a little while, and  
24                  give us some -- give us some advice.

1                   COMMISSIONER ZUNIGA: For the record,  
2 I didn't think that that's the approach, you  
3 know, being vulnerable to litigation. But I  
4 --

5                   CHAIRMAN CROSBY: Why don't you --

6                   COMMISSIONER ZUNIGA: -- actually like  
7 --

8                   CHAIRMAN CROSBY: Why don't you want  
9 to do it that way?

10                  COMMISSIONER ZUNIGA: Well, to -- to  
11 -- because of what -- what I said if somebody  
12 could draw the wrong conclusion. You know, I  
13 don't know that they'll -- they -- civil  
14 action or not.

15                  I think, I like actually the  
16 recommendation, the idea that Jennifer points  
17 out. Keeping the -- making available the  
18 bullet points for each question, for each  
19 individual evaluator, passing that around,  
20 that's a public record. But the rating for  
21 each question is then discussed --

22                  MS. PINCK: We talked about that with  
23 Commissioner Cameron's group, and thought that  
24 sheet that we're debating where you rate and

1 have bullets, those bullets should include  
2 dissenting opinions.

3 And, you know, or language that says  
4 the majority of the group. So, that you -- I  
5 agree with you, we don't want to have  
6 consensus if we don't have consensus. And we  
7 want to make sure that opposing thoughts or  
8 other thoughts, other ways of viewing the  
9 question were recorded, and would be recorded  
10 on the final sheet, that is the work product  
11 of the group for each question.

12 COMMISSIONER CAMERON: Yeah, I would  
13 be more comfortable and I know my group would,  
14 too if we, you know, certainly we individually  
15 look at every question, we put our bullets  
16 together, and held off on rating. I don't  
17 think it's necessary at that point.

18 MS. PINCK: I wonder if -- I would ask  
19 two questions. We're talking about the  
20 process of arriving at a rating and to what  
21 extent individual's assessments written are  
22 part of the record. And the other question I  
23 have is do we think that every team has to  
24 operate in exactly the same way that you --

1 your group, Commissioner McHugh might have  
2 more paper in the file, more analysis than  
3 someone else.

4 The other thing I want to point out is  
5 I do think that we're recommending that every  
6 group identify ahead of time those questions  
7 for which we expect the technical consultants,  
8 the technical experts to have produced a  
9 report. And I always go back to traffic  
10 because traffic I think is the number one  
11 significant issue, and I think the finance.

12 And we're expecting the technical  
13 reviewers to review the material and to bring  
14 more than just what they thought about it to a  
15 meeting, because I believe we should have, if  
16 in the record, engineers' reports which  
17 substantiate those ratings because if they are  
18 challenged you don't want to call the engineer  
19 and say well, you know, to court some day and  
20 say well, you know, why did you say that.  
21 They want to have a legitimate professional  
22 engineer or financial consultant's report in  
23 the file. Not for every question because  
24 that would be impossible, and there are some

1 that you couldn't write a report on.

2 And so, maybe that also goes to some  
3 of those -- goes to the record that is  
4 created.

5 COMMISSIONER MCHUGH: Well, I think  
6 it's a good idea to have a report on some  
7 questions. The question is how many reports  
8 do we get and how much do we -- is happy  
9 mediums.

10 CHAIRMAN CROSBY: I don't have any  
11 problem with that, different groups do it.

12 COMMISSIONER MCHUGH: I think it's  
13 good to have a --

14 CHAIRMAN CROSBY: I don't have any  
15 problems with different groups doing it  
16 slightly differently.

17 MS. PINCK: I don't think that it  
18 necessarily addresses this -- this issue we're  
19 getting at, but it might in -- in some ways,  
20 because if the approach is Commissioner  
21 Cameron's and there's just one form, there --  
22 you -- but there's been a lot of discussion  
23 which is not recorded, the -- the professional  
24 consultants, HLT in this case, would have

1 produced a report -- I'm sorry, MaFarland  
2 Johnson would have produced some reports that  
3 would substantiate the consensus or the  
4 evaluation.

5 COMMISSIONER ZUNIGA: You could take  
6 your two ideas into at -- at the level of the  
7 individual questions. There could be  
8 questions really that lend themselves freely  
9 for those -- for that writing to come from  
10 each of the individual evaluators. Where  
11 others are really not, they really an advisors  
12 report to come to the meeting, convince the  
13 team about a rating and that being the end  
14 work product.

15 MS. PINCK: I do think these reports  
16 actually substantiate the ratings on  
17 criteria, not so much questions. The  
18 criteria is job creation.

19 CHAIRMAN CROSBY: So, where are we.  
20 Somebody summarize.

21 DIRECTOR DAY: Matter of fact, I think  
22 we might have gotten away from the topic, I  
23 thought the Commission was coming close. At  
24 least as I -- as I was listening, it sounded

1           like the Commissioners were leaning toward  
2           asking the raters to complete, that they could  
3           bring their notes for discussion to the group.  
4           But the actual rating would take place during  
5           the meeting of the -- of the evaluation team.  
6           And at that point, there would be an entry  
7           made whichever rating it might actually be,  
8           that the individual participants would bring  
9           their notes, there would be a discussion about  
10          -- about the notes and the thoughts about the  
11          -- what the raters' thoughts were. And there  
12          would be a consensus process if it was  
13          possible.

14                   I think Jennifer's right, you know, if  
15                   it's not possible, then that can be entered  
16                   factually. That's at least what I was -- I  
17                   was understanding.

18                   COMMISSIONER MCHUGH: You said bring  
19                   the notes, but they would -- that admits the  
20                   possibility and -- that they could be  
21                   circulated in advance, so that the team  
22                   members could look at them before the  
23                   consensus meeting, before the group meeting.

24                   DIRECTOR DAY: I think that was the

1 possible, yes.

2 COMMISSIONER MCHUGH: Yeah.

3 DIRECTOR DAY: Yes. Your notes,  
4 that's your thoughts at least absent the  
5 rating. The rating is essentially something  
6 that in effect is going to be a team rating  
7 anyway. So, you know, I think that the  
8 concept that people might be -- fudge that  
9 rating one way or another, might not be an  
10 honest, and just have a discussion about their  
11 thoughts initially, I think that would promote  
12 people participating in the thoughts, and then  
13 -- and then in turn the group can make the  
14 rating. That's just -- I thought we were  
15 getting close, I'm not suggesting it.

16 COMMISSIONER CAMERON: That makes  
17 sense to me. And, you know, the group then  
18 has access to one another's thoughts, as well  
19 as if there's some expert reports that will  
20 help -- will help educate and come to a rating  
21 based on the expertise needed.

22 CHAIRMAN CROSBY: What do you think?

23 COMMISSIONER MCHUGH: I think that's  
24 fine, and -- and I -- I frankly would envision

1           that to be filling out those individual sheets  
2           without the score, without the rating score,  
3           and circulating that. So that that was  
4           available to all Commissioners if somewhere up  
5           the chain you wanted to go all the way back  
6           and figure out how you got to this point, the  
7           Commissioners would be able to see that. But  
8           what they'd see is the bullet points, and not  
9           the individual --

10                   CHAIRMAN CROSBY: Right.

11                   COMMISSIONER MCHUGH: -- evaluator's  
12           rating. That's how I envision it working out  
13           and I think that would be fine.

14                   COMMISSIONER STEBBINS: I like that  
15           structure. We had a -- just conversation  
16           about notes in our session that those notes  
17           not only will help us go back from review, but  
18           also give us some ideas to potential  
19           conditions to attach to a license if --

20                   COMMISSIONER MCHUGH: That's another  
21           piece.

22                   COMMISSIONER ZUNIGA: Sounds like a  
23           consensus.

24                   DIRECTOR DAY: Develop the notes,

1 absent the rating and use those notes for  
2 discussion and circulation.

3 CHAIRMAN CROSBY: Does that work all  
4 right?

5 MS. PINCK: Mm-hm.

6 CHAIRMAN CROSBY: Okay. Do you want  
7 to go to the rating, do you want a break or  
8 anything?

9 COMMISSIONER CAMERON: No, I'm okay.  
10 Thank you.

11 CHAIRMAN CROSBY: Do you want to have  
12 the rating conversation? Is that next on your  
13 list?

14 DIRECTOR DAY: Yes, that's last on my  
15 list.

16 CHAIRMAN CROSBY: Last on your list.

17 DIRECTOR DAY: Can I have --

18 CHAIRMAN CROSBY: There was the  
19 original, the dated draft is from Pinck and  
20 Company, and the one we just got is from mine.  
21 Maybe everybody ought to just take a chance --  
22 take a minute to read them and see what you  
23 think.

24 MR. ZUNIGA: Which one is --

1 COMMISSIONER CAMERON: This --

2 CHAIRMAN CROSBY: The one with the  
3 date on it is from -- is the most recent from  
4 Pinck. And this other one I just did  
5 yesterday.

6 COMMISSIONER STEBBINS: You're  
7 suggesting we should --

8 CHAIRMAN CROSBY: I'm proposing -- I  
9 wasn't happy with these. I didn't think the  
10 structure was parallel. I didn't think it was  
11 very articulate, and so last night I rewrote  
12 them and I'm -- but, you know, we can all  
13 rewrite them.

14 COMMISSIONER ZUNIGA: Tough critics.

15 DIRECTOR DAY: That's a tough grade  
16 right there.

17 MS. PINCK: Well, that's what happens  
18 I think when you do group writing sometimes.

19 CHAIRMAN CROSBY: Well, it felt like  
20 group writing.

21 MS. PINCK: Yeah, yeah, I think it's a  
22 -- this is challenging.

23 CHAIRMAN CROSBY: Right.

24 DIRECTOR DAY: And I might add just as

1 we're reading that the -- in the process we  
2 had talked about different methodologies, what  
3 would be a good, better, best. Commissioner  
4 Stebbins started this out and proposed this  
5 format and that's what we thought the  
6 Commissioners were moving forward with was the  
7 insufficient, sufficient, and very good and  
8 outstanding. So, the question remains then is  
9 what do those particular terms mean. That  
10 brings us to where we are today.

11 CHAIRMAN CROSBY: Right. That -- that  
12 sort of reminds me, Commissioner Cameron, you  
13 talked about -- my group is -- plans to meet  
14 in advance of anybody doing any rating. Just  
15 sit there with the questions, talk about the  
16 questions, what do they mean, what do -- what  
17 do the ratings themselves mean, so that we --

18 COMMISSIONER CAMERON: Yeah.

19 CHAIRMAN CROSBY: -- will try to, you  
20 know, somebody will say, you know, I don't  
21 quite understand this type material, what does  
22 that mean. We'll talk about it.

23 COMMISSIONER CAMERON: It will be  
24 helpful.

1 CHAIRMAN CROSBY: Yeah, okay.

2 COMMISSIONER CAMERON: One of the  
3 issues that I had or our group had was many of  
4 our questions are, well, not many, but a  
5 number of them are really almost check the  
6 box. Yeah, they supplied what we asked them  
7 to supply and sufficient was the way it was  
8 originally written had some negative  
9 connotations. So, we did not think that was  
10 appropriate. And even this rewrite, minimum  
11 acceptable is a little bit of a negative. I  
12 kind of like the address the statutory and  
13 other criteria in an acceptable manner. There  
14 are just no negatives attached to that.

15 CHAIRMAN CROSBY: What about -- what  
16 about if you just added that. You could sort  
17 of -- you could -- you could almost do a  
18 parenthetical, or in certain circumstances  
19 meets the --

20 COMMISSIONER ZUNIGA: Statutory  
21 requirement.

22 CHAIRMAN CROSBY: -- statutory  
23 requirement. Right.

24 COMMISSIONER CAMERON: Right.

1 CHAIRMAN CROSBY: Just add that.

2 COMMISSIONER CAMERON: Okay. Yeah,  
3 only because, you know, minimum, some of our  
4 questions there -- there is no more that could  
5 have been provided.

6 CHAIRMAN CROSBY: Right. I understand  
7 that.

8 COMMISSIONER CAMERON: It's not a  
9 negative, it's just -- it meets it. So,  
10 however we can rephrase that so that it  
11 there's not a negative attached to sufficient.

12 COMMISSIONER MCHUGH: I like this. I  
13 like this one submission a lot. The only  
14 question I have is the outstanding category,  
15 and that is compelling experience. I wonder  
16 if there's another adjective for compelling  
17 that would be clearer.

18 CHAIRMAN CROSBY: In the earlier draft  
19 it said strong, and I was trying to come up  
20 with another one. So, I'm I wasn't happy  
21 either so --

22 DIRECTOR DAY: Just to be clear, we  
23 are on the Chairman's draft?

24 COMMISSIONER MCHUGH: The Chairman's

1 draft, yeah. It demonstrates --

2 CHAIRMAN CROSBY: Considerable  
3 experience, relevant experience.

4 COMMISSIONER MCHUGH: Those are --  
5 compelling is qualitative, and that's what I  
6 think we want. It's just not --

7 CHAIRMAN CROSBY: Yeah.

8 COMMISSIONER MCHUGH: -- clear what,  
9 rather than quantitative. And demonstrates --

10 DIRECTOR DAY: Extensive work?

11 CHAIRMAN CROSBY: Substandard?

12 DIRECTOR DAY: Extensive?

13 CHAIRMAN CROSBY: Meaning it's a  
14 little more, because it means really that's  
15 right on.

16 COMMISSIONER MCHUGH: These people  
17 really have it -- have the background --

18 CHAIRMAN CROSBY: Right.

19 COMMISSIONER MCHUGH: -- to do this.

20 CHAIRMAN CROSBY: Not only have they  
21 done this, they've done it well.

22 DIRECTOR WELLS: What about successful  
23 experience?

24 COMMISSIONER ZUNIGA: Superior, high

1 level?

2 CHAIRMAN CROSBY: You want --

3 COMMISSIONER MCHUGH: That -- that's  
4 getting close to it. Demonstrates high --  
5 high -- I wonder if we could supply -- think  
6 about that and maybe supply an adjective later  
7 this morning or something.

8 DIRECTOR DAY: We've got a question  
9 mark on it.

10 COMMISSIONER MCHUGH: Can we take an  
11 adjective break?

12 CHAIRMAN CROSBY: We could ask, we've  
13 got a couple of journalists over here. We can  
14 ask our journalists.

15 COMMISSIONER MCHUGH: We could, we  
16 could.

17 CHAIRMAN CROSBY: You guys come up  
18 with some better words, more compelling.

19 COMMISSIONER MCHUGH: We've got some  
20 headline writers here?

21 CHAIRMAN CROSBY: All right. So,  
22 we're going to amend sufficient to accommodate  
23 the category where it's just a matter of a  
24 check and we're going to think about the word

1           compelling.

2                   DIRECTOR DAY: I just want to make  
3           sure I'm with you. Did we amend insufficient?

4                   CHAIRMAN CROSBY: No.

5                   DIRECTOR DAY: No, that's okay?

6                   CHAIRMAN CROSBY: It was sufficient  
7           that we --

8                   COMMISSIONER MCHUGH: Oh, this is on  
9           the Chairman's draft?

10                  DIRECTOR DAY: Yeah, the Chairman's  
11           draft, I'm looking at the Chairman's draft  
12           that we -- insufficient is -- did you say we  
13           amended sufficient?

14                  COMMISSIONER MCHUGH: Yes.

15                  CHAIRMAN CROSBY: Yeah, to say  
16           something like in -- in appropriate  
17           circumstances address the statutory  
18           requirement.

19                  COMMISSIONER MCHUGH: That would be  
20           comma and then after Commissioner. That would  
21           be an add-on.

22                  MS. PINCK: Yes.

23                  CHAIRMAN CROSBY: That would be an  
24           add-on, right.

1 MS. PINCK: It would be another way of  
2 being sufficient.

3 CHAIRMAN CROSBY: Right.

4 MS. PINCK: Provided the list of  
5 people you talked to.

6 CHAIRMAN CROSBY: It's an alternative  
7 way to --

8 MS. PINCK: Yes, yes.

9 CHAIRMAN CROSBY: Right.

10 DIRECTOR DAY: And then very good is  
11 acceptable. And then just the one question on  
12 outstanding?

13 COMMISSIONER MCHUGH: Right.

14 DIRECTOR DAY: Other than that, this  
15 is the rating we'll use for the process?

16 COMMISSIONER CAMERON: Okay.

17 CHAIRMAN CROSBY: Until somebody  
18 changes their mind.

19 COMMISSIONER CAMERON: That wouldn't  
20 happen.

21 CHAIRMAN CROSBY: Shall we take a role  
22 call vote on that? Unless somebody else gets  
23 their knee replaced. Okay. We will then --  
24 go, you're done?

1                   DIRECTOR DAY: Mr. Chairman, I am  
2 done. And Director Wells is next on the  
3 agenda.

4                   CHAIRMAN CROSBY: Okay. Actually,  
5 let's just do take a real quick break.  
6 There's a couple of things I want to --

7  
8                   (A recess was taken)

9  
10                  CHAIRMAN CROSBY: All right. So, we  
11 will reconvene number 77. Just to think about  
12 this, we are by about noon, we're going to  
13 have to stop this meeting. There'll be an  
14 executive session during lunch. At 1:00,  
15 we're going to want to start the adjudicatory  
16 hearing. So, it means we've really only got  
17 about an hour left for this -- these agenda  
18 items. And I guess we -- we definitely want  
19 to do the -- yours, we definitely want to do  
20 the Ombudsman report. Are there -- are there  
21 other items here that have to get done today?

22                  DIRECTOR WELLS: Mr. Chairman, it  
23 would be very helpful if we could talk about  
24 some of the policy issues that pertain to the

1 next set of regulations, because we could use  
2 the guidance as we move those forward.

3 CHAIRMAN CROSBY: Is that -- which  
4 topic is that?

5 DIRECTOR WELLS: I think that's under  
6 item five, Legal Review.

7 CHAIRMAN CROSBY: Yeah, all right.  
8 So, we're going to try to do four, five and  
9 six. Research and Problem Gambling, if we  
10 didn't complete -- if we didn't get to that  
11 today, is there anything that we have to do  
12 today?

13 MR. ATTENDEE: No, we -- we -- can do  
14 that.

15 CHAIRMAN CROSBY: Racing, is there  
16 anything that we have to do today?

17 DR. DURENBERGER: I think we're all  
18 right.

19 CHAIRMAN CROSBY: Yeah, okay. We can  
20 always have another meeting if we have to have  
21 it, but anything today is important. And  
22 Director Acosta, is there anything you have to  
23 have today?

24 DIRECTOR ACOSTA: No. We can --

1                   CHAIRMAN CROSBY: All right. So,  
2 we're going to try to get to items four, five  
3 and six in the next hour.

4                   DIRECTOR WELLS: All right. So, in  
5 the interest of efficiency --

6                   CHAIRMAN CROSBY: I'm sorry, I'm  
7 sorry. There was one thing, we skipped item  
8 3B.

9                   COMMISSIONER ZUNIGA: Just real  
10 briefly, I included in the packet a draft of  
11 the report that's due to the legislature by  
12 September 30th. Of particular note is the  
13 finance piece that is -- is technically the  
14 first time I'm presenting it to this  
15 Commission.

16                   That includes the results of the  
17 fiscal year as -- of up until June 30th. And  
18 I would entertain any feedback and  
19 recommendations for edits at a later time, but  
20 --

21                   CHAIRMAN CROSBY: I haven't had a  
22 chance to read it yet, but --

23                   COMMISSIONER MCHUGH: I though the  
24 report was great, but the finance piece -- and

1 the finance piece in here that you set  
2 forward, as set forth in section 6, I thought  
3 was comprehensible, appropriate. The one  
4 question I had was the suggestion that we were  
5 going to submit a finance plan for the next  
6 year by September 30th, and wondered when the  
7 Commission was going to take a look at that.

8 COMMISSIONER ZUNIGA: Yeah, that's a  
9 -- that's a very good question. We -- we  
10 could request an extension. This finance  
11 plans is due to Administration and Finance  
12 mostly from agencies that have line item  
13 appropriations. They're due by September  
14 30th. We don't have a line item  
15 appropriation, but we still have the  
16 requirement to submit a finance plan like  
17 everyone else. I -- I think we can -- we can  
18 prepare a finance plan, which is what we're  
19 doing out of the last budget projection that I  
20 did present this Commission a couple of  
21 months ago. And it's simply aggregating what  
22 we expect to project -- what we project to  
23 spend in a four month that they require. We  
24 could wait until the next Commission meeting

1           October 3rd to present that, and then forward  
2           it to Administration and Finance by October  
3           4th fully. And I don't think there would be a  
4           problem with any of that.

5                   CHAIRMAN CROSBY: Speaking as a former  
6           secretary, nobody's going to care whether we  
7           get it there on the 30th.

8                   COMMISSIONER ZUNIGA: I know that's  
9           comforting in that.

10                   COMMISSIONER MCHUGH: I would welcome  
11           an opportunity to do that, just so that we  
12           could tie back into where we are, and we're in  
13           good shape. The only other comment I had  
14           about this is I thought it was terrific. I  
15           thought that the executive summary could be  
16           expanded a little bit, even if it -- to a  
17           second page. There's a lot of stuff that has  
18           been accomplished this year. And even for  
19           those who never -- get in front of the  
20           executive summary, it would be helpful.

21                   COMMISSIONER STEBBINS: I agree. I  
22           thought it was great. I just had some small  
23           edits which I can share.

24                   COMMISSIONER ZUNIGA: You can share.

1                   COMMISSIONER CAMERON: I have a couple  
2 of edits as well. We could do those.

3                   COMMISSIONER ZUNIGA: Great.

4                   CHAIRMAN CROSBY: Thank you very much  
5 for doing that. Okay. Director Wells.

6                   DIRECTOR WELLS: So, the first topic  
7 is a Region C discussion. During the ongoing  
8 scope of licensing process for prospective  
9 Region C applicants, some questions have  
10 surfaced. I thought it would be appropriate  
11 to have that discussion with the Commission.  
12 As you're aware, the Region C situation's  
13 slightly different than the Regions A and B in  
14 the slot applications because of two things.

15                   One, we've got the tribal issue which  
16 you're are all familiar with. I won't go into  
17 detail on that. And secondly, and  
18 particularly important for this discussion,  
19 you know, the Commission indicated they were  
20 in favor of an opportunity for unsuccessful  
21 applicants and Regions A and B and for slots,  
22 the slots license that they could apply in  
23 Region C. So, given that the deadline is  
24 coming up at the -- at the end of September,

1           some questions have come up about that and  
2           sort of that potential partner in process.

3           One question I got was if a Region C,  
4           non-gaming operator, so somebody that say had  
5           just a piece of land doesn't file the Phase 1  
6           one application by September 30th, is it  
7           limited to partner with those applicants that  
8           have already filed Phase 1 applications. And  
9           my impression is that the answer to that is an  
10          obvious yes. If nobody has filed, either your  
11          you or your partner by the 30th, that -- that  
12          you've missed the deadline in effect. So, I  
13          just want to confirm that with the Commission  
14          it is any question about that. I can --

15                 CHAIRMAN CROSBY: Say the -- read it  
16                 again. I missed that.

17                 DIRECTOR WELLS: If a Region C non-  
18                 gaming operator, so say someone that owns land  
19                 doesn't file an application by the 30th, is  
20                 that person, if they want to partner with  
21                 someone in a gaming operation in Region C, are  
22                 they limited to partnering with those  
23                 applicants that have already filed Phase 1  
24                 applications. That was the question I

1 received.

2 COMMISSIONER MCHUGH: If they don't --  
3 they don't file -- if nobody files by --

4 DIRECTOR WELLS: Right. Pretty much.  
5 So, that's why I think it's sort of a  
6 threshold question. If nobody's really -- if  
7 no one's was filed by deadline, whether it be  
8 a new applicant that hasn't been in the  
9 process or someone that's already filed in  
10 Region A, or B, or a slots applicant and wants  
11 to move over. I think it's an obvious  
12 question.

13 COMMISSIONER MCHUGH: It seems to me  
14 the deadline hasn't been met, they're -- that  
15 --

16 DIRECTOR WELLS: Right. So, then the  
17 follow up -- oh, pardon me, Jim.

18 CHAIRMAN CROSBY: Well, that -- that  
19 question implied that an unsuccessful bidder  
20 could apply after the 30th.

21 DIRECTOR WELLS: Right. I think  
22 that's the question.

23 CHAIRMAN CROSBY: That's the  
24 implication.

1                   DIRECTOR WELLS: And I'll get into  
2 that sort of scenario a little later.

3                   COMMISSIONER MCHUGH: This question,  
4 the question you just posed is --

5                   DIRECTOR WELLS: Yeah.

6                   COMMISSIONER MCHUGH: -- there has --  
7 nobody has applied. There has -- that doesn't  
8 include an unsuccessful bidder.

9                   CHAIRMAN CROSBY: Nobody has applied.

10                  COMMISSIONER MCHUGH: Neither the  
11 operator, nor the land owner has applied for  
12 anything before the deadline, can an operator  
13 or a land owner apply after the deadline. And  
14 the answer to that question seems to be no.  
15 Somebody has to have applied before -- by the  
16 -- by the --

17                  CHAIRMAN CROSBY: Okay. If that was  
18 the question, fine. Yeah.

19                  DIRECTOR WELLS: And if the question  
20 is no, could a Region C non-gaming operator,  
21 so say a land owner, file a Phase 1  
22 application and then pay the \$400,000.00 fee  
23 and partner with a gaming operator that has  
24 not filed a Phase 1 application by September

1 30th, so it's -- the question, I believe is  
2 it's almost like a placeholder. So, if  
3 someone has -- they want to potentially  
4 partner with someone in the gaming industry,  
5 but they haven't identified that person as of  
6 September 30th, can they file the application  
7 really knowing that --

8 CHAIRMAN CROSBY: By December 31st?

9 DIRECTOR WELLS: By September 30th.

10 COMMISSIONER MCHUGH: September 30th.

11 CHAIRMAN CROSBY: I'm sorry, September  
12 30th.

13 COMMISSIONER CAMERON: By the 30th.

14 DIRECTOR WELLS: And then partner with  
15 someone later.

16 CHAIRMAN CROSBY: Right.

17 DIRECTOR WELLS: So, from my  
18 perspective, just from the IEB, I see a big  
19 difference between partnering with someone who  
20 has been unsuccessful in the other regions but  
21 has passed suitability and just slides over,  
22 because I don't have to do a lot of work on  
23 that investigatory process because most of  
24 it's already done. But my concern is if

1           there's a new -- if they want to partner with  
2           someone that has not been in the process yet,  
3           that they've met their deadline, they bring in  
4           a partner after September 30th, can they do  
5           that.

6                     And so, I see two different scenarios,  
7           one is sort of an easy one for me. It's a  
8           policy question I think for the Commission,  
9           how they want to do that, you know, any  
10          determination whether something's  
11          administratively complete. I know we've had  
12          discussions with Ombudsman Ziembra, General  
13          Counsel Blue, you know, about this issue. I  
14          would welcome their comments on how we would  
15          approach this.

16                    The advantage to a potential, say it's  
17          a landowner to doing that, in filing the  
18          \$400,000.00 fee is it gets their investigatory  
19          process started. So, then if they want to  
20          partner with someone later, so say someone in  
21          Region A or Region B for some reason they  
22          don't, they're unsuccessful and their role or  
23          they're not selected, they could then partner  
24          later, and the person that is now applying new

1 in Region C could have their investigation  
2 underway and their -- they would not have the  
3 problem of partnering late in the game and the  
4 IEP not having enough time to do their  
5 investigation. So, that's -- that's how I see  
6 the question posed.

7 COMMISSIONER CAMERON: That scenario  
8 is consistent with what we did in the other  
9 regions. And by that I mean of course we want  
10 the good application. We understand that  
11 there may be additional qualifiers. There  
12 were at least two applicants that I'm aware of  
13 that did not have an operator identified at  
14 the time of the application. So, I don't  
15 think that was a requirement that you have to  
16 have an operator. But the application has to  
17 be -- I don't also like to term placeholder.  
18 It really, it's a good faith -- you're very  
19 interested --

20 CHAIRMAN CROSBY: It's \$400,000.00,  
21 which I think is ipso facto. That's pretty  
22 good faith if you ask me.

23 COMMISSIONER CAMERON: Well, but --  
24 but there were, you know, we made a decision

1 early on, we had one that came in, a potential  
2 operator that did not have any kind of a  
3 complete application and we denied that.

4 CHAIRMAN CROSBY: They didn't have the  
5 form.

6 COMMISSIONER STEBBINS: They didn't  
7 have the form.

8 COMMISSIONER CAMERON: Agreed. But we  
9 -- I don't know that we would have taken just  
10 a check without an application either, to be  
11 honest, I mean that -- that's not our policy.

12 CHAIRMAN CROSBY: No, but we need an  
13 application.

14 COMMISSIONER CAMERON: Right.

15 CHAIRMAN CROSBY: But somebody who's  
16 -- you submit an application, and you submit  
17 \$400,000.00, it's been my way of thinking that  
18 was -- would be perfectly acceptable. I don't  
19 think you should -- I think I'm agreeing with  
20 Director Wells, I don't think you should be  
21 able to bring in a new partner, given how much  
22 time there's been, and I don't -- bringing in  
23 a new financial partner who hasn't been  
24 preapproved, that seems to me to be

1                   problematic.

2                   But if you, if somebody -- if  
3                   somebody, a landlord applies September 30th  
4                   and doesn't have an operator, and adds an  
5                   operator between now and -- between September  
6                   30th and the end of December, who has been  
7                   unsuccessful operator elsewhere -- applicant  
8                   elsewhere, that would seem to me to be okay.

9                   COMMISSIONER CAMERON: The only one  
10                  that would know by December 30th would be  
11                  slots.

12                 COMMISSIONER MCHUGH: Right.

13                 CHAIRMAN CROSBY: Well, whoever -- but  
14                 no, they won't.

15                 COMMISSIONER MCHUGH: Why is December  
16                 30th the date?

17                 CHAIRMAN CROSBY: Isn't that the date  
18                 the applications are due?

19                 COMMISSIONER MCHUGH: No.

20                 COMMISSIONER CAMERON: No. This is  
21                 Region C and they're due September 30th, the  
22                 application.

23                 CHAIRMAN CROSBY: I'm sorry, not the  
24                 application, the final Phase 2 application.

1 COMMISSIONER MCHUGH: Right. Due  
2 September 30th for Region C.

3 DIRECTOR WELLS: No.

4 DIRECTOR DAY: No, in the spring.

5 COMMISSIONER MCHUGH: In the spring,  
6 I'm sorry.

7 CHAIRMAN CROSBY: When is it due?

8 DIRECTOR WELLS: July.

9 DIRECTOR DAY: July 23rd.

10 CHAIRMAN CROSBY: The final  
11 application -- applications, the final  
12 application is due July. So, okay, scratch  
13 everything I said.

14 COMMISSIONER STEBBINS: But I think to  
15 Karen's point is we find out there really  
16 isn't enough time to interject a new party  
17 outside of the parties that are currently in  
18 the process. So, if I'm an applicant in  
19 Region 1, I don't get the license, I'm going  
20 to know that sometime in the April time frame.  
21 I may then decide to partner with an applicant  
22 in Region C, that would give you barely a  
23 three month window. You're helped by the fact  
24 that if they've already gone through --

1                   DIRECTOR WELLS: Right.

2                   COMMISSIONER STEBBINS: --

3                   suitability, that anybody else would not be  
4                   able to be thoroughly investigated within the  
5                   three month window.

6                   DIRECTOR WELLS: Right.

7                   COMMISSIONER CAMERON: But I'm not  
8                   sure we should limit it. We haven't done that  
9                   in the past. I think the onus is on the  
10                  applicant to have it completed in a timely  
11                  fashion with enough time to investigate  
12                  everybody by July. For example, if next month  
13                  that particular applicant partners with an  
14                  operator who may not be in our process, there  
15                  would be sufficient time to complete. So, I  
16                  don't know that we should said you could only  
17                  partner with someone that's already in the  
18                  process. I think what is important that they  
19                  understand these other time frames and the  
20                  investigation has to be completed and you need  
21                  to have a final package. And we've run into  
22                  that with these present applicants.

23                  COMMISSIONER MCHUGH: They have to  
24                  have a final package as a practical matter in

1 time to negotiate a host community agreement  
2 and have the host community vote --

3 COMMISSIONER CAMERON: Correct.

4 COMMISSIONER MCHUGH: -- and so all  
5 that other stuff, so --

6 COMMISSIONER CAMERON: But that's on  
7 them.

8 COMMISSIONER MCHUGH: No, I  
9 understand. I'm agreeing with you.

10 DIRECTOR WELLS: And it would be  
11 appropriate, you know, just, you know,  
12 publicly and of note to potential applicants  
13 or I can have conversation with them to submit  
14 at their own peril and direct them to look at  
15 the statutory requirements for suitability,  
16 that, you know, I think that, you know, if you  
17 come in, and, you know, you have a piece of  
18 land with no gaming experience, as you can see  
19 from the Commission's activities to date,  
20 that's going to be problematic.

21 COMMISSIONER MCHUGH: Right.

22 COMMISSIONER ZUNIGA: I -- I want to  
23 pick up just on the original point of  
24 Commissioner Cameron, which is much like we

1 have done in the other regions. We accepted  
2 legitimate, you know, applications. Sometimes  
3 some of them did not come with all the  
4 partners, whether they were operators, or  
5 financing, or whatever. And eventually the  
6 milestones like having the investigations  
7 done, the -- with enough time frame prior to  
8 the Phase 2, the host community agreement  
9 process that has to happen sometime in between  
10 really fleshes that out, the need to have a  
11 complete application.

12 So, my recommendation is to have the  
13 same approach. Let's see who shows up, the  
14 deadline is September 30th.

15 DIRECTOR WELLS: Okay.

16 COMMISSIONER ZUNIGA: You know, and I  
17 think that's -- that's obvious.

18 DIRECTOR WELLS: Okay.

19 CHAIRMAN CROSBY: So, the deadline for  
20 Phase 2 in Region C is what?

21 DIRECTOR WELLS: July 23rd.

22 DIRECTOR DAY: July 23rd is Phase 2.

23 CHAIRMAN CROSBY: July 23rd. So, the  
24 host community agreement would have to be done

1 June, May, mid May at the latest, which would  
2 give the -- if we get our decisions done in  
3 the mid April on A and B, that would provide a  
4 very, very tight window for unsuccessful  
5 bidders in A and B to get involved in C. It's  
6 feasible, but tough.

7 COMMISSIONER CAMERON: Didn't --

8 MR. ZIEMBA: There are also some  
9 elections that are pending where that might  
10 impact.

11 CHAIRMAN CROSBY: Well, you may lose  
12 others. I understand that, right, right. And  
13 all of the -- all of the people from the slots  
14 will be available.

15 COMMISSIONER MCHUGH: But as a  
16 practical matter, we haven't -- we haven't yet  
17 had a suitability hearing where there hasn't  
18 been an operator. And that comes way before,  
19 right?

20 COMMISSIONER CAMERON: We did.

21 DIRECTOR WELLS: Our way, I would  
22 suggest really didn't partner with an  
23 experienced gaming operator.

24 COMMISSIONER MCHUGH: Our way was kind

1 of up?

2 COMMISSIONER CAMERON: They did not  
3 have an operator.

4 COMMISSIONER MCHUGH: I thought they  
5 were going to operate it themselves, but --

6 CHAIRMAN CROSBY: Oh, they didn't have  
7 an operator?

8 COMMISSIONER CAMERON: Well, they --

9 DIRECTOR WELLS: They were going to do  
10 it themselves.

11 CHAIRMAN CROSBY: Fulton was -- Fulton  
12 was --

13 COMMISSIONER CAMERON: No, just an  
14 investor. Was not an operator.

15 COMMISSIONER MCHUGH: No, they did.  
16 They said -- Fulton said that they -- they  
17 were going to bring somebody in.

18 COMMISSIONER CAMERON: Right. After  
19 he tried to save it. It was not a --

20 COMMISSIONER MCHUGH: No, no, you said  
21 that at the hearing.

22 COMMISSIONER CAMERON: I know, but  
23 that's when they knew that they were --

24 CHAIRMAN CROSBY: In trouble.

1                   COMMISSIONER CAMERON: Initially there  
2 was no talk, he was only an investor.

3                   COMMISSIONER MCHUGH: I guess my point  
4 is that, and we don't have to decide this now,  
5 but my point was that at the hearing we had an  
6 idea who the operator was -- where the  
7 operator was going to come from. As opposed  
8 to somebody who's by the time of the  
9 suitability hearing simply says I have a piece  
10 of land and I'll get back to you. So, I don't  
11 think we need a rule. That's just -- that's  
12 just -- that would be problematic for me.

13                   DIRECTOR WELLS: Right.

14                   COMMISSIONER MCHUGH: As one  
15 Commissioner, if that's the way it showed up.

16                   DIRECTOR WELLS: Just common sense  
17 dictates that's not going to work.

18                   COMMISSIONER MCHUGH: Right. Right.

19                   COMMISSIONER CAMERON: And the ability  
20 of those other applicants who are unsuccessful  
21 because they didn't put an application in for  
22 this region, in other words we allow one to  
23 move from a region to the slots --

24                   DIRECTOR WELLS: Yeah, that's a little

1 different because we -- the -- they didn't  
2 have to identify the slots --

3 COMMISSIONER CAMERON: We didn't have  
4 them identify in that -- in the --

5 DIRECTOR WELLS: In the initial  
6 submission, but then later we asked for it.  
7 And the two that had not identified reserved  
8 their rights to switch.

9 COMMISSIONER CAMERON: So, if someone,  
10 say one of the slots applicants who was  
11 unsuccessful says I'd like to now take my  
12 whole project and move it to Region C --

13 DIRECTOR WELLS: Yes.

14 COMMISSIONER CAMERON: -- that would  
15 not be acceptable because they had not put  
16 that application in?

17 DIRECTOR WELLS: No, no, I think  
18 that's acceptable.

19 COMMISSIONER CAMERON: Okay. That's  
20 what my question is. So, that would --

21 DIRECTOR WELLS: I think the question  
22 is do they -- so, for example, if I'll just  
23 say applicant A, applicant A, for whatever  
24 reason, host community agreement, something

1 goes awry, they want to come into Region C, do  
2 they have to file something by the 30th?

3 COMMISSIONER CAMERON: That was my  
4 question to you.

5 DIRECTOR WELLS: That's the question.  
6 Okay. So, I think that can be one of the  
7 questions.

8 COMMISSIONER ZUNIGA: Applicants from  
9 Regions A or B?

10 DIRECTOR WELLS: From A, or B, or  
11 slots. They then -- do they -- do they have  
12 to submit something to be the applicant?

13 COMMISSIONER STEBBINS: No.

14 COMMISSIONER ZUNIGA: No, we already  
15 solved that question.

16 DIRECTOR WELLS: I thought that was  
17 the threshold question.

18 DIRECTOR DAY: I guess from my  
19 perspective as we -- as we moved on, the  
20 question seems to end up with the, if there's  
21 no operator, does the Commission still want to  
22 accept the application?

23 CHAIRMAN CROSBY: And the answer I  
24 think is yes.

1                   DIRECTOR DAY:  And it seems like the  
2                   answer is yes.

3                   CHAIRMAN CROSBY:  Right.

4                   DIRECTOR DAY:  And it's almost  
5                   dictated by the time available to complete the  
6                   investigation as to whether or not that will  
7                   work practically or not.

8                   CHAIRMAN CROSBY:  Right.

9                   DIRECTOR WELLS:  And I'll -- you know,  
10                  my approach during this stage of things is  
11                  that if the applicant doesn't meet its burden  
12                  and it doesn't produce information, the burden  
13                  is on them, and that will reflect in their  
14                  suitability report.  I can't just hold off on  
15                  doing the investigation or submitting a final  
16                  report because the applicant has failed to  
17                  provide the whole information regarding their  
18                  project.  So

19                  -  
20                  -

21                  COMMISSIONER STEBBINS:  There's a huge  
22                  oneness on the applicant if they don't have a  
23                  partner in mind, they don't think about  
24                  partnering with somebody currently in the  
                  system, I think they're going to -- they're

1 going to understand that.

2 DIRECTOR WELLS: Yeah.

3 COMMISSIONER STEBBINS: I also think  
4 it would be tough for them to even approach a  
5 host community saying I want to negotiate a  
6 host community, well who's your operator.

7 DIRECTOR WELLS: Right, right. So,  
8 there's a lot --

9 COMMISSIONER STEBBINS: Still waiting.

10 DIRECTOR WELLS: But if they're  
11 willing to take that on themselves, then it's  
12 worth the risk. If the Commission's all right  
13 that, then we can communicate that and start  
14 the process.

15 CHAIRMAN CROSBY: All right.

16 COMMISSIONER CAMERON: So, unlike the  
17 first deadlines, where we had a clear picture  
18 of how many applicants, we will not  
19 necessarily have that after the 30th, because  
20 of the ability of present applicants to move  
21 into the region.

22 DIRECTOR WELLS: Oh, that's  
23 interesting, yes. So, we could get one, two.  
24 We could get zero. We could get one, two,

1 three, you know. And then see what happens.

2 COMMISSIONER MCHUGH: Right.

3 DIRECTOR WELLS: And I'll just keep  
4 the Commission informed as we -- as we move  
5 along in the process.

6 MR. ZIEMBA: Just for clarification,  
7 where an existing, non-successful applicant  
8 moves in after September 30th, they might be  
9 adding a land partner that would have not made  
10 that September 30th deadline.

11 COMMISSIONER CAMERON: Correct. Which  
12 is what we've done in the other regions.  
13 We're being consistent.

14 CHAIRMAN CROSBY: Okay. Let's move  
15 along.

16 DIRECTOR WELLS: And then the other,  
17 the MS State Police Staffing, that's just an  
18 update for you. I'm in discussions with  
19 command staff with the state police about  
20 staffing. As you know, the statutory  
21 requirement that state police have exclusive  
22 jurisdiction over enforcement of criminal  
23 matters relating to the operation of the  
24 gaming establishment. There will be a

1           necessity for state police staffing. And  
2           also, internally at our -- at our -- at our  
3           bureau. So, the legislature has approved a  
4           line item for the money for a class which is  
5           expected to start in November. And the --  
6           it's a class, they would start in November and  
7           they would have road training probably in May  
8           through August. So, they wouldn't have bodies  
9           until after that. So, I'm in discussions with  
10          them about buying some slots the class similar  
11          to what Massport has done and what the  
12          Turnpike has done, so that we can have some  
13          staffing available for when the slots license  
14          -- slots facility opens, and staff internally.

15                 We already have five members now and  
16                 then two members are expected, staff members  
17                 from the state police are expected to come  
18                 over to the IEB. And the expectation is that  
19                 we would need approximately 8 members of the  
20                 state police for the staffing of the facility  
21                 at that slots parlor. There's a little  
22                 flexibility in that depending where it is, but  
23                 generally that's our estimation.

24                         So, the -- I expect the proposal,

1           which I will work out with state police and  
2           which would come before the Commission for  
3           your approval, would be first 15 slots in the  
4           class. I am concerned because we know there's  
5           going to be this class. I don't know when  
6           there potentially would be another class, so  
7           we're going to have to talk about staffing  
8           the resort casino facilities. But we  
9           certainly can't buy enough slots in the class  
10          now to staff those, so there's going to have  
11          to be another solution after time has passed.  
12          But my hope is that there will be another  
13          class. After this 81st RTT and that we would  
14          be able to partner with the state police and  
15          buy some slots for that class as well, or  
16          potentially vis-à-vis, the option we would  
17          have to run a class on our own if there's no  
18          money from the legislature. So, we can talk  
19          about that at a later time. I just want to  
20          put that on your radar screen.

21                   CHAIRMAN CROSBY: And -- go ahead.

22                   COMMISSIONER CAMERON: My concern, and  
23                   I know that this is something that we couldn't  
24                   avoid because the class is going in when the

1 class is going in, you know, if, for example  
2 this went to an existing facility, they have  
3 plans to open within a couple of months. Do  
4 you know what I'm saying?

5 DIRECTOR WELLS: Right.

6 COMMISSIONER CAMERON: So that could  
7 be much sooner than when the class A,  
8 graduates; B, can finish with their road duty  
9 training.

10 DIRECTOR WELLS: My experience with  
11 the state police is they are first and  
12 foremost committed to public safety. And they  
13 are also committed to the successful operation  
14 of these casinos. They recognize that the,  
15 you know, especially when they open, they are  
16 especially vulnerable. People are going to  
17 come in looking to do all sorts of things.  
18 And check whether the correct policies and  
19 procedures are in place, and people are  
20 properly trained. So, my expectation is they  
21 will work with us to make this successful,  
22 however how that needs to happen.

23 COMMISSIONER CAMERON: That's my  
24 expectation as well, but I just wanted to --

1 DIRECTOR WELLS: Yeah.

2 COMMISSIONER CAMERON: -- make sure  
3 we've thought about that.

4 CHAIRMAN CROSBY: But you did raise  
5 something which I hope you heard. You just  
6 said something about if it goes to an existing  
7 facility, they expect to open in a couple of  
8 months.

9 COMMISSIONER CAMERON: Correct.

10 CHAIRMAN CROSBY: And the schedule  
11 you're talking about is a nine month, I think,  
12 expectation. Which we have talked about  
13 repeatedly making sure that we know when the  
14 earliest likely opening date is, and that  
15 we're geared up to do that. But no other  
16 department of ours is geared up to open two  
17 months after the license is awarded, right?

18 DIRECTOR DAY: Yes, and that's  
19 actually -- as far as the two months, I have  
20 heard no formal information. So, we'll see  
21 what they actually propose when they submit  
22 their applications. But I knew some were  
23 actually talking about the possibility of just  
24 putting some slot machines in a temporary

1 fashion. Ultimately that would have to be  
2 something that would have -- the Commission  
3 would have control over on whether you would  
4 allow that.

5 CHAIRMAN CROSBY: I don't even think  
6 the statute would permit that.

7 DIRECTOR DAY: Yeah. So, the --  
8 basically we just selected around the nine  
9 month, which is --

10 CHAIRMAN CROSBY: Let me just  
11 interrupt just in the interest of time.  
12 There's a disconnect here.

13 DIRECTOR DAY: Yeah.

14 CHAIRMAN CROSBY: And I think what you  
15 need -- you need to talk about it, because we  
16 -- we've got a lot planning on what we think  
17 is a reasonable expectation of a start date.  
18 And if that's a fungible date in a material  
19 way, we need to -- we need to think about  
20 that. We never -- we haven't had a  
21 conversation where we'd say we wouldn't open  
22 the facility because we aren't ready to do it  
23 yet. But that is one possible outcome from --  
24 from this conversation.

1                   DIRECTOR DAY:  There are some  
2                   practical misunderstandings, too, about  
3                   actually obtaining equipment and how fast that  
4                   can -- that can take place.  Even if you  
5                   wanted to open in a short time.  So, we'll  
6                   talk about that and see where it goes.  
7                   Ultimately, though, the Commission is in  
8                   control of when someone opens their  
9                   facility.

10                   CHAIRMAN CROSBY:  Well, I fully  
11                   understand that.  But -- but as I said we've  
12                   never talked about having the Commission say  
13                   sorry, you're ready to open, but we aren't  
14                   ready for you yet.

15                   You know, that would be a big no-no.  
16                   Unless we change our minds.  We've never had  
17                   that conversation, so whatever -- so, anyway,  
18                   you guys just got to talk about this and --

19                   DIRECTOR DAY:  We will.

20                   CHAIRMAN CROSBY:  -- see where we're  
21                   at.  All right.  Is that it?

22                   DIRECTOR WELLS:  All set.

23                   CHAIRMAN CROSBY:  Thank you.

24                   DIRECTOR WELLS:  Thank you.

1 CHAIRMAN CROSBY: I think maybe we  
2 should do the Ombudsman first, to make  
3 absolutely sure we get that done.

4 DIRECTOR DAY: All right.

5 CHAIRMAN CROSBY: And then we'll do  
6 what we can on the legal question side. So,  
7 Ombudsman Ziemba.

8 MR. ZIEMBA: Mr. Chairman, If you  
9 wouldn't mind, I'll take things out of order  
10 to try to dispense with the quick items and  
11 get to a more robust conversation about  
12 surrounding communities.

13 CHAIRMAN CROSBY: All right.

14 MR. ZIEMBA: In your packet, you have  
15 the note -- the citizens notice for Milford.  
16 Attorney Grossman and I have reviewed the  
17 citizens notice. It is consistent with other  
18 notices that have been provided and it meets  
19 the -- regulations that we have on utilizing  
20 the exceptions and the citizens notice. So, I  
21 recommend that you approve the citizens  
22 notice.

23 CHAIRMAN CROSBY: Do we have a motion?

24 COMMISSIONER MCHUGH: I move that we

1 approve the citizens notice as set forth in  
2 the meeting, today's meeting materials, the  
3 Milford citizens note.

4 COMMISSIONER CAMERON: Second.

5 CHAIRMAN CROSBY: All in favor?

6 COMMISSIONER CAMERON: Aye.

7 COMMISSIONER MCHUGH: Aye.

8 COMMISSIONER STEBBINS: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 CHAIRMAN CROSBY: Opposed? The Ayes  
11 have it.

12 MR. ZIEMBA: Great. The second item,  
13 by way of background we discussed this at our  
14 last meeting, we are about to issue a number  
15 of answers to questions that have been  
16 raised in our pre-application meetings with  
17 Category 2 applicants. A copy of that has  
18 been provided for you. Hopefully we'll issue  
19 that by very early next week, perhaps Monday.

20 So, the degree that you have any  
21 questions about very specific language in  
22 there, please get that to us and we can make  
23 any -- any changes.

24 But I thought what I'd use our time

1 for today is just call out a couple of the  
2 matters that rise to the level of either  
3 changes or clarifications in policies that we  
4 looked at before. And I'll verbally go  
5 through them so we don't have to go through  
6 the specifically recommended language which  
7 I'll forward to you.

8 But the -- the four issues are on  
9 audited financial statements. We talked about  
10 this issue at our last meeting. And the  
11 general issue was that some of these entities  
12 do not have audited financial -- audited  
13 financial statements for a good period of time  
14 as they are new entities that have been  
15 created for the -- for the gaming market. So,  
16 in the last couple of days, this is question  
17 number 25 in your packet, which is probably  
18 curiously blank to you. But the actual  
19 recommendation we worked on with our financial  
20 consultants over the last couple of days, we  
21 submitted some language to them and the bottom  
22 line is -- of the of the language is that we  
23 recommend that at a minimum that Commission is  
24 interested in seeing audited financial

1 statements exhibiting the financial  
2 performance of the entity that is developed  
3 and operating the gaming establishments in  
4 other jurisdictions.

5 The applicant should provide a  
6 narrative describing the interrelation of the  
7 entities for which it is providing financial  
8 statements. And then there's also further  
9 clarification that contributions and donations  
10 which are not part of audited financial  
11 statements, we didn't mean to say that they  
12 should be audited. And our outside financial  
13 advisors concurred with that recommendation.

14 There is -- there's a question on 217  
15 regarding financial suitability. We talked  
16 about that a little bit a couple of minutes  
17 ago, about what are we going to do regarding  
18 the first phase of our financial suitability  
19 and other suitability determinations, and how  
20 is that going to be brought into the  
21 Commission's review in the second phase.

22 And specifically, we had a number of  
23 questions from applicants asking, where we  
24 said please update your financial suitability.

1           And they asked us what does that include. For  
2           example, if one of the qualifiers got a paper  
3           route, should that be added, because that  
4           wasn't a specific income of what was of what  
5           was -- was noted previously.

6           So, what we recommend here is that  
7           what we really are getting at is a materiality  
8           test. If indeed there are some material  
9           information that would be important for the  
10          Commission to consider, that all of the  
11          applicants are under a burden to provide that  
12          financial -- excuse me, that financial and  
13          other information that is material. And we  
14          list, and we will list in the answer, certain  
15          things that should be included and a  
16          materiality test, such as bankruptcies and  
17          litigation, and other substantial changes.  
18          But in our answer, we put the burden on the  
19          applicant that they have to provide all  
20          material changes since the qualifiers -- since  
21          the first round of suitability. And the  
22          burden is on them.

23          The third answer is regarding  
24          schematic design. And the good folks over at

1 Pinck and Co. discussed the language of that  
2 at our last meeting. We discussed that, and  
3 there's a recommendation that advanced  
4 conceptual design level drawings will be  
5 acceptable. The applicant question addresses  
6 only the structures of the facility and should  
7 not be interpreted to require the same level  
8 of design for mechanical, electrical systems,  
9 etcetera, many of which are addressed in other  
10 questions within this category related to  
11 performance or sustainability goals.

12 The Commission will be looking for  
13 design details and dimensions that are  
14 relevant to agreements made between the  
15 applicant and the host and surrounding  
16 communities. So, that recommendation gets at  
17 the level of design that we're -- that we are  
18 requiring but didn't require the full level of  
19 schematic design in that language was worked  
20 out with Pinck and Co.

21 The final question is we've received  
22 numerous questions regarding what we meant by  
23 requiring the applicants to tell us what we  
24 want for remote regulatory surveillance. A

1 number of applicants have asked --

2 CHAIRMAN CROSBY: Which question is  
3 that?

4 MR. ZIEMBA: This is question 464.  
5 So, the answer in your packet has been revised  
6 since our discussions with -- with Michael and  
7 Carol, and our other consultants on what  
8 should be required for remote surveillance.

9 And what they suggested is that what  
10 we really meant by that question is that we  
11 want to have remote surveillance within the  
12 facility, but that we are not requiring some  
13 sort of a remote surveillance at a Commission  
14 building, which could raise security concerns  
15 in and of itself. Whether or not we would  
16 want to do a remote surveillance at some time  
17 in the future, I think that would be -- that  
18 would be up to us. But requiring applicants,  
19 particularly the Category 2 applicants to  
20 provide that type of a level of detail when  
21 it is not -- it doesn't exist in the industry.  
22 It is not what we meant by our question. So,  
23 they suggest -- so, this, what we've revised  
24 our answer to say is in providing a general

1 discussion description of the applicant's  
2 approach to remote regulatory surveillance,  
3 applicant should describe how the Commission  
4 and the state police will have surveillance  
5 access at the gaming establishments. The  
6 question does not require description of how  
7 the Commission would have access to  
8 surveillance data from the Commission's  
9 headquarters.

10 So, this question doesn't -- this  
11 answer to this question doesn't in any way try  
12 to say that we will never ask for remote --  
13 remote surveillance if for some reason that  
14 becomes a good idea in the future. It just  
15 clarifies when these applicants are filling in  
16 their applications in two weeks that we are  
17 not asking for something that's unprecedented  
18 in the industry, and to the best that we know.

19 COMMISSIONER MCHUGH: Surveillance, I  
20 take it, excludes data feeds from slot  
21 machines? I mean, that's -- that would be  
22 commonly understood as excluding that because  
23 we may want to do that, right?

24 DIRECTOR DAY: That would be different

1 than having a master computer and server  
2 facility at -- at our -- at headquarters. Two  
3 different things.

4 CHAIRMAN CROSBY: Surveillance does  
5 not preclude data from slots machines?

6 DIRECTOR DAY: Yes.

7 CHAIRMAN CROSBY: Okay.

8 COMMISSIONER CAMERON: I don't think  
9 data has ever been considered as part of  
10 surveillance.

11 COMMISSIONER MCHUGH: Okay. I'm just  
12 -- I -- I'm -- I'm --

13 MS. CAMERON: No, I understand your  
14 question.

15 COMMISSIONER MCHUGH: First time --

16 COMMISSIONER ZUNIGA: Well, yeah, and  
17 that exists in the industry, remote, you know  
18 --

19 COMMISSIONER CAMERON: Yes, yes.

20 COMMISSIONER ZUNIGA: -- data feeds  
21 from the slot machines.

22 COMMISSIONER CAMERON: Yes.

23 MR. ZIEMBA: So, the actual language,  
24 to the degree any of you have any suggestions

1 or additions, and Director Day had some  
2 additions that we will make over the next  
3 couple of days, please let us know. But we  
4 thought we'd bring those policy auditing  
5 questions to you.

6 CHAIRMAN CROSBY: I have one on a  
7 question that's in my category. Question 1-  
8 09. I was -- I was imagining that this  
9 question was asking for much more than this  
10 answer. This says just the question of  
11 permitting issues, but I was really thinking  
12 was as an open ended question.

13 I mean, for example, if you -- a  
14 bidder might say that you -- the Commonwealth,  
15 in order for us to be successful can't issue  
16 any more licenses for the period of our 15  
17 year license, for example, or would need to be  
18 -- would need to be open to amending the  
19 number of table games and slots, or whatever.  
20 I'm just making this up. But it was sort of  
21 an open ended question to say what if anything  
22 do you need from us to be, you know, the  
23 future of internet gaming. You know, what I  
24 mean, or whatever else. I'm just, you know,

1 so --

2 COMMISSIONER STEBBINS: I had the same  
3 note. That was -- it was more open ended as  
4 to say how can we, once a license is awarded  
5 help you get up, open your doors faster, get  
6 up and running faster, be robust, be  
7 successful. Not necessarily where we know  
8 we're going to assist them when -- with  
9 respect to permitting assistance or, you know,  
10 the alcohol beverage license. But in other  
11 words how we conduct our licensing, you know,  
12 prioritizing their employees over, you know,  
13 general license applicants. But I -- much  
14 more open ended.

15 COMMISSIONER MCHUGH: I had the same  
16 understanding. I thought this was a really --  
17 question.

18 CHAIRMAN CROSBY: Right. And it's --  
19 right.

20 MR. ZIEMBA: So, we'll come up with  
21 some substantive language.

22 CHAIRMAN CROSBY: Right. And it's --  
23 it's important that we get that out to people,  
24 because that -- if this is the understanding,

1 that's way short of what we obviously were all  
2 really thinking.

3 MR. ZIEMBA: Okay.

4 CHAIRMAN CROSBY: And I assume that  
5 Jill has reviewed 320, and it is compatible  
6 with the stuff you've been working on so far.

7 MS. GRIFFIN: It is. It is.

8 MR. ZIEMBA: Jill had some other items  
9 that she wanted to add in. And I said  
10 absolutely, that would be a great idea, but  
11 can I take the prerogative and use the twenty  
12 minutes from the surrounding community  
13 discussion, because that specific item that  
14 you mentioned might be able to wait until two  
15 weeks from now? The definition of small  
16 business.

17 MS. GRIFFIN: Sure.

18 MR. ZIEMBA: Can I do that?

19 CHAIRMAN CROSBY: Yes.

20 MS. GRIFFIN: Yes, I think the time is  
21 -- I think we could wait until the next  
22 meeting.

23 MR. ZIEMBA: Thank you very much.

24 CHAIRMAN CROSBY: There are going to

1 be several. We're starting to rush now. And,  
2 you know, haste makes waste. I can feel -- I  
3 have notes on these questions that I would  
4 like to have discussed.

5 MR. ZIEMBA: All right.

6 CHAIRMAN CROSBY: And we're -- and  
7 we've got these legal policy questions that  
8 are going to come up, which are big. You  
9 know, I think we need to think about whether  
10 we need an extraordinary meeting between now  
11 and the 3rd to put in stuff, that we're --  
12 we're not doing full justice to. Or maybe on  
13 the 3rd we've got -- maybe we've got time on  
14 the 3rd, I'm not sure.

15 But I -- I -- I can feel that I'm not  
16 getting an opportunity to talk about some of  
17 the things that I think are important. So,  
18 and I -- I would lean toward maybe having an  
19 extraordinary meeting next week to catch up on  
20 stuff we're leaving short right now.

21 COMMISSIONER CAMERON: Mr. Chair, is  
22 next week the --

23 CHAIRMAN CROSBY: We're away, but  
24 sometime.

1 COMMISSIONER CAMERON: Yeah.

2 CHAIRMAN CROSBY: Yeah, I mean  
3 whenever. Maybe it doesn't have to be a full,  
4 maybe -- maybe only three of us could do -- I  
5 don't know. But anyway, I've got a feeling --

6 COMMISSIONER MCHUGH: I'm sure, the  
7 concern about rushing.

8 CHAIRMAN CROSBY: I got a feeling  
9 that by 1:00 we're going to have some fairly  
10 substantial open -- or by noon, we're going to  
11 have some pretty substantial open ended  
12 questions, including the small business  
13 definition. So, maybe we could think about  
14 that. Okay.

15 MR. ZIEMBA: That directly feeds into  
16 my next -- Mr. Chairman.

17 CHAIRMAN CROSBY: All right.

18 MR. ZIEMBA: So, my next report is a  
19 report on the status of surrounding  
20 communities. Mr. Chairman, you asked me to do  
21 a little bit of a survey to see where we are.  
22 And specifically, I wanted to talk about where  
23 we are with the Category 2 applicants. I  
24 unfortunately report that with 15 days

1 remaining before the October 4th slots  
2 deadline, to the best of my knowledge, no  
3 surrounding community agreements have been  
4 executed. This concerns me greatly.

5 The lack of a Category 1 surrounding  
6 community agreement also concerns me greatly,  
7 however 103 days remain between now and the  
8 December 31st Category 1 deadline.

9 Therefore, the most immediate concern  
10 regarding the lack of agreement is a situation  
11 with the Category 2 applications.

12 First, I think it's important to note  
13 that there are significant differences in the  
14 extent of the likely impacts that will result  
15 from Category 2 facility versus Category 1  
16 facility.

17 For example, ENF filings indicate that  
18 a Category 1 facility may generate daily trips  
19 of approximately 39,000 trips on a Saturday or  
20 28,500 trips on an average day; compared to  
21 approximately 6,500 to a Category 2 facility.  
22 For comparison purposes, one applicant notes  
23 that a Target -- that a Target store may  
24 generate approximately 17,000 trips on an

1 average day and 25,000 on a Saturday. A  
2 Category 1 may generate approximately 4,500  
3 trips during a Saturday peak hour in  
4 comparison to Category 2 facility may generate  
5 approximately 600 trips during a Saturday peak  
6 hour.

7 A Category 1 facility may employ 3,000  
8 to 4,000 permanent employees, compared to  
9 about 400 to 700 employees for a Category 2  
10 facility.

11 Category 1 facility may necessitate  
12 435,000 gallons of water per day, compared to  
13 about 27,000 gallons for a Category 2  
14 facility.

15 By discussing these different impacts,  
16 I don't intend to minimize the real concerns  
17 that communities have about potential impacts  
18 of Category 2 facilities. You know, as the  
19 Commission and I've noted on numerous  
20 occasions, our review process anticipates that  
21 applicants will engage in a robust education  
22 and outreach process to inform communities  
23 about all of the impacts. Applicants have  
24 also been encouraged to have discussions with

1 communities to demonstrate why they believe  
2 there may be a lack of impacts. And that is  
3 also a very important consideration.

4 With fifteen days to go before October  
5 4th, I am very skeptical that applicants for  
6 Category 2 will be able to have the robust  
7 discussions that we have envisioned. In some  
8 cases, important studies in traffic, etcetera  
9 have just become available within the last ten  
10 days or so. In other cases, initial community  
11 meetings have not occurred yet, and may  
12 actually not even occur until after the  
13 October 4th deadline. This gives very little  
14 time for the level of dialogue that we  
15 envisioned.

16 There are numerous reasons why this  
17 has occurred. We have discussed that  
18 applicants have told us that they first have  
19 to get their host approvals in order before  
20 they can fully engage in negotiations with  
21 surrounding communities. Applicants have  
22 focused first and foremost on the most  
23 immediate challenges before them in host  
24 communities, because those challenges have

1 existential implications on their -- on their  
2 proposed developments.

3 Also, the rigors of our application  
4 process including background reviews and  
5 adjudicatory hearings, in some cases demand  
6 tremendous resources by the applicants. While  
7 applicants live within these realities, and  
8 the host communities are direct participants  
9 in such demands and therefore can understand  
10 them, surrounding communities have needed to  
11 wait until applicants were in a position to  
12 fully engage with them.

13 Now, with time short remaining under  
14 the Category 1 deadline, especially under our  
15 Category 2 deadline, communities across the  
16 state are feeling the pressure of trying to  
17 understand the impacts of these facilities and  
18 understand how in other cases the worst fears  
19 of their citizens may not actually be  
20 demonstrated by the data.

21 So, what's facing these communities?  
22 Although I'm stressing the 15 days remaining  
23 before the Category 2 deadline, both our  
24 regulations and the statute contemplate that

1 applicants may not be able to reach an  
2 agreement with communities by our Phase 2  
3 deadline. Our regulation specifies that  
4 communities and applicants may negotiate for  
5 thirty days after our application deadline.  
6 If they cannot reach an agreement by then,  
7 communities and applicants shall enter into  
8 another twenty day arbitration period.

9 In addition to the thirty d  
10 negotiation period, the regulations also ay  
11 provide for another ten days for a community  
12 to assent to the designation of a surrounding  
13 community status if an applicant designates a  
14 community as a surrounding community. Thus,  
15 even after our deadline for applicants and  
16 communities working to reach an agreement,  
17 there may be forty days to conclude a  
18 negotiated agreement in addition to the  
19 fifteen days remaining before our application  
20 date.

21 For those that are not designated by  
22 applicants as surrounding communities, there  
23 are only thirty days of negotiation to follow  
24 any designation by the Commission of those as

1 surrounding communities after a petition to  
2 the Commission.

3 Now, while there are days that  
4 communities may utilize after our application  
5 deadline, the use of these days has  
6 consequences. In many cases, communities and  
7 applicants will be in an increased adversarial  
8 process. This may hurt the near-term  
9 prospects for facilities to become fully  
10 integrated into their regions. Also, it may  
11 lead to potential future development delays if  
12 the adversarial process continues through the  
13 permitting and development process.

14 The lack of surrounding community  
15 agreements will hamper our review process,  
16 which is predicated upon a deep understanding  
17 of the impacts of these facilities and the  
18 measures applicants are taking to mitigate  
19 those concerns.

20 Further, where fu  
21 1  
22 1 consultations with  
23 communities occur at such a late hour,  
24 communities may believe that their only

1 recourse would be to come before the  
2 Commission to protect their communities.  
3 Perhaps with a greater understanding of both  
4 the impacts and in some cases the lack of the  
5 impacts, communities and applicants would be  
6 in a better position to develop a long-term  
7 relationship that would be critical to the  
8 development of these facilities.

9           During previous discussions, we have  
10 -- we have asked applicants to opine on our  
11 deadlines. They have stated that they are  
12 prepared to meet any deadline the Commission  
13 sets.

14           Host communities have also stated  
15 that they will meet our long-standing  
16 deadlines. Even though compliance is a very  
17 -- or was a very significant challenge. The  
18 overwhelming majority of surrounding  
19 communities have expressed that they need more  
20 time to evaluate facilities, especially when  
21 data on impacts is only now becoming more  
22 readily available.

23           I could provide further specifics if  
24 the Commission desires, however, as the

1 landscape changes almost daily, I am not  
2 certain what I tell you today has not changed  
3 in the prior twenty-four hours since I may  
4 have checked, or in the next twenty-four  
5 hours that may occur.

6 In general, I recommend that the  
7 Commission discuss whether our current  
8 timetable, specifically for the Category 2  
9 applicants, will serve to help the Commission  
10 achieve its objectives or may hinder the  
11 Commission from achieving its short and long-  
12 term objectives.

13 Now, I certainly know that this  
14 process is a competition. Whichever applicant  
15 reaches our deadline with the best application  
16 by the application date will win the license.  
17 Changing a deadline will impact which  
18 applicant can reach that deadline in the best  
19 position perhaps in unanticipated ways.  
20 However, the challenge before the Commission  
21 is how to ensure that we have a fair  
22 competition while also pursuing other  
23 objectives helping to ensure that negative  
24 impacts are known and mitigated. Our

1 objective to ensure that these projects once  
2 proven will generate jobs and revenues as  
3 quickly as possible, and an overarching  
4 objective of these facilities will fit within  
5 the long-term fabric of the Commonwealth's  
6 regions and communities.

7 I know that's a lot to talk about. I  
8 can provide other information more specific.  
9 But in general, I think that because we have  
10 two weeks to go before the application  
11 deadline and the last meeting of the  
12 Commission is the day before the deadline, I  
13 thought it was important to bring you the  
14 latest and greatest information about the  
15 status of these applicants. And  
16 unfortunately, it -- it's not in a  
17 tremendously -- I'm skeptical about the  
18 ability of some of these applicants to reach  
19 our deadline in the manner that we want them.

20 COMMISSIONER MCHUGH: Is -- is --  
21 there is a lot to digest here. But is there  
22 -- is there a -- is there merit to keeping the  
23 deadline to where it is, and then seeing where  
24 everybody is on the surrounding community

1 front as of that deadline. And then talking  
2 in a public session, both to the applicants  
3 and if necessary, to others, about the amount  
4 of time necessary to do the host -- the  
5 surrounding community agreements, and if  
6 necessary adjusting subsequent deadlines to  
7 take account of that. I say that because I  
8 agree with you that a non-adversary  
9 relationship between the developer and the  
10 surrounding communities is going to greatly  
11 facilitate not only the construction, but the  
12 operation after the place opens. But also, a  
13 concern that simply moving back the deadline  
14 does not require the kind of concrete  
15 presentation that it seems to me would greatly  
16 help surrounding communities and us, and  
17 everybody determine what really was at stake.

18 The current schedule calls for the  
19 application to be filed, then those  
20 presentations the following Monday. That's a  
21 lot of concrete information that I suspect  
22 nobody has at the moment, and that would  
23 facilitate, potentially at least, the kind of  
24 interaction between the applicant and the

1 surrounding communities that would -- would be  
2 most fruitful.

3 So, I -- that is -- that's my  
4 immediate reaction.

5 COMMISSIONER CAMERON: I would agree.  
6 I don't think just moving the deadline,  
7 there's so many other factors around moving  
8 the deadline. And I would agree for those  
9 reasons that -- that those meetings in  
10 particular will be helpful in moving this  
11 process forward.

12 CHAIRMAN CROSBY: So, what was the net  
13 of that question?

14 COMMISSIONER MCHUGH: The net of that  
15 was we leave the October 4th deadline for  
16 filing the RFA-2 in place. That we leave the  
17 presentation schedule for October 7th in  
18 place. That we then take an assessment as of  
19 October 7th, again, at the status of the  
20 surrounding community agreements which may  
21 well be no different than you've reported  
22 today. And that we bring in, at the earliest  
23 possible opportunity for a public meeting, the  
24 applicants, and communities. And say where

1 are you, and what can we do to facilitate your  
2 getting together. And then make a judgment as  
3 to whether we adjust other deadlines that are  
4 driven by regulation at that point. But --  
5 but we could -- that -- that's fixable, if its  
6 essential. And tailor a new plan, if  
7 necessary, to the reality that we're faced  
8 with by then, not by the time the application  
9 is filed.

10 I just don't think letting this --  
11 this deadline slip back is going to advance  
12 any -- anything. And at the same time, I -- I  
13 appreciate that trying to cram things down  
14 people's throats prematurely, there may --  
15 there may be that we have to go to the  
16 arbitration and start cramming things down  
17 people's throats; everybody gets an  
18 opportunity to be there. But if we do that  
19 prematurely, it's not the best outcome that we  
20 could -- that we could reach.

21 We may have to do that, but --

22 COMMISSIONER STEBBINS: In -- in the  
23 scenario in keeping to the schedule, do you  
24 have an idea of after the presentations on the

1           7th, when it would be feasible for us to meet  
2           with the -- with an applicant and get a good  
3           understanding of what the project is on  
4           October 7th, four or five days, a week to get  
5           an understanding as to where we think they  
6           are. For that follow-up conversation, do you  
7           have an idea or foresee what a time table  
8           would be?

9                    COMMISSIONER MCHUGH: Is that --

10                   COMMISSIONER STEBBINS: I mean, to  
11           you, or to John.

12                   CHAIRMAN CROSBY: Why do we need a  
13           meeting to find out where people are at?  
14           Don't we know? I mean, that's what -- that's  
15           what John was telling us.

16                   COMMISSIONER MCHUGH: But it's -- it's  
17           more than -- we don't need a meeting to find  
18           out where they're at.

19                   We'll know from John's survey. But if  
20           my -- my hypothesis is they're going to be the  
21           same place where they are now.

22                   We've used before, effectively I  
23           think, the form of a meeting without the  
24           formality and decision making to bring people

1 in and say it's time for you to reason  
2 together. We did that not too long ago and it  
3 worked. And my suggestion would be that we  
4 think about doing that and seeing whether or  
5 not that could produce the kind of  
6 interaction between the applicant and the  
7 surrounding communities that would lead to a  
8 fruitful agreement before putting them into  
9 the involuntary process.

10 I mean, the other alternative is to  
11 not change anything, say we're going forward.

12 COMMISSIONER STEBBINS: And -- and my  
13 question is to that is where -- where do you  
14 conceptualize seeing that kind of discussion  
15 with the host communities and the applicants  
16 --

17 MR. ZIEMBA: Very quickly. Very  
18 quickly.

19 COMMISSIONER STEBBINS: -- following  
20 the October 7th --

21 COMMISSIONER ZUNIGA: I agree with all  
22 of that. And I was actually, as you were  
23 reading through -- going through your remarks,  
24 John, I was, in my mind, trying to

1 differentiate the designation of surrounding  
2 community; the agreement, reaching of an  
3 agreement with the surrounding community which  
4 could come after, obviously. They first have  
5 to be designated by the applicant. And then  
6 the outreach or lack of outreach to those that  
7 may not be a surrounding community that we  
8 were hoping to, but sounds like there hasn't  
9 been much.

10 I think what's -- what's critical for  
11 us -- for us to know that could advance  
12 everything you say, Commissioner, is if we  
13 leave the deadline in place, and we put  
14 effectively the burden on the applicant to  
15 come before us saying this is who we think is  
16 a surrounding community, however many, that  
17 would be a very important data point, which is  
18 in accordance with everything that you are  
19 outlining. It will really sort of force, if  
20 you will, the remaining community, ongoing  
21 conversations with those communities and the  
22 remaining conversations as to whether some are  
23 not -- are or are not surrounding communities.

24 CHAIRMAN CROSBY: I -- I have very

1 mixed feelings about this. We took a lot of  
2 criticism for a long time about our schedule,  
3 because we appreciated, which not very many  
4 people did, that this is an incredibly  
5 complicated process. This statute, the  
6 combination of the background checks and this  
7 long-term participatory process was going to  
8 take a long time. This is a really  
9 complicated, and people didn't really  
10 understand it until they got into it.

11 I feel like we are now, I actually --  
12 just like I said about this meeting, you know,  
13 I feel like we're trying to cram ten pounds of  
14 sand in an eight pound bag. And the right way  
15 to do it is to take a deep breath and say  
16 we're pushing too hard, let's give them a  
17 month, let's give them whatever.

18 There's a practical, there's a really  
19 serious practical consequence of doing that,  
20 because so many other things that we've got  
21 teed up, so many of these deadlines are  
22 related. I just think in my own work group,  
23 I've worked so hard to get it scheduled,  
24 starting over again would be a real problem.

1                   But I feel very strongly that the  
2                   prudent thing to do here is to back off and,  
3                   you know, we've always said we're not going to  
4                   let the pressure of time, you know, corrupt  
5                   the process or -- or impede the process. And  
6                   I think it is now. I think they're going to  
7                   be running around like crazy people, that the  
8                   surrounding communities that are skeptical  
9                   about this are going to see this as  
10                  railroading. It's going to heighten tensions.

11                  So, what I -- I would like to find a  
12                  middle ground, which would be to enable us to  
13                  keep our schedule going while we gave the  
14                  bidders and the surrounding communities time  
15                  to get this done. I am not sure that it's  
16                  doable. But there would be the -- we -- the  
17                  statute does, as you said, the statute does  
18                  anticipate the possibility that a --  
19                  surrounding communities will not be done, the  
20                  negotiations will not be done prior to the  
21                  application coming in. So, the statute  
22                  envisioned that we could start the review  
23                  process of the applications while surrounding  
24                  community negotiations are still being

1 negotiated. That was anticipated.

2 So, if we were to lengthen that  
3 window, if we were to lengthen that thirty day  
4 window, setting aside for the moment  
5 statutorily how we can do that, if we were  
6 to lengthen that thirty-day window, go ahead  
7 and have the applications come in on the 4th  
8 so we can start our evaluation process with a  
9 couple of unknown data points, could we do  
10 that in a way that would protect our -- the  
11 practical consequences of our schedule right  
12 now and relieve the pressure on the  
13 surrounding communities and the bidders, so  
14 they could do this in a non-hyper environment.

15 COMMISSIONER MCHUGH: That was exactly  
16 what I thought I was trying to accomplish.

17 CHAIRMAN CROSBY: I was just trying to  
18 take credit for your idea.

19 COMMISSIONER MCHUGH: If we kept the  
20 -- if we the application date online, if we  
21 kept the presentation date on the 7th online,  
22 the -- and then did as you suggest, the only  
23 difference would be that we were shortly after  
24 the presentations, proactive in reaching out

1 to the applicant and surrounding communities  
2 to the extent that they were surrounding  
3 committee want-to-bes or surrounding  
4 communities by agreement, getting them in here  
5 and saying how much time, where are you and  
6 how much time realistically do you need, and  
7 how can we help you get to the goal or impasse  
8 in the quickest possible time. That's the  
9 only difference between what the -- what the  
10 theory that, it seems to me functionally would  
11 -- would be a helpful middle step. But the  
12 rest of it is, yes, push back the deadline  
13 after the application.

14 CHAIRMAN CROSBY: Right. I guess the  
15 -- a significant difference would be if we  
16 were -- decide today that we were going to  
17 move the -- the surrounding community deadline  
18 back, it would today relieve that pressure.  
19 And -- and otherwise if we wait until  
20 somewhere between the 7th and the whatever,  
21 there'll be this intense period when  
22 everybody's running around trying to --

23 COMMISSIONER MCHUGH: I hear you, but  
24 couldn't we without setting a new deadline,

1            simply say today as a matter of policy that we  
2            are going to reconsider that deadline in light  
3            of the realities, because we want this to be  
4            done the right way and we want it to be done  
5            ideally in -- by agreement, rather than by  
6            arbitration. We want, as a practical matter  
7            to give communities an opportunity to do that.  
8            We want to see how much time that's going to  
9            take. So, that --

10            CHAIRMAN CROSBY: So, your suggestion  
11            -- your suggestion would be that, say today,  
12            that we're prepared to let that deadline slip,  
13            move forward as quickly as you possibly can,  
14            we'll see where you stand by the first week or  
15            so of October. But we will now say that  
16            you're not going to be penalized, you're not  
17            going to be forced, so I guess -- I think  
18            that's a very good modification of what I was  
19            saying.

20            DIRECTOR DAY: Mr. Chairman --

21            CHAIRMAN CROSBY: Mine was a  
22            modification of yours.

23            COMMISSIONER MCHUGH: But then, we --  
24            yeah. Take the pressure off.

1                   CHAIRMAN CROSBY: The one -- the one  
2                   question I would have is whether taking the  
3                   big picture, you know, looking from, you know,  
4                   is that -- forgetting our practical problems,  
5                   which are considerable, are we jerry-rigging a  
6                   solution that will solve the problem, but  
7                   leave a dynamic which is suboptimal because we  
8                   don't want to get all screwed up for a month  
9                   or two of our schedule. Is it really better  
10                  to just bite the bullet and give it more time?

11                  I mean, I came in there thinking the  
12                  opposite, but I'm -- I'm not -- I think we  
13                  should think very carefully about what's the  
14                  really the right thing to do here for the  
15                  purity of the long-term process.

16                  COMMISSIONER ZUNIGA: I -- I will  
17                  emphasize the point that Commissioner McHugh  
18                  made, which is that simply extended --  
19                  extending the current deadline may not by  
20                  itself solve or, you know, make some of these  
21                  surrounding communities' agreements happen  
22                  just by itself. So, I -- there's a risk in  
23                  simply just extending the deadline. We may  
24                  find ourselves to be in early October with

1 still no surrounding community designation,  
2 not enough outreach.

3 CHAIRMAN CROSBY: You mean if we  
4 simply --

5 COMMISSIONER ZUNIGA: If we simply  
6 extend the --

7 CHAIRMAN CROSBY: -- the October 4th  
8 deadline?

9 COMMISSIONER ZUNIGA: -- the October  
10 4th deadline. I -- I don't know how big that  
11 risk is. I think in hindsight we did  
12 anticipate and hope for all the surrounding  
13 community conversations to have happened. But  
14 the reality was as you well pointed out,  
15 otherwise. So, I would --

16 CHAIRMAN CROSBY: That's another --  
17 that's an interesting point. We, by having  
18 deadlines, we have forced people --

19 COMMISSIONER CAMERON: Yes.

20 CHAIRMAN CROSBY: -- to get their job  
21 done. And if the deadlines weren't there,  
22 they weren't going to get the job done. And  
23 so, that's a very good point, you know, do we  
24 maybe -- what I was trying to figure out is

1           what's the -- let's try to really take a high  
2           level perspective here. We're -- we don't  
3           care about the next ninety days, we care about  
4           the next fifteen years.

5                     Let's get this right. Maybe keeping  
6           our deadlines in place is a positive, too, in  
7           that sense. So, maybe the middle ground is  
8           the right way to go because these folks will  
9           meet the deadline.

10                    I mean, there are surrounding  
11           communities that don't want to negotiate,  
12           aren't trying to --

13                    COMMISSIONER ZUNIGA: No matter what  
14           deadline.

15                    CHAIRMAN CROSBY: There are bidders  
16           who have been laggards. So, maybe -- maybe  
17           the middle ground is the big picture right  
18           there.

19                    MR. ZIEMBA: Can I just add --  
20           clarify. Yes, deadlines do put pressure and  
21           they motive people to get things done quicker.  
22           But for some of these applicants, I have no  
23           doubt that they're moving forward very, very  
24           quickly now. But it's because they are past

1 certain things.

2 CHAIRMAN CROSBY: I know.

3 MR. ZIEMBA: They just couldn't get by  
4 them, and that for example, if you have an  
5 election forthcoming --

6 COMMISSIONER STEBBINS: Right.

7 MR. ZIEMBA: -- once that election is  
8 successful you will free -- you will be free  
9 to do a lot more than you probably than prior  
10 to --

11 CHAIRMAN CROSBY: But John, that was  
12 -- they made -- they made a strategic --

13 MR. ZIEMBA: Understood.

14 CHAIRMAN CROSBY: -- political  
15 decision.

16 MR. ZIEMBA: Oh, yeah.

17 CHAIRMAN CROSBY: It didn't have  
18 anything to do with this --

19 MR. ZIEMBA: Yeah.

20 CHAIRMAN CROSBY: -- they said we  
21 don't want to run the risk of having a debate  
22 going on with the surrounding community  
23 because it might get in the way of our being  
24 willing -- the referendum.

1 MR. ZIEMBA: Yeah.

2 CHAIRMAN CROSBY: I mean, that's a  
3 political judgment, so --

4 DIRECTOR DAY: Mr. Chairman?

5 CHAIRMAN CROSBY: Yeah.

6 DIRECTOR DAY: Could I just make a --  
7 just an addition to this, because I -- I think  
8 where you were going in the end there, it --  
9 if we were to allow the process to actually  
10 move forward, there is a section of the  
11 process that the Commission's already enacted,  
12 which allows a period for a surrounding  
13 community to identify itself, that it's a  
14 surrounding community, an applicant then to  
15 respond to that request. And then the section  
16 that has the Commission making a decision, I  
17 -- I don't believe, and I believe the legal  
18 staff here would agree, that there's anything  
19 that says the Commission has to make a  
20 decision right away.

21 So, essentially, you would actually  
22 have a realistic actual view of who thinks  
23 they're surrounding communities and -- and  
24 what the applicants have to say before we have

1 to move over, or move any further. And then  
2 the Commission would be in a position to take  
3 that information and actually decide.

4 I think one thing that's really tough  
5 about this area is it is unique. I think  
6 you're correct. It's new. I don't think it's  
7 really been tried before. That's always  
8 difficult with getting people to take it real  
9 seriously and -- and follow the process and  
10 move forward.

11 So, at least at that point, the  
12 Commission will know for sure who thinks  
13 they're a surrounding community and we'll know  
14 for sure what the applicants think.

15 CHAIRMAN CROSBY: So, do I hear you  
16 say --

17 COMMISSIONER MCHUGH: Well --

18 CHAIRMAN CROSBY: Can I just ask for  
19 clarification? Do I hear you saying that  
20 there's two thirty day windows, one thirty day  
21 they can negotiate with themselves, another  
22 thirty days to arbitrate. The first thirty  
23 day window doesn't start to run until we  
24 determine whether they're a surrounding

1 community or not, or --

2 DIRECTOR DAY: As there is two ten day  
3 periods, too. Ten days to -- to say that you  
4 are a surrounding community; the ten days for  
5 the applicants to respond; and then the thirty  
6 day period -- or the -- then there's a ten day  
7 period for the Commission to decide  
8 technically. But if I understand correctly,  
9 it's not required that the Commission make a  
10 decision within that period.

11 COUNSEL BLUE: The thirty day clock  
12 wouldn't run until the Commission makes its  
13 designations. So, you could potentially take  
14 a little bit of time to make your designation  
15 in the hopes that the communities were having  
16 the conversation.

17 COMMISSIONER MCHUGH: And also, at the  
18 same time, you could -- those are the  
19 deadlines I was thinking of extending. Also,  
20 proactively bring people in to ask them before  
21 -- before you started that thirty day clock  
22 how much time they think it's really  
23 realistically going to take for them to come  
24 to an agreement, and why. And there may be

1 things that we could facilitate doing, or help  
2 them facilitate doing that would shorten that  
3 time. And -- and use that as an opportunity,  
4 that process, that designation, as really an  
5 opportunity to talk with the applicant and the  
6 surrounding communities. And -- and make some  
7 judgments based on the reality of the  
8 application that was filed, and the  
9 explanation of it.

10 CHAIRMAN CROSBY: All right.

11 DIRECTOR DAY: And actually have the  
12 issue before you with some facts in order to  
13 address them at that point.

14 COMMISSIONER MCHUGH: Right. Yeah.

15 COMMISSIONER STEBBINS: Facts are  
16 always wonderful things.

17 CHAIRMAN CROSBY: Just one other thing  
18 to think about, do you -- if we do this, which  
19 I think is an evolving reasonable plan, is our  
20 -- is our evaluation -- is our evaluation  
21 process degraded in any way by having a vast,  
22 open -- a number of open surrounding  
23 agreements? Does it change -- does it change  
24 the dynamic of the evaluation? Does it change

1 the surrounding communities' negotiations  
2 because the proposals are already in, they've  
3 seen the -- they've seen the ninety minute  
4 presentation? Are we setting any dynamic in  
5 play that's bad?

6 MR. ZIEMBA: I see your point where  
7 applicants that have met the deadline are in a  
8 different place than applicants that have not  
9 met the deadline and surrounding community  
10 agreements. And there's different data  
11 sources. I -- I just don't know how it goes.

12 CHAIRMAN CROSBY: Yeah. They're  
13 actually in a better place, I mean, because,  
14 you know, we will look favorably obviously on  
15 those people who got their surrounding  
16 community agreements done on time. We've said  
17 all along that we will take into consideration  
18 the nature of the relationships with the  
19 surrounding communities. So, this hopefully  
20 won't be interpreted as a reason to slack off.

21 It's -- it's -- we have been saying,  
22 talk to the surrounding communities, get this  
23 done. So, it'll be -- it will accrue to the  
24 benefit of people who get it done on time.

1                   DIRECTOR DAY:  And Mr. Chairman,  
2                   there's a protection for the surrounding  
3                   communities anyway, because the Commission  
4                   can't make an award until there's an agreement  
5                   as well.

6                   CHAIRMAN CROSBY:  Right.

7                   DIRECTOR DAY:  So, I -- it seems that  
8                   it -- it really would put the Commission in a  
9                   better position than it is at this point with  
10                  just -- just trying to anticipate what might  
11                  --

12                  CHAIRMAN CROSBY:  Right.

13                  COMMISSIONER MCHUGH:  I thought the  
14                  statute said that we couldn't consider.  But I  
15                  interpret that to be a formal consideration.  
16                  But your question does raise something.  And  
17                  that is in the surrounding communities who  
18                  reached an agreement, the application might be  
19                  altered in some -- in other words,  
20                  negotiations between the applicant and the  
21                  surrounding community might yield a slightly  
22                  different application than the one we get  
23                  without those conversations.  I don't think --  
24                  I don't think that's a big enough risk to

1 change this middle ground that we've been  
2 talking about. But --

3 CHAIRMAN CROSBY: But I -- I feel like  
4 -- I think there is some, there is some  
5 distortion in the process that will take  
6 place.

7 COMMISSIONER MCHUGH: Right.

8 CHAIRMAN CROSBY: This -- this throws  
9 in an unknown that wasn't anticipated.

10 COMMISSIONER MCHUGH: Right.

11 CHAIRMAN CROSBY: That we kind of  
12 don't know anything. In a perfect world, I  
13 personally think in a perfect world, we ought  
14 to give it a month.

15 COMMISSIONER MCHUGH: Right.

16 CHAIRMAN CROSBY: But I think the  
17 consequences of giving it a month are so great  
18 for so many other players in the process,  
19 including the construction workers who are  
20 trying to get their jobs, that -- that that is  
21 a greater loss than whatever the peculiarity  
22 ready to the dynamic is that would be caused  
23 by this.

24 COMMISSIONER MCHUGH: Right.

1                   CHAIRMAN CROSBY: So, let me just make  
2                   sure I'm absolutely clear on one thing. The  
3                   application comes in on October 4th, under the  
4                   statute, the process relative to surrounding  
5                   communities is exactly what?

6                   DIRECTOR DAY: The surrounding  
7                   community has ten days to petition the  
8                   Commission.

9                   CHAIRMAN CROSBY: Yeah.

10                  DIRECTOR DAY: And then the applicant  
11                  has ten days to respond.

12                  CHAIRMAN CROSBY: And then there is no  
13                  time frame during which we have to respond?

14                  DIRECTOR DAY: Not that I --

15                  COUNSEL BLUE: No.

16                  DIRECTOR DAY: Not that way that you  
17                  estimated that we respond within ten days.

18                  CHAIRMAN CROSBY: So, that's -- that's  
19                  thirty days. So, we're now to November 4th.  
20                  Then there's 30 days for them to negotiate.  
21                  That's December 5th -- December 4th. So,  
22                  there's already 60 days without us doing a  
23                  thing that's available in the process for the  
24                  negotiations to continue.

1 COMMISSIONER MCHUGH: Well --

2 CHAIRMAN CROSBY: And then there's the  
3 30 days for arbitration, which takes us to  
4 January 4th, which is our deadline day  
5 basically. So -- and so, what we're saying is  
6 we're going to stick with October 4th. We are  
7 going to urge host bidders to negotiate in  
8 good faith and aggressively as quickly as they  
9 can, and try to get their surrounding  
10 community agreements done. We're saying to  
11 surrounding communities in particular that in  
12 our statute, there is a 60 day period of time,  
13 not 30, 60 day period of time from October 4th  
14 to December 4th, during which time they can  
15 continue to negotiate with the bidders pre-  
16 arbitration process. And it's up to us, we  
17 have the flexibility to make that window even  
18 longer by not -- by not deciding after the  
19 first two 10 days as to whether a community is  
20 a surrounding community or not.

21 COMMISSIONER MCHUGH: That's all I can  
22 accept. Most of that's in our regulations.

23 COUNSEL DAY: That's in our -- yeah.

24 CHAIRMAN CROSBY: Oh, it is. Not the

1 statute?

2 COUNSEL DAY: It's in our regulations.

3 COMMISSIONER MCHUGH: So, we have more  
4 control over it.

5 CHAIRMAN CROSBY: Oh, even more so.  
6 Okay. All right. So, that's -- that's much  
7 -- there's much more flexibility in there than  
8 I quite realized. I was thinking there was  
9 only a 30 day window, but there's -- there's  
10 at least a 60 day window and really much more  
11 than that.

12 MR. ZIEMBA: I'm not trying to  
13 complicate things, but obviously we are going  
14 to be putting communities in a position where  
15 they may not have tremendous amount of  
16 information to file within 10 days of the  
17 application.

18 That starts the adversarial process.  
19 I understand the point that will things change  
20 between now and the application date, maybe  
21 not. I understand that there will be a  
22 tremendous store of information that will be  
23 included within the application, and that that  
24 may enlighten communities on whether or not

1           they are a surrounding community or not. But  
2           I do think that this -- this ticking clock of  
3           this 10 days after -- after the application  
4           deadline forces the adversarial process. And  
5           it doesn't necessarily mean that applicants  
6           will have been any more forthcoming with --  
7           with information outside of the fact that some  
8           of that information is included in their  
9           application. Applicant communities may not be  
10          in the position to evaluate that information.

11                    COMMISSIONER STEBBINS: But there's  
12          more than the application information, there's  
13          presentation and --

14                    MR. ZIEMBA: That's exactly right.  
15          So, you have the application information which  
16          will now be available to communities, which it  
17          had not been before. And one thing I'll note,  
18          Commissioner McHugh, obviously our involuntary  
19          disbursements, but there's no time table on  
20          involuntary disbursements. So, to the degree  
21          that a community is still aggrieved by the  
22          lack of information, even after the  
23          application deadline, even where it's not a  
24          surrounding community, potentially could file

1 for an involuntary disbursement.

2 COMMISSIONER MCHUGH: And I agree.

3 But that's the -- that's the part that I  
4 think where we need to be proactive before  
5 that first 10 day clock starts running. That  
6 we -- we -- this process hasn't worked in the  
7 past. Cramming it now, and putting pressure  
8 on people to make it work isn't going to make  
9 it work now without, I think, some Commission  
10 hand-holding. So, my idea was that that  
11 schedule is there to play itself out, but that  
12 before we start that first 10 day clock  
13 ticking, we bring the applicants in, we bring  
14 surrounding obvious and want-to-be surrounding  
15 communities in, we sit everybody down and talk  
16 to them; where are you in the negotiations;  
17 what information, now that you've seen the  
18 application and the presentation, do you need.  
19 How much time are you going to need to do it;  
20 why are you going to need that much time; and  
21 try to adjust this in the processing of those  
22 -- of those regulatory time limits in light of  
23 the actual needs of the communities. So that  
24 we can -- we can shepherd this thing through

1 in a way that facilitates the -- the greatest  
2 likelihood of a resolution. So, if the  
3 pressure release would be to say that we are  
4 perfectly prepared to extend that first 10 day  
5 deadline until we have that meeting shortly  
6 after the presentation. And then we'll take  
7 it from there.

8 COMMISSIONER ZUNIGA: I agree with all  
9 of that. And I would note some of the remarks  
10 that you made, John, also include very  
11 important data points for surrounding  
12 communities. At this point, I think the ENF,  
13 that -- that is likely going to come with  
14 these applications will include a lot of  
15 relevant information.

16 I particularly like your comparison  
17 with the Target store. That should provide  
18 the public a lot of information if -- if there  
19 -- if there's comparable impacts. Maybe  
20 they'll be able to relate to some of that even  
21 from day one. But ultimately I agree with  
22 Commissioner McHugh.

23 MR. ZIEMBA: So, what I'm going to  
24 recommend is between now and October 3rd, is

1           that perhaps Catherine, and myself, and  
2           Executive Director Day to come up with, you  
3           know, a series of recommendations of how this  
4           could work, if indeed there is any regulatory  
5           relief that we would need. For example, the  
6           10 day petition before the Commission for  
7           surrounding the community status, if that  
8           would need to be changed to give the  
9           Commission more flexibility, we can come to  
10          the Commission with a -- with a package on  
11          October 3rd. Counsel Blue, does that make any  
12          sense?

13                   CHAIRMAN CROSBY: We could -- we could  
14          talk about it before that.

15                   COUNSEL BLUE: We could do that.

16                   CHAIRMAN CROSBY: I think we're  
17          running up against some other deadlines.

18                   COMMISSIONER MCHUGH: Right.

19                   CHAIRMAN CROSBY: And we've got some  
20          other important business to do. I think we  
21          have a pretty clear understanding of what we  
22          would like to do here. We can think about  
23          this a little bit and make sure that we  
24          haven't stumbled across something.

1 MR. ZIEMBA: Yeah.

2 CHAIRMAN CROSBY: And then I think we  
3 probably ought to publish it.

4 But let's move -- if you're okay,  
5 let's move on with this sort of presumed  
6 consensus. We're not going to be able to  
7 obviously do to the legal questions,  
8 Catherine. There are some important ones  
9 there that we need to talk about that. I  
10 think that goes to the question of whether  
11 we're going to need an additional meeting or  
12 whether we can wait 'til the 3rd.

13 But we are going to, during our lunch  
14 break there is going to be an executive  
15 session. The Commission will now go into  
16 executive session pursuant to MGL 30A, Section  
17 21A5, 21A7, and MGL Chapter 66 of MGL Chapter  
18 4, Sections 726F.

19 The Commission will reconvene in open  
20 session at the end of the executive session  
21 which we think will be around

22 COMMISSIONER CAMERON: 1:30 It's  
23 12:20. I think we needed at least an hour.

24 CHAIRMAN CROSBY: Yeah. So, probably

1 1:30. So, do I have a motion to go into  
2 executive session?

3 COMMISSIONER STEBBINS: So moved.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER MCHUGH: Second.

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

9 Commissioner McHugh?

10 COMMISSIONER MCHUGH: Aye.

11 CHAIRMAN CROSBY: Commissioner  
12 Cameron?

13 COMMISSIONER CAMERON: Aye.

14 CHAIRMAN CROSBY: Commissioner  
15 Stebbins?

16 COMMISSIONER STEBBINS: Aye.

17 CHAIRMAN CROSBY: Commissioner Zuniga?

18 COMMISSIONER ZUNIGA: Aye.

19 CHAIRMAN CROSBY: And the chair votes  
20 Aye. Thank you. The Commission is now in  
21 executive session. We'll have to empty this  
22 room, although the executive session will  
23 actually be technically be over there.

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(Meeting suspended at 12:20 p.m.)

MASSACHUSETTS GAMING COMMISSION STAFF

Catherine Blue, General Counsel

Richard Day, Executive Director

Jill Griffin, Director of Workforce, Supplier  
and Diversity Development

John Ziemba, Ombudsman

Karen Wells, Director

GUEST SPEAKER

Jennifer Pinck, Pinck and Co.

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C E R T I F I C A T E

I, Pauline L. Bailey, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Pauline L. Bailey, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Pauline L. Bailey, further certify that 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 24th day of September, 2013.

PAULINE L. BAILEY  
Notary Public

My Commission expires:  
November 7, 2014