

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #113

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

March 20, 2014 9:30 a.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 102

Boston, Massachusetts

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

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3 CHAIRMAN CROSBY: I am pleased to
4 call to order the 113th meeting of the Mass.
5 Gaming Commission, March 20th at the Boston
6 Convention and Exhibition Center at 9:30.

7 We will go to item number two the
8 approval of minutes, Commissioner McHugh.

9 COMMISSIONER MCHUGH: Good morning,
10 colleagues. The minutes are in the book. I
11 would move that they be adopted as contained in
12 the book with the customary exceptions for
13 typographical and other mechanical errors.

14 COMMISSIONER CAMERON: Second.

15 CHAIRMAN CROSBY: Any discussion?
16 They all look fine to me. All in favor of the
17 motion, aye.

18 COMMISSIONER MCHUGH: Aye.

19 COMMISSIONER CAMERON: Aye.

20 COMMISSIONER ZUNIGA: Aye

21 COMMISSIONER STEBBINS: Aye.

22 CHAIRMAN CROSBY: Opposed? The ayes
23 have it unanimously. Item number three
24 Director Day, you have a series of issues.

1 COMMISSIONER STEBBINS: On the
2 agenda.

3 CHAIRMAN CROSBY: On the agenda,
4 yes.

5 MR. DAY: And issues generally.

6 CHAIRMAN CROSBY: I didn't want to
7 get too personal.

8 MR. DAY: Thank you, Mr. Chairman, I
9 think, and good morning. What I would like to
10 do is just have a few general notes as we start
11 this morning.

12 One of them is just is that I note
13 that the agenda and hopefully these are changes
14 that will be acceptable to the Commission. As
15 you get to the horseracing topic, item 5b, what
16 we were requesting here is that we delay the
17 emergency regulation consideration issue and
18 move that into our larger regulation package as
19 we get further into the year.

20 The second item would be that we
21 would also like to postpone the discussion of
22 the training school's regulation proposals
23 until April 3. We'd like to meet with a
24 specific stakeholder and make sure we've got

1 that input before we come before the
2 Commission. So, if you could bear with us on
3 both of those, we would appreciate it.

4 I might just note that as we move
5 forward, the Commission is aware of this, but
6 there is a significant landmark for licensing.
7 They actually got their first registration
8 application on March 14.

9 CHAIRMAN CROSBY: Great. We should
10 frame that and put it up in our lobby.

11 MR. DAY: Yes, embossed. We are
12 still -- The team really of licensing, IEB and
13 our legal and our finance group are working
14 diligently, fairly regularly to work through
15 procedures and processes. It's kind of
16 amazing, I think, all of us that have been part
17 of organizations for a number of years, you
18 always take for granted everything that happens
19 behind the scenes, all of the plans and
20 equipment and decisions need to be there.

21 But then when you start to create it
22 again, the processes seem to readily unfold,
23 much to your surprise. But your team is
24 working very well together and providing

1 solutions to each problem as they arise. And
2 as we get more applications, we'll be ready to
3 go.

4 Hiring process update, just wanted
5 to let you know that we are still recruiting
6 for three gaming positions. We've confirmed
7 three to start, and two offers have been
8 accepted and they are in background. I think
9 pretty close to all of our racing positions are
10 either in background or have been completed in
11 background. So, we've got some pretty good
12 progress.

13 The three we are recruiting, we are
14 still having some struggles around our gaming
15 lab manager and our assistant director to be
16 responsible for gaming agents and financial.
17 So, these are some positions that we are
18 looking for particular experience. So, it
19 makes it a little more difficult for us to come
20 up with someone we think's qualified.

21 CHAIRMAN CROSBY: Have we taken the
22 background check responsibility in-house now?

23 MR. DAY: Yes. It's entirely in-
24 house. It's actually our human resource

1 manager, Trupti Banda, is really responsible
2 for it at this point. Of course, the actual
3 background work is being done by our MSP.

4 CHAIRMAN CROSBY: By our troopers,
5 okay, great.

6 MR. DAY: As I look through it,
7 they've streamlined it. It's working much
8 better.

9 CHAIRMAN CROSBY: Great.

10 MR. DAY: Now if I might direct you
11 to item 3b.

12 CHAIRMAN CROSBY: D?

13 MR. DAY: 3b as in boy. There is a
14 memorandum there concerning policy and
15 financial process recommendation. At our last
16 meeting we talked briefly that the Commission
17 has been in the process to build the
18 infrastructure necessary as the organization
19 grows. It has been taking a number of steps to
20 make sure that's accomplished. And of course,
21 those steps include strengthening our policy
22 and financial systems as we move forward.

23 I think it's important from my
24 perspective, this memorandum covers a number of

1 issues and plans. So, if you'll bear with me,
2 I do want to read some sections of that. I
3 believe the Commission is pretty familiar with
4 it, but I think it's important that everybody
5 else be aware of it as well.

6 First of all, as to continue to try
7 to emphasize that this framework we're talking
8 about here is part of the foundation necessary
9 for organizational high performance and our
10 ability to implement the necessary performance
11 management choose tools. So, this whole
12 process we're going through is part of a
13 process that we need to use immediately but
14 also part of something that has to fit into our
15 whole plans as we move forward to the
16 performance management system.

17 I'd like to note as well as we start
18 into where we're at, the Commission, as you
19 know, in its early stages had previously
20 approved an employee policy handbook. So,
21 those policies were in existence. We've been
22 in the process of revising and strengthening
23 this handbook while aligning it closer to the
24 Redbook which the handbook the Commonwealth

1 Human Resource Division publishes for
2 unclassified employees. So, we've been in the
3 process of comparing those two, updating the
4 current policies in process.

5 In addition, we have developed
6 temporary policies until final policies are in
7 place and to examine several of those policies
8 in the light of any criticisms or discussion
9 that's been going on to determine any further
10 changes are appropriate.

11 With that I'd like to outline the
12 plan at least staff are recommending. We
13 recommend that the Commission review the
14 revisions to the handbook over the upcoming
15 weeks and today approve those that apply to
16 travel, purchase and commuting and parking
17 benefits.

18 In addition, those will serve as
19 temporary policies if the Commission approves
20 those until completion of our more extensive
21 policy and review system. We are obtaining
22 outside assistance to examine our financial and
23 internal control policies and identify areas we
24 need to develop any proposed improvements.

1 In addition, we've requested an
2 outside expert to compare our travel policy to
3 other similar peer agencies and report
4 findings. The final policy manual that I've
5 spoken of which will go into our larger
6 structure, which is to be produced as part of
7 our high-performance project, will be informed
8 by the independent review and will replace the
9 temporary policies that are pending approval.

10 Just to note, and I think is
11 important, is the Commission is required to use
12 state accounting system and follow state
13 finance law. Finance policy of the
14 Commonwealth is established by the Office of
15 the State Comptroller. Process and systems as
16 we move forward will need to be based on these
17 established laws and policies.

18 CHAIRMAN CROSBY: Could I interrupt
19 there? That was a sentence that I noted. We
20 are generally exempt from a whole bunch of
21 things by not being a member of the executive
22 branch. And I know we're exempt, for example,
23 from the procurement laws although we've chosen
24 to follow a lot of them. Are we apparently not

1 exempt from the state finance law?

2 MR. LENNON: That's correct. We are
3 not exempt from the state finance law. We do
4 have to follow Chapter 29. That's right in our
5 enabling legislation.

6 CHAIRMAN CROSBY: Okay.

7 COMMISSIONER ZUNIGA: And we've been
8 following that all of those procedures.

9 MR. LENNON: We have been.

10 CHAIRMAN CROSBY: I wasn't speaking
11 at all to the issue of whether we should or
12 shouldn't. I just was speaking to the issue of
13 whether we are required to or not.

14 MR. LENNON: Yes. We are also
15 required to follow 7A, which is the
16 Comptroller's -- the law that establishes the
17 Comptroller and their oversight.

18 CHAIRMAN CROSBY: Okay.

19 COMMISSIONER MCHUGH: We've been
20 doing that as well.

21 MR. LENNON: Correct.

22 CHAIRMAN CROSBY: Correct.

23 COMMISSIONER ZUNIGA: That's an
24 important point, we are exempt from a number of

1 them. Throughout our statute, there's a number
2 of exemptions that apply to us that makes us
3 unique in many ways, but also similar to many
4 other boards and independent authorities that
5 have been through the years exempted from
6 different things.

7 CHAIRMAN CROSBY: Great, thanks.

8 MR. DAY: We do have some specific
9 steps. We've got kind of two steps, the
10 financial and the overall policy issue.

11 With our financial systems, we have
12 some processes and deliverables that we are
13 proposing. We'll assess the current systems.
14 We're going to bring on a third-party. And
15 it'll assess the current systems, make
16 recommendations for stronger policies or
17 systems where they're warranted.

18 We keep in mind that all of this
19 occurs with the backdrop of the Comptroller's
20 requirements. And those requirements that
21 we've been following and need to continue to
22 follow in state law.

23 We'll recommend additional systems
24 and policies and process to mitigate any

1 weaknesses or to strengthen any areas we need
2 in our systems. And they'll produce in 11
3 weeks a policy manual format and a list of
4 policies and procedures to be incorporated in
5 the high-performance manual project. So, this
6 is one piece of our entire policy manual as we
7 move forward. Derek will be prepared to
8 explain to the Commission where he is at with
9 that particular part of the process.

10 I'll just keep reviewing in general,
11 because I'm going to move back to Derek too
12 with specific questions on those policies I
13 talked about.

14 So, in the larger process, we expect
15 to implement the high-performance project. And
16 this is focused on strengthening the agency's
17 ability to fulfill its mission and role in the
18 long-term. So, it's to make sure we're ready
19 as we move into our regulatory phase of the
20 Commission's operation.

21 In that process, we'll be conducting
22 a thorough review. These will be an external
23 group that will review these policies and
24 practices for us as well. Conduct a thorough

1 review of our overall human resource
2 organizational structure, policies and
3 practices. As part of that, I won't read this
4 entire thing, but they will do an in-depth
5 review of the current policies and records.
6 And they'll also make sure that we are
7 complying with the specific requirements,
8 Americans with Disability, COBRA, affirmative
9 action and so forth.

10 And they'll also take a look at
11 probably two agencies we're talking about
12 pulling their policy manuals and having these
13 consultants work with us to review those in
14 specific and compare them to what we have at
15 this point in areas before they make
16 recommendations.

17 In the end, they'll recommend a
18 policy manual format and structure. So, it's
19 an entire structure list, everything from as
20 simple as to how the policies are designed and
21 numbered in the manual structure, content and
22 those things, what should be in it.

23 They will also produce a level of
24 fit. They'll look at what should be best

1 practices what the Commission uniqueness the
2 Commission has in statute. And as we move
3 forward to a final list, they'll take those
4 items into consideration as well.

5 Specific deliverables that we're
6 looking at, there are seven that I listed out
7 here. I won't go through all seven of those.
8 I know you're greatly relieved by that. But
9 there are a couple of significant ones that
10 apply to the policy issue.

11 They will give us a draft of each
12 personnel policy or revision to existing
13 policies to conform to federal, state law in a
14 comparison to the peer agencies and best
15 practices. As we move through the end of this
16 process, they will give us a report too of best
17 practices relative to employee performance and
18 evaluations. So, we'll have that information
19 as we end this process as well.

20 We are looking to specific
21 timeframes for these deliverables. The policy
22 manual format master list I talked about we
23 anticipate in one month. The draft of each
24 personnel policy we anticipate in two months.

1 We expect to start this project here yet in the
2 end of March and moving straight through.

3 For this particular section of this
4 project, we anticipate a full four months
5 before it is in-hand, three months of course
6 we'll anticipate the employee evaluation
7 project and then any additional recommendations
8 as well.

9 Then this all ties in in May. We
10 plan to bring an outline of the full services
11 for the high-performance project to the
12 Commissioners. So, we'll bring back to you a
13 full concept together with those that will be
14 providing the service and ask for your
15 consideration and hopeful approval of that
16 project in its entirety.

17 With that I'm happy to answer any
18 questions, but I'll defer back to Derek for our
19 specific request today which is the approval of
20 those three policy areas the travel, the
21 purchase card, the commuting and parking
22 benefits temporary policies. Thank you.

23 COMMISSIONER MCHUGH: Could I just
24 say something here because this is when we get

1 finished with this, this is going to be a sort
2 of a soup to nuts high-performance manual for
3 the organization, right? It's going to deal
4 with promotional policies, hiring policies,
5 criteria for promotion, everything.

6 MR. DAY: That's correct,
7 Commissioner McHugh.

8 COMMISSIONER MCHUGH: And I think
9 it's worth observing that we went through this
10 exercise about two years ago. So, we've had
11 policies in place for the last two years.
12 We're not coming out of left field here or
13 inventing something wholly new. We've had
14 these.

15 But when we went through that I
16 think there were eight of us on the Commission
17 at the time. And we were all doing a little
18 bit of everything. And in the natural
19 evolution of things, we've become bigger and
20 more complex. And we anticipate getting bigger
21 and more complex yet.

22 So, that in an evolutionary sense,
23 this is the next logical step to ensure that we
24 are ready for the transition, as you said

1 Director Day, to the regulatory phase from the
2 licensing phase that we've been preoccupied
3 with since we began. So, I welcome this. I
4 think this looks like a terrific agenda. And
5 it will put us in a logical next place for the
6 agency to grow and mature.

7 MR. DAY: Thank you, Commissioner
8 McHugh. And you are right. It deals with
9 things that are so simple almost as how does a
10 policy get into effect with the Commission to
11 start with all of the way through the more
12 complex topics really that deal very well with
13 enforcement processes and regulations.

14 COMMISSIONER MCHUGH: Right.

15 COMMISSIONER ZUNIGA: That's key. I
16 would just emphasize that point and give a
17 quick example that is very relevant.

18 Just on the finance side, there was
19 not an urgency in the past to look at a lot of
20 tight controls around let's say revenue
21 collection because we were collecting revenue
22 from only a couple of sources. Now that we are
23 going to license individuals, vendors, etc.,
24 it's very important to have a really defined,

1 strong controls and procedures around how we're
2 using credit card payments, collecting revenue
3 and funneling to the appropriate funds.

4 Just to that point about the natural
5 evolution of certain things, it's also when
6 we're required to get tighter around some of
7 the specific activities that we are conducting.
8 So, I think this is very good as well.

9 CHAIRMAN CROSBY: Before you start,
10 Mike, does Director Day's voice pick up okay?

11 MR. SANGALANG: Yes.

12 COMMISSIONER STEBBINS: Just two
13 other items, I appreciate the work that's going
14 to go into this. Two particular areas of
15 interest, the organizational structure, which
16 is going to be key which I'm glad to see we're
17 addressing, also the job descriptions.

18 I remember in some of the early
19 interviews we had with people, we said what you
20 may be doing today may not be doing a month
21 from now. As Commissioner McHugh alluded to,
22 we are moving past that phase where we are
23 bringing on the appropriate staffing resources.

24 In addition, I'd ask us to somewhat

1 be considerate of the fact that we do do a lot
2 of recruitment from out-of-state because we do
3 not have a lot of people with gaming
4 experience. We've brought in folks like
5 yourself from other jurisdictions. And that
6 kind of creates a recruitment policy or a
7 recruitment process that needs to kind of be
8 tightened up and refined for what our
9 expectations are going to be going forward.

10 CHAIRMAN CROSBY: Yes. I'm going to
11 second that. I don't think it's actually
12 covered here, but we'll get to that. I agree
13 with Commissioner Stebbins. That's someplace
14 where we're kind of distinctive.

15 Also and this only tangentially
16 relates, but I'm reminded to bring it up again.
17 We do want to keep an eye on our overall budget
18 as compared to comparable agencies to the
19 extent that we can find them. The applicants,
20 the bidders, the licensee have a legitimate
21 interest in making sure that our costs are
22 reasonable. And one way we can make sure
23 that's the case is to look for comparable
24 situations.

1 So, as this develops, but also as
2 your overall budget develops, I would like to
3 see some comparisons so we get a good clear
4 sense of that.

5 COMMISSIONER ZUNIGA: I also wanted
6 to bring up for the record what I spoke to you
7 earlier, but I think it's important to
8 emphasize, as we embark on these or continue
9 with these really, I think it's key that a
10 group of individuals at the Commission at the
11 agency are involved in the formulation and
12 strengthening of policies and procedures.

13 I think an independent review and
14 the use of consultants in the two aspects that
15 you were describing is key, it's necessary.
16 But it cannot be an exercise in and of itself
17 that is left for us to implement at a later
18 time or anything like that.

19 The formulation, conceptualizations
20 and then tying to existing procedures is key.
21 So, as you move forward, I would encourage you
22 to formalize a working group, a steering
23 committee or something like that that would
24 look at each of these processes to make sure

1 that there's a lot of ownership, buy-in and
2 ease of implementation as we move forward.

3 MR. DAY: Commissioner Zuniga, yes.
4 And you mentioned the term ownership and that's
5 critical to this part of the process as we move
6 it forward. We want to make sure our existing
7 staff has ownership around those policy areas
8 and those processes.

9 And as we move forward because we
10 are also going to be heavy into the evaluation
11 and assessment process, we want to make sure
12 it's thorough enough. But not too overly time-
13 consuming but does help formulate our staff
14 around the common objectives of where the
15 Commission wants to go, which will also be
16 outlined in greater detail as we move forward
17 through the process.

18 Commissioner Stebbins mentioned the
19 concept, I think it's one thing we forget is
20 almost because it's natural is the Commission
21 has been working so hard and thoroughly on this
22 project as we move forward but when you
23 actually start with the nuts and bolts, there
24 isn't really any in Massachusetts as far as

1 gaming experience.

2 So, it has required -- Everything
3 that the Commission does relative to the
4 applicants, those involved in it, those might
5 be involved in -- it usually requires out-of-
6 state and in many cases international to be
7 able to accomplish it.

8 CHAIRMAN CROSBY: Let's just go
9 right to that. Is there a place in here that
10 addresses the outside recruitment practices?

11 MR. LENNON: There's nothing in
12 there, the travel reimbursement policy and the
13 payment card policy or the commuting benefits
14 policy, so, no. But we will bring that up as
15 one of the issues we wanted to bring up in the
16 employee handbook.

17 We have to do a lot more on research
18 on that to see what specifically is allowable
19 and not allowable as our quasi somewhat state
20 employee status/non-state employee status --
21 non-executive branch agency status. I am not
22 used to those aspects coming from the executive
23 branch, but there are a few things that I've
24 learned here that we are allowed to do that

1 actually the executive branch agencies can't.
2 So, I want to do more research into that before
3 I come back and say a yes or a no.

4 MR. DAY: Let me just help out a
5 little bit too is our HR manager has been going
6 through and putting in a lot of work at this
7 point on hiring practices and how those occur.
8 So, we are making a lot of progress in that
9 way.

10 And the second part is, as this
11 high-performance project moves through the end
12 of the four months, one of those areas that
13 they will be taking a look at is in fact,
14 again, the hiring process and recruitment
15 process and selection, how we're going about
16 that. So, we will have a significant amount of
17 input by the time we get towards the end of
18 this process.

19 We've got it now, but we're going to
20 make it wrapped in as part of this project
21 including compensation and details of position
22 descriptions. Because as Commissioner Stebbins
23 mentioned, it sounds easy but actually having
24 something that's developed comparably and

1 stands up and is some kind of a consistent
2 compensation and description package is a
3 little more time-consuming.

4 CHAIRMAN CROSBY: Right. But the
5 specific part that I was referring to was the
6 expenses associated with out-of-state
7 recruitment. As you know, many agencies in
8 Massachusetts get criticized because they have
9 "national searches" and they end up hiring
10 somebody local and get criticized for it.

11 We had real national searches, spent
12 money trying to wine and dine and recruit
13 people and got criticized for it. So, you
14 can't win for losing.

15 So, we need to have an explicit
16 policy about expenditures when we're trying to
17 recruit people, if there are spouses and
18 families and relocation and all that stuff in
19 trying to recruit people from out-of-state
20 which we are doing much more than I think
21 probably any other agency in the Commonwealth.
22 So, that specific issue needs to be addressed
23 straight on.

24 MR. LENNON: I agree.

1 COMMISSIONER MCHUGH: And we're
2 trying to not only recruit them but to get them
3 to come here right away.

4 CHAIRMAN CROSBY: Right, even when
5 they don't have houses to live in. Exactly,
6 because under such time pressure. You're an
7 example.

8 MR. DAY: As you were speaking, I
9 was thinking I'm very familiar with it. Derek,
10 so, if the Commission has questions we'd like
11 to -- Hopefully, the Commission will consider
12 adopting those three temporary policy areas.
13 Derek is prepared to review those with you if
14 you would like him to now.

15 MR. LENNON: So, before I move onto
16 those three specific policies, did you have any
17 questions regarding the process we're going
18 through for the financial independent review or
19 the independent review of our proposed travel
20 policy?

21 CHAIRMAN CROSBY: You're going to
22 talk to two agencies right, two other agencies?

23 MR. LENNON: We have a quote out to
24 three agencies right now off of our statewide

1 contract for auditing and compliance services.
2 So, they specialize in audit of state
3 financials.

4 CHAIRMAN CROSBY: No, I meant the
5 comparable agencies.

6 MR. LENNON: Yes. We're going to
7 look at two comparable agencies as well as our
8 own policy and crosswalk that with the HID
9 policy to show whether specific exceptions --

10 CHAIRMAN CROSBY: And the comparable
11 regulatory agencies will be agencies that
12 assess their costs on the operators not through
13 a state appropriation?

14 MR. LENNON: Correct.

15 CHAIRMAN CROSBY: That's an
16 important distinction. I don't have any other
17 questions about that.

18 MR. LENNON: Okay. So, moving onto
19 the travel policy, I'll spend a little bit of
20 time there and walk through each section
21 quickly. I know that we've got a little bit of
22 criticism on this.

23 This policy is drafted to follow
24 along the Redbook, which is, as Rick pointed

1 out, the travel reimbursement and personnel
2 book for managers and unclassified employees of
3 the executive branch. There will be a few
4 areas where we propose to differ. I'll point
5 those out. And I'll give you a general
6 overview of each section.

7 Section one, just points out
8 authorizations for out-of-state travel we'll
9 have a dual approval. For in-state travel,
10 it's just a supervisor approval. That's pretty
11 standard across the executive branch.

12 Section two just requires us to use
13 economy of travel group rates where possible.
14 I did update this a little bit because in the
15 state book, it says that we should use rail or
16 steamship where possible. So, airfare is
17 cheaper than both rail and steamship nowadays.
18 So, we've updated that.

19 CHAIRMAN CROSBY: Maybe if we're
20 going up the Erie Canal.

21 MR. LENNON: Yes.

22 CHAIRMAN CRSOBY: What does the
23 sentence mean cost of transportation shall
24 include fares less federal taxes? We can't get

1 reimbursed for federal taxes?

2 MR. LENNON: That's been standard in
3 the Redbook. You should ask for it to be
4 excluded. Just let them know you're a state
5 employee traveling.

6 CHAIRMAN CROSBY: I see.

7 MR. LENNON: Ask for it to be
8 excluded.

9 COMMISSIONER ZUNIGA: Just like the
10 state tax, we don't pay the state tax either.
11 We're exempt from paying the state tax.

12 MR. LENNON: Section three defines
13 when we can get paid traveling from home. The
14 main thing is you shouldn't be paid for
15 traveling to or from your permanent place, but
16 if you are traveling someplace different, you
17 should get the difference in those miles.
18 That's basically what section three is talking
19 about.

20 CHAIRMAN CROSBY: The one issue here
21 that we've talked about that is important to be
22 clear is that we have a Commissioner who was
23 appointed to his job in part because he lives
24 in Western Mass. In effect he's required to

1 live in Western Mass. He's not working in
2 Boston for the fun of it.

3 And we've talked about making his
4 permanent assignment either at home or at an
5 office the Western Mass. so that he's not
6 obligated to commute every day. And we're
7 going to change our schedules, which we'll be
8 talking about. Did you already mention that?
9 No, I think you forgot that. We're going to be
10 changing the times of our meetings to relieve
11 the pressure on his commute.

12 But if we're going to deal with this
13 by making his assigned office somewhere in
14 Springfield, fine. Then when he has to come to
15 Boston, we can exempt in terms of the expenses
16 as well as when we get this issue of spending
17 the night. But I don't want to leave
18 Commissioner Stebbins hanging out there without
19 a way to get compensated for the extraordinary
20 travel that he is required to do by virtue of
21 his appointment.

22 MR. LENNON: And that's not an
23 uncommon practice. I've had commissioners be
24 assigned to areas out in Western Mass. when

1 they live in Western Mass. and there are
2 additional offices. There are deputy directors
3 that are assigned to different parts of the
4 state. That's not an uncommon practice as long
5 as in Boston when he needs to be in Boston and
6 passes every test that is gone through. Then
7 he will be able to be reimbursed when he comes
8 into Boston.

9 COMMISSIONER ZUNIGA: This actually
10 strengthens a prior policy that we had that had
11 a 45-mile exclusion that was somewhat
12 arbitrary. And I remember it because I drafted
13 it. This streamlines quite a bit that
14 eventuality and others, Mr. Chairman.

15 And depending on the assignment,
16 which we can easily discuss, or let
17 Commissioner Stebbins decide then the mileage
18 would be reimbursable whenever traveling to
19 Commission meetings, to the Boston office, etc.

20 And it would be a lot more
21 consistent with existing agencies that have
22 similar situations. Because we are a state
23 agency and there are assignments that travel
24 requirement. The State Police is another

1 agency that deals with this quite often.

2 COMMISSIONER MCHUGH: It's not an
3 insignificant sum. I did a rough calculation
4 the other day and it can be about 4000 bucks a
5 year. If you don't have something like this,
6 then Commissioners, employees from outlying
7 districts are getting paid less than the
8 Commissioners who live closer to Boston.
9 That's not fair.

10 CHAIRMAN CROSBY: We've always
11 talked about as time unfolds, we talked about
12 this when we first met with Commissioner
13 Stebbins way back that at the outset we were
14 getting organized. We'd assumed he was going
15 to have to be in Boston quite a bit. But we
16 assumed as time passed, he would be able to
17 work either at home or from an office in
18 Western Mass.

19 Then once we have a facility in
20 Western Mass., even more we're assuming that
21 one of the Commissioners -- it might make a lot
22 of sense for one of the Commissioners to have a
23 fairly permanent presence out there.

24 So, we're on the track we've always

1 been on. Since we're going to implement this
2 rule, we need to make the assignment of him
3 having his permanent location be local, ASAP
4 however we do that, in order that he can go
5 ahead then and bill for his mileage.

6 COMMISSIONER ZUNIGA: Can I also
7 mention something? This applies for a lot of
8 other people some that are currently employed
9 with us and many others that will later be
10 employed. Although it's in our minds because
11 one of us is sitting right next to us, there is
12 racing people who have to go to racetracks and
13 travel. And we have to think about where
14 they're assigned.

15 There's going to be a significant
16 presence in Western Mass. soon enough in terms
17 of business that we conduct there. So, it's
18 going to work the other way too. I just don't
19 want to go without mentioning that this applies
20 to a lot of people.

21 MR. LENNON: And that's how we
22 drafted the policy, if you look at it. There's
23 approval process for both Commissioners and
24 employees going through the Executive Director.

1 So, we recognize that this is meant to be for
2 the whole organization.

3 MR. DAY: It's for everybody.

4 COMMISSIONER STEBBINS: I think
5 obviously this is going to be a policy which
6 will certainly help Commissioners and
7 Commission staff down the line who may have a
8 sizable commute if they come into Boston. Now
9 that we are zeroing in on at least one
10 applicant from Western Mass. we can kind of
11 revisit looking for office space.

12 I think before we were mindful of
13 where we would find office space because we
14 didn't want to send signals that we were
15 beginning to favor one community over another.
16 But certainly it's worked itself out, so to
17 speak.

18 CHAIRMAN CROSBY: Good point. I
19 forgot about that. Okay, anything else on item
20 three? Okay, Derek.

21 MR. LENNON: Item four just gives
22 the definition of full travel status and some
23 examples of allowable expenses.

24 CHAIRMAN CROSBY: This raised an

1 issue that I've mentioned to you. I don't how
2 you deal with this. I, for example, or
3 somebody else go out to Western Mass. to speak
4 at a breakfast. I'd much prefer to go out the
5 night before rather than try to get up at 5:00
6 or 5:30 and drive out before the speech, which
7 I don't think is unreasonable, but people may
8 disagree with me. I'm open-minded on this.

9 But if people agree that that is a
10 reasonable thing to do or if you are at a late-
11 night event like a late-night dinner or
12 something, sometimes driving back from Western
13 Mass. leaving at 9:30 or 10:00 is unreasonable.

14 This doesn't have -- 24-hour mandate
15 is not covered. If people agree that
16 occasionally, I'm talking very occasionally
17 that's a reasonable thing to ask for then we
18 should have some mechanism in here that on an
19 occasional circumstance somebody can approve
20 that whether it's my traveling or somebody
21 else.

22 Like for example, the other way
23 around, Commissioner Stebbins, if we have
24 something really early that's happening in

1 Boston, he might feel it makes more sense to
2 come in the night before, which I would think
3 is reasonable.

4 So, (A), maybe that's already able
5 to be done on a one-by-one approve basis. Well
6 (A) is, is everybody comfortable with that?
7 (B) Can it be done? And if not (C) can we make
8 sure it can be done?

9 COMMISSIONER ZUNIGA: I am not
10 comfortable with that Mr. Chairman. I think
11 this opens the door for the sort of criticism
12 that we can take. I think a tier policy like
13 this that can bind this notion of convenience
14 is stronger and better for everybody.

15 I could argue it the other way. I
16 know there are breakfast functions, etc., but
17 we could also ask for the recommendation to
18 make that a lunch function, let's say, if that
19 was such a consideration. So, I am in favor of
20 leaving it the way it is and deal with all of
21 these one-offs on an individual basis.

22 MR. LENNON: I have authorized that
23 in the past. I guess I've been a CFO for 11
24 years. And I've seen these things happen in

1 the past in state government in executive
2 branch agencies. It's usually given
3 consideration for the safety of someone and a
4 good business purpose.

5 So, if you are getting up at 4:00
6 a.m. to travel to a breakfast, and if you can't
7 rearrange it, and there's a possibility that
8 that could put you in jeopardy, there is no way
9 we should ask you to do that. If there is a
10 specific justification for that and that's
11 attached to the reimbursement of the
12 documentation, there's a good business purpose
13 and a good reason for that.

14 So, there's arguments to be made
15 that you can either include it in the policy
16 and make it a one-off, or you can say it's
17 going to be the exception base. And we're
18 going to do it when someone's health or safety
19 is a concern.

20 You don't want to flat-out say no
21 because the first time you have someone drive
22 at 4:00 a.m. or at midnight and they fall
23 asleep at the wheel that's not a decision you
24 want to have come back to this policy manual.

1 COMMISSIONER MCHUGH: I like that
2 approach, but I think particularly after a
3 dinner meeting, driving home on a long drive
4 can be hazardous just from personal experience.

5 CHAIRMAN CROSBY: From the older
6 folks among us that's you and me, Commissioner.

7 COMMISSIONER MCHUGH: That's it.
8 But I also think that the business case, if one
9 has got a 7:00 meeting someplace way out of
10 town and then is going to be out there all day
11 at other meetings, by the 3:00 meeting, if
12 you've gotten up at 4:00, you're not going to
13 be very effective at least at our age. And it
14 seems to me that that business case may be part
15 of the application.

16 So, I'd be comfortable with the
17 safety and good business reason approach to
18 this rather than pure convenience.

19 COMMISSIONER STEBBINS: Derek, is
20 there anything that prohibits say going out to
21 speak to a chamber of commerce that prohibits a
22 chamber of commerce for helping to assume the
23 cost of the overnight stay or is that frowned
24 upon?

1 MR. LENNON: You'd have to look at
2 the ethics requirements. You'd have to file
3 the ethics form. You'd have to look at whether
4 it serves a legitimate business purpose. You'd
5 have to run it by our General Counsel's office
6 and make sure they're comfortable with it.

7 But there's nothing that prohibits
8 it as long as you meet all of those ethics
9 tests. So, no, but you would have to fill out
10 that statement of interest.

11 COMMISSIONER STEBBINS: Right.

12 CHAIRMAN CROSBY: Commissioner
13 Cameron?

14 COMMISSIONER CAMERON: I would agree
15 that it should be the rare exception, and
16 health and safety is always a reason to have a
17 sound policy. Again, get away from any
18 convenience issues. That is not good policy
19 nor is it a good example to set for all other
20 employees.

21 So, I think that minimal flexibility
22 and a health and safety issue is acceptable.
23 And I would be interested in those when we do
24 this review of the other travel policies.

1 CHAIRMAN CROSBY: In a bigger state,
2 a Pennsylvania or a Texas, we're sort of right
3 at the margins where it can be unreasonable,
4 but it's a close call.

5 I'm comfortable with that if you are
6 Commissioner. I'm totally respectful. I think
7 documentation goes a long way. One of the
8 issues that we've talked about is none of us I
9 think feels very bad about our expenses. Our
10 expenses for the very most part have been
11 totally legitimate.

12 But because we were still in an
13 early stage, we didn't have a lot of the backup
14 and explanation that we should have had and
15 will now be having. If there is a little memo
16 that says Crosby or Smith or Jones requested
17 such and such and was granted for such and such
18 reasons as backup and it happens every once in
19 a while, I think that's probably okay.

20 COMMISSIONER ZUNIGA: You have a
21 form that memorializes that for every expense
22 reimbursement that's occurring now.

23 MR. LENNON: Correct. And we're
24 going to update that a little bit.

1 COMMISSIONER ZUNIGA: We can update
2 that a little bit. We can have any number of
3 called all reasons why this may be an exception
4 to the policy, etc.

5 MR. LENNON: And those exceptions
6 would have to be approved by Enrique for you,
7 Mr. Chairman.

8 CHAIRMAN CROSBY: He has to approve
9 my expense reports and it's not fair.

10 COMMISSIONER ZUNIGA: That's right
11 and you approve mine.

12 CHAIRMAN CROSBY: That's true, good
13 point.

14 MR. DAY: Just to be clear, does the
15 Commission then want that exemption I
16 understand to health and safety and effective
17 business purposes exemption that would have the
18 same approval process, the Executive Director,
19 the Chair and the --

20 COMMISSIONER ZUNIGA: That's right.
21 And like any other strong procedures, ideally
22 in advance, but we cannot think of every
23 eventuality that may happen in the future. And
24 that's important to remember for every policy.

1 As long as we leave reasonable discretion here,
2 we can have a principle and then manage to the
3 exception.

4 MR. DAY: I'm convinced that our
5 accounting staff will return it to all of us if
6 the justification isn't in there.

7 CHAIRMAN CROSBY: Okay. Great.

8 MR. LENNON: Section five gives a
9 broad description of an allowable expenses.
10 Section six limits full travel status to 30
11 days without getting prior approval from the
12 Executive Director or the Chair, which is
13 already in there for out-of-state travel. So,
14 it's almost a duplicative one, but we are just
15 following the Redbook. We could strike that if
16 we wanted to.

17 Section seven, eight and nine deal
18 with state-owned automobiles. Eventually, we
19 will have a fleet. We have a request into OVM
20 right now to get two fleet cars. So, these
21 will become more essential as those cars come
22 online. But we're working on getting insurance
23 as well, we won't be using those cars until we
24 have an insurance policy.

1 Sections 10 and 11 deal with private
2 mileage allowable and unallowable expenses.
3 Section 12 is a little different than the
4 Redbook. It deals with meal reimbursement
5 rates. I am recommending that we go with the
6 GSA rates, which is the federal government
7 rates.

8 The GSA does a regular survey to
9 come up with what the costs should be in the
10 continental US for places that aren't standard
11 visits and then where they regularly go to and
12 the amount they allow. They come up with
13 specific costs per city.

14 I've been a state employees for 13
15 years. Traveling in-state and out-of-state for
16 most of those 13 years. And the rate of \$30
17 hasn't changed during that time period that the
18 state allows.

19 Where the GSA actually goes out and
20 does a survey of what it costs to eat and stay
21 at each city. So, I think this is a more
22 reasonable approach. It's not arbitrary. It's
23 done on research. That's why I'm recommending
24 going with this rate versus just \$30 that the

1 state stuck to for years.

2 COMMISSIONER CAMERON: I think the
3 federal policy makes sense because of our
4 business, which is an international business
5 and does require travel not only out-of-state
6 but certainly travel out of the country. So,
7 for that reason I think this makes sense.

8 COMMISSIONER ZUNIGA: And I think
9 something key here is key, which is the rate
10 varies on the destination that you travel to.
11 And we would incorporate all of that. It
12 doesn't presume that there is one rate for
13 everybody just because we live in Boston or
14 Western Mass., etc.

15 So, it accommodates essentially the
16 survey but it also includes and takes into
17 account the destination.

18 CHAIRMAN CROSBY: Does the GSA not
19 permit receipts with alcohol on it even though
20 the alcohol isn't claimed as a reimbursement?

21 MR. LENNON: Any federal training
22 I've gone to they say no alcohol, none on
23 receipts.

24 CHAIRMAN CROSBY: Not on the

1 receipt.

2 MR. LENNON: No, not at all.

3 COMMISSIONER ZUNIGA: Separate tabs.

4 CHAIRMAN CROSBY: I promise to say
5 nothing.

6 COMMISSIONER MCHUGH: Good.

7 MR. LENNON: There is one correction
8 I do need to make to this policy. It's a
9 technical correction in this section. Where it
10 says .12 to .18, that should be sections .13 to
11 .16.

12 CHAIRMAN CROSBY: There was a
13 section, and I've now forgot where the
14 reference is that said we are going to have a
15 per diem. So, there's going to be a cap. But
16 there was a section that said we couldn't be
17 reimbursed for tips. Is that in here?

18 MR. LENNON: We changed that to
19 reasonable tips at 20 percent, capped at 20
20 percent. Section 13 states the time period for
21 full travel status and a whole day when you're
22 entitled to meals, when you're not entitled to
23 meals.

24 Section 14 deals with travel over 24

1 hours. So, when you're ending time tells you
2 which meals you are allowed to be reimbursed
3 for.

4 Section 15 deals with what meals are
5 allowed when you're on travel status under 24
6 hours and when it needs to start and when it
7 needs to end.

8 Section 16 deals with exclusions of
9 meals. So if the place you're traveling to
10 provides meals, you're not entitled to be
11 reimbursed for those as well. There are a lot
12 of things that we will be having to review on
13 the travel receipts, which is why you will see
14 further along under guidelines we ask for
15 brochures from the conferences to see if it's
16 allowed, if it's not allowed.

17 Then section 17 deals with foreign
18 travel. Basically, what we'll do is go with
19 the federal guidelines for foreign travel too,
20 which is the Department of State has different
21 allowable rates per the area that you're going
22 to.

23 COMMISSIONER STEBBINS: Derek, just
24 a silly comment but under 16 meals served by

1 air, you mean meals served in the air.

2 MR. LENNON: Good point.

3 COMMISSIONER STEBBINS: I've been in
4 some restaurants that serve by air.

5 CHAIRMAN CROSBY: It's like Durgin
6 Park is served by air.

7 MR. LENNON: Good point. I had to
8 eliminate from there or steamship as well.

9 CCOMMISSIONER MCHUGH: This one
10 should go the way of the steamship, because
11 they don't serve by air.

12 CHAIRMAN CROSBY: Peanuts served in
13 air, right.

14 MR. LENNON: I can just get rid of
15 that.

16 COMMISSIONER CAMERON: Sometimes on
17 international travel there are still meals.

18 COMMISSIONER STEBBINS: I thought
19 about the steamship though, there are still
20 state employees who probably travel out to
21 Martha's Vineyard or Nantucket is the Steamship
22 Authority. The notion of the paddle wheeler
23 getting you to your locations is probably
24 outside the context.

1 MR. LENNON: Yes. The next piece I
2 figure will be an annual update. This will be
3 our general policy. Then annually the
4 Executive Director and I will issue travel
5 guidelines. And as things change, we can
6 always update those guidelines. So, if
7 circumstances change, if rates change we can
8 send out a new one, or if a statewide
9 contractor changes. The main things in here
10 are it just takes the actual policy and puts it
11 into practice.

12 Section one basically requires that
13 we take the start and end date of each trip.
14 And if you're making trips in between, you
15 document those, which is what we'll have to fix
16 on our form.

17 Section two under accommodations, we
18 are requiring that there are multiple ways you
19 can go about it. You either get competitive
20 rates, show those to us or use a statewide
21 contractor. Pan Am, that's not the old
22 airline. It's an actual travel agent that the
23 state does business with.

24 And at all times you should let the

1 travel agent know you're looking to get the GSA
2 per diem rates not the government rate. The
3 government rate is different from the GSA per
4 diem rates.

5 And actually they do work with you
6 on that. I've had to travel a few times, and
7 as long as you let them know that. And there's
8 a process in here if the GSA rate are not
9 allowable, that you should come back and
10 justify it to me.

11 Because this will happen at
12 conferences sometime if the hotels are booked
13 up, the low GSA rate ones are booked up and
14 you'll be stuck 40 or 50 miles outside to get a
15 GSA rate. It's going to cost you more in cabs
16 to get back and forth to that or a rental car
17 than it would to just increase to the rate of
18 the hotel you'll be staying at. So, we include
19 an exception to understand that there are
20 business circumstances that don't allow you to
21 do that.

22 Section three deals with meals. I
23 think we'd gone over that ad nauseum, the GSA
24 rates and what's allowed on receipts, not

1 allowed on receipts.

2 Section four tells people what they
3 need for documentation to be reimbursed.

4 Section five is probably a little controversial
5 one for out-of-state travel in asking people to
6 fill out TAFs, travel authorization forms.

7 I'd have to review it with Catherine
8 because account one is for executive branch
9 employees. So, we'll have to peel off the
10 pieces that don't. But it's basically letting
11 people know that you're out-of-state on
12 official business in case something happens.
13 This was the purpose of your travel. This is
14 who is paying for it and this is the date you
15 should be back. And if you have anyone
16 traveling with you that's not part of your
17 official business that's documented too.

18 COMMISSIONER STEBBINS: Derek, on
19 the out-of-state travel under three, the
20 detailed cost of the trip breakdown of all
21 anticipated expenses.

22 MR. LENNON: That's an estimate.
23 I've never held anyone to that unless they put
24 down \$200 and it came back at \$800. It's a

1 general estimate. It's just what do you think
2 you're going to spend.

3 COMMISSIONER STEBBINS: Okay.

4 MR. LENNON: Section six is
5 subsidized travel by a non-public entity. So,
6 this is the ethics requirements where we just
7 have to let it known that somebody is paying
8 for.

9 Then section seven just points out
10 what the current statewide contract for travel
11 is, gives you a link to it. We would also
12 attach a fact sheet for how to access that.

13 I think most people have been having
14 an all right time using the statewide
15 contractor. We've had a few instances where it
16 hasn't gone that route.

17 We've established a very good
18 relationship. We have a dedicated rep. now
19 because of the amount that we do travel. And
20 either me or my staff can help you with that.
21 If you're having difficulty, we can step in and
22 help you to make arrangements.

23 COMMISSIONER CAMERON: Derek, maybe
24 we can have our human resources manager conduct

1 a training program for staff so that they who
2 are frequently booking our travel can
3 understand and abide by this policy.

4 MR. LENNON: Absolutely. I'd be
5 willing to give that training.

6 CHAIRMAN CROSBY: That's a great
7 idea. Good idea.

8 MR. LENNON: Any question on travel
9 updates?

10 COMMISSIONER CAMERON: Thank you for
11 the research and the work.

12 MR. LENNON: Thank you. We had a
13 good team together. I know we had a few
14 Commissioners sit in on the team to review
15 this. We had a lot of division heads, people
16 who have been in state government sit down and
17 try and pinpoint where we are open to some
18 criticism and where we're different. So, I
19 think it was a very good working group and I
20 think the product shows that.

21 COMMISSIONER MCHUGH: Great.

22 MR. LENNON: The next part I will
23 breeze through a little quicker, because it's a
24 payment card policy. It doesn't apply to

1 everyone.

2 CHAIRMAN CROSBY: Go ahead. I don't
3 have a p-card. So, I just thought I could go
4 and make a quick phone call.

5 MR. LENNON: Payment cards are
6 basically credit cards for state employees.
7 They are allowed for incidental purchases or
8 travel. A state employee is not required to
9 take it, but if you do take it you have to
10 comply the state Comptroller policy. And the
11 state Comptroller policy basically says each
12 agency has to have a policy.

13 The main things around the policy on
14 payment cards, you need to be accountable for
15 your card. You only use it for approved
16 expenses which are in our policy. It's not to
17 be used to circumvent competitive procurements.
18 So, use statewide contracts, use department
19 contracts where available.

20 Make sure you reconcile. You have
21 to reconcile and have all original receipts.
22 Those need to be provided to the accounting
23 department prior to the payment cycle. Then if
24 there are any disputed costs, there's a

1 specific format we have to go through for
2 disputing costs. It's all laid out in the
3 policy.

4 Then there's one other area where
5 you're set up with a \$10,000 when you get a
6 payment card. I've never seen many people
7 overuse that. But if you are going on an
8 extended trip, so when I was at HED, we handled
9 all of the Governor's trade missions, we would
10 actually bump those credit cards up to \$30- or
11 \$40,000 because you were going to be over for a
12 couple weeks. And you're putting expenses on
13 for multiple people on those trips. So, those
14 would be the times where you bump up the limit
15 of over \$10,000.

16 I know that we're looking at maybe
17 shortening up the amount of payment cards that
18 we have, but I think if we use the policy here
19 and we have the documentation attached for each
20 reconciliation and each bill that we pay and
21 reasons why costs were incurred, we'll be all
22 right.

23 And we've moved towards taking
24 recurring expenses off of these payment cards.

1 It's just something we were doing in the past.
2 It wasn't used for the exceptions. So, we
3 moved away from that. I don't see any cause
4 for concern on how we are currently using our
5 payment cards.

6 COMMISSIONER MCHUGH: Again, it
7 seems to me that in the process of migrating to
8 a more sophisticated approach to a lot of our
9 activities, we started out using these cards
10 for things that there's a better way to account
11 for and have now begun to migrate to that
12 process of accounting and integrating them into
13 our expenses and budgeting. So, that
14 activities that began before we had a
15 sophisticated -- We always had a sophisticated
16 treasurer, but it was just systems were not as
17 necessary then as they are now.

18 MR. LENNON: Yes. And it helps to
19 have dedicated staff.

20 COMMISSIONER MCHUGH: Yes. And a
21 dedicated competent staff that's capable of not
22 only creating these policies but then enforcing
23 them and making sure that the policies are
24 followed. So, this is a logical migration and

1 it's a good one.

2 MR. LENNON: Yes. Enrique didn't
3 have the luxury of having four of us on the
4 team when this started.

5 COMMISSIONER MCHUGH: That's right.
6 It was everybody was doing everything. And
7 Enrique did a terrific job of setting up
8 policies and overseeing their execution. At
9 the same time doing all of the other things
10 that he was doing as we tried to move this
11 process forward. So, we are now in a position
12 where we can relieve him of some of that and do
13 a better job of accounting and processing.

14 MR. LENNON: So, that's the basics
15 on the P-card policy. It only applies to five
16 people in the office. So, I won't go as in-
17 depth.

18 And the final policy I have for your
19 review is a transportation commuting benefits.
20 I just wanted to put into policy what is
21 already allowed by law by both the Department
22 of Revenue -- well three agencies, the
23 Department of Revenue, the Internal Revenue
24 Service as well as the State Comptroller's

1 Office, allows employers to provide parking or
2 T passes to their employees. It's just any
3 amount over the non-withholding amount has to
4 be taxed.

5 We've implemented that. Any parking
6 that we have is open to the public also. So,
7 we're in public parking garages. It's not a
8 private garage. It's putting into policy
9 what's already an allowable law.

10 COMMISSIONER ZUNIGA: This
11 memorializes really something that since Derek
12 arrived, we really implemented. I think it's a
13 formality, but it's an important one.

14 COMMISSIONER MCHUGH: The policy's
15 been implemented but we've been taxed on our
16 parking since the get-go. That's true of all
17 state employees. You are taxed on the value in
18 excess of whatever the Comptroller, I guess,
19 the federal government sets as --

20 MR. LENNON: Yes. There's two
21 rates, the state and the feds. This year,
22 they're the same. For T passes it's been where
23 it's been different over the past years. But
24 this year they're the same at the federal and

1 state level, but they're different for T passes
2 versus parking.

3 So, there is some work that our HR
4 department has to do as far as distinguishing
5 it. However, we're going to come out with a
6 specific form for the T passes we're paying for
7 so it doesn't slide through the cracks.

8 COMMISSIONER MCHUGH: The point for
9 general consumption is that this is a statewide
10 process. Everybody whether you pay for parking
11 or you park in a state garage, you're taxed on
12 the excess over the assigned value to the
13 average parking space in Boston.

14 MR. LENNON: That's actually written
15 right into the state comptroller policy. So,
16 for non-state buildings -- For state owned
17 parking garages, you have to go around and do
18 an assessment of area ones, what the most
19 reasonable rate is to determine what the cost
20 of that parking space would be. And then you
21 pay the difference between the \$250 this year
22 and that space.

23 For private ones -- well, not
24 private but for non-state owned but public

1 parking that you're paying for, you pay the
2 full cost as the full cost that the public can
3 park for and then the difference between the
4 \$250 and that is what we get taxed on. It's
5 basically added to your income as a taxable
6 expense. That's standard. I know that we were
7 criticized as nonstandard but it is across
8 state government.

9 COMMISSIONER MCHUGH: That's right.
10 That value is also income. That difference is
11 also income for your federal and state income
12 taxes.

13 MR. LENNON: Yes.

14 COMMISSIONER STEBBINS: Good work.

15 CHAIRMAN CROSBY: Thank you.

16 COMMISSIONER MCHUGH: Great.

17 COMMISSIONER ZUNIGA: Do we need a
18 vote on this?

19 CHAIRMAN CROSBY: Do we need a vote?

20 MR. LENNON: Yes.

21 CHAIRMAN CROSBY: All right.

22 Commissioner Zuniga?

23 COMMISSIONER ZUNIGA: Sure. I would
24 move that this Commission approve in favor of

1 the recommendation here as set forth by
2 Executive Director and CFO relative to the
3 travel policy, the P-card policy and the
4 expense reimbursement, the commuting benefits
5 policy as described in the packets.

6 COMMISSIONER STEBBINS: Second.

7 MR. DAY: Commissioner Zuniga does
8 that include the small technical changes plus
9 the amendment on the exemption?

10 COMMISSIONER ZUNIGA: Thank you, it
11 of course does. As amended in this hearing.

12 CHAIRMAN CROSBY: Any further
13 discussion? Second by Commissioner Stebbins.
14 All in favor of the motion say aye, aye.

15 COMMISSIONER MCHUGH: Aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER STEBBINS: Aye.

19 CHAIRMAN CROSBY: Opposed? The ayes
20 have it unanimously. Do you want to go back to
21 3a and then 3c?

22 MR. DAY: We are ready for 3c.

23 CHAIRMAN CROSBY: Did you talk
24 about --

1 MR. DAY: For some reason, I am
2 insisting not to mention the time, I don't know
3 what it is, which is a good reason why I
4 actually put it on the agenda.

5 Beginning April 3, Commission
6 meetings will start at 10:30 a.m. instead of as
7 they have at 9:30. It will of course be on all
8 agendas, but for everybody who is calendaring,
9 please change to 10:30.

10 CHAIRMAN CROSBY: This was from the
11 journalists in America who were having to get
12 up too early.

13 MR. DAY: Mr. Chairman, I have now
14 stated that which was my intention was a long
15 time ago.

16 One thing about these I just want to
17 mention these travel we touched on, but we are
18 now in the process of as well of entering into
19 a number of license investigations for instance
20 with machine manufacturers. And we are going
21 to be in a position again, we're talking about
22 the countries of Australia, Japan, Europe, a
23 number of these applicants will come from these
24 areas. So, it will be a pretty intensive

1 process. And I think the flexibility in that
2 process is very important as we go to these
3 areas that are just uncommon in many cases.

4 With that or to the procurement or
5 the monitoring process and Derek.

6 COMMISSIONER MCHUGH: Is that point,
7 as long as we are on this discussion, is that
8 point worth stressing? So, I plunge ahead and
9 stress. We are operating in a part of the
10 economy that is truly global. The qualifiers
11 for our applicants are in different countries.
12 The suppliers of machines or other kinds of
13 equipment that are going to be in our places
14 are in different countries. The facts that we
15 need to gather in order to do a complete and
16 thoughtful and thorough background
17 investigation are in different countries.

18 You can't do that by sitting in an
19 office in Boston and talking on the telephone.
20 You can do some of it, but you can't do it
21 thoroughly. You can't do it on the Internet.
22 In many cases, you have to go there and talk to
23 people and particularly to get, as we have in
24 many, many cases these statements under oath

1 that formed an important part of our background
2 investigation and that will form an important
3 part of the investigation for equipment
4 suppliers and the like for their suitability.

5 There will be a day perhaps
6 hopefully when there can be some kind of a
7 national compact so that one can safely rely on
8 examinations performed by others. But that day
9 hasn't arrived and we have different standards
10 and others have different standards.

11 So, that the need for policies like
12 this and the flexibility of policies like this
13 is essential if we're to do what the statute
14 requires us to do and conduct thorough
15 suitability investigations to safeguard the
16 citizens of the Commonwealth.

17 And that's what we've been doing
18 from the beginning. That's what we continue to
19 do. That's why we need this. So, it seems to
20 me that everybody ought to understand that.

21 MR. DAY: I agree. With that a
22 factor that plays into it as well, as you
23 mentioned, the qualifiers and the parties that
24 we have to interview in that process and what

1 works for them as well.

2 There are examples I'm aware of
3 where there's a request from a party that's in
4 a different country not to come all of the way
5 to Massachusetts but because of their business
6 reasons, they would rather have staff come to a
7 place in between that would be helpful for them
8 where they can get their interview, get their
9 facts done and get on their business without
10 too much interruption to their own schedule.

11 COMMISSIONER MCHUGH: Right.

12 MR. DAY: Which I think is also
13 another important consideration. Then of
14 course one of the bottom lines to this process
15 is ultimately those expenses are billed to all
16 of our licensees and applicants. They're not
17 at state expense.

18 CHAIRMAN CROSBY: I was going to
19 emphasize that point too. I think Commissioner
20 McHugh's emphasis is well made as well as the
21 point you made that no taxpayer money goes to
22 this. All of these expenses are assessed back
23 on the applicants and the license holders.

24 MR. DAY: Monitoring.

1 MR. LENNON: So, the next piece in
2 front of you is the oversight project manager
3 recommendation. On January 31, we posted an
4 RFR for a firm or firms to conduct oversight
5 project management services. Not owner's
6 project management services because we don't
7 own the actual building that's going to be
8 constructed, but oversight to just review the
9 goals. Make sure that the building promised to
10 us will be built, the promises made, the
11 commitments made are actually upheld, the
12 materials, the layouts, timelines are kept to.
13 We're looking for a firm that can produce these
14 services for us.

15 The responses -- I'm sorry. On
16 January 7 we posted that, responses were due
17 January 31. Four firms responded to us. A
18 team of three were assembled to review the
19 responses. It was clear that two of the
20 responses came back better written and
21 understood the scope of what we were asking
22 for.

23 Those two were asked to come in for
24 an interview on February 19 and March 7.

1 Originally, it was February 19 and February 20,
2 however, during the process one of the
3 finalists was a collaborative between McFarland
4 and Pinck and Company. McFarland had
5 identified they had been conflicted out and
6 ceded their interest in the response over to
7 Pinck and Company. We reviewed the responses
8 and saw that it was substantially the same and
9 it didn't change that much because almost all
10 -- actually all of the sub-consultants remained
11 with the Pinck and Company team.

12 We moved on and interviewed both PMA
13 Consultants and Pinck and Company. During the
14 interviews, if you look at the original written
15 scores, you would think there was a much bigger
16 gap but it showed that both firms could
17 probably do this job well. Two different
18 approaches, one was a little more straight to
19 the scheduling, the 10 percent audit, come back
20 and give us areas to mitigate the risk.

21 Where the other one had a more in-
22 depth knowledge of how the process works, a
23 better understanding of what's going on but may
24 have been offering more than just the oversight

1 project manager role.

2 So, based on those interviews, the
3 team came back and thought it would be best to
4 actually prequalify both of these contractors.
5 The procurement allows for us to select one or
6 multiple contractors. Prequalify both of these
7 contractors, provide Pinck and Company
8 collaborative with the opportunity to start on
9 the awarded slots license because there would
10 be less startup time. They already know about
11 the process having gone through the initial
12 reviews.

13 And leave the second consultant as
14 an option if we wanted to go out as Category 1
15 license are awarded to ask for specific quotes
16 to see if a different technique would work.

17 CHAIRMAN CROSBY: Discussion?

18 COMMISSIONER CAMERON: I agree with
19 the recommendation. I think the fact that
20 Pinck and Company has a working knowledge first
21 of all of us and in the process, the host
22 community agreements, the conditions, I think
23 that will be an advantage. And the fact that
24 they did score a bit higher was something I saw

1 as a reason to consider as well as you do. So,
2 both are qualified and prequalified and go in
3 this direction. I think it's a sound
4 recommendation.

5 COMMISSIONER MCHUGH: I do too, but
6 I wonder if there's a possibility of - whether
7 a possibility of collaboration between the two
8 was explored. We know both of these companies.
9 They provided very good services to us.

10 CHAIRMAN CROSBY: What does PMA do?

11 COMMISSIONER MCHUGH: PMA is the
12 scheduler, the ones that create the charts.
13 That's really their sweet spot. That's what
14 they do. And that tool that they use really is
15 flexible and makes updating easy while
16 supporting whatever level of detail you want to
17 get into.

18 Was there any exploration of
19 collaboration between the two?

20 MR. LENNON: I can't tell you what
21 the two firms talked about. I can only go
22 based on what the responses were. We can sit
23 down and talk about collaboration. We can
24 write the contract so that --

1 COMMISSIONER MCHUGH: I throw that
2 out as a possibility. I don't know whether
3 it's a good idea or a bad idea. But it does
4 seem to me that as we go forward, the slots
5 parlor is one thing. Hopefully at least the
6 slots parlor is going to be joined by two more
7 bigger projects and perhaps a third one before
8 the end of the year.

9 And trying to keep track of all of
10 the conditions of four things that are going on
11 simultaneously really is going to require a lot
12 of thought and all of the sophisticated tools
13 that are available for everybody. So, I throw
14 that out. I don't know if it's a good idea. I
15 don't know if it's a bad idea.

16 COMMISSIONER ZUNIGA: I actually
17 think it's a very intriguing idea and a very
18 good one. I personally always assumed that in
19 the prior procurement for the scheduling
20 services, we could always extend that contract
21 and we have that ability.

22 Similarly, in all of the other
23 procurements we've done, we have the ability to
24 extend other contracts. But I think this is

1 worthwhile exploring to go back as you fine
2 tune a negotiation, we could ask the parties as
3 to whether scope refinement could be integrated
4 with the current efforts like the scheduling
5 and just put it on them to see if that's
6 something they'd be willing to do.

7 COMMISSIONER STEBBINS: I think it's
8 an intriguing idea. Mapping out licensing,
9 mapping out permitting requirements, mapping
10 out job and recruitment pieces to all of this
11 might make our monitoring oversight
12 responsibilities a little bit be easier.
13 Certainly, something to explore.

14 CHAIRMAN CROSBY: Is PMA, is it
15 Public Management something or other? Is that
16 the firm that's in Quincy Market?

17 MR. LENNON: No.

18 COMMISSIONER ZUNIGA: No, they are
19 in Braintree.

20 CHAIRMAN CROSBY: I thought I knew
21 who they were.

22 COMMISSIONER MCHUGH: They're
23 basically construction managers.

24 COMMISSIONER ZUNIGA: Yes. They are

1 project managers. They both compete in other
2 instances. I'm familiar with both from the
3 School Building Authority. I might add, they
4 are both minority- and women-owned.

5 CHAIRMAN CROSBY: By implication
6 you're answering some of my questions. I had
7 two that's sort of in the same vein. One was I
8 guess I don't really know what Pinck and PMA do
9 or what their skills are. I thought of this as
10 being quite a technical job. And I was
11 expecting sort of an engineering type firms to
12 do this, to oversee the construction of these
13 facilities.

14 It's not just monitoring the
15 timeline, although that's important but it's
16 monitoring the technology and the whole
17 construction process.

18 MR. LENNON: And the teams that
19 they've assembled have all of that. They have
20 LEED specialists. They have architects. They
21 have road engineers. They have the engineering
22 background and they have the project controls.
23 So, they have all of those areas.

24 COMMISSIONER ZUNIGA: They do, both

1 do.

2 MR. LENNON: Yes, both do.

3 CHAIRMAN CROSBY: That's good. This
4 is all I know about it is what is in this
5 report.

6 The other thing is that Commissioner
7 Cameron, I don't have any choice but to talk
8 about this publicly, but you've expressed some
9 concerns I thought about some of the technical
10 support that we have had.

11 COMMISSIONER CAMERON: I had an
12 issue with some traffic work that wasn't done
13 in a timely manner but that was corrected.
14 Those additional traffic analysts were added to
15 this team moving forward. And I'm comfortable
16 with the team assembled that this project, we
17 all have a better understanding of what it is
18 and everyone understands what their assignments
19 are. So, I don't see an issue moving forward.

20 CHAIRMAN CROSBY: Okay. The last
21 one was just the bandwidth of Pinck. There's a
22 lot on their plate. And there is going to be a
23 lot more between -- certainly between now and
24 June and probably thereafter. Do they have the

1 management bandwidth and the personnel
2 capacity?

3 MR. LENNON: That was part of the
4 interview and they said that they will have
5 dedicated staff to this project.

6 COMMISSIONER ZUNIGA: This is where
7 prequalifying more than one really gets us the
8 flexibility to respond quickly if we start
9 thinking that there is an overreliance on a
10 group or there's bandwidth concerns, which I
11 always think is a great approach in terms of
12 procurements.

13 We would not need to go out with
14 another procurement. We could just pick the
15 next one come in to supplement, to complement
16 or to replace if needed.

17 CHAIRMAN CROSBY: And you've had
18 experience apparently with both firms.

19 COMMISSIONER ZUNIGA: Yes.

20 CHAIRMAN CROSBY: So, you know from
21 personal experience that both firms can do
22 exactly what we need here.

23 COMMISSIONER ZUNIGA: They do. They
24 do. They have technical expertise. They don't

1 draw technical requirements but they can
2 assess. They monitor the progress. They
3 evaluate any kind of drawings and engineering
4 reports, etc. It's just precisely the role we
5 want them to be.

6 The applicant is going to hire a
7 number of experts to come up with the actual
8 solutions. We are interested in understanding
9 a number of things essentially relative to what
10 they promised they're going to deliver. But
11 we're not asking the project manager to be an
12 engineer that provides a solution but rather
13 comments on that.

14 MR. LENNON: Tell us the impacts.

15 CHAIRMAN CROSBY: I can only go on
16 what you guys said. So, if you say they've got
17 the skills and the bandwidth then they've got
18 the skills and the bandwidth. I just would
19 emphasize then if you're going to prequalify
20 them both, this is obvious I guess, but this is
21 a very big deal. And our bidders, and this is
22 not to cast dispersions on them, our licensees
23 have gone from being salesmen to becoming
24 operators. And it's a whole different world

1 out there when you're out of the sales mode and
2 into the operational mode.

3 And we need to be as rigorous in
4 this oversight as we have been in the bidding
5 process but with a different kind of rigor.
6 So, I hear from you all that they've got the
7 skills, okay, fine. But it's important that it
8 really be exercised really aggressively,
9 particularly at the outset as we get to know
10 each other.

11 COMMISSIONER ZUNIGA: Yes. These
12 bidders are going to be very motivated to get
13 things done very quickly as we all know. The
14 payoff is as soon as they can open a gaming
15 establishment. And in that sense our interests
16 are aligned. But on the other end, getting
17 things done properly and without any surprises
18 is also very much in our interest, which
19 emphasizes your point Mr. Chairman.

20 MR. DAY: The recommendation, it
21 gives us the flexibility I think that we need
22 by prequalifying both of them so we can look at
23 it as things are moving forward as well,
24 particular with the resort casinos and

1 Commissioner McHugh's suggestion about any
2 possible collaboration. And it gives Pinck the
3 nod for the slots parlor, but also provides us
4 the opportunity to make judgments on how that
5 process is going and whether we need to change
6 it as we move forward.

7 I think it will give us a lot of
8 flexibility. We do intend once, if the
9 Commission approves this recommendation, we
10 will ask both prequalifying firms for their
11 recommendations on our monitoring regulation
12 proposals too. So, we'll have their input
13 before we ring them back.

14 COMMISSIONER MCHUGH: Great.

15 CHAIRMAN CROSBY: Okay.

16 Commissioner, do you want to make a motion?

17 COMMISSIONER ZUNIGA: Sure. I can
18 move that this Commission accept the
19 recommendations relative to the procurement of
20 the oversight project manager and prequalify
21 both the firms of Pinck and Company as well as
22 PMA Consultants to conduct those services for
23 the Commission.

24 COMMISSIONER CAMERON: Second.

1 CHAIRMAN CROSBY: Any further
2 discussion? All in favor of the motion,
3 signify by saying aye, aye.

4 COMMISSIONER MCHUGH: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? The ayes
9 have it unanimously.

10 MR. LENNON: Thank you.

11 MR. DAY: Thank you very much.

12 COMMISSIONER MCHUGH: Thank you.

13 MR. DAY: Mr. Chairman that's the
14 end of my report and unless there are further
15 questions, that brings us to Legal.

16 CHAIRMAN CROSBY: We are going to
17 take a brief break. And we'll be back in a few
18 minutes.

19

20 (A recess was taken)

21

22 CHAIRMAN CROSBY: We ready to
23 reconvene with item number five on the agenda.
24 And I guess that is directed to Director

1 Durenberger. No, sorry make that item number
2 four, General Counsel Blue.

3 MS. BLUE: Commissioners you have in
4 your package under section 4a the amendments to
5 205 CMR 125.01(6)(c). This is our binding
6 arbitration process.

7 What we've done is we've drafted
8 amendments to this section to address some of
9 the concerns that were raised in our last
10 Commission meeting about the binding
11 arbitration process and to create a sort of a
12 safety valve in the event that there offers,
13 best and final offers that are submitted that
14 may be inconsistent with 23K or potentially
15 beyond the scope.

16 So, we have the changes in that
17 section marked. And we'd be happy to answer
18 questions that you have about it.

19 COMMISSIONER CAMERON: I had a
20 couple of questions. I know the reason we did
21 this initially was that we really thought it
22 would be an incentive for those to really sit
23 down and come to an agreement. Do you
24 personally feel like by amending that we have

1 taken away that sword, so to speak, to get the
2 folks to sit down and come to an agreement?

3 MS. BLUE: I am concerned that the
4 way we had it originally structured, it
5 provided an incentive for folks to sit and
6 negotiate because they knew with the arbitrator
7 having to pick one or the other that they
8 should be reasonable on the best and final
9 offers that they submitted.

10 So, by giving a Commission look at
11 these offers, I am a little concerned about the
12 number of petitions that would be filed and
13 whether folks would take as seriously the
14 arbitration process as perhaps they would have
15 before when they knew the arbitrator's decision
16 was the only decision.

17 COMMISSIONER CAMERON: The second
18 question I have is our ability above and beyond
19 an arbitrator to have a better judgment of what
20 the process is. Are we staffed to have a
21 process that we insert our judgment over that
22 of an arbitrator?

23 MS. BLUE: Under this amendment,
24 when the petitions are filed, the Commission

1 would need to take a look at them and review
2 them. And we would have to determine if there
3 was any additional information perhaps that the
4 Commission felt it needed or whether there was
5 staff help that we could help that we could
6 support in answering questions on it.

7 So, we would really need to see how
8 the petitions came in and what the issues were
9 that were raised.

10 COMMISSIONER CAMERON: In your legal
11 opinion and I know that there are varying
12 opinions. Is there a legal jeopardy that we
13 don't agree with the arbitrator, so we're going
14 to come to a different judgment, let's say?

15 MS. BLUE: These amendments give the
16 Commission the right to modify a best and final
17 offer if it's fundamentally inconsistent with
18 23K. So, from a purely technical perspective,
19 it may be a different decision than the
20 arbitrator comes to. But that is the point of
21 the changes to this section, which would be to
22 give the Commission the ability to modify
23 offers that they felt were fundamentally
24 inconsistent.

1 COMMISSIONER ZUNIGA: Is the test
2 reserved for or rather is the discretion now
3 afforded to the Commission under this draft
4 purely on the eventualities of something
5 fundamentally inconsistent with 23K?

6 MS. BLUE: Yes. The way this is
7 drafted, we have removed the arbitrator's
8 ability to make a determination like that. And
9 we have vested that in the Commission. And
10 it's whether it's fundamentally inconsistent
11 with the provisions of 23K or the purposes of
12 23K.

13 COMMISSIONER ZUNIGA: Or the
14 purposes?

15 MS. BLUE: Yes.

16 COMMISSIONER ZUNIGA: It's obviously
17 broader. The purposes of 23K is broader than
18 something fundamentally inconsistent with 23K.

19 MS. BLUE: It could be, yes.

20 COMMISSIONER MCHUGH: Fundamentally
21 inconsistent with the purposes of 23K or
22 fundamentally inconsistent with a specific
23 provision of 23K.

24 COMMISSIONER ZUNIGA: As drafted

1 here, we would have that discretion, the
2 discretion to determine whether something was
3 fundamentally inconsistent with both sections
4 or purposes of 23K.

5 COMMISSIONER MCHUGH: Or either.

6 COMMISSIONER ZUNIGA: Or either,
7 right.

8 MS. BLUE: Yes.

9 COMMISSIONER CAMERON: That's vague.

10 MS. BLUE: It is a standard that you
11 would have to look at on a case-by-case basis.
12 You would have to look at what the parties
13 filed in their petition, because the parties
14 would have to file a petition and state which
15 provisions of the best and final offer they
16 felt were fundamentally inconsistent with 23K.
17 So, that would be the review process.

18 And we would have to review it to
19 see what they pointed out and what they brought
20 before you.

21 COMMISSIONER ZUNIGA: So, the
22 parties would -- I'm thinking of incentives or
23 reverse incentives, would still have an
24 incentive to negotiate and arbitrate in good

1 faith let's say for -- to put forth their best
2 and final offer in good faith because the risk
3 that this Commission view the outcome as
4 fundamentally inconsistent with the purposes or
5 sections of 23K, or the result of the
6 arbitration is fundamentally inconsistent, is
7 not a guarantee.

8 Just to dovetail with Commissioner
9 Cameron's question or point, there is still
10 maybe not as strong as originally -- Is that a
11 fair statement? -- because this Commission
12 could say the outcome was consistent. There's
13 not an incentive for everybody to appeal
14 necessarily.

15 MS. BLUE: That's true. The
16 Commission could always find the arbitrator's
17 consistent with 23K and final, if that were the
18 case after their review. That's correct.

19 COMMISSIONER MCHUGH: The Commission
20 under this regulation wouldn't have to find
21 that it was consistent. And it was not just
22 semantics. For the Commission to do anything,
23 it would have to find that it's fundamentally
24 inconsistent. In other words, if there was

1 ambiguity or if the Commission couldn't
2 determine whether it was consistent or not but
3 could not say that it was fundamentally
4 inconsistent then it stands.

5 The safety valve analogy is a useful
6 one. You could use the seatbelt analogy too,
7 but the safety valves are inserted in the
8 expectation that they will never go off. But
9 they are there in case something goes horribly
10 wrong and they relieve a pressure so that
11 things don't blow up.

12 And it seems to me, as we talked
13 about it last time -- We had a good discussion
14 last time. I thought we settled on the concept
15 and maybe we have, but this is here in the full
16 expectation that it will not be used. But it's
17 there in an emergency. And it's better to have
18 it there the to find an emergency and not have
19 the tool necessary to deal with it, in my view.

20 COMMISSIONER CAMERON: Ombudsman
21 Ziemba, did you feel like the fact that an
22 arbitration was an all or none incentivized in
23 the Category 2 negotiations? They did not want
24 to get to that point because of the fact that

1 it was either/or?

2 MR. ZIEMBA: I'm not sure that this
3 amendment would veer too much from the
4 either/or. This goes over the more specific
5 questions of whether or not this is
6 fundamentally inconsistent with the provisions
7 of 23K.

8 Still you'll have both parties
9 putting forth their best and final offers
10 whether or not by a degree or not this is more
11 of an incentive to not come to a conclusion for
12 arbitration, I think that remains to be
13 determined. I don't think that we can really
14 make that judgment now.

15 I'm sure we all have our opinions on
16 what it's going to do. But I think there is
17 still a very strong incentive for parties to
18 not go to arbitration and whether or not this
19 lessens that to a degree, I think that remains
20 to be determined.

21 COMMISSIONER CAMERON: Would you
22 have an example of something that would be
23 fundamentally inconsistent? I'm just trying to
24 understand that concept better.

1 MR. ZIEMBA: I will give you a real
2 world question that I get. One of the
3 questions is could in an arbitration decision,
4 if a provision in one and the best of finals
5 required the community to support the
6 application, would that be inconsistent with
7 23K? As in the operator says when the
8 arbitrator chooses our best and final, one of
9 our provisions is that you have to support our
10 development. And 23K gives options to
11 communities to express support or opposition to
12 developments through the host community
13 hearing, through the surrounding community
14 hearing.

15 So, whether or not that is
16 fundamentally inconsistent with 23K that could
17 be a question that could be decided.

18 COMMISSIONER CAMERON: Okay.

19 CHAIRMAN CROSBY: That's a good
20 example.

21 COMMISSIONER ZUNIGA: By this
22 Commission.

23 MR. ZIEMBA: By this Commission.

24 COMMISSIONER ZUNIGA: Another one.

1 When we last talked about -- It's easy to talk
2 about examples in the extremes, but you'll
3 remember the notion about a best and final
4 offer that includes community impact fee of
5 zero or a very big number, an offer that was
6 that wide apart.

7 One read of this fundamental
8 inconsistent notion would be that zero is
9 fundamentally inconsistent with a community
10 impact fee, because zero is no fee. Is that a
11 fair statement? Something like that could be
12 viewed as fundamentally inconsistent.

13 CHAIRMAN CROSBY: Just to clarify
14 one thing here, I thought that we had debated
15 this a while back and decided that we did want
16 to implement the safety valve, and that this
17 was a draft of implementing it.

18 We can reopen if we want to but I am
19 going to refrain from debating whether we
20 should have it or not unless we decide we're
21 going to reopen the whole thing.

22 So, do we want to reopen the
23 question of whether we want a safety valve? Or
24 is this merely about is this the proper

1 manifestation of a decision to have a safety
2 valve?

3 COMMISSIONER CAMERON: I thought we
4 had made the decision to take a look at what a
5 possible draft would look like. But in looking
6 at the draft, I had questions about the fact
7 that this whole idea of arbitration is hey,
8 you're taking your chance.

9 In my concern was that this in fact
10 gave another option. Of course we are going to
11 petition that kind of a thing and what that
12 process would be and how would we -- Just in
13 thinking it all through, I had those questions.

14 And speaking with the Chief Counsel,
15 I think there are questions there as well about
16 whether or not this is the proper approach to
17 take.

18 CHAIRMAN CROSBY: It's completely
19 legit to reopen. So, if that in effect, it's
20 reopened. So, my personal feeling, perception
21 for what it's worth is that this really does
22 not take pressure off the two bidders to come
23 to the center, because the chances of winning
24 on this longshot appeal are very remote. So,

1 it's not going to undercut the intention of the
2 best and final to get them to come to the
3 center.

4 What I think it does do is pretty
5 much assure that every loser is going to
6 appeal. Why not? You've got a longshot appeal
7 and it's going to add an extra five days. My
8 personal guess is that's going to be pretty
9 often. But I don't think it undercuts the
10 fundamental concept of the best and final offer
11 driving people to reasonable conclusions.

12 COMMISSIONER ZUNIGA: Yes, I would
13 agree with that. I think it's very hard to
14 read the tea leaves, obviously. The stakes are
15 higher in the case of Category 1. The time is
16 also critical because Region B -- this process
17 is really imminent to Region B. We've had some
18 slippage in Region A, but this is also very
19 critical.

20 So, in the final analysis, if we
21 have a little bit more discretion although it
22 may come at a cost of additional appeals, I
23 would be in favor of the procedures drafted
24 here.

1 CHAIRMAN CROSBY: Commissioner
2 Stebbins, do you have either a macro or micro
3 sense?

4 COMMISSIONER STEBBINS: I am
5 comfortable with the language as it is laid
6 out. I did have some concerns and maybe it's
7 just a clarification. I'm sorry we haven't had
8 a chance to -- I just have some reservation
9 about one of the parties being able to object
10 to the arbitrator's decision or at least raise
11 its awareness to us.

12 CHAIRMAN CROSBY: You mean as
13 opposed to the Commission having the right?

14 COMMISSIONER STEBBINS: Right.

15 CHAIRMAN CROSBY: That's
16 interesting.

17 COMMISSIONER STEBBINS: What's the
18 point of going through the whole process.
19 We're giving them one more bite at the apple,
20 so to speak.

21 MS. BLUE: The petition process is
22 the mechanism by which it comes in front of the
23 Commission. And it also helps to narrow the
24 issues that you would look at. The petition

1 process is helpful from that perspective, if I
2 am understanding your concern.

3 COMMISSIONER STEBBINS: Okay.

4 CHAIRMAN CROSBY: But the whole idea
5 really that Commissioner McHugh raised was in
6 the very unlikely event that something kooky
7 happens. And that the Commissioners might feel
8 like something really went off the rails here
9 that is fundamentally inconsistent with the
10 statute, granting as he said repeatedly the
11 likelihood of this happening is very slight.

12 If that's the issue, would the
13 mechanism not work maybe better but certainly
14 as well if the Commissioners had the chance, if
15 one of the Commissioners wanted to raise that
16 issue? That would preclude what I think is one
17 soft spot in this, which is if I were a loser,
18 I would of course appeal because why not? You
19 got a one in a million chance, you might as
20 well take it.

21 So, I think that's interesting. I
22 don't know whether there are other
23 implications, but I think that's an interesting
24 thought.

1 MS. BLUE: There has to be a
2 mechanism by which it's placed in front of the
3 Commission. The Commission can't sort of reach
4 out and review it automatically. So, the
5 petition is the method by which it comes in
6 front of the Commission.

7 CHAIRMAN CROSBY: Why couldn't one
8 of the Commissioners say, I want to re-think
9 this?

10 MS. BLUE: Well, you have an
11 arbitration where you have two parties to an
12 arbitration, the applicant and the community.
13 And it's a review mechanism that once the
14 arbitrator makes the decision -- if the
15 arbitrator made decision and neither party
16 objected, it would be fine. The arbitrator's
17 decision would stand.

18 CHAIRMAN CROSBY: Unless a
19 Commissioner objected is what Commissioner
20 Stebbins said.

21 MS. BLUE: But under our
22 regulations, things have to be brought to the
23 Commission's attention. And the mechanism for
24 that is through a petition or a request to be

1 heard. This is really just the mechanism to
2 get it in front of the Commission so they can
3 consider it.

4 The Commission can't just consider
5 items that are not brought to it. They have to
6 be formally brought to it unless there is some
7 violation of the statute, a particular
8 violation.

9 As we get down the road and we have
10 regs., if the Commission were to issue a notice
11 to show cause, for example, the Commission
12 could hear things on its own merits. But right
13 now, there had to be a mechanism by which the
14 Commission is asked to consider a particular
15 matter.

16 COMMISSIONER MCHUGH: There also, it
17 seems to me in addition to that but going hand-
18 in-hand with that is the problem of
19 administrative convenience. Yes, everybody is
20 going to perhaps take an appeal, but they're
21 not just going to say so this whole thing is
22 fundamentally inconsistent with the statute if
23 they hoped to get some place.

24 They're going to identify the ways

1 in which it is fundamentally inconsistent.
2 That immediately narrows the focus of the
3 inquiry because if you believe in the adversary
4 process, these people are going to be is the
5 best judgment as to where the winners are.

6 And the likelihood that something
7 that they don't raise is something we would
8 find is fundamentally inconsistent with a
9 provision or the purposes is highly remote. It
10 is even more remote than the times we'll
11 actually exercise our judgment, I think.

12 So, we rely on the parties out of
13 self-interest to come and tell us what things
14 they believe are fundamentally inconsistent.
15 We're always going to have the city on one side
16 and the operator on the other side basically or
17 the town on one side. And two fairly
18 sophisticated groups and we'll get through it a
19 lot better with a lot better guidance given the
20 time we have to do it. And we'll avoid those
21 that really are close together and as to which
22 nobody has any problem.

23 CHAIRMAN CROSBY: I had some
24 questions, assuming that we were going to go

1 forward with this. What is the thought process
2 of having the appeal be framed at the beginning
3 of the process? This says a party has to put
4 that in in advance of the eventual -- of the
5 decision.

6 MS. BLUE: It gives get the
7 Commission some time to look at what the
8 parties submit. The way the process is set up,
9 you have to submit a best and final offer in
10 the form of an actual surrounding community
11 agreement. They will see each other's best and
12 final offer.

13 They will have an opportunity to
14 look at that and determine what provisions they
15 believe would be fundamentally inconsistent.
16 Then they can get that to the Commission with
17 their reasons early enough in the 20-day period
18 so the Commission has some time to take a look
19 at it.

20 CHAIRMAN CROSBY: Okay. And on
21 section six, it says upon receiving the
22 petition, the Commission shall schedule a
23 hearing. Why did you say shall as opposed to
24 may?

1 MS. BLUE: We can change it to may.
2 The thought behind that sentence is so that we
3 keep the process moving along so if the
4 Commission looked at it and wanted to have a
5 hearing, we would schedule it far enough in
6 advance so that we could have the hearing
7 promptly after the 20-day period for the
8 arbitration.

9 But we can certainly change it to
10 may. I think the Commission at a minimum would
11 want to be able to say at a hearing that they
12 weren't going to consider the petition. So, I
13 think the likelihood of having some sort of a
14 hearing is probably pretty strong once a
15 petition is filed.

16 CHAIRMAN CROSBY: I don't have a
17 strong feeling. I'd be interested to know what
18 Commissioner McHugh thinks on this. But if
19 it's may -- My concern is everybody is going to
20 appeal. This whole thing maybe it's going to
21 happen once but if it's an invitation for
22 everybody to appeal just sort of frivolously,
23 why not appeal. This would give us a chance to
24 say to say forget about it. We're not going to

1 listen.

2 COMMISSIONER MCHUGH: It is designed
3 to -- We can only deny the petition in a
4 hearing. If we get a petition, we can't act on
5 it negatively unless we are in a hearing, it's
6 a public meeting. It's the five of us.

7 So, the idea there is we want to do
8 this really quickly and we want to schedule
9 these hearings in advance. And if we take a
10 look at three of them and say we could schedule
11 three in a day and we know exactly when they're
12 going to be held and when they're going to be
13 resolved. And everybody else does too. So,
14 that was the idea. But it could be may, we
15 could still do the same thing.

16 CHAIRMAN CROSBY: But do we want the
17 flexibility to say -- just to ignore the
18 petition, just not have a hearing. Just say
19 this is so clearly not inconsistent and we
20 don't want to have a hearing.

21 COMMISSIONER MCHUGH: But we're
22 denying the petition but we have to deny the
23 petition in a public meeting. That's the
24 problem.

1 CHAIRMAN CROSBY: Then it would have
2 to be shall; it couldn't be made.

3 COMMISSIONER MCHUGH: Yes.

4 COMMISSIONER ZUNIGA: Which is why
5 it's drafted shall.

6 CHAIRMAN CROSBY: He just said it
7 could be may.

8 COMMISSIONER MCHUGH: I was just
9 trying to be accommodating.

10 CHAIRMAN CROSBY: On a slightly more
11 substantive, although not much, item number
12 seven in reaching its decision, the arbitrator
13 shall select a best and final offer of one of
14 the parties and incorporate those terms into
15 the report. Incorporate only those terms into
16 the report? It sounded to me like this kind of
17 left if vague as to you incorporate those
18 terms, but by implication there might be other
19 terms.

20 MS. BLUE: They would incorporate
21 the terms of the best and final offer that they
22 selected. So, it would be all of the terms of
23 the best and final offer in their report.

24 CHAIRMAN CROSBY: And no others.

1 MS. BLUE: And no others, yes.

2 CHAIRMAN CROSBY: But I guess that's
3 clear. What is the report other than to say I
4 pick that one or I pick that one?

5 COMMISSIONER MCHUGH: It is.

6 MS. BLUE: It basically is. We had
7 this report concept in the reg. as we
8 originally drafted it. And as we've given some
9 thought to it over time, we've determined that
10 the best way for the arbitrator to consider it
11 is to have people submit an actual agreement.

12 So, the report concept is a little
13 not as necessary now, but there is some sense
14 that the arbitrator would write a report that
15 would explain why they picked the best and
16 final that they did. Then the actual best and
17 final would actually be most likely be an
18 attachment to that report.

19 So, it didn't make sense to take
20 that whole report concept out of the reg. It's
21 there, but the report will be some decisional
22 explanation as well as the best and final.

23 COMMISSIONER ZUNIGA: An offer can
24 contain -- it would likely contain, either

1 offer would like contain a number of things not
2 just one number say. It's something that we
3 tend to focus on quite a bit. There's claims
4 about A, B, C, D will happen and counterclaims
5 as to why some of it may or some of it may not
6 etc., etc., some of it is in the future. So,
7 the arbitrator doesn't have the discretion to
8 pick and choose A, B, C and F.

9 MS. BLUE: That's correct.

10 COMMISSIONER ZUNIGA: It can either
11 be one or the other.

12 MS. BLUE: Yes.

13 COMMISSIONER ZUNIGA: And in this
14 instance, the Commission could say F not A, B,
15 C and D but F is inconsistent with the purposes
16 of Chapter 23K.

17 MS. BLUE: Yes. If one of the
18 parties filed a petition and said to the
19 Commission I believe these sections, F being
20 one, is fundamentally inconsistent --

21 COMMISSIONER ZUNIGA: Right, not all
22 of it.

23 MS. BLUE: Not all of it. Then the
24 Commission could modify that. They can modify

1 it or cause it to be modified or they can
2 delete it. They would then have the discretion
3 to make that change.

4 COMMISSIONER CAMERON: If I remember
5 from the handbook or the arbitrator's handbook,
6 the arbitrator has the discretion also to say
7 this is fundamentally inconsistent, this one
8 piece; isn't that accurate?

9 MS. BLUE: We've taken out. If the
10 Commission is going to exercise that
11 discretion, we have taken it away from the
12 arbitrator in this draft of the regulation.

13 COMMISSIONER MCHUGH: But there is
14 no reason that in the report the arbitrator
15 couldn't say that. This is the best report
16 overall, but in --

17 CHAIRMAN CROSBY: -- best proposal.

18 COMMISSIONER MCHUGH: -- best
19 proposal, but in provision -- so I am
20 constrained to accept this report. But in
21 provision F there is a requirement that all of
22 the Planning Board regulations be waived and
23 not apply to anything. And I think that is
24 fundamentally inconsistent with the statute.

1 You ought to take a look at that. That's what
2 the arbitrator can do. The final decision is
3 up to us but that discretion is still there for
4 the arbitrator.

5 CHAIRMAN CROSBY: Would it clarify
6 anything if in paragraph seven that last
7 sentence it said and incorporate only those
8 terms into the report?

9 MS. BLUE: You want the arbitrator
10 to express in their report what they think.
11 And I think Commissioner McHugh has raised a
12 very good point, which is if the arbitrator has
13 a strong idea of a provision that may be
14 fundamentally inconsistent, it would be helpful
15 for them to tell us that. So, what they would
16 incorporate into their report is a decision as
17 to which best and final they chose. But if
18 they had concerns about certain provisions, it
19 would be helpful to have them point that out to
20 us. So, I wouldn't want to constrain the
21 arbitrator too much in their report.

22 CHAIRMAN CROSBY: Where is the
23 reference to the arbitrator picking only one or
24 the other of the two, which paragraph?

1 MS. BLUE: It's in paragraph seven
2 where it's right above the sentence that we
3 deleted with the arbitrator's discretion.

4 COMMISSIONER MCHUGH: Yes. In
5 reaching its decision the arbitrator shall
6 select the best and final offer of one of the
7 parties and incorporate those terms in the
8 report.

9 CHAIRMAN CROSBY: Okay.

10 COMMISSIONER MCHUGH: The report
11 concept is not only I think this is good or
12 bad, but it is also some -- gives the
13 arbitrator a basis for saying why he or she
14 acted and that's helpful.

15 COMMISSIONER ZUNIGA: And we should
16 remember that at their disposal is also, at the
17 arbitrator's and the applicants and the
18 communities are also all of the other
19 agreements, which at that point with other
20 surrounding community for example.

21 MS. BLUE: Yes. The party can file
22 other surrounding community agreements for the
23 arbitrator to view in terms of thinking about
24 what's reasonable, what's not reasonable. They

1 can show agreements that were entered into by
2 the applicant itself or other applicants in
3 similar situations.

4 COMMISSIONER ZUNIGA: So, it could
5 be somebody else's agreement?

6 MS. BLUE: Yes.

7 COMMISSIONER MCHUGH: Wait a minute,
8 the arbitrator is limited to picking one --

9 COMMISSISONER ZUNIGA: For reference.

10 COMMISSIONER MCHUGH: Oh, for
11 reference. Sorry, I misunderstood.

12 MS. BLUE: Yes, for reference.

13 COMMISSIONER CAMERON: And we feel
14 like that discretion should be taken away from
15 the arbitrator because it comes to us now?
16 Isn't there a way to let them make that
17 decision and they still have the right to come
18 to us after the fact and say we disagree, we
19 are petitioning?

20 CHAIRMAN CROSBY: That does do what
21 you were concerned about, which takes off the
22 pressure for the parties to come to the center.
23 That was the whole idea. If the arbitrator has
24 to pick one or the other period, then that

1 really puts the pressure on the parties to
2 compromise. If the arbitrator has room to
3 negotiate or pick and choose --

4 COMMISSIONER CAMERON: Not pick and
5 choose, but if there's one thing that -- I
6 would not want them to be able to pick and
7 choose. But if there's one issue that is
8 fundamentally inconsistent, the ability to do
9 that may save -- I guess they'll come to us
10 anyway.

11 CHAIRMAN CROSBY: I was never
12 comfortable with that language because I
13 thought it was too vague. It left the
14 arbitrator --

15 COMMISSIONER CAMERON: But now it's
16 vague for us.

17 CHAIRMAN CROSBY: Yes, but if we're
18 going to have the Commission -- if we're going
19 to have a failsafe, there's got to be some
20 flexibility. It's now written much more
21 clearly than consistent with MGL. It's
22 fundamentally inconsistent stronger than
23 consistent with. But I don't see why we want
24 to give that authority back to the arbitrator

1 and to us.

2 So, where are we?

3 MR. ZIEMBA: I would just like to
4 make one clarification. In regard to the
5 example that I mentioned, I just wanted to note
6 that I think there is difference between being
7 compelled by an arbitrator to support an
8 applicant versus an agreement to voluntarily do
9 that. I just wanted for the purposes of the
10 record to make sure that we knew that.

11 CHAIRMAN CROSBY: I thought that
12 that was a very good example.

13 So, we have a proposal to adopt this
14 reg. Are we ready to vote on it?

15 MS. BLUE: So, we would adopt this
16 as an emergency regulation. We would need the
17 vote of the Commission to do that. Then we
18 would take it forward. And then we would move
19 it through the regular process once we've
20 adopted it as emergency regulation.

21 CHAIRMAN CROSBY: Right. And if we
22 adopted this, the handbook would be adjusted
23 accordingly.

24 MS. BLUE: Yes, that's correct.

1 COMMISSIONER CAMERON: How would the
2 process of adopting it affect Region B, which
3 starts immediately?

4 MS. BLUE: This would go into effect
5 as soon as it was filed. So, we would file it
6 probably tomorrow morning. We would get the
7 word out to the Region B folks so that they
8 know.

9 CHAIRMAN CROSBY: Are they going
10 into arbitration?

11 COMMISSIONER CAMERON: Yes.

12 MS. BLUE: If they are, it starts
13 tomorrow.

14 CHAIRMAN CROSBY: Commissioner
15 McHugh, do you want to move?

16 COMMISSIONER MCHUGH: I move that
17 the Commission adopt on an emergency basis 205
18 CMR 125.01(6)(c) as drafted in the handbook -
19 in the Commissioners packet, period.

20 CHAIRMAN CROSBY: Second?

21 COMMISSIONER ZUNIGA: Second.

22 CHAIRMAN CROSBY: With modest
23 enthusiasm. Any further discussion? All in
24 favor, signify by saying aye, aye.

1 COMMISSIONER MCHUGH: Aye.

2 COMMISSIONER CAMERON: Aye.

3 COMMISSIONER ZUNIGA: Aye.

4 COMMISSIONER STEBBINS: Aye.

5 CHAIRMAN CROSBY: Opposed? The ayes
6 have it halfheartedly --

7 COMMISSIONER MCHUGH: -- but
8 unanimously.

9 CHAIRMAN CROSBY: -- but
10 unanimously. We are now to Director
11 Durenberger, am I right? Yes.

12 DR. DURENBERGER: Good morning Mr.
13 Chair, Commissioners. I'll have to ask you to
14 shift gears now and put on your racing hats,
15 dynamic hats.

16 I have an administrative update for
17 you today. I've been kind of batching it.
18 We've had a number of minor things that have
19 come in over the last couple of weeks. I'm
20 going to summarize them for you briefly.

21 We are recruiting staff, seasonal
22 staff for our two racing meetings, our harness
23 racing meeting and our thoroughbred racing
24 meeting. As we're going to see a little bit

1 later, we have a request for a schedule
2 amendment that has necessitated us to reopen
3 some searches and increase in particular the
4 number of staffing, testing barn staff that we
5 are trying to recruit.

6 But those efforts are ongoing and
7 I'm happy to report that the background check
8 process this year, since it has come in-house,
9 has been much more efficient from our
10 perspective. So, things are moving along in a
11 timely fashion.

12 We have received from Plainridge
13 Racecourse a list of key operating personnel
14 and racing officials also for background
15 checks. We've had a meeting this week with the
16 State Police with the gaming enforcement unit.
17 So, everybody's on the same page as to how
18 those checks will transpire and the timeline.
19 So, those are beginning. I anticipate coming
20 back to you at the April 3 meeting with the
21 list of those folks to request your approval.

22 For a matter of establishing the
23 record, we'll put on our simulcasting hats for
24 a minute. The Commission does regulate

1 simulcast wagering under the Interstate
2 Horseracing Act. And we've got a number of
3 entities that have either switched names that
4 they're doing business under or have new
5 operators largely as a result of expanded
6 gaming acts in other states.

7 So, as a matter of establishing the
8 record, I just wanted to let you know about
9 some of those because our licensees do have to
10 have the entities that they do business with
11 approved by the Commission.

12 Last year, just as a reminder, you
13 did delegate to the Director of Racing the
14 authority to approve simulcast requests. And
15 so, under that authority, I report to you that
16 we're approving the following: there was an
17 entity in Ohio called Lebanon Raceway. Lebanon
18 Raceway is no longer doing business. It is now
19 Miami Valley Gaming. So, we are approving
20 amendments to exhibits for that entity.

21 We've got Belterra Park, which is
22 just outside of Cincinnati. That used to be
23 River Downs. So, we'll be approving that name
24 change request. And then over in Indiana, we

1 have Indiana Downs now operating under the name
2 Indiana Grand Racing Casino. There will be
3 additional changes coming up this year,
4 particularly in Ohio. But I just wanted to
5 report to you and establish the record on those
6 three changes. Any questions there before I
7 move on?

8 The Racing Commissioners

9 International annual conference is coming up in
10 the first week of April. It's in Lexington,
11 Kentucky this year. There are a number of
12 agenda items that the Model Rules Committee
13 will be considering.

14 As you know, I represent the
15 Commission on that committee. Just to give you
16 a flavor of why we made the recommendations to
17 adopt medication rules by reference, I want you
18 to know that there are no fewer than nine rule
19 amendments to medication and veterinary
20 practice regulations that are on the table for
21 consideration.

22 So, that it is a living, breathing
23 document those medication rules as we put forth
24 to you. And this is one of the reasons why we

1 recommended that they be adopted by reference.

2 There's also a new wager type, very
3 interesting, that we're going to be here about,
4 a Social Pick N, a very interesting new type of
5 wager that's being offered in other
6 jurisdictions. And has come before the Model
7 Rules Committee for a number of practical
8 reasons. But I look forward to the day in
9 Massachusetts where we're able to amend our
10 pari-mutuel and simulcast statutes and
11 regulations that we can consider some of these
12 newer and more innovative wagers, because
13 they're building tremendous excitement with the
14 pari-mutuel customers. And they're part of the
15 growing wager initiative that we're starting to
16 try and undertake. So, we've got that coming
17 up.

18 So, speaking of rulemaking, I guess
19 that would segue into item 5b, which was the
20 emergency regulations part of the agenda. We
21 had come before you with some proposed
22 regulations that we were proposing to adopt by
23 emergency.

24 The circuit breaker was thrown along

1 the way, if you will. And we went back and
2 looked at them, the regulations that we
3 proposed had a number of moving parts within
4 them.

5 We started looking at what other
6 jurisdictions did and what the model rules
7 approach was. We found that jurisdictions are
8 all over the map on several of these areas,
9 particularly when it comes to prohibited
10 conduct among racing officials and conflicts of
11 interest.

12 And in fact, within the model rules
13 themselves, there is a prohibited conduct among
14 racing officials rule. And then in another
15 chapter there is a conflict of interest
16 regulation that is actually a bit in conflict
17 with that. So, we decided at this time to
18 withdraw those as emergency regulations.

19 We have a big comprehensive package
20 of licensing amendments that will be coming
21 before you in July or June or perhaps earlier,
22 but it's not too soon to start looking at it.
23 And I think that these, everything we're trying
24 to accomplish here we can take care of as part

1 of that more comprehensive package. We'll have
2 more time to do more research into other
3 jurisdictions, other approaches and get more
4 stakeholder comment as part of the regular
5 rulemaking process. So, that would strike 5b.

6 CHAIRMAN CROSBY: The memo stayed in
7 the books anyway. And I thought your
8 discussion of the conflict issue was a really
9 interesting, well-written, articulate,
10 thoughtful piece. I'm looking forward to
11 trying to figure out how to join that issue at
12 some point.

13 DR. DURENBERGER: Mr. Chair, thank
14 you. And if you asked me to rewrite it today,
15 it would be three times as long based on new
16 information. So, you're lucky that that was a
17 one-shot deal.

18 That will take us to racing schedule
19 amendment requests from our two licensees. The
20 first one in the book comes to us from Suffolk
21 Downs. This is a request dated March 14. I
22 think that we have been for about the last six
23 months talking to you about we anticipated a
24 number of potential schedule request amendments

1 for a number of circumstances that are unique
2 to this year and potentially to next year as
3 well.

4 Again, last year you did delegate to
5 me the authority to approve requests to
6 schedule, to amend schedules. Because this and
7 the Plainridge request involve changing the
8 opening day, I thought that that was a more
9 substantive request which is why I bring it to
10 you.

11 The letter from Suffolk Downs
12 highlight some of the uncertainties that we've
13 been alluding to or actually not alluding to
14 but being fairly explicit about. There's a
15 statement they did not accompany this with a
16 letter from their horseman's group, but I have
17 confirmed with counsel that the horseman's
18 group is in agreement with moving the opening
19 day from June 2 to May 3, which is a Saturday.
20 Accompanying the letter is a proposed schedule
21 now. This is a 100-day schedule beginning May
22 3 and continuing to November 1. And I do
23 recommend that the Commission approve.

24 CHAIRMAN CROSBY: Remind me. Has

1 Suffolk Downs committed to a meet next year
2 independent of the gaming license or not?

3 DR. DURENBERGER: In 2015?

4 CHAIRMAN CROSBY: No, this year
5 2014.

6 DR. DURENBERGER: 2014, yes.

7 CHAIRMAN CROSBY: So, there's a meet
8 at Suffolk Downs at the moment 100 days no
9 matter what happens with the gaming license?

10 DR. DURENBERGER: Currently
11 scheduled from June 2 until I believe it was
12 November 28 or ninth. This moves up the
13 opening day, moves up the whole schedule.

14 COMMISSIONER MCHUGH: Moves the
15 whole schedule up, yes.

16 COMMISSIONER STEBBINS: Because it
17 ties in with the Kentucky Derby, generally does
18 that draw more fans out to the racetrack.

19 DR. DURENBERGER: Big day. Yes,
20 Commissioner, big day.

21 COMMISSIONER MCHUGH: And then it
22 ends early before everybody's freezing. So,
23 the whole thing makes sense.

24 DR. DURENBERGER: I remind

1 Commissioner McHugh that at one time they did
2 race year-round in Massachusetts.

3 COMMISSIONER MCHUGH: And they
4 froze, they still froze.

5 DR. DURENBERGER: Having spent a
6 couple of winters at Aqueduct in New York, I
7 can tell you it's not a fun experience. It's a
8 tough way to make a living.

9 CHAIRMAN CROSBY: With any luck,
10 they'll still be freezing at Fenway Park. Any
11 further discussion? Do we want a motion,
12 Commissioner Cameron?

13 COMMISSIONER CAMERON: I move that
14 we accept the proposed racing schedule
15 amendment for Suffolk Downs.

16 CHAIRMAN CROSBY: Second?

17 COMMISSIONER MCHUGH: Second.

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

20 COMMISSIONER MCHUGH: Aye.

21 COMMISSIONER CAMERON: Aye.

22 COMMISSIONER ZUNIGA: Aye.

23 COMMISSIONER STEBBINS: Aye.

24 CHAIRMAN CROSBY: Opposed? The ayes

1 have it unanimously.

2 DR. DURENBERGER: Thank you,
3 Commissioners. The next letter in your packet
4 comes to us from Plainridge Racecourse.

5 As I highlighted to you at a
6 previous meeting, horses and heavy machinery do
7 not mix. So, this is a letter from Plainridge
8 requesting an amendment to their schedule in
9 order to ease the conflicting interest of
10 construction and live racing with safety and
11 expediting the construction timeline as
12 ancillary benefits.

13 And they are not ancillary to us.
14 Safety is job one on the racing side. And
15 expediting the construction timeline, I think,
16 is probably job one for the Commonwealth.

17 So, we are certainly happy to
18 consider this request. This one is accompanied
19 by a letter from the organization representing
20 the occupational licensees at the racetrack.
21 This is the Harness Horseman's Association of
22 New England. And you'll see in it that the
23 horseman's group considered the balance between
24 disruptions to both the horsemen and the

1 construction team.

2 And I think it illustrates an
3 understanding on the part of the harness
4 horsemen that a rising tide lifts all boats.
5 So, they are looking at the fact that some
6 compromise to the schedule in the end is in the
7 long-term benefits of everybody in the
8 industry.

9 So, I am happy to approve this.
10 This would actually not change the schedule in
11 terms of when it started, but it will switch
12 the racing days to Wednesday, Saturday and
13 Sunday in order to enable a fuller construction
14 schedule during the week. Again, I would
15 recommend that the Commission approve this
16 request to amend the schedule.

17 COMMISSIONER MCHUGH: What happens
18 on Wednesdays? The horses just -- Well, 4:00
19 but in September, October and November, it's
20 1:00. So, the horses just have to put up with
21 it.

22 DR. DURENBERGER: Or it may be that
23 the construction, interior work only or
24 whatever is going on at that point.

1 COMMISSIONER MCHUGH: I see, horse
2 friendly construction.

3 DR. DURENBERGER: Horse friendly
4 construction, yes, or in the alternative if we
5 could come up with a way to do three weekend
6 days, I'm sure that they would anticipate doing
7 that. So, I recommend that the Commission
8 approve this request.

9 COMMISSIONER STEBBINS: Mr. Chair,
10 I'd move that the Commission accept the revised
11 racing schedule for 2014 for Plainridge
12 Racecourse as presented.

13 CHAIRMAN CROSBY: Second?

14 COMMISSIONER CAMERON: Second.

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

17 COMMISSIONER MCHUGH: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER STEBBINS: Aye.

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

23 DR. DURENBERGER: Thank you,
24 Commissioners. And that concludes the racing

1 report for today.

2 COMMISSIONER MCHUGH: Great, thank
3 you very much.

4 COMMISSIONER CAMERON: Thank you,
5 Director.

6 COMMISSIONER ZUNIGA: Thank you.

7 CHAIRMAN CROSBY: It's quarter of
8 12. So, we'll see whether we can get
9 everything up to Ombudsman Ziemba's, then take
10 a break. Let's go ahead with research and
11 problem gambling, Director Vander Linden.

12 MR. VANDER LINDEN: Good morning.
13 So, it's still National Problem Gambling
14 Awareness month. We're on the backend of it
15 right now. But I still think it's an important
16 time to highlight some of the relationships
17 that we've developed through the Commission.
18 And highlight some of the great work that's
19 being done here in the Commonwealth.

20 I think our ability to effectively
21 mitigate problem gambling, to address some of
22 the social tasks is dependent not in small part
23 but in quite a large part on some of the
24 partnerships that we have here.

1 I think I said it in the last
2 meeting, but Massachusetts is home to some of
3 the most amazing researchers, to some of the
4 most talented individuals in terms of policy
5 and advocacy and clinicians that I've ever met
6 in the United States, not least of which and in
7 fact probably at the front of the pack is
8 sitting next to me, Marlene Warner with the
9 Massachusetts Council on Compulsive Gambling.

10 And I invited her here specifically
11 today to highlight a little bit about the work
12 that they are doing, to highlight the power of
13 the relationship that we have with her and to
14 just kind of share some of her wisdom from this
15 field. With that I'll just turn it over to
16 Marlene.

17 MS. WARNER: Thank you very much,
18 Mark. And thank you to all of you. You know I
19 think one of the things that's interesting is
20 the Commission has really been involved in the
21 issue of problem gambling from day one. I can
22 attest to the fact that I think Chairman Crosby
23 was named and probably moments later I emailed
24 him and got a very quick response. And it

1 really has been that level of commitment from
2 day one. And I really greatly appreciate that.

3 I also appreciate the importance
4 with which you see yourselves in terms of
5 stewards of public safety as it relates to the
6 problem gambling provisions. A lot of time and
7 effort, as you all know, did go into writing
8 those pieces of the statute.

9 And I really can't say enough of
10 thanks for the importance with which you have
11 taken those pieces and really move forward,
12 including having one of the only directors of
13 problem gambling research in the country and a
14 very good one here in terms of having Mark join
15 your team.

16 I could be here all day telling you,
17 I'm not going to do that. I'm very aware of
18 the fact that I'm between you and lunch. But I
19 am going to tell you a little bit about problem
20 gambling awareness month and some of the
21 activities that are happening. And then also
22 just kind of give you an update, because I've
23 not been able to speak with you, obviously, as
24 an entire Commission since one of your very

1 first forums, which happened in June of 2012 in
2 the great city of Lynn. And give you some
3 updates as it relates to that.

4 So, for Problem Gambling Awareness
5 month, a lot has happened. Dr. Debi LaPlante
6 was here from Harvard Medical School's Division
7 on Addictions at Cambridge Health Alliance two
8 weeks ago and talked a little bit about
9 national screening day, which by all accounts
10 I've heard had gone very well.

11 And the Council was very much
12 involved in that both in encouraging the
13 clinical screenings but also encouraging the
14 screenings at both of the racetracks. And
15 making sure that folks again across the
16 Commonwealth were looking at some well tested
17 screens. So, making sure that folks are --
18 that this issue is being brought to the
19 forefront.

20 This is called the invisible or
21 hidden addiction. And oftentimes that's where
22 it stays. So, drawing some awareness to this
23 is just as important as screening folks who may
24 have a problem getting them to the right help.

1 In addition to that, there's a lot
2 of work that's happening and it is happening
3 with some great collaboration like the Gaming
4 Commission. Mark and Elaine have been great
5 about looking at writing blogs and certainly
6 there's an opid (PHONETIC) that's be formed
7 right now and hopefully that will be picked up.

8 We've also worked greatly with the
9 people that we contract with and who have been
10 a good partner through all of this, which is
11 the Department of Public Health's Bureau of
12 Substance Abuse Services. And one of the
13 things we've advocated for years and they've
14 just been able to do which is fantastic news is
15 also hire a director of problem gambling.
16 Stefano Keel or Steve Keel is that new
17 director.

18 So, we're thrilled to be working
19 with him in some of these same areas for
20 Problem Gambling Awareness month.

21 The other thing I should make
22 mention of, hopefully folks will see them in
23 their communities, but if not I have some
24 extras. I am never above handing things out.

1 There are these very bright yellow forms. And
2 one of the things we've done is very basic
3 campaign which is to get these posters out and
4 just get our helpline number out which is 1-
5 800-426-1234 to just draw some attention to
6 folks needing help and getting information out.

7 What I want to tell you a little bit
8 more though about is some of the work that has
9 been happening. In addition to Problem
10 Gambling Awareness month, and it is a month.
11 It was a week in previous years. And it's a
12 whole month because there are so many
13 activities happening. As you all know, we work
14 in areas of advocacy, training and education,
15 helpline and referral and public awareness and
16 recovery support.

17 Again, a lot has taken place. It's
18 been a blessing in some ways that the issue has
19 been raised. We've been in existence for 30
20 years, have been really trying to pull people
21 to the table. People are readily interested
22 now and wanting to be trained, wanting to know
23 more about this issue.

24 So, we have just completed a very

1 successful training season in the fall and are
2 about to embark on a very robust training
3 program this spring. One of the items that
4 will be included there is the Mass. Council on
5 Compulsive Gambling Training Institute.

6 Currently, we have over 40
7 clinicians who have signed up to take an eight-
8 week course in the Springfield area. Again,
9 all of whom are interested in knowing more
10 about this issue, how to screen and how to pull
11 more folks into treatment and use science-based
12 methodologies to approach this issue.

13 We always do a conference. This
14 year we decided to do a two-day conference.
15 And we have some really tremendous speakers
16 including some of yourselves and Mark coming to
17 the conference. That's going to be taking
18 place in Natick and we're quite pleased about
19 that.

20 One of the other nice things and I
21 think Mark will be saying this more probably at
22 future Commission meetings is talking about the
23 community forum that you're going to be hosting
24 in collaboration with the Department of Public

1 Health and we are quite excited about that.
2 Really giving another opportunity to
3 communities to voice some of their concerns and
4 to have those concerns met with some
5 opportunities and some other options for them.

6 We just launched a new website. And
7 this is certainly a pretty standard practice,
8 but one of the things that is neat for us is to
9 see how people are reaching out for help. Our
10 helpline has been around since 1983. Our
11 founder, Tom Cummings, who struggled with
12 gambling in his own lifetime started that at
13 his kitchen table.

14 But we know it's not the way most
15 people reach out for help. Hardly anyone of us
16 probably pick up the phone anymore. You go to
17 the Internet. So, what we're trying to do is
18 build a much more robust way for people to
19 gather information online and get to
20 information in the privacy of their homes or in
21 a more discreet way.

22 One of the other things that we've
23 done is in the past we had had trial period for
24 an online chat program. And we've implemented

1 that in a 24-hour period. That's rolling out
2 and we're going to kind of do a hard launch
3 later on this spring, but we're rolling it out.

4 And it's wildly successful. People
5 are 2:00 a.m. who are waking up with an urge to
6 gamble and don't want to get in the car and
7 drive down to that casino or to go buy that
8 lottery ticket are certainly interested in
9 reaching out and talking to someone who
10 understands the problem and who can help. So,
11 that's one of the ways that they can do that is
12 via an online chat in addition to certainly our
13 traditional helpline.

14 One of the other things that might
15 be of interest to you is that we have run and
16 we are running another one in May, a weekend
17 retreat. This is an opportunity. It's in
18 Bolton at a place called the International. We
19 hold this retreat so that it's a place where
20 people can go and get away from all of the
21 different pressures of their lives including
22 the impulses that often drive them to go
23 gamble.

24 They have to bring a support person,

1 typically a family member with them to this
2 retreat. It's from Friday to Sunday. It's
3 really to try -- We bring clinicians in so that
4 they can really try and spend some time
5 figuring out, parceling out what they want to
6 do next, how they're going to get better, what
7 are some of the things that they need.

8 Then we connect them with help
9 outside of that weekend. It's ridiculously
10 powerful for these individuals and we've heard
11 so many good stories from the ones that we've
12 held in the past about success rates.

13 CHAIRMAN CROSBY: Do they have to
14 pay for that?

15 MS. WARNER: They don't. It's
16 something that we pay for.

17 CHAIRMAN CROSBY: It's an overnight?

18 MS. WARNER: Yes, exactly. They
19 have to commit to being involved in Gamblers
20 Anonymous, a 12-step program. They have to be
21 committed to going to treatment. And they have
22 to commit to bringing a support person so that
23 you don't try to do this alone, which is often
24 the difficult piece. It's a small thing. It's

1 for 20 folks but it's powerful.

2 I think some of you have heard about
3 the statewide survey we've done. And we've
4 done some other surveys. We're actually
5 expecting some more information out of work
6 that we're doing with Institute for Asian-
7 American Studies at UMass Boston with Dr. Paul
8 Watanabe and Dr. Carolyn Wong.

9 Those are some of the types of
10 projects we're trying to bring some more
11 information in. Obviously, we are eagerly
12 awaiting the robust agenda, research agenda
13 that's going to come forward or is in process
14 from the Mass. Gaming Commission. But we are
15 certainly collecting information which is
16 informing some of our programs. All of that is
17 available on our website.

18 Another interesting piece, and I
19 don't know that I've talked much with any of
20 you about this is we started and we're still
21 very much in the initial phase of this, but
22 working on a program called Square One. Square
23 One is a program -- I didn't think I could hire
24 many more people who had been to prison for

1 their gambling disorder. I just don't have the
2 space nor the money to do. But we needed to
3 find a place for folks to restart their lives.

4 And there's a lot of individuals who
5 are working at a high level attorneys, business
6 owners, folks, CFOs of this sort who have
7 education and experience that would warrant
8 them on doing something at a pretty high level
9 but are coming out of prison, and not that
10 there's anything wrong with these professions,
11 but certainly moving into janitorial services
12 or food services and not using their knowledge
13 base for good and feeling pretty demoralized
14 around that.

15 So, we're trying to put these folks
16 back to work in a place where they're not as
17 tempted as they once were. Maybe they don't
18 have the same access to money that they once
19 did or the same buying power that they once
20 did. But getting them connected to resources
21 and kind of managing them.

22 And I think that's one of the things
23 different. When we were talking to reentry
24 programs, first of all, they didn't know what

1 to do with someone with a gambling problem.
2 They know what to do with folks who have mental
3 health issues or with kind of traditional
4 mental health issues or with substance abuse
5 issues, but they really didn't know what to do
6 about this gambling.

7 So, we're trying to educate those
8 folks and then do some case management so that
9 we can help those folks figure out what to do
10 in the middle of March Madness when someone
11 comes by and wants you to buy into a pool and
12 how you handle that and other similar type
13 things. So, that's just getting off the
14 ground.

15 We're doing a lot of great work with
16 county, state and federal probation and parole
17 in terms of screening and getting information
18 from those folks and screening them out. And
19 they're very, very excited because you talk to
20 any parole officer or probation officer and
21 they can tell you about a number of people in
22 their caseload who have dealt with a gambling
23 disorder and they really don't know what to do
24 with them.

1 So, I can go on and on. We have a
2 research luncheon happening in Western Mass.
3 right now as we speak. Dr. Sara Nelson is out
4 there talking about some of her current work
5 with about 25 clinicians primarily from the BHN
6 System. So, there's a lot of things afoot.
7 And I'm happy to answer questions from any of
8 you.

9 One of the other kind of really
10 important pieces that we've put in place I'd
11 say in the past few years is to reinvigorate
12 the Mass. Partnership on Responsible Gaming.
13 This group was originally initiated by my
14 predecessor Kathy Scanlon the Executive
15 Director of the Mass. Council at the time to
16 really initiate making sure that both our group
17 and the industry came together to make sure
18 problem gambling provisions were part of any
19 expanded gambling act. And obviously the group
20 was fairly successful.

21 The original members there were the
22 original players in Massachusetts, Plainridge,
23 the Mass. State Lottery, Suffolk Downs and
24 Mohegan Sun. Mohegan Sun clearly not being a

1 member in Massachusetts but recognizing their
2 responsibility to Massachusetts players.

3 Last year these folks started to
4 reconvene and start meeting. And last year
5 they joined in a more formal way. In addition,
6 to those original members, Plainridge, Lottery,
7 Suffolk Downs and Mohegan, were Wynn and MGM
8 who joined a little more recently.

9 I'm happy to announce that Mohegan
10 Sun, Plainridge and the Lottery have recently
11 recommitted for another year-long membership.
12 So, they're really owning up to their
13 responsibility. And this group what's nice is
14 occasionally we have to be sensitive about the
15 fact that we have competitors in the room and
16 how we address some of the issues, but they've
17 come together really cohesively in terms of
18 what is our mission. And that is to address
19 problem gambling in Massachusetts. And not
20 just to address it but to also approach it in
21 terms of a responsible gaming way.

22 So, they've done a lot in sponsoring
23 conferences, our 30th anniversary events, doing
24 a lot around supporting the survey and data

1 collection, a lot with training employees.

2 Recently, I spent some time down at
3 Plainridge and trained the employees. And they
4 were really -- The employees know. They know
5 what's going on. They know when someone's
6 struggling, but they don't often know what to
7 do about it. But they are very sincere in
8 wanting to address the topic and knowing the
9 appropriate and sensitive way to do it. So,
10 they were fantastic. I trained two different
11 groups of employees and they were great.

12 Prior to that, we have trained
13 almost every lottery employee in this state who
14 again I think are on the front lines. One of
15 the things that I'm very sensitive to is that I
16 can be on my phone in Boston talking with
17 someone of struggling with the disorder, but
18 they're dealing with it face-to-face. So, I am
19 so pleased that the Mass. State Lottery has
20 really committed to addressing this both
21 through face-to-face trainings but also I've
22 done a project with the North American State
23 and Provincial Lotteries Group in terms of
24 building a video. And that is going to be

1 something that is going to make sure that every
2 employee is trained and has some sense of what
3 to say and do and what are the resources that
4 are available.

5 For Problem Gambling Awareness Month
6 a lot of these companies have put out signage
7 and are doing work with their employees.
8 There's also a PSA that was developed by some
9 students out of Suffolk University that
10 basically
11 -- it's a great video actually. I don't know
12 if it's actually playing on your website.
13 Elaine would know that. But I think that's one
14 of the intentions.

15 And it's a young boy who is trying
16 to get his parents to come watch a basketball
17 game he's in. And the dad is too involved in
18 his gambling to be able to make it to the game.
19 And it's called there are some games you
20 shouldn't miss. It's kind of very heart-
21 wrenching video, but it kind of gets to the
22 point. So, those are also being played at some
23 of these facilities.

24 I think the point is that there's a

1 number of folks coming together. Last May, two
2 of the Commissioners were available to be at a
3 common agenda meeting. And there's a number of
4 stakeholders involved. So, we're not doing
5 this alone and we couldn't do it alone. I
6 think it takes a lot of effort. We have put
7 out a lot of work and effort with the
8 municipalities. And that is something that the
9 MPRG members are doing. So, I just wanted to
10 also give them some credit.

11 We have a number of them here.
12 Domenic Longobardi and Steve O'Toole are here
13 from Plainridge. You guys know them. Gary
14 Luderitz is here from Mohegan Sun. And if you
15 haven't read about her yet, she is the hottest
16 ticket in town now, Beth Bresnahan from the
17 Mass. State Lottery the new Executive Director
18 of the Mass. State Lottery who has been
19 recently appointed to that position.

20 CHAIRMAN CROSBY: Welcome, let me
21 interrupt. I didn't realize you were here. We
22 hadn't met, but we are really pleased to have
23 you here. Thank you very much for coming.
24 We're looking forward to working with you on a

1 whole host of matters.

2 MS. WARNER: I'm happy to answer any
3 questions. Again, I could be here all day
4 telling you about all of the things that are
5 going on. But we are pleased, we are pleased
6 that you're such a good partners and that
7 there's a lot of good efforts going on in
8 Massachusetts.

9 COMMISSIONER MCHUGH: What does the
10 training that you gave the Lottery employees
11 consist of?

12 MS. WARNER: It's a great question.
13 It's a pretty basic overview talking about --
14 This is always a fascinating piece, which is
15 first of all sitting down and starting to talk
16 about what is gambling. People can really get
17 confused as to what gambling is versus problem
18 gambling versus social gambling. So, talking
19 about the definition of gambling and getting
20 into that.

21 Then I often will say whether it's
22 at the Lottery or elsewhere, how many people
23 think what you offer is gambling. Because
24 people have a really moralistic view connected

1 to the definition. Then we go into a little
2 bit more around talking about the DSM-V
3 criteria and what that kind of looks like, not
4 from a clinical piece but really how do those
5 signs and symptoms show up.

6 Then a little bit more about what is
7 the conversation you're going to have with that
8 person that's standing in front of you who you
9 think may have a problem or when they approach
10 you.

11 Some of the sales agents for the
12 Mass. State Lottery or any lottery have quite a
13 relationship because they have their normal
14 route in terms of where they're responsible for
15 going. And they know their customers. And the
16 customers are in there every day. So, how do
17 you use that close relationship to make some
18 suggestions that they may want to get some
19 help.

20 We're very, very clear with
21 employees whether it's at a racetrack or a
22 lottery or elsewhere, you're not a clinician.
23 You're not an attorney. You're not a financial
24 planner. Don't go down those roads. But you

1 have some resources available that you could
2 really help someone with.

3 COMMISSIONER MCHUGH: How long does
4 it take?

5 MS. WARNER: Typically, I'm in a
6 training for hour and a half to two hours with
7 them.

8 COMMISSIONER MCHUGH: I ask those
9 questions because I'd be fascinated to take
10 that training. And I wonder if -- We don't
11 have the contact with potential customers but
12 it would be good to know at a granular level,
13 at least I would.

14 CHAIRMAN CROSBY: That's a great
15 idea.

16 COMMISSIONER MCHUGH: And we do bump
17 into people who may because of our status
18 confide in us that they've got a problem.

19 MS. WARNER: That's a good point.

20 CHAIRMAN CROSBY: Even beyond that
21 just familiarizing us and teaching us. So,
22 Janice and Rick if we could put that together,
23 put together a training session for the
24 Commission and maybe other staff who would be

1 interested. That's a great idea. Thank you

2 COMMISSIONER STEBBINS: In picking
3 up on that training, have you ever matched up
4 your training kind of stacks up against the
5 problem gaming training offered by a casino?

6 MS. WARNER: We've not. That's an
7 excellent point. I would kind of defer to the
8 folks at Suffolk or the folks at Plainridge in
9 terms if they've ever tried to do any other
10 type of training other than ours. I don't
11 think they have.

12 When we were at Plainridge, they
13 also had folks come in from Penn National. And
14 they do have a program that they have done at
15 other sites. They were quite pleased and asked
16 if they could use some of my slides in the
17 future. So, I'm guessing that they thought
18 what we were offering was useful.

19 Obviously, in terms of some of these
20 other companies, Wynn and Mohegan Sun and MGM,
21 they have companywide programs. So, whatever
22 licensees more forward or applicants move
23 forward as licensees, my assumption is that
24 they will take what they currently have and

1 then probably look at how to customize it for
2 the Commonwealth. But I don't know to be
3 perfectly honest.

4 COMMISSIONER STEBBINS: I had the
5 chance to watch -- I gave Mark a little bit of
6 grief, because he wasn't familiar with the
7 webinar I watched yesterday tailored towards
8 the issues of vulnerable student populations.
9 Interestingly enough, it's National Responsible
10 Gaming month and today kicks off the March
11 countdown or the final four countdown on
12 college basketball and the billion dollar give
13 away.

14 What interested me and a point that
15 I picked up was how much time they spent in the
16 presentation talking about reliable data coming
17 out of their sampling of surveys to college
18 students. They're either over -- most likely
19 they are under valuing how much time they are
20 spending on gaming as opposed to being accurate
21 in their survey responses.

22 Is that typical across the board for
23 a lot of the survey work that we're doing that
24 we're going to find people kind of

1 underestimating the amount of time and the
2 amount of money that they spend on gaming?

3 MR. VANDER LINDEN: Yes. I would
4 say that's a great point and I think it is true
5 across the general population that people
6 typically underestimate that amount. And
7 honing in on an accurate figure when we start
8 talking about what are people's actual gambling
9 behaviors is really difficult.

10 And it's something that's certainly
11 within our SEIGMA group as we have that part of
12 the study in the field, we're paying close
13 attention to that. Paying close attention to
14 that and learning from the experience of what
15 our researchers have done in the past.

16 COMMISSIONER STEBBINS: Okay.

17 CHAIRMAN CROSBY: Anything else?
18 We've also been doing quite a bit of work
19 trying to get the relationship going with HHS
20 and DPH which we are now with the help of
21 Commissioner Bartlett getting some progress and
22 I'll have more to talk about that in a little
23 while. That's been another topic that's been
24 an important part of what's been going on

1 relative to the research and problem gaming
2 area. We hope to involve Beth and her folks as
3 well. Anything else?

4 COMMISSIONER ZUNIGA: Just to thank
5 you for your participation. I know you provide
6 often lots of good feedback on a lot of the
7 things we do that Mark helps us do like the
8 responsible gaming framework. There's a lot
9 more detail that happens after that framework
10 with the help of you and others. So, just a
11 general thank you for your participation.

12 MS. WARNER: Thank you very much.

13 CHAIRMAN CROSBY: I would second
14 that certainly.

15 COMMISSIONER CAMERON: Yes, thank
16 you.

17 COMMISSIONER MCHUGH: Thank you.

18 COMMISSIONER CAMERON: Thank you.

19 CHAIRMAN CROSBY: Item c?

20 MR. VANDER LINDEN: Item c is
21 looking at amending the contract that we have
22 with Problem Gambling Solutions. Dr. Jeff
23 Marotta is the president of Problem Gambling
24 Solutions.

1 We, since last September have used
2 Problem Gambling Solutions for a couple of
3 different projects. One was and probably the
4 most important is the establishment, crafting
5 of the responsible gaming framework. He
6 assisted and was instrumental in the
7 Commission's forum on responsible gambling or
8 gaming on October 28 of last year. He has also
9 provided assistance with the section five
10 mitigation areas, questions of the RFA-2
11 applications for CAT-2 gaming licenses.

12 The contract was a rate contract not
13 to exceed \$10,000 and expired June 30, 2014. I
14 request today that we extend that contract or
15 amend that contract to increase the dollar
16 amount from \$10,000 to \$22,000 and extend the
17 end date of that contract from June 30, 2014 to
18 June 30, 2015.

19 In terms of the scope of services,
20 the responsible gaming framework is still not
21 done. It is a work in progress. We are in a
22 draft form. I would like his continued
23 assistance with that.

24 Marlene mentioned briefly, but I

1 will mention it again, we are hosting a
2 community forum on problem gambling on April
3 11, 2014 in conjunction with the Mass. Council
4 on Compulsive Gambling's annual conference.

5 That piece of the conference is by
6 and large led by myself from the Commission.
7 And I think that I would love to have Dr.
8 Marotta's assistance. Actually, that was a bit
9 of a misstatement.

10 That is hosted in collaboration with
11 the Department of Public Health and Steve Keel
12 and the Commission. And Dr. Marotta's
13 assistance with that would be really helpful in
14 having some continuity between what happened at
15 the forum that we had last fall and this event
16 next month.

17 I'd also like his assistance in
18 reviewing the RFA-2 applications submitted for
19 Category 1 gaming licenses. I think the amount
20 of the increase should capture those additional
21 and continued responsibilities.

22 COMMISSIONER CAMERON: I can attest
23 to the good work that Dr. Marotta has done in
24 assisting us in mitigation with those

1 responses. A number of questions and with his
2 assistance that was done -- the work was
3 excellent and we anticipate that for this next
4 evaluation process as well.

5 CHAIRMAN CROSBY: Great. Any other
6 discussion?

7 COMMISSIONER MCHUGH: There's no
8 problem with the amount in terms of
9 procurement?

10 COMMISSIONER ZUNIGA: No. This
11 would be the venue for us to extend a contract.

12 CHAIRMAN CROSBY: Do you want to
13 move?

14 COMMISSIONER ZUNIGA: Certainly. I
15 would move that we accept the recommendation to
16 amend and extend the contract to Problem
17 Gambling Solutions as stated here in the
18 Commissioner packet.

19 COMMISSIONER CAMERON: Second.

20 CHAIRMAN CROSBY: Further
21 discussion? All in favor, aye.

22 COMMISSIONER MCHUGH: Aye.

23 COMMISSIONER CAMERON: Aye.

24 COMMISSIONER ZUNIGA: Aye.

1 COMMISSIONER STEBBINS: Aye.

2 CHAIRMAN CROSBY: Opposed? The ayes
3 have it unanimously.

4 MR. VANDER LINDEN: Thank you.

5 CHAIRMAN CROSBY: Item seven has
6 been removed, right, for the time being.

7 MR. DAY: That's correct.

8 CHAIRMAN CROSBY: Janice, is the
9 food court open? No.

10 So, let's try to be back here by
11 1:30, an hour and 15 minutes. We are
12 temporarily adjourned.

13

14 (A recess was taken)

15

16 CHAIRMAN CROSBY: I think we are
17 good to reconvene at just about 1:30 the 113th
18 meeting of the Mass. Gaming Commission. We are
19 at the eighth and last item on the agenda,
20 which will be conducted by Ombudsman Ziemba.

21 MR. ZIEMBA: Thank you very much,
22 Mr. Chairman. As you know, today the
23 Commission is deciding on a number of
24 outstanding surrounding community petitions for

1 the cities of Cambridge and Saugus relative to
2 the Wynn proposal and Everett relating to the
3 Mohegan Sun proposal.

4 I am very happy to report that
5 Somerville has been designated as a surrounding
6 community by the Mohegan Sun folks. As a
7 result, they will not be subject to the
8 petition reviews today.

9 CHAIRMAN CROSBY: Great.

10 MR. ZIEMBA: By way of context,
11 today we will review the petitions and the
12 responses by the applicants and the communities
13 that are seeking to be designated by the
14 Commission as surrounding communities.

15 In addition, on the same date, not
16 subject to a back and forth between the parties
17 but we will also make designations relative to
18 a number of cities and communities that were
19 designated by applicants in either the
20 application or after the application. And
21 those communities, the importance of our
22 written designation even though they were
23 already designated by the applicants, the
24 importance of our written designation is that

1 it kicks off the 30-day statutory period for
2 the negotiation of a surrounding community
3 agreement.

4 With that I understand that we may
5 have representatives from the city of Boston,
6 thank you Mayor, that would like to provide
7 some input regarding today's discussion.

8 CHAIRMAN CROSBY: We're going to go
9 a little bit out of order because we do have
10 the Mayor of Boston here. And we are always
11 deferential to public figures.

12 Last night, we received something
13 called the city of Boston's declaration of host
14 community status, which is a new one on us.
15 But we understand that Mayor Walsh would like
16 to speak to that. So, you are invited to do so
17 and we'll pick up thereafter.

18 THE HON. MARTIN WALSH: Thank you,
19 Mr. Chairman and through you to the Commission
20 committee members. I'm pleased to be here
21 today. This is my 74th day as the Mayor of the
22 city of Boston, roughly about 1754 hours as
23 mayor of the city. I respect the work that
24 this Commission has undertaken, but the

1 importance of this issue to the residents of
2 the city of Boston brings me here today.

3 The potential impact of casinos goes
4 to the core of the quality of life of our
5 neighborhoods. I speak as someone who is a
6 member of the Legislature when this gaming
7 legislation was debated and enacted in the
8 Legislature. The right of the most impacted
9 public to vote was critical to the Legislature
10 for allowing casinos in Massachusetts. The
11 sense of duty to the people and the law is what
12 brings me here before you today. And I welcome
13 the opportunity to be heard and I thank you for
14 that.

15 The people of Boston deserve the
16 democratic process. My priority is to the
17 people of Boston. And I know you care about
18 the citizens as well. My office hears daily
19 from the city's residents asking me to fight on
20 their behalf. They're asking me why they don't
21 have an opportunity to have a vote when one of
22 the casinos is accessed solely by a Boston
23 roadway. They are asking why don't they get a
24 chance to vote when their neighbors got a

1 chance to vote twice.

2 The law allows and discusses
3 multiple host communities. And that is what we
4 are here for today. I am committed to
5 protecting the interests of the people and
6 residents and businesses of the great city of
7 Boston, especially those impacted neighborhoods
8 of Charlestown and East Boston.

9 My priority is fighting for the
10 public right to vote. I stand here before you
11 on behalf of the people bringing their voice
12 and representing their interests.

13 The city of Boston in our opinion is
14 a host community to both proposals, Mohegan Sun
15 and Wynn Resorts. Boston is an integral and
16 vital part of each development regarding its
17 site, the construction, the use, the operation
18 the planning, the amenities, the marketing,
19 access and appeal of each project.

20 Each accesses its project through
21 the city of Boston. Each project is intimately
22 related and cannot be disentangled from the
23 city of Boston. Each project depends on Boston
24 airport, bus, rail services, harbor tunnels,

1 roadways and other means of transportation, its
2 retail stores, restaurants, museums, cultural
3 institutions, tourist attractions and other
4 institutions, public safety, public health and
5 other city services and the many amenities of
6 the city of Boston.

7 The city of Boston is the crucial
8 component to the key selling point of the
9 proposed gaming establishments. Host community
10 truly defines and reflects the city of Boston's
11 status as a destination for the casinos in
12 Region A.

13 I ask this Commission to join me in
14 recognizing Boston as a host community and do
15 not compromise in any way the due process right
16 of the city residents. Therefore, I ask the
17 Commission not to designate the city as a
18 surrounding community today.

19 I ask that you consider what we have
20 filed most recently, an extension request and a
21 declaration of host status. I ask that you
22 respect the city of Boston residents and not
23 join the casinos in cutting the people of
24 Boston out of the process.

1 Thank you for the opportunity to say
2 a few words.

3 CHAIRMAN CROSBY: Thank you, Mayor.
4 Does anybody want to say anything directly to
5 the Mayor before we --I think as long as we're
6 doing this, we might as well deal with the
7 Boston issue in this sequence.

8 Before we go back to John, does
9 anybody have any questions for the Mayor?

10 COMMISSIONER MCHUGH: I have a
11 question about, I guess, about procedure, Mr.
12 Mayor. We've been meeting through our
13 representatives with your staff for months now
14 to try to facilitate some resolution of the
15 obvious issues that are before us and that
16 you've addressed yourself to today. And yet it
17 was only yesterday at 2:00 that we got this
18 request for an extension --

19 CHAIRMAN CROSBY: Another extension.

20 COMMISSIONER MCHUGH: -- another
21 extension. And it was at 5:00 yesterday
22 afternoon that we got this designation of host
23 community.

24 It seems to me and I know you agree

1 that the process is really important. And the
2 thoughtful ability to deal with the issues that
3 these petitions and this legislation, quite
4 frankly, raises.

5 So, I am curious as to why the
6 secrecy surrounding this? We were talking with
7 you representatives at 4:00 asking them what
8 was being planned and told that they didn't
9 know what was being planned.

10 Then at 5:00 we get this
11 declaration. I certainly would like to take a
12 look at it. I think there are procedures for
13 dealing with it. I understand your position,
14 but I don't understand the secrecy.

15 MR. FRONGILLO: If I may,
16 Commissioner McHugh. I am Tom Frongillo from
17 the law firm of Fish and Richardson and I
18 represent the city of Boston in connection with
19 the proceedings before you.

20 First and foremost, I don't think
21 there's been a question of secrecy about the
22 city of Boston's contention in declaration that
23 it is a host community here. It is a position
24 that has been taken consistently by the city in

1 a number of documents. And you may recall that
2 earlier this year there was a filing with the
3 Commission that the city was taking the
4 position admitting for the purposes of meeting
5 your deadline that it was a surrounding
6 community, but it was reserving its right to
7 declare host community status.

8 A letter was written by the Gaming
9 Commission on January 10 specifically
10 requesting Boston to advise the Gaming
11 Commission of whether or not it was going to
12 declare host community status. That was the
13 day after the Mayor's inauguration.

14 Now that he has been in office, as
15 you know, for a short period of time, and his
16 legal team has been assembled, we are fully
17 prepared to address these issues.

18 And I think that one of the things
19 that has happened here is that the cart is
20 being put before the horse on this issue of
21 surrounding community status.

22 The host in the status has to be
23 addressed first, because if it is determined
24 that Boston is a host community, Boston has a

1 right to vote. If that were to happen after a
2 license were to be issued, then the license
3 would be invalidated and there would be time,
4 effort expended by this Commission, which is
5 valuable, and all of the applicants that would
6 go to not.

7 And one of the problems is it is a
8 disputed issue right now. The city's position
9 is it is a host community. The position of
10 both of the applicants is it isn't. And the
11 problem is we have a very elaborate statutory
12 scheme, the Gaming Act, that does not address
13 the issue that is before us.

14 There is a grant of authority in
15 here specifically for the Gaming Commission to
16 address surrounding community status. It's
17 Section 17 of 23K. The powers in regulatory
18 powers of the Commission are enumerated in
19 Sections 4 and 5. There's about 60 of them.
20 The Legislature when they enacted this
21 elaborate regulatory scheme, did not include a
22 provision that addresses what happens when
23 there is a dispute of a host community status.

24 And the problem is further

1 complicated because the definition of host
2 community has necessarily built into it legal
3 determinations not simply factual
4 determinations.

5 Just for example, the question of
6 access to a particular facility, that is a
7 legal question. The Supreme Judicial Court of
8 Massachusetts has ruled definitively that
9 access to a use takes on the use. In both of
10 these particular applications, let's talk
11 Everett for a moment, the only access to
12 Everett legally is right now Horizon Way, which
13 is located primarily in the city of Boston.

14 Today if a casino were open there,
15 the only door to that house is through the city
16 of Boston. And a house without a door is not a
17 casino. Nobody can get in; nobody can get out.
18 So, an integral part of the Everett application
19 right now by Wynn is how do you get in?

20 In sitting here right now, all that
21 you have before you is a legal established
22 access way and a conjectural hypothetical road
23 that hasn't been built and as far, I believe,
24 as the Commission knows there's not even a

1 definitive agreement on any of the land to
2 build the road.

3 So, that particular application in
4 and of itself under Supreme Judicial Court
5 rulings with the issue of access falls in
6 Boston.

7 Again, and I'm sure that you have,
8 if you look closely at the Wynn application,
9 you'll see that Wynn has entered into
10 contractual relationships with amenities
11 located in Boston. It has a contract, a
12 binding what they call partnership with the
13 Boston Symphony Orchestra. It has a binding
14 partnership with the TD Garden, both of which
15 are located in Boston. Going back to the
16 definition of host community, it's clear that
17 host community encompasses the amenities.
18 Those amenities are in Boston.

19 And this has been portrayed to you
20 through the proceedings that I've read, granted
21 I was not a participant in those, but I've read
22 every single word of these transcripts. This
23 is a black-and-white case for the Commission.

24 We are not going to use any aspect

1 of Boston. We've got our boundary lines drawn
2 in a way that is only Everett. At best what
3 you have right now is a conjectural
4 hypothetical road, a contingency of something
5 that might happen or might not happen.

6 I've recently been told by the
7 applicant that in the event that the MBTA
8 property is not sold or otherwise an access
9 right given across that property to the casino
10 location, and if it is sold by the MBTA through
11 a bidding process to another entity, that the
12 city of Everett with its newly developed
13 redevelopment authority is going to come in and
14 take it by eminent domain.

15 I am not sure if you've been made
16 aware of those facts, but all of this goes to
17 the issue of host community. And I could go
18 on.

19 COMMISSIONER MCHUGH: I understand
20 that. And I'm grateful for that. And that is
21 a thoughtful analysis of what's before us.

22 But it comes in the context of
23 something that was not fully developed in that
24 fashion beforehand. And it comes as a dramatic

1 surprise as opposed to a petition so that we
2 all could reason together and think about the
3 appropriate solution and think about how to
4 solve this problem. Think about how to address
5 those issues collectively, which is what
6 frankly we've been trying to do since last
7 October.

8 And it seems to me, that the
9 citizens of Boston, the citizens of the
10 surrounding communities deserve, and I know you
11 agree, the kind of thoughtful approach and the
12 kind of thoughtful dissection of the issues
13 that you've raised that they're entitled to.
14 And I know that this Commission is committed to
15 that.

16 But it's very hard. I can't respond
17 to everything that you've said here today. I
18 understand the points that you're making. And
19 I think that we need to respond to it. But
20 it's very hard to do that if we get a
21 presentation like this, which is helpful but
22 out of the blue without any advanced time for
23 thought.

24 MR. FRONGILLO: Again, with respect

1 to the Commission, Mayor Walsh has only been in
2 office since January. The issues are
3 infinitely complex here. They're not
4 straightforward.

5 We are interpreting the law of which
6 there's only been, I think, one reported
7 judicial decision so far. So, this requires a
8 complete understanding of zoning issues, real
9 estate issues, analysis of thousands of pages
10 of documents. We have done that. We
11 understand what the issues are, but it is a new
12 administration with a new legal department with
13 outside counsel prepared to address all of
14 these issues.

15 COMMISSIONER MCHUGH: I don't want
16 to prolong this. You understand my point. I
17 understand yours. I think that the way to deal
18 with this is to work collaboratively to see it
19 through. And that means giving notice and
20 creating a procedure to work it through and
21 come to grips with the issues that you've just
22 described so that we can get to an answer. Not
23 only an answer, but the best answer that we
24 can, given the complexity of the issues with

1 which we are dealing. I know you don't
2 disagree with that either.

3 MR. FRONGILLO: I don't disagree
4 with that. And I know that your agenda had
5 slated for today this issue of designation of a
6 surrounding community. For the reasons that I
7 started with I'll just repeat, because I think
8 that they are really vital to what happens here
9 today is we cannot put that cart before the
10 horse.

11 This process is well along down the
12 road. And it is a process that by virtue of
13 this very proceeding, it's supposed to be
14 completely transparent one. It's live-
15 streamed. There's cameras, everything is
16 recorded. For the citizens of the city, to
17 have their rights fully protected, the issue of
18 their status as a host community has to be
19 fully vetted and it has to be determined before
20 any other question of surrounding community
21 status can be reached.

22 CHAIRMAN CROSBY: Just for the
23 record, it has been resolved. The fact that
24 the Mayor has been new for 74 days, there was

1 another mayor before him. And that mayor
2 operated presumably in good faith, with a legal
3 team and so forth.

4 So, don't be disingenuous about
5 this. This process has been going on for a
6 long time. This specific issue has been
7 addressed at least twice. We are going to deal
8 with what you've put on the table. But let's
9 not quibble that you haven't had time to talk
10 about this or that this is the cart before the
11 horse. The host community issue started last
12 summer and has been resolved, as I said, at
13 least twice.

14 MR. FRONGILLO: Chairman Crosby,
15 with all due respect, at the hearing on
16 September 4, you asked what I thought was a
17 very poignant question of the Wynn applicant.
18 And you asked the Wynn applicant whether or not
19 the plans with respect to how the parcel, the
20 Monsanto Chemical site parcel had been divided.
21 And there was a parcel B and a parcel C.

22 And you asked the question of
23 whether the plans had been produced to the city
24 of Boston. And that was over six months ago.

1 And when you were asked that question, the
2 response was no that they had not.

3 And your next point was right on
4 point, this package you're saying that these on
5 this sine qua non documents that demonstrate
6 that in your view Boston is a host community --
7 is not a host community. That seems to me a
8 pretty reasonable set of documents that you
9 would give to the city. And I'm asking, have
10 you given them to the city? And if not, why
11 not?

12 And Ms. Sinatra stepped in and said
13 that she thought that everything was publicly
14 available, which it was not.

15 CHAIRMAN CROSBY: What's the
16 relevance of this?

17 MR. FRONGILLO: The point is is that
18 documentation that are vital to the issue of
19 host community status that was addressed back
20 in September and when you point it out you need
21 to give these documents to the city --

22 CHAIRMAN CROSBY: So, you're now
23 saying that the documents were never delivered?

24 MR. FRONGILLO: We do not -- We

1 don't have those documents.

2 COMMISSIONER MCHUGH: Just a minute.

3 We got together at the end of October. And
4 there's another transcript in which we went
5 through document by document, about six
6 documents. And at that time, they were given
7 to the city to Ms. Dello Russo. It was two
8 days after that that we got a joint message
9 from Ms. Dello Russo and the Wynn
10 representative saying that they were proceeding
11 -- Just a minute. Could I finish?

12 We got an email from Ms. Dello Russo
13 and the Wynn representative saying that they
14 were proceeding on a surrounding community --
15 to try to negotiate a surrounding community
16 agreement. And we said at that time, this was
17 long before you were involved, we said at that
18 time before they left that day after the
19 exchange of documents that if they could not
20 come to some kind of a resolution, were
21 prepared to have an immediate adjudicatory
22 hearing.

23 So, those documents -- And they said
24 they didn't need the hearing. So, those

1 documents were not in their hands then and we
2 expressly made them turn them over at that
3 hearing. So, that's what the Chairman is
4 talking about.

5 MR. FRONGILLO: We have an
6 incomplete production of documents. Documents
7 pertaining to the hypothetical road, we've
8 never seen them. I don't see how this project
9 proposal over Wynn, for example, can be ruled
10 upon without those documents.

11 CHAIRMAN CROSBY: Let's just focus
12 on two things. You're making a declaration,
13 we're going to address that. But don't come in
14 here and say that we've been putting the cart
15 before the horse. What you want to do is
16 rearrange the cart and the horse. You're
17 welcome to try it. That's fine.

18 But we've been talking about what
19 you're referring to as the horse for a long,
20 long time. You're interpreting the
21 documentation differently from your
22 predecessors. I assume that's probably your
23 right. But don't give us a lecture about doing
24 cart before the horse when it's you who want to

1 rearrange the two.

2 MR. FRONGILLO: Most respectfully,
3 I've seen the submissions that were filed
4 before you by the city in January even after
5 the new mayor came in detailing what had and
6 had not been produced, what had been redacted.

7 CHAIRMAN CROSBY: So, you're looking
8 at those documents differently from you
9 predecessors.

10 MR. FRONGILLO: No, I don't say that
11 all. I've seen a trail of requests that have
12 not been completely fulfilled.

13 CHAIRMAN CROSBY: So, when your
14 predecessors told us that they had agreed to be
15 a surrounding community they were wrong, right?

16 MR. FRONGILLO: The documents that
17 I've seen filed with this Commission, because
18 when the new mayor came in was that the city
19 was prepared to state that it was a surrounding
20 community with reservation of its right to
21 declare host status.

22 And I read the letter that the
23 Gaming Commission to the city right after the
24 new mayor was inaugurated on January 10, 2014

1 saying if the city determines that it qualifies
2 for host community status before such date, the
3 city could notify the Commission. Further, as
4 noted by the Commission previously host
5 community status will be part of the RFA-2
6 evaluation process.

7 So, I am looking at a document that
8 came from the Commission.

9 CHAIRMAN CROSBY: After the new
10 mayor, but --

11 MR. FRAGINELLO: In any event
12 requesting a declaration of where do we stand
13 on this. And you have that. And so, while I
14 understand that there is history that we did
15 not participate in, and it probably is futile
16 at this point to discuss all the details of
17 which there may be disagreements about. The
18 real question is where do we go from here.

19 And I do think there is a legal
20 issue about where and how the question of host
21 community status should be resolved. But I do
22 believe that that issue necessarily has to be
23 resolved before any questions of surrounding
24 community status. If it isn't, it create a

1 legal error and the entire process gets turned
2 upside down.

3 CHAIRMAN CROSBY: Anybody else?

4 Thank you.

5 THE HON. MARTIN WALSH: Thank you,
6 Mr. Chairman.

7 COMMISSIONER MCHUGH: Thank you very
8 much, Mr. Mayor.

9 CHAIRMAN CROSBY: Let's deal with
10 Boston first. Where are we in that process in
11 the view of our esteemed staff given the
12 current location of the cart and the horse?

13 MR. ZIEMBA: Mr. Chairman, as you
14 know we've had very little time to review the
15 submission from the city of Boston. There were
16 recent meetings -- a recent meeting of the
17 Commission where both parties, I mean the city
18 of Boston and the Wynn applicant had some
19 testimony before the Commission. There are a
20 number of communications that followed that
21 meeting.

22 We had been in contact with the city
23 to try to determine whether or not the
24 information sharing was proceeding between the

1 parties. The Wynn applicant and the Mohegan
2 applicant both met with the city a number of
3 different times between the last meeting and
4 today.

5 We received this declaration of host
6 community status, as Counsel indicated. And
7 that January 10 memo from the Commission we did
8 indicate that the city of Boston could so
9 indicate host community status to the
10 Commission.

11 Not before the submission as of last
12 evening have they ever asserted that they are a
13 host community. They had always reserved that
14 right. So, this is a new matter pending before
15 the Commission.

16 I will note that what we've been
17 trying to do is implement the Act on a
18 statewide basis as I think has been the mandate
19 by the Legislature. And that consistently what
20 we've been trying to do is ensure that the
21 Commonwealth gets the benefit of what's been
22 put forward in the Act, namely that the
23 Commonwealth can take advantage of very
24 significant revenues and tax revenues. And

1 that they are very significant jobs that are
2 related to these facilities.

3 Within that context, I noted at the
4 beginning where we are today. We have a number
5 of surrounding communities that have been
6 designated by applicants. We have petitions
7 before the Commission to be designated. And
8 the importance of that date is what we decide
9 today will in the end have a very big impact
10 upon what our timeline is.

11 What we've been trying to do is
12 ensure that we get these licenses issued as
13 quickly as we possibly can, giving due
14 deference to all of the communities across the
15 state.

16 But to the degree in our process
17 that the scheduling is dependent upon any one
18 particular community. So, to the degree that
19 we cannot decide on one community that means
20 that the entire process comes to a halt.

21 Because under our regulations and
22 under the standards, we cannot issue a license
23 until all surrounding community agreements are
24 resolved. And to the degree that there is a

1 dispute regarding a particular surrounding
2 community, albeit through an arbitration or
3 otherwise, we cannot issue our licenses.

4 So, we sit here today with the
5 question of what should we do regarding
6 Boston's petition as of last evening to be a
7 host community within the context of the
8 statewide implementation of the law and what we
9 need to do regarding surrounding communities.

10 COMMISSIONER MCHUGH: Well, I think
11 you've used the right phrase that the document
12 -- That's why I raised the question about the
13 secrecy and the last-minute nature of this. I
14 know there's a long history, but trying to
15 think through now on the fly what we do with
16 respect to something we didn't see coming until
17 5:00 last night, at least the timing of it,
18 does not make for good decision-making in the
19 abstract. And it's a shame.

20 But it seems to me that you have
21 perhaps purposefully put this in its right
22 context. The document is entitled a
23 declaration of host community status. I think
24 that we could well treat that as a petition for

1 recognition as a host community. And work
2 quickly with both the city and its able team
3 and with the two applicants to put together an
4 adjudicatory hearing at which we listen to the
5 arguments and look at the facts.

6 We have primary jurisdiction here,
7 because this is a question of both fact and
8 law. You can't separate the fact from the law.
9 The law is there in the definition. And
10 Counsel pointed to the correct definition. We
11 all agree where the definition is.

12 So, we treat this as a petition for
13 declaration of host community status. Look at
14 the facts and the law and make as we're
15 required to make a determination as to whether
16 or not the city is a host community as to one
17 or both of those projects.

18 The agenda for today was to
19 recognize the surrounding community status that
20 was embodied in both the application and the
21 acceptance for both projects. I would like to
22 talk further about that. But it seems to me
23 that whatever we do, we ought to get the ball
24 rolling on a procedure for resolving the host

1 community question.

2 CHAIRMAN CROSBY: I had two
3 additional thoughts to that. One is -- First
4 of all, I think we ought to see whether we can
5 get the surrounding community timeline running
6 whatever we're going to do. Clearly, the
7 parties are not going to come to an agreement.
8 If they aren't a host community or maybe if
9 they are a host community it's going to go to
10 arbitration.

11 So, whatever we do on the issue of
12 addressing the petition to be a host community,
13 I would hate to have it get tacked onto the 60-
14 day cycle that we thought we were going to be
15 starting today. So, I want to put out there
16 can we think about that, number one.

17 And number two, I agree that we have
18 to have a process for resolving this issue. If
19 I remember correctly, the adjudicatory process
20 is one in which we deliberate in private. And
21 this doesn't strike me as one we want to
22 deliberate in private about.

23 COMMISSIONER MCHUGH: We don't have
24 to. We're entitled to.

1 CHAIRMAN CROSBY: We may. Would you
2 all agree with me that if we had an
3 adjudicatory process we would deliberate in
4 public?

5 COMMISSIONER MCHUGH: Right.

6 COMMISSIONER STEBBINS: Yes.

7 COMMISSIONER ZUNIGA: Yes.

8 COMMISSIONER CAMERON: Yes.

9 CHAIRMAN CROSBY: That's fine.
10 Okay. Then there's the first issue, what I
11 think we were going to do today was determine
12 whether or not we thought there was a
13 surrounding community status and start that
14 clock ticking; is that right?

15 MR. ZIEMBA: For numerous
16 communities, yes.

17 CHAIRMAN CROSBY: For numerous
18 communities, including Boston. I would like to
19 start that process. Now is that a good idea or
20 not? And can we do that?

21 COMMISSIONER MCHUGH: Is that a
22 discussion?

23 CHAIRMAN CROSBY: Yes. It's not a
24 rhetorical question, I really mean genuinely.

1 COMMISSIONER MCHUGH: Coming in here
2 today that was my judgment as well. I in
3 thinking this through am now troubled by this.
4 And this is unfortunately part of the last-
5 minute nature of what we're facing.

6 But I think the potential for a mix-
7 up and things going at cross currents is strong
8 enough that we ought to get the host community
9 thing resolved, and we ought to get it resolved
10 within a couple of weeks. And then based on
11 that either decide that we have a surrounding
12 community on our hands or we have a host
13 community.

14 I think that proceeding along two
15 tracks simultaneously -- In an ideal world,
16 there is nothing inconsistent -- Let me back
17 up. There is nothing inconsistent between
18 proceeding on those two tracks simultaneously.
19 I hear Counsel's statements to the contrary.
20 But there is nothing inconsistent about that.

21 You can proceed down a surrounding
22 community track at the same time you're trying
23 to figure out whether you're a host community.
24 Then you're far enough ahead in the game that

1 if it turns out you're not a host community,
2 you've got an agreement and you're ready to
3 move forward.

4 But I think and sense that that
5 process will be -- that that process is
6 unlikely to work in this atmosphere. And I
7 think the danger of being sidetracked and
8 having all kinds of things going on is too
9 great to try and do both of those.

10 So, I've come around to the idea
11 that we ought to get this straightened out as
12 quickly as we can and then go to the
13 surrounding community thing.

14 COMMISSIONER ZUNIGA: I agree. Just
15 to quite a bit of a degree, we had that
16 parallel track happening in my opinion since
17 October since they said they were going to be
18 -- since the parties said they were going to be
19 proceeding on their surrounding community
20 negotiation but reserve the right to claim host
21 community status.

22 CHAIRMAN CROSBY: They didn't
23 reserve that right in October.

24 COMMISSIONER ZUNIGA: Or later on,

1 in general, right. I do want to speak to
2 something that would hopefully help us be as
3 expeditious as possible in this matter, which
4 is some of the assertions from the letter we
5 received yesterday and some of the comments
6 here today, we've heard before from other
7 surrounding communities.

8 I think the question of access is an
9 important one. And the question of property
10 boundaries really needs to be answered to
11 everybody's satisfaction, especially this
12 Commission.

13 But the question about proximity
14 we've heard before. I remember very well a
15 number of Lancaster citizens saying I can see
16 the project from my property and I didn't get
17 to vote on it. Some of the assertions made
18 here today would have us have a host community
19 be in just about any other surrounding
20 community in the other regions.

21 That would be true for Foxboro. It
22 would be true for Holyoke and Chicopee. If
23 anybody was going to take infrastructure,
24 convenience and other things in the nearby

1 roadways, for example, be the determining
2 factor of being a host community.

3 Now I emphasize that the property
4 boundaries and the actual drawing of roadways
5 and access is an important thing that needs to
6 be resolved, but it needs to be focused on that
7 if we are going to move expeditiously to
8 resolve this issue. But I agree that we need
9 to resolve this as soon as possible.

10 COMMISSIONER MCHUGH: Let me just
11 say one thing about that. Counsel raised an
12 interesting point that I hadn't thought about
13 before. I'm not sure of its ultimate validity,
14 but it's something I hadn't heard before. And
15 that is that the contract with the various
16 venues in Boston made them amenities. I want
17 to hear more about that. I am not sure I
18 understand that, but I've never thought about
19 it before.

20 That's why I think we need to get
21 this teed up. We need to get it done in an
22 orderly fashion. We need to get it done
23 without some kind of sudden unveiling and think
24 it through. And think it through clearly. So,

1 that's why I'm not prepared to make any kind of
2 judgments now.

3 CHAIRMAN CROSBY: I think I'm going
4 to come down on the side of suggesting that the
5 host community process precede the 30-day or
6 the 60-day even though -- but I do want to just
7 for the record point out that we have been
8 heavily criticized by both the city of Boston
9 and by the building trades for not moving fast
10 enough and not getting the jobs done. And
11 we've been trying to move quickly and we have
12 met with delay after delay, not of our doing.

13 We have also been trying to get the
14 \$85 million fee, license fee into this fiscal
15 year, which the Legislature and the Secretary
16 of Administration and Finance had been counting
17 on and want. If we take this delay, that will
18 likely mean that we are going to get pushed
19 outside this fiscal year when we resolve this.
20 And I think all of that is unfortunate.

21 But I don't think that emotion ought
22 to rule the day. And the right thing to do is
23 to ignore some of the obnoxious rhetoric and
24 deal with the petition on its face straight. I

1 agree with Commissioner McHugh that there have
2 been some issues raised that I have not thought
3 about before. And we should deal with that and
4 let's figure it out, but something like a two-
5 week period. We will resolve at that point
6 whether there is a host community status or not
7 for either of these two communities. And then
8 we will then go from there. And we just live
9 with the slip to our schedule. Does anybody
10 disagree with that?

11 COMMISSIONER ZUNIGA: No, I don't
12 disagree. I think it's unfortunate that we
13 will be slipping potentially more than a few
14 days if this question drags any longer. But
15 better resolve it sooner rather than later,
16 obviously.

17 COMMISSIONER CAMERON: I would
18 agree. Ombudsman Ziemba, is two weeks, and
19 General Counsel Blue, enough time to prepare
20 and schedule an adjudicatory hearing?

21 MS. BLUE: Yes, it is.

22 CHAIRMAN CROSBY: Let me think about
23 it. So, there are -- Apparently, there are
24 some arguments here about host community status

1 that we've not heard before. So, how would
2 this process work? If we do a two-week
3 process, tell me exactly what the process would
4 be.

5 MS. BLUE: So, what we would do is
6 we would schedule an adjudicatory hearing for,
7 by way of example, say two weeks from today.
8 We would hold a prehearing conference with the
9 applicants about a week from today. We would
10 ask that all briefing materials be provided to
11 us right after the prehearing conference.

12 We can have a prehearing conference
13 sooner, but to give people some time. We would
14 ask that they submit any materials to us by no
15 later than the Monday or so before the hearing
16 so that the Commission has time to review it
17 and that they share it with all parties.

18 CHAIRMAN CROSBY: But would we have
19 had time to do the proper kind of research to
20 think through. For example, there's this
21 reference to an SJC cases that says access is
22 imputed as use. Will we have had time to
23 really think those things through?

24 MS. BLUE: We can start doing that

1 right away.

2 CHAIRMAN CROSBY: But you don't even
3 know what the citation is yet.

4 COMMISSIONER MCHUGH: We can find
5 it.

6 MS. BLUE: Yes.

7 CHAIRMAN CROSBY: But we don't know
8 what else is in the package.

9 MS. BLUE: We will start with what
10 we have already that's been filed. And again,
11 we can move a prehearing conference up sooner
12 to have some of those conversations. We can
13 have the parties in as soon as early next week
14 to start framing the issues.

15 COMMISSIONER ZUNIGA: We could also
16 schedule that adjudicatory hearing. And we
17 don't have to decide right then. So, to the
18 point that you're alluding, we could have come
19 back another day after having read and heard
20 all of the presentations and materials. And
21 deliberate back in public not necessarily at
22 that time.

23 CHAIRMAN CROSBY: That's true. This
24 is new news to the two bidders as well,

1 presumably. I assume they found out when we
2 found out. So, they're going to be invited to
3 appear. And they're going to need get their
4 cases together. And they too are going to need
5 to deal with these new references. So, that
6 they've got the time?

7 MS. BLUE: I do. There have been a
8 great deal of conversations about these issues
9 going on since last fall. So, while the
10 applicants will have some work to do to prepare
11 for the hearing, I think the issues have been
12 out there. We've all been considering them and
13 I think that's sufficient time to move it
14 along.

15 CHAIRMAN CROSBY: Okay.

16 COMMISSIONER MCHUGH: And if it
17 isn't, that's a target. If it isn't, if it
18 turns out that for some reason that it isn't,
19 we can slip it back and be prepared to do that.

20 MS. BLUE: Yes. If something comes
21 up in the course of the hearing, as
22 Commissioner Zuniga pointed out, we can
23 certainly recess, go back, take a look at
24 issues, get more information come back again

1 and hear and then deliberate.

2 COMMISSIONER ZUNIGA: But the
3 adjudicatory proceeding would help us really
4 frame the discussions, stop this back and forth
5 as to the document that you received that
6 wasn't available, etc. It will all be part of
7 record as exhibits. So, without the
8 deliberation in private, this process could
9 really help us once and for all address the
10 issue.

11 MS. BLUE: Yes.

12 CHAIRMAN CROSBY: An hour and a half
13 before the declaration came in, came in the
14 request for a 30-day extension. And I guess
15 what we are saying is we are going to basically
16 ignore that and instead declare a call for an
17 adjudicatory hearing on the petition in two
18 weeks; is that right?

19 MS. BLUE: Yes.

20 CHAIRMAN CROSBY: Do we need -- I
21 guess we don't need any motions or anything.
22 We can just tell you.

23 COMMISSIONER MCHUGH: We have before
24 us what we are treating as a petition for

1 determination of host community status. We are
2 talking about scheduling a hearing on that
3 petition. And there is no other action item
4 that we need to take today, no vote necessary.
5 We're just talking about scheduling.

6 CHAIRMAN CROSBY: Okay. Great.
7 What's next?

8 MR. ZIEMBA: So, Mr. Chairman, what
9 I suggest is that we proceed to the outstanding
10 petitions that we have for both Mohegan Sun and
11 Wynn applications.

12 CHAIRMAN CROSBY: John, you had
13 another item on your agenda. You had the
14 master licensing schedule in Region C. You are
15 going to go ahead with this topic?

16 MR. ZIEMBA: I was just going to
17 recommend that we put that at the backend.

18 CHAIRMAN CROSBY: Right.

19 MR. ZIEMBA: Mr. Chairman, members
20 of the Commission, as you know the Commission
21 heard from representatives from Mohegan Sun and
22 Wynn and the communities on January 28 and 29.

23 The packet in front of you organizes
24 the materials from that meeting including very

1 detailed project community petitions and
2 petition responses from the applicants.

3 All of those materials are available
4 on our website. And I'd urge anyone who wants
5 to follow further to take a look at those in
6 the archives for those meetings.

7 Today, we will discuss six separate
8 criteria used in the Commission's regulation to
9 help the Commission determine surrounding
10 community status, proximity, transportation
11 infrastructure, development impacts,
12 operational impacts, other impacts and positive
13 impacts.

14 The petitions, the applicant
15 responses and the staff and consultant reviews
16 found in the packet demonstrate that different
17 criteria are more integral in the determination
18 of surrounding community status for each
19 community. We'll focus much of the discussion
20 today on such areas.

21 So, just as a reminder, today we are
22 making decisions relative to Cambridge and
23 Saugus relative to the Wynn proposal and
24 Everett relating to the Mohegan Sun proposal.

1 Today, we are joined by our team of
2 consultants to help us review these criteria
3 including City Point Partners, Green
4 International Affiliates, Dewberry Engineers
5 Construction on construction, water and
6 wastewater issues. As a reminder, we asked
7 Dewberry Engineers to give us their traffic
8 analysis for the city of Everett that was
9 previously reviewed by the McFarland-Johnson
10 team.

11 In addition Dewberry Associates also
12 did a peer-review update, an update of the
13 analysis done by Green International. This
14 further review of the Green International prior
15 work was being advisable because it would
16 provide an independent verification of the
17 prior work which had involved some discussions
18 with McFarland-Johnson whose work posed a
19 potential conflict of interest.

20 One benefit of the Dewberry review
21 is that the traffic reviews to be discussed
22 today have the benefit of reviews from four
23 separate independent teams. And that each one
24 of those teams concur with the recommendations

1 regarding impacts for every one of the
2 communities that are before us.

3 CHAIRMAN CROSBY: John, say that
4 again. Four different on the same aspect, like
5 four different traffic reviews?

6 MR. ZIEMBA: As you know, we had
7 McFarland-Johnson analyzing some. And then we
8 had Green International analyzing others. We
9 had the benefit of City Point Partners helping
10 organize the discussion and lead the
11 conversation.

12 These conversations were done as a
13 team. Even though each of the independent
14 groups came up with their recommendations, they
15 were discussed by and among those teams to
16 determine if there are any weaknesses in the
17 arguments and whether or not there is consensus
18 among those groups.

19 The Dewberry Group came in and did
20 reviews as I just noted, and they concurred
21 with the recommendations from all of those
22 teams. We are not reviewing today the
23 McFarland-Johnson reviews. They're not part of
24 our reviews, but I just will note for the

1 record that they came to the same conclusions.

2 CHAIRMAN CROSBY: Okay.

3 MR. ZIEMBA: So, we're also joined
4 by HLT Advisory on economic issues, LDS
5 Consulting on housing and school impact issues,
6 and our own Mark Vander Linden, Director of
7 Research and Problem Gaming on issues such as
8 problem gaming, crime and other operational
9 impacts.

10 At the conclusion of the
11 presentation on each community, I recommend
12 that the Commission deliberate the surrounding
13 community status and make a decision on each.
14 In addition, today there are two involuntary
15 disbursement petitions. One related to the
16 Everett application for surrounding community
17 status and one relating to the Saugus petition.

18 After we review each of the
19 surrounding community petitions in those two
20 instances, then we can turn to the involuntary
21 disbursement petitions.

22 As we determined by lot as with all
23 of our proceedings, first we will start with
24 the Mohegan Sun petition and then we'll finish

1 with the Wynn petitions.

2 With that I ask you to turn to page
3 five of the Everett petition, Everett analysis
4 included in the Mohegan book. So, this is the
5 first criteria that we reviewed, which is
6 proximity.

7 COMMISSIONER CAMERON: Under A?

8 MR. ZIEMBA: Yes, the A criteria
9 number one. So, you have tabbed by Everett and
10 then you have separate tabs for each of the
11 different criteria. And I'll also refer to
12 page numbers, but each of the criteria is a
13 separate tab.

14 The first tab proximity. Everett
15 argues that it borders Revere and the site is
16 2.5 miles drive from the shared border that
17 they share -- Excuse me. Everett argues that
18 it borders Revere and the site is a 2.5 mile
19 drive from there.

20 Mohegan agrees that they share a
21 border, states that the project is 1.7 miles
22 away from the closest Everett border. And that
23 the closest residential neighborhood is six
24 miles away but the geographic distance or

1 shared border alone is not sufficient for the
2 surrounding community designation.

3 Instead the Mohegan Sun team argues
4 that we should base our determinations not
5 solely on the fact of a shared border or
6 whether or not the proximity to the site, but
7 that we should base it also on impacts that is
8 consistent with the way that we have reviewed
9 all of the other petitions that is a
10 combination of both proximity and impacts.

11 Within that context, first we turn
12 to the transportation infrastructure impacts
13 starting on section two, page 11 of your
14 packets.

15 I'm going to ask Rick more from City
16 Point Partners to join us and to introduce team
17 members that are here. He's going to give us
18 the benefit of his presentation. He is going
19 to give us a summary of some of the arguments
20 that have been raised by Everett and Mohegan
21 Sun together with his recommendations regarding
22 those context.

23 He will also at the conclusion of
24 his remarks, he will give us a little bit about

1 the construction and development impacts, which
2 is the second criteria, but it is very much
3 related to the traffic and infrastructure
4 impacts. Rick, thank you.

5 CHAIRMAN CROSBY: What page was the
6 final recommendation of the consultant for this
7 on?

8 MR. ZIEMBA: If you take a look at
9 their analysis is found on page 11 is his
10 analysis. The executive summary is included in
11 that. His analysis begins --

12 CHAIRMAN CROSBY: I see consultant
13 analysis is on page, okay, page 19.

14 MR. ZIEMBA: I believe that that is
15 the executive summary.

16 CHAIRMAN CROSBY: I got it.

17 MR. MOORE: Are you ready?

18 CHAIRMAN CROSBY: Yes.

19 MR. MOORE: First off, I'm here with
20 several of the traffic engineers who worked on
21 this analysis. In the next row Frank
22 Tramontozzi and Jason Sorbel from Green
23 International. And at the end Miguel Cavano
24 from Dewberry and they did the majority of the

1 actual analysis that was reviewed, as John
2 said, by many.

3 So, we'll talk about first the
4 Everett petition if we can have the first
5 slide. This is a base map of the area. This
6 is the city of Boston. This is the casino at
7 Suffolk Downs. This is the boundary of the
8 city of Everett. And what we'd really be
9 talking about today is the traffic that drives
10 through the center of the city on Route 16.

11 But the consultants for the casino
12 distributed the traffic. And basically, I'd
13 just like to summarize that. This is the
14 traffic that is coming to and from the casino.
15 And if you look at these arrows, these three
16 arrows essentially are the traffic that goes to
17 the north. And if you add those numbers up,
18 you get about 20 to 25 percent of the traffic
19 going to the north.

20 And then if you look down on the
21 bottom of the screen, there's an arrow that
22 goes to the Ted Williams Tunnel, which
23 essentially is South on 93 to the south and
24 Route 90 to the west. That's about 44 to 45

1 percent of the traffic.

2 So, if you take the north and the
3 south and the west traffic out, you're left
4 with the traffic going through the Sumner and
5 Callahan tunnels and the traffic going along
6 Route 16. Both of these trips will eventually
7 wind up on 93 going north-south but they will
8 get to 93 two different ways.

9 And if you assume for instance
10 you're going to the site coming down 93, this
11 is saying that about 25 percent of the traffic
12 will go through the tunnels and about seven
13 percent of the traffic will cut across Route 16
14 to the casino. The reason the large majority
15 of the traffic goes through the tunnel is it's
16 a straight shot and there's no tolls going in
17 that direction.

18 Now, if you are leaving the casino
19 and going north on 93, because of the tolls and
20 because as you can see there's a fairly direct
21 access to 93, the traffic consultants are
22 suggesting, and we would agree that 18 percent
23 of the traffic leaving would go on Route 16.
24 And about 14 percent would go through the

1 tunnels and up north.

2 So, you wind up with about a third
3 of the traffic going north but the in and the
4 out is slightly different because of the
5 options to get there and the tolling.

6 Also, the traffic numbers we're
7 talking about and, as John said, the distance
8 between the casino and the middle of Everett is
9 about two and half miles. But the traffic
10 numbers we're talking about basically come from
11 the original casino proposal, the Caesars
12 proposal in Boston.

13 The new proposal, Mass. DOT this
14 week issued a letter requiring the new proposal
15 to do a new traffic analysis, distributing the
16 traffic new counts because there's a different
17 complexion of uses. You'll notice up on the
18 top here they've indicated that the gaming
19 positions will actually go down from 6000 to
20 5000.

21 However, if you look further down
22 you'll see that the retail will go up. So,
23 what Mass. DOT is saying is let's get good
24 traffic numbers for the actual proposed casino.

1 And then redo the traffic analysis.

2 Now MAPC Planning Agency has
3 suggested in some of their comment letters that
4 they think more than this 18 and seven percent
5 will go on Route 16. That will be factored
6 into this new traffic analysis. But the long
7 and short of it there'll be some up and
8 there'll be some down. But in the end result,
9 the traffic numbers will be within probably a
10 level of confidence that we'd like to see. So,
11 using the old traffic numbers, if you will, is
12 still we believe a relevant way to analyze the
13 surrounding communities.

14 Now if you look at what these 18 and
15 seven percent do in terms of the actual traffic
16 on Route 16, let's just go to the next slide,
17 You remember when we talked about the
18 surrounding communities in Springfield, we
19 talked about the Friday peak hour period.
20 There's many conditions we can look at that
21 tends to be the most significant. So, that's
22 what we'll focus on.

23 And if you look at Route 16 through
24 Everett, the road rate volume essentially today

1 is almost 5000 vehicles roughly going equal in
2 each direction. If you look at the increase
3 that the casino would generate with the seven
4 percent coming in and the 18 percent coming
5 out, it's about 227 vehicles. And that's about
6 a five percent increase.

7 Mohegan Sun did not analyze that
8 section of Route 16. That's part of Everett's
9 contention. But the Wynn proposal did analyze
10 that section. And they looked at the
11 signalized intersections. And they concluded
12 that the signalized intersections along that
13 section, which include Santilli Circle and a
14 number of intersections through the
15 intersection of 99 north-south and Route 16,
16 they concluded the Wynn folks did that those
17 intersections operated at level of service D or
18 better.

19 Now in an urban environment, level
20 of service D is considered acceptable. When
21 you get into E and F that's when you start to
22 have backups and difficulties.

23 However, if you drill down a little
24 bit further beyond that overall assessment,

1 you'll find out that 10 out of the 48
2 individual movements along that corridor
3 actually operate at a level of service F.

4 COMMISSIONER MCHUGH: By movements
5 you mean intersections?

6 MR. MOORE: If you're coming into an
7 intersection, you can have a movement through
8 the intersection, you can have a left turn
9 movement or a right turn movement. In many
10 cases, the left turn movements, which are the
11 most problematic, operate at level of service
12 F.

13 The result of that as you can see in
14 the third bullet is that at some of these
15 intersections, the queuing spill back into the
16 adjacent intersections.

17 The analysis tools, the computer
18 models they used are not completely integrated
19 in terms of signal to signal. So, there's some
20 acknowledgement that one signalized
21 intersection can back up into the other. But
22 they don't do a terribly good job of
23 interconnecting intersections. There is more
24 sophisticated tools that can do that but they

1 weren't used in this analysis.

2 Our conclusion is that if you used
3 more sophisticated analysis that this rather
4 optimistic level of service D would do nothing
5 but degrade because of the queuing issue at
6 some of these intersections. And so we
7 acknowledge that there is a report out there
8 that says the overall intersections operate at
9 level of service D. But that was concluded
10 based on computer models that are generous, if
11 you will, to how individual intersections
12 operate.

13 And you add to that the fact that a
14 number of the intersections -- a number of the
15 movements are operating at level of service F
16 and you have this queuing and back up issue.
17 We conclude that that section of roadway in
18 Everett is congested and is at capacity.

19 And by the way, MAPC has also
20 requested a number of their comments that Route
21 16 be looked at in more detail. And in fact
22 they think there could be more traffic on Route
23 16 than estimated by the casino engineers.

24 So, when you add that together, it

1 is our conclusion that there is a potential
2 significant adverse impact on Route 16 because
3 of that casino traffic and the way 16 operates
4 today.

5 Keep in mind that in 10 years, which
6 is the future projection, there'll be still
7 more traffic on Route 16. And without any
8 improvements it will just get more and more
9 congested.

10 I will say, as John mentioned, we
11 also looked at the construction vehicle
12 impacts. We did not consider those to be
13 significant.

14 And on a completely separate topic
15 there was an issue about water and sewer that
16 is not an issue in Everett. It's not even an
17 issue in Everett.

18 So, we are really back again to the
19 traffic impact what we would consider a
20 congested section of Route 16.

21 CHAIRMAN CROSBY: Okay.

22 COMMISSIONER MCHUGH: Thank you.

23 COMMISSIONER ZUNIGA: Are there ways
24 to address -- Or let me ask another question,

1 two different questions. Are you identifying
2 the particular intersections that cause this
3 cumulative degrading, if you will?

4 MR. MOORE: Yes. They have actually
5 been identified in the analysis. And you can
6 pick them out movement by movement. But
7 because there's 48 of them, it's a pretty
8 complicated diagram and we didn't put it up
9 there. But yes, they are specifically
10 identified, each one of them.

11 COMMISSIONER ZUNIGA: The 10 out of
12 the 48?

13 MR. MOORE: Yes.

14 COMMISSIONER ZUNIGA: Are there
15 pragmatic ways to -- at that level of service
16 or at that cumulative level of service, are
17 there ways to resolve by additional signaling
18 or more synchronization or are we talking lane
19 widening?

20 MR. MOORE: The first thing you
21 would look at and the most cost-effective is
22 signal timing. And you could look at the
23 signal timing and change it and optimize it,
24 particularly if you looked at the corridor as

1 operating at one rather than isolating
2 individual signals. If you interconnect
3 essentially the signals, you can get a much
4 more fluid movement.

5 Another mitigation measure that
6 would be cost-effective, it seems to us, are a
7 number of these left-hand turn pockets. For
8 example, if a left-hand turn pocket has
9 capacity for three or four vehicles and the
10 analysis says that in a peak time you have six
11 vehicles that want to use that pocket, you
12 could conceivably because the median along
13 Route 16 there is wide in some cases, you could
14 extend the left-hand turn pocket to accommodate
15 those six vehicles that would get them out of
16 the main barrel and the main barrel would move
17 more smoothly. Those are the kinds of things
18 that you would look at first.

19 COMMISSIONER ZUNIGA: Okay.

20 CHAIRMAN CROSBY: Great, thank you.

21 COMMISSIONER MCHUGH: Thank you.

22 COMMISSIONER CAMERON: Thank you.

23 MR. ZIEMBA: Thank you, Rick. Rick
24 addressed the factor of development in his

1 presentation. So, if we can now move to the
2 operational factor, please turn to page 135 in
3 the Everett analysis that's section four.

4 Upon review of the Everett
5 application, Everett's concerned about a number
6 of operational concerns including housing
7 related concerns, public safety impacts,
8 particularly related to housing concerns. And
9 we as is our course, we reviewed a number of
10 other potential concerns that have been raised
11 by other applicants, operational type of
12 concerns, including water and wastewater, as
13 Rick just mentioned, impacts on local
14 businesses and other issues related to problem
15 gaming and crime.

16 So, I'm going to ask our folks from
17 HLT to come join us. I'm going to ask Lyle
18 Hall from HLT Advisory, Lynne Sweet from LDS to
19 join us at the table. We'll approach the
20 operational concerns as a group. And Mark
21 Vander Linden, if he could come join us as
22 well.

23 So, what I'm going to first do is
24 I'm going to ask Lyle to go over his analysis

1 of the application and the concerns as they
2 relate to business impacts. Then I'll then
3 turn to Lynne. And she can give us the benefit
4 of her analysis on housing related issues and
5 school related issues. And then I'm going to
6 turn to Mark for the analysis on those other
7 areas that I discussed. Lyle?

8 MR. HALL: Thanks, John. Good
9 afternoon, Commissioners. You'll have to
10 pardon my horse voice. I've not transitioned
11 well to the southern climate down here.

12 COMMISSIONER MCHUGH: It's too warm
13 for you, is it?

14 MR. HALL: It's just a bit too warm.
15 HLT's role in the surrounding community
16 discussions was focused on local retail,
17 entertainment and service establishments and
18 the impact on operation from a Category 1
19 casino on those establishments.

20 In each of the applications that you
21 will hear today and that we will go through,
22 the potential surrounding communities assert
23 that the operation of a Category 1 casino will
24 have a negative impact on the surrounding

1 community, notably on specific and individual
2 retail and entertainment businesses, with a
3 primary focus on the business volume of those
4 entities will lose as a result of the
5 competition from the Category 1 casino.

6 Some communities have provided more
7 detail than others to substantiate their
8 support and claim, but in most cases the claim
9 has been a fairly generic one in terms of a
10 region wide loss of business with little
11 substantiation provided for it.

12 The approach we took was similar to
13 what we looked in Region B and really focused
14 on three areas. One, the concept of demand
15 substitution. That is that the dollar spending
16 in a gaming environment whether it's on a
17 gaming activity or non-gaming activity is not
18 necessarily a one-to-one transfer from a dollar
19 that might have been spent on some
20 entertainment or retail or food and beverage
21 use elsewhere in the community.

22 And I would point out there is no
23 empirical evidence that supports a one-to-one
24 relationship on that transfer including the two

1 studies that were done for the Commonwealth,
2 one by Innovation Group and one by Spectrum
3 Consulting.

4 Secondly, and more importantly
5 though is what we refer to as the repatriation
6 of gaming dollars. We've mentioned before that
7 the University -- UMass Dartmouth does an
8 annual study looking at the amount of gaming
9 revenue spent by Massachusetts residents in
10 neighboring -- or casinos located in
11 neighboring jurisdictions. And that that
12 amounts to somewhere north of \$700 million
13 annually.

14 We believe that a substantial
15 portion of that will be repatriated and spent
16 within the Massachusetts environment. And
17 certainly the largest population concentration
18 is in the greater Boston area where the two
19 applicants that we are currently considering.
20 And therefore, we don't believe we're even
21 talking about a substitution of dollars. We're
22 talking about bringing those dollars back and
23 having them spent here.

24 And finally, we looked at

1 consideration of the positive impacts from both
2 the operation of these Category 1 licensees in
3 terms of what they're doing for employment, the
4 goods and services they're buying, and the
5 people that are visiting them not only in the
6 immediate area but from further afield. And
7 that varies by applicant.

8 But as a general rule and based on
9 these points, we found that operationally there
10 could be very little negative impact on any of
11 the surrounding communities.

12 I won't repeat that when we go
13 through the other two. But let me just spend a
14 few minutes talking about Everett, which is the
15 one we're dealing with right up front. It
16 might be worthwhile, just as a real quick
17 summary in terms of what the Mohegan Sun of
18 Massachusetts proposal is just in terms of
19 content and where some of the concern is coming
20 from.

21 We're talking about roughly 170,000
22 square-foot casino with about 4000 slot
23 machines and 120 table games, two hotels and
24 about 20 food and beverage outlets containing

1 about 3500 seats. And a 38,000 square-foot
2 multipurpose room that can seat up to 1000
3 people and also a substantial retail
4 environment.

5 Now the city of Everett states that
6 it would be, and I'll quote "significantly and
7 adversely affected by the operation of the
8 gaming establishment after its opening, taking
9 into account such factors as negative impacts
10 on local retail, entertainment and service
11 establishments."

12 However, Everett provides virtually
13 no detail other than that one sentence in terms
14 of quantifying or talking about the type or the
15 nature or the impacts.

16 The applicant on the other hand has
17 submitted a number of background documents that
18 speak to the positive impacts that result from
19 the casino, including the direct employment in
20 the order of 3000 people, FTEs, whose salaries
21 obviously will be spent in the immediate area
22 and could conceivably be spent or trickle out
23 into those retail and entertainment
24 establishments.

1 The purchase of goods and services
2 to operate the casino, some are in the order of
3 \$100 million a year, \$50 million of which by
4 agreement in the host community agreement will
5 be spent within a 15-mile radius of the casino.

6 And about a million visits to the
7 casino that will come from outside the Suffolk,
8 Norfolk, Essex and Middlesex counties with
9 estimates up to \$20 million, on amounts that
10 will be spent on non-gaming activities that
11 could be in restaurants or local service
12 stations and retail environments.

13 As a result, when we go through that
14 and look at the balance of the potential
15 negative and the clear positive aspects of
16 this, we cannot agree with the city of Everett
17 that in fact there is any negative impact or
18 more likely to be as a result of the Category 1
19 casino. John.

20 MR. ZIEMBA: Thank you. Lynn, if you
21 could give us the benefit of your analysis.

22 MS. SWEET: Sure. With regard to
23 Everett, I was asked to look at housing, school
24 and code enforcement impacts. And of the three

1 petitions that we looked at today this is the
2 only one that actually had a little bit of
3 information provided by the petitioner with
4 regard to some demographics and a letter from
5 the town planner.

6 The other two that we're going to
7 speak about did not have any information or
8 requests on these matters. I'm going to do the
9 same thing by giving you kind of a general
10 overview and then not repeat it in the next two
11 statements.

12 In the Everett petition they are
13 suggesting that approximately 2500 full-time
14 jobs will be created on-site. And the proposed
15 casino is in walking distance to the Blue Line
16 and four bus lines. We did provide you with an
17 MBTA map. This should allow workers to travel
18 by public transportation from all areas of
19 Boston to the site.

20 The developers have committed to
21 having 75 percent of positions filled by
22 persons living in a 15-mile radius of the
23 casino. We also gave you a map of that. And
24 went further say that 20 percent will be filled

1 by Revere residents.

2 The area that we looked at
3 encompasses much of Routes 93, 95 and 128 going
4 to the north up to North Reading, west out to
5 Concord and south to Norwood. That 15 miles is
6 a pretty broad area. So, we looked at just
7 eight communities that are kind hugging the
8 coastline. So, we studied a much smaller area
9 than that 15 miles.

10 We also reviewed a study that was
11 provided by the Innovation Group. And that
12 study had a number of case studies of
13 communities that were in urban areas. And they
14 specifically looked at impacts to school and
15 housing.

16 And they concluded that casinos that
17 are being built in urban areas that are already
18 populated and have infrastructure in place do
19 not see impacts in housing and in schools.

20 They also went a little bit further
21 and talked about the Mohegan Sun property in
22 Connecticut and stated that there were housing
23 shortages there because it was a suburban, in
24 fact a rural area of the community that didn't

1 have the roads, the infrastructure and the
2 housing in place. And we agree with that
3 assessment.

4 The Everett casino is located, as I
5 stated, close to major transportation routes
6 which will allow workers -- And then I'll talk
7 a little bit more about the housing.

8 So, we looked at a couple of
9 demographics. We looked at unemployment in the
10 eight communities. In the eight communities
11 there's 32,000 persons in these communities as
12 of December 2013 that are unemployed. That's
13 about 10 times more than the 2500 jobs. More
14 jobs than job seekers, basically.

15 We looked at housing and vacancy
16 rates in these eight communities and identified
17 3300 vacant housing units, more if you were to
18 add in Everett and the other petitioner in
19 Everett. So, nine times more vacant housing
20 units than jobs being created.

21 We also just because this is some of
22 what my office does, we keep a pipeline of
23 units that are in production in greater Boston
24 and identified about 30,000 units that are

1 currently permitted in some stage of either
2 permitting or construction.

3 So, we also note that the
4 communities, the eight communities that we
5 looked at had a vacancy rate of about eight
6 percent. We talked about this last time about
7 five percent is an indicator of a need for more
8 units.

9 We also looked at code enforcement
10 because Everett did raise that as an issue.
11 And we looked at a couple of factors to try and
12 kind of peel back the layers as to whether or
13 not code enforcement could be an issue. And we
14 determined that Everett is what's called a mini
15 entitlement community under the Community
16 Development Block Grant program.

17 That means that funds flow from the
18 federal government through the state to the
19 community. And in the past two years, they
20 have received over \$900,000 in Community
21 Development Block Grant funds and that was a
22 very large increase, almost a tenfold increase
23 from what they had received in the prior two
24 years.

1 And that money is specifically
2 targeted for infrastructure, housing rehab. and
3 administration. So, I think the government has
4 recognized there are issues in place and they
5 are providing funding to some degree.

6 We also looked at the fact that
7 their inspectional services department is quite
8 robust compared, I think, to other communities
9 that they have 19 staff members, five code
10 inspectors and a code admin. person as well.
11 In addition, their tax revenue has also been
12 increasing over the past couple of years. It's
13 gone up \$4 million.

14 So, it was hard for us to come to a
15 conclusion on the code enforcement that there
16 were going to be issues there.

17 On the school-age children, we
18 looked housing size and school-age population.
19 And they actually have been increasing in
20 Everett. It's actually a contrast to what's
21 going on in most of Massachusetts. And that
22 probably is due in part to a large influx of
23 immigrant population into the community.

24 So, at the end of the day, our

1 findings were that Everett would not be
2 significantly and adversely affected by the
3 operation of a Category 1 gaming facility after
4 its opening due to housing or inspectional
5 service impacts resulting from the facility.

6 It is possible however that it could
7 experience impacts to its school-age
8 population. It might not be an offset by state
9 aid. There are problems there already, and
10 anything could exacerbate it in a minor way.

11 However, given the high unemployment
12 and housing vacancy rates in the community,
13 it's more likely than not that the Category 1
14 casino will be beneficial to the housing market
15 in Everett and therefore add to the real estate
16 tax base as well as increase overall consumer
17 spending in the area.

18 CHAIRMAN CROSBY: Great, thank you.

19 COMMISSIONER MCHUGH: Thank you.

20 MR. ZIEMBA: Thank you. I'm going
21 to ask Mark to take over from here. For your
22 benefit, Commissioners, his analysis is on page
23 167. At the beginning of each packet, there is
24 also an index of where each one of these

1 consultant reports is. But I will give you the
2 benefit of the page numbers as we go forward.

3 MR. VANDER LINDEN: Good afternoon,
4 Mr. Chairman, Commissioners. So, I was asked
5 to take a look at what are the social issues.
6 To state the Everett petition spoke very
7 generally about an increase in social service
8 needs should Mohegan Sun casino be located.
9 So, that was the information that I took from
10 the petition itself.

11 From there, I took a look both at
12 what was contained within the application as
13 well as any additional empirical evidence that
14 would be there.

15 So, within the actual application
16 there wasn't anything that would state
17 specifically, that would address that very
18 specific need but there are several components
19 within the application that would talk about
20 what efforts they would take towards mitigation
21 of social problems, whether it be problem
22 gambling, managing alcohol-related incidents
23 and so forth.

24 What does the empirical evidence say

1 about these issues and when we talk more
2 generally about social service needs? When you
3 take a look at some of the most common ones
4 that people would cite, an increase in problem
5 gambling. There are a couple of studies that
6 would actually indicate that given the
7 proximity that there may be an increase in
8 problem gambling, at least initially.

9 Probably the most common study would
10 be the Gambling Impact Study in 1999 that
11 showed that there is approximately a doubling
12 in the prevalence of disordered gambling within
13 a 50-mile radius.

14 There was another study in 2004 that
15 showed that within a 10-mile radius that you
16 have also almost an equal increase in gambling
17 disorders. The complicating factor there is
18 that these prevalence rates tend to decrease
19 after a casino or a new gaming establishment
20 has been open for a couple of years.

21 What is the actual impact given what
22 the resources are within the community, given
23 the mitigation efforts that would be put forth
24 by the applicant, given a whole host of other

1 factors, I think that it's very difficult to
2 say what the actual increase rates of problem
3 gambling would be after a casino would open in
4 that area.

5 There are other questions when we
6 talk more generally about the social issues or
7 the social impacts. Another one that often is
8 referenced is increase in crime. As I stated,
9 it's very similar, it's the same evidence that
10 I would be citing previously is that it's very
11 difficult to tell.

12 What are the impacts of crime when
13 you open up a casino, there are a number of
14 different variables. What is the density of
15 population in the area? What are the community
16 resources that are available? What are the
17 mitigation efforts by the casino itself? I
18 would say that the evidence is inconclusive.

19 I would also say that on any of
20 these issues that this is something that we
21 will be paying very close attention to and to
22 measure, be it problem gambling, be it crime,
23 be it increases in alcohol-related crashes
24 where the person was drinking at the casino

1 prior to hitting the road a whole host of those
2 factors, which would lead me to the next one.

3 What is the increase in alcohol-
4 related accidents in the proximity of a casino?
5 There is actually a fair amount of evidence
6 that would say that yes, indeed, there is an
7 increase in alcohol-related accidents in the
8 proximity of a casino. There are a couple of
9 studies I think that are very relevant to this.

10 Probably the one that I find
11 relevant both in terms of when it was done as
12 well as its proximity is a 2009 Spectrum Gaming
13 Group analysis of gambling in Connecticut. Its
14 original intent was to take a look at the
15 social and economic impacts but it found a
16 positive correlation between driving while
17 intoxicated and proximity to a gaming facility
18 over time.

19 So, the final one that I would like
20 to just talk about and this kind of encompasses
21 all of that is what is the burden on social
22 services? That it seems logical to say if we
23 see an increase in problem gambling that you
24 would in turn see an increase in the burden on

1 social services. And problem gambling would
2 incorporate or encompass a whole host of
3 issues.

4 It would encompass mental health
5 problems, substance abuse issues, domestic
6 violence issues. So, you should in turn see a
7 fallout and an increased burden on social
8 service agencies within that specific
9 community.

10 As Dr. Williams, Rob Williams
11 pointed out in his analysis of this very
12 specific issue is that it's a bit more
13 complicated than that. That traditionally you
14 see very low uptake of persons with gambling
15 disorders seeking help. And that typically
16 those issues are resolved in other ways.

17 Will that be the case in
18 Massachusetts? It's very difficult to say. We
19 are taking a much different strategy and a much
20 more aggressive approach to addressing some of
21 these problems. So, would we see an increase
22 in utilization of social services by persons
23 with gambling disorders? I certainly do hope
24 so. But we just simply don't have the evidence

1 that would point to that fact at this point.

2 So, in conclusion, I would say just
3 on the face of it when they say that we'll see
4 an increase in social issues and burden on
5 social services, it's difficult to say. I
6 would also say that it is something that we are
7 spending an enormous amount of resources and
8 energy taking a look at through our SEIGMA
9 research group right now on these very specific
10 issues that I just mentioned.

11 COMMISSIONER STEBBINS: Mark, in a
12 couple of your presentations you made reference
13 to the Spectrum Report in Connecticut. For me
14 that's not apples to apples in comparison.
15 You're starting with a real rural destination
16 with limited population. Now we're talking
17 about a resort casino already in a heavily
18 populated area.

19 Are there other statistics that we
20 can draw from, other examples? I know you're
21 trying to stay close geographically, but is
22 there something that might be a little more
23 apples to apples than what Spectrum pulled out
24 for us?

1 MR. VANDER LINDEN: Sure. There was
2 a 2010 study done by Cotti and Walker that did
3 support the same conclusion is that there was
4 an increase in drunken driving accidents,
5 crashes within a proximity to a casino.

6 There's a study done by Dr. Richard
7 McGowan, a local researcher that found a
8 correlation between drunk driving arrests for a
9 county in the presence of a casino within that
10 county.

11 I use the Spectrum. You are
12 absolutely right. It is not necessarily apples
13 to apples when we talk about what is the gaming
14 climate in Connecticut versus the gaming
15 climate that would be in the Boston area. So,
16 I hear that. There is those other two studies
17 that I would cite and I imagine there are
18 others, but I have not unearthed those yet.

19 COMMISSIONER STEBBINS: Thank you.

20 MR. ZIEMBA: Thank you very much,
21 Mark. Criteria number five, other, there
22 really were no presentations by either side on
23 that matter. Number six is the positive
24 impacts. I think you've heard a number of

1 positive impacts included in the presentations
2 relative to the Everett petition including \$50
3 million annually spent for local vendors, a
4 very significant percentage of the workforce to
5 be hired from the immediate area of the city of
6 Revere.

7 So, with that Commissioners, I put
8 that to you for deliberation on whether or not
9 Everett is a surrounding community.

10 CHAIRMAN CROSBY: Comments?

11 COMMISSIONER ZUNIGA: Not unlike
12 other determinations of surrounding community,
13 it would appear that the traffic topic is the
14 one that is most relevant to the designation.
15 We've heard many of the arguments on the other
16 categories before. I think they are very
17 similar in this case.

18 I would be in agreement that as it
19 relates to traffic, particular to the
20 intersections and given the complexity of the
21 dynamics of Route 16 that Mr. Moore was
22 articulating, that the city of Everett would
23 qualify as a surrounding community.

24 COMMISSIONER CAMERON: I would agree

1 based on the traffic analysis and the numbers
2 that several groups of traffic analysts have
3 looked at and concurred that there will be a
4 significant impact.

5 CHAIRMAN CROSBY: I agree. Do you
6 want to make a motion?

7 COMMISSIONER ZUNIGA: Sure. Based
8 on the evidence and the discussion presented
9 before this Commission, I would move that this
10 Commission designate the city of Everett as a
11 surrounding community to the Mohegan Sun
12 application based on the evidence presented
13 here relative to traffic, potential traffic
14 impacts.

15 COMMISSIONER MCHUGH: Is that
16 traffic in the whole city or is that traffic
17 limited to Route 16 and the feeders to and from
18 Route 16?

19 COMMISSIONER ZUNIGA: Yes. It is
20 limited to Route 16 from what I heard in the
21 evidence, yes. Thank you for that
22 clarification.

23 CHAIRMAN CROSBY: That's right.

24 MR. MOORE: Yes.

1 CHAIRMAN CROSBY: So, does not limit
2 the scope of the surrounding community
3 negotiation?

4 COMMISSIONER MCHUGH: No.

5 CHAIRMAN CROSBY: If they're a
6 surrounding community, it's open-ended. We're
7 getting them there by way of this issue, but
8 once they sit down and negotiate, you can
9 negotiate about anything.

10 COMMISSIONER MCHUGH: About
11 anything. But what we say as the basis for our
12 finding may guide the arbitrator if it gets
13 there as to what offer is more reasonable.

14 CHAIRMAN CROSBY: Okay. Any further
15 discussion? Was there a second?

16 COMMISSIONER STEBBINS: Second.

17 CHAIRMAN CROSBY: Any further
18 discussion? All in favor of the motion to make
19 Everett a surrounding community to the Mohegan
20 Sun application signify by saying aye, aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER STEBBINS: Aye.

1 CHAIRMAN CROSBY: Opposed? The ayes
2 have it unanimously.

3 MR. ZIEMBA: Thank you, Mr.
4 Chairman. If we can now turn to the packet,
5 the original book for the meeting book. The
6 involuntary disbursements petition is included
7 in tab 8c of that matter.

8 As a reminder, our regulation 205
9 CMR 114.03 the Commission can approve an
10 involuntary disbursements petition upon a
11 finding that there is a reasonable likelihood
12 that a community will be designated as a
13 surrounding community. I believe that as
14 they've been designated as a surrounding
15 community, they've passed that test.

16 Number two, that the request is
17 reasonable in scope and number three that the
18 risk that the community will not be able to
19 properly determine the impacts of a proposed
20 gaming establishment without the requested
21 funds outweighs the burden of the actual
22 financial cost that were borne by the
23 applicant.

24 On that packet, we outline the

1 requests from the city of Everett, some
2 socioeconomic impact a \$35,000 grant. An
3 additional grant from WorldTech for \$50,000,
4 and then legal fees for \$60,000.

5 COMMISSIONER MCHUGH: What page are
6 you reading from now, John?

7 MR. ZIEMBA: 8c.

8 COMMISSIONER MCHUGH: The first
9 page, that's a good place to start.

10 MR. ZIEMBA: The main contention
11 from the Mohegan Sun folks was about the
12 reasonableness of the scope of the services.
13 There are a number of different arguments that
14 they raised about the scope particularly they
15 said that the scope exceeds the \$50,000 amount
16 that has been set aside in the statute. This
17 is actually number five.

18 The city of Everett raises the fact
19 that the \$50,000 although that is included in
20 the statute, that doesn't reflect the reality
21 of the services that have been provided to host
22 and surrounding committees across the whole
23 state.

24 CHAIRMAN CROSBY: And the statute

1 doesn't say anything about \$50,000 as the
2 amount anyway. It's a starting amount.

3 MR. ZIEMBA: That's right.

4 CHAIRMAN CROSBY: It makes \$50,000
5 available to start.

6 MR. ZIEMBA: Mohegan Sun -- I'm
7 sorry to be moving up from five to one. Number
8 four Mohegan Sun states that it shouldn't be
9 required to pay for the expenses related to the
10 city of Everett's petition to be designated as
11 a surrounding community.

12 Everett states that this argument is
13 misplaced. It argues that these expenses are
14 consistent with the Gaming Act and the statute
15 and that Everett should not be penalized for
16 having to utilize the surrounding community
17 process.

18 COMMISSIONER MCHUGH: Can I ask you
19 -- I'm sorry. Are you finished?

20 MR. ZIEMBA: For that one, I can go
21 on with the rest but if you wanted to stop.

22 COMMISSIONER MCHUGH: No, no. Go
23 ahead, because I have an overall question.

24 MR. ZIEMBA: Mohegan Sun also said

1 it's being asked to pay for Everett's against
2 -- it should be Revere. Excuse me for that.
3 Everett argues that Mohegan Sun's claim is
4 false and that Everett has not campaigned
5 against Mohegan Sun's project.

6 Mohegan Sun argues that the maximum
7 request should not be required up front.

8 Everett argues that its request to
9 receive the entire disbursement up front is
10 consistent with our regulations. Our
11 regulations do require communities to provide
12 us an estimate of the consulting costs and the
13 legal costs that would be necessary for the
14 engagement. And that any costs that do not
15 amount to that estimate that those funds will
16 be reimbursed the applicant.

17 Then in regard to the scope, Mohegan
18 Sun raises an issue that this is a large
19 amount. And that it is a very large scope and
20 that the dollar amount is a large amount.

21 Everett raises the argument, it says
22 that given the pattern of recalcitrance on the
23 part of the applicant, the scope may
24 overestimate the number of such events

1 necessary for counsel to attend. It also notes
2 that Mohegan Sun will not be charged for
3 meetings not required.

4 I would note on the matter of the
5 argument that Mohegan Sun shouldn't be required
6 to pay up front for every one of the costs, the
7 Everett applicant, Everett petitioner notes
8 that it could come to an alternative billing
9 arrangement with Mohegan Sun and if the
10 Commission so desires.

11 Commissioner, if you would like me
12 to answer any questions? I was going to put
13 forward a recommendation on how we could deal
14 with some of these issues, if you'd like, or I
15 could answer your questions.

16 COMMISSIONER MCHUGH: Yes, Sir. I
17 didn't understand on the very last page of this
18 section there's a chart of some kind, grant
19 one, grant two, grant three, grant four, the
20 very, very last page of the whole book. I
21 didn't understand what that was.

22 MR. ZIEMBA: So, what I did here is
23 I put together by way of comparison in order to
24 determine the reasonableness of the approach

1 that the city it Everett has put forth, the
2 voluntary disbursements that Everett -- that
3 the city of Everett has requested of the Wynn
4 applicant, because we are dealing with some of
5 the same teams, notably the legal fees.

6 One item that I will raise is in our
7 review, there was a flat fee for legal services
8 through Phase 2 of the application, including
9 the host community agreement. Then services
10 after Phase 2 on the grant number two there was
11 a billing arrangement at \$375 an hour. The
12 request for this particular request, I believe,
13 it is at \$475 an hour.

14 CHAIRMAN CROSBY: These were monies
15 that Wynn granted to Everett.

16 MR. ZIEMBA: These are monies that
17 Wynn granted to the city of Everett. And they
18 involved some of the same consulting groups as
19 a way of trying to determine whether or not an
20 expense is a reasonable expense.

21 COMMISSIONER MCHUGH: Oh, I'm sorry.

22 MR. ZIEMBA: These are Wynn related
23 expenses. And I'm just using this as a chart
24 to show comparisons between what is being

1 requested versus what was put forward by the
2 Wynn team.

3 COMMISSIONER MCHUGH: What is the
4 Revere reference at the top, voluntary
5 disbursements Everett/Revere.

6 CHAIRMAN CROSBY: It's background
7 for that.

8 MR. ZIEMBA: Sorry about that.
9 That's just voluntary disbursements for Everett
10 from the Wynn applicant. Pardon me.

11 COMMISSIONER ZUNIGA: Are some of
12 the studies that Mr. Moore was describing as he
13 was analyzing the traffic on Route 16, he was
14 cross-referencing for the Mohegan Sun traffic
15 generation some of the analysis done for Wynn.

16 MR. ZIEMBA: Yes.

17 COMMISSIONER ZUNIGA: Is there other
18 work that has happened in that realm here that
19 can also be helpful to the city of Everett?

20 MR. ZIEMBA: Neither the parties had
21 the benefit of the consulting analysis that we
22 put forward today. So, neither could predict
23 what their needs would be. In all fairness, I
24 do imagine that the city of Everett will still

1 want to move forward with its analysis of some
2 of the concerns that it has raised. And
3 consistent with the way that we have treated
4 these disbursements throughout, we do provide
5 some flexibility to the communities to get
6 prepared as they need to get prepared for the
7 agreements or in this case a petition for a
8 surrounding community status.

9 But given the concerns and the
10 flexibility that counsel for the city of
11 Everett has indicated, I was wondering if it
12 might make sense for the Commission to agree to
13 a portion of the full amount that is being
14 requested, and ask the parties to get together
15 to see if there is anything that the two
16 parties could do to make a determination in
17 regard to billing arrangements or invoices so
18 that there's more comfort related to the
19 overall amount of expense.

20 Then I could bring that forth that
21 recommendation to you in two weeks' time. But
22 if we agreed to at least a percentage that
23 wouldn't hamper Everett as it proceeds with its
24 negotiation.

1 COMMISSIONER MCHUGH: I have a
2 deeper question. Wynn has already paid, if I
3 understand this now correctly, WorldTech
4 \$180,000 or advanced monies to give WorldTech
5 \$180,000 to study traffic conditions in
6 Everett, right?

7 MR. ZIEMBA: No, I think the
8 WorldTech analysis, I think that is for very
9 specific intersections, correct, within Everett
10 as they related to the Wynn project.

11 I think what we heard today is that
12 yes, there is indeed some, for lack of a better
13 word, cross-fertilization of that two projects
14 in terms of analysis but still there remains
15 some individual questions that would need to be
16 reviewed.

17 COMMISSIONER MCHUGH: How do we know
18 that the \$50,000 being sought here doesn't
19 overlap the \$180,000 that's already been spent?

20 MR. ZIEMBA: That's part of my
21 recommendation is that the parties can come
22 back to us in two weeks' time with the benefit
23 of this analysis and give us perhaps an
24 agreement on what expenses would absolutely be

1 necessary to move forward to analyze this
2 proposal.

3 But I don't want to hamper
4 unnecessarily the city of Everett given the
5 timetables that we have in the ability to move
6 forward in their reviews.

7 COMMISSIONER ZUNIGA: I wonder just
8 on that last point, if that might be something
9 that is better delegated to you as to determine
10 the reasonability or the incremental nature of
11 this rather than try to go at it once every two
12 weeks that we meet.

13 I would for example just on another
14 note but related, from what is being sought
15 here by the city, I would strike out the line
16 item that is being sought for economic
17 development analysis, which we already
18 discussed is something we don't believe makes
19 the city a surrounding community. It's really
20 relative to traffic and particularly that on
21 Route 16 that we agreed on.

22 COMMISSIONER MCHUGH: Wynn has
23 already paid \$70,000 to the same company for
24 the same study.

1 CHAIRMAN CROSBY: I had the same
2 thought, I agree. It seemed to me that it's
3 reasonable from what we've heard to eliminate
4 the consult Econ \$35,000. Take your suggestion
5 about something say 50 percent of the WorldTech
6 so they can get started and some small
7 percentage of the Kopelman and Paige. And then
8 let you take from there, if you want to bring
9 it back to us, you can.

10 MR. ZIEMBA: Perhaps what we could
11 instead recommend, one thing that we did note
12 is obviously that our determinations regarding
13 the impacts are not dispositive regarding the
14 negotiations between the parties.

15 So, to the degree that there could
16 be some arguments by the city of Everett that
17 they want to continue to evaluate some impacts
18 that perhaps we didn't evaluate.

19 What we could instead do is if you
20 wanted to delegate to me or a consortium of
21 staff to determine reasonableness in trying to
22 work between the two parties on what would be
23 necessary going forward that would be a way to
24 try to resolve this matter. And hopefully the

1 two parties can reach a resolution by and
2 amongst themselves.

3 COMMISSIONER CAMERON: What was your
4 original recommendation going to be with regard
5 to a dollar figure?

6 MR. ZIEMBA: My original
7 recommendation was going to be probably
8 approximately 50 percent of the grant upfront
9 and then we would work with the parties for the
10 remainder of the grant to determine its
11 reasonableness.

12 That said that doesn't prejudice the
13 city of Everett that it's only 50 percent of
14 what's necessary. But since counsel for the
15 city of Everett has put forward that it wanted
16 to be reasonable regarding the number of
17 meetings that would be necessary, it admitted
18 to saying that if there's much more of a
19 working environment between the two parties
20 that perhaps 15 meetings would not be
21 necessary. So, there's a lot to be determined
22 in that regard.

23 COMMISSIONER MCHUGH: So, what if we
24 went back to that and said 50 percent of two

1 and three plus anything over that that they
2 could convince you is reasonable and up to the
3 max here. And if you want to bring it back,
4 bring it back.

5 CHAIRMAN CROSBY: It could be 50
6 percent of two and three and let them figure
7 out how to spend it around if they want to. We
8 don't to finalize the line items.

9 COMMISSIONER CAMERON: Was there an
10 issue with three with regard to a different
11 hourly rate that you were bringing to our
12 attention?

13 MR. ZIEMBA: I just noted that the
14 rate that was being charged for the city of
15 Everett analysis paid for by the Wynn proposal
16 was \$375. Excuse me, I think I said \$475 here,
17 but it's \$450 included in the scope of work.

18 CHAIRMAN CROSBY: To me that's the
19 city's problem. We're giving them a number of
20 dollars. They can negotiate the hourly rate
21 they want to pay.

22 COMMISSIONER MCHUGH: Right. And if
23 the \$30,000 is exceeded, you can take a look at
24 the rate if you wanted to and conclude that any

1 excess was reasonable or unreasonable based on
2 the rate differential.

3 MR. ZIEMBA: With the ability to
4 come back to the Commission about --

5 COMMISSIONER MCHUGH: If you wanted
6 to.

7 CHAIRMAN CROSBY: I am sure this is
8 just a typo, but I just want to make sure I'm
9 not missing some. In the Foley Hoag letter,
10 which was near the front, on the first page, in
11 that first full paragraph, the last line it
12 says and served on MSM on January 13, 2013.
13 Then there are two other places where it refers
14 to January 2013. That means 14, right? Or is
15 there something going on?

16 MR. ZIEMBA: Yes.

17 CHAIRMAN CROSBY: That's a multiple
18 typo?

19 MR. ZIEMBA: Yes. I know how they
20 feel.

21 CHAIRMAN CROSBY: I am in favor of
22 Commissioner McHugh's suggestion that we take
23 50 percent of the latter two categories without
24 specifying where it goes that we're authorizing

1 as an initial involuntary disbursement with
2 some sense that that's appropriate but
3 delegating to you the ability to take it
4 further if you can get the parties to agree on
5 it. And to bring it to us if you can't.

6 MR. ZIEMBA: Okay.

7 CHAIRMAN CROSBY: Does that make
8 sense? Does somebody want to so move?

9 COMMISSIONER MCHUGH: So moved.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER CAMERON: Second.

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

14 COMMISSIONER MCHUGH: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER ZUNIGA: Aye.

17 COMMISSIONER STEBBINS: Aye.

18 CHAIRMAN CROSBY: Opposed? The ayes
19 have it, guess what, unanimously.

20 COMMISSIONER CAMERON: Thank you.

21 COMMISSIONER MCHUGH: Thanks.

22 CHAIRMAN CROSBY: What else do you
23 have, John? You have Region C and this is it.

24 MR. ZIEMBA: So, we have Cambridge

1 and Saugus for the Wynn application.

2 CHAIRMAN CROSBY: Cambridge, Saugus
3 and then Region C.

4 MR. ZIEMBA: But as is consistent
5 with our previous reviews of these surrounding
6 community petitions, a lot of the analysis that
7 was done by the consultants carries forward to
8 actually both of these applications because
9 they are in so geographically proximate
10 locations.

11 CHAIRMAN CROSBY: So, I think we
12 would try to get through everything; is that
13 all right?

14 COMMISSIONER MCHUGH: Yes.

15 CHAIRMAN CROSBY: Okay. With that
16 we'll take a quick break and we'll be right
17 back.

18

19 (A recess was taken)

20

21 CHAIRMAN CROSBY: We are reconvening
22 about 3:30. And Ombudsman Ziemba will pick up
23 where we left off.

24 MR. ZIEMBA: Great. Thank you, Mr.

1 Chairman. We will now consider the surrounding
2 community petitions relative to the Wynn
3 applicant. First up is a review of the
4 Cambridge surrounding community petition. If
5 you take a look at your Wynn Everett binder,
6 the green tab is Cambridge, if you go to tab
7 one, page five proximity.

8 CHAIRMAN CROSBY: The green tab?

9 COMMISSIONER CAMERON: Cambridge is
10 going first.

11 MR. ZIEMBA: Cambridge goes first.

12 COMMISSIONER CAMERON: What page
13 again? I'm sorry.

14 MR. ZIEMBA: Page five.

15 CHAIRMAN CROSBY: Of the DEIR
16 certificate.

17 MR. ZIEMBA: No of the packet.

18 CHAIRMAN CROSBY: Got it.

19 MR. ZIEMBA: On proximity, Cambridge
20 indicated that it is less than five miles away
21 from Everett. The Wynn applicant indicated
22 that the length of the common border is zero.
23 It doesn't border, doesn't have a shared
24 border. And that it's 1.14 miles from the site

1 to the border of Cambridge. Almost immediately
2 the next page, page eight, we begin with
3 transportation infrastructure. And I'm going
4 to turn to Rick and his crew for the analysis.

5 MR. MOORE: We'll start with the
6 city of Cambridge.

7 MR. ZIEMBA: The city of Cambridge.
8 And his analysis is found on page 53 that's
9 where we begin the transportation analysis.

10 MR. MOORE: If I can direct your
11 attention to the screen and the map. The Wynn
12 site is shown right here in Everett. If the
13 Wynn site happens to be in the city of
14 Cambridge there that was inadvertent and
15 shouldn't be taken as a declaration one way or
16 the other.

17 But the traffic as it comes out of
18 that front door of the Wynn site, about one-
19 third of it goes towards the north on Broadway.
20 And about two-thirds of it goes to the south
21 towards the river and over the river.

22 Some of that traffic once it goes
23 over the river turns north again on 93 and
24 comes up north. But in terms of Cambridge,

1 there are two roads that they suggested would
2 have traffic on them. One was Route 16.
3 Remember we talked about Route 16 on Everett,
4 went across east-west. Then Route 16 crosses
5 93 about this location, Wellington Square, and
6 follows the Neponset River all of the way down
7 to the Alewife Brook train station.

8 So, there's a section of Route 16 in
9 Cambridge that carries approximately five
10 percent of the traffic. This is a Wynn number.
11 Wynn projected that five percent of the traffic
12 would be on Route 16 in the vicinity of 93.

13 Most of that five percent, although
14 some of it will peel off, most of that five
15 percent will follow Alewife Brook Parkway along
16 the river and go out Route 2 towards the west.

17 So, there's two intersections there
18 of interest, one is the Massachusetts Avenue
19 intersection, which is right about here. And
20 the other one is what we'll call the rotary at
21 the end of Route 2. Both of those are
22 congested intersections. And looking at the
23 impact of that five percent on those two
24 intersections are what we'll talk about in just

1 a minute.

2 But before we get to that, there's
3 another sort of piece of the Cambridge issue,
4 and that's the approximately third of the
5 traffic that goes south on 93. The problem as
6 we see it is the traffic analysis just ended
7 right there. And it said that there'd be 37
8 percent of the traffic on 93 heading into
9 Boston following 93 directly south. As in the
10 other case, also taking the Mass. Pike, I-90
11 West.

12 But they didn't do any analysis past
13 just identifying that 37 percent on 93. And
14 furthermore, they looked at an interchange, an
15 intersection in Cambridge. It's the Land
16 Boulevard/Route 28 intersection right by the
17 Museum of Science, which is a congested
18 intersection.

19 And then when they projected traffic
20 in the future, they didn't project -- they
21 projected an escalated traffic just because
22 future escalation but they didn't estimate any
23 of the Wynn traffic would go through that
24 intersection. That struck us as unusual.

1 The reason for that is they don't
2 define what happens to that 37 percent as you
3 go further south and west. So, we took a look
4 at what might happen to that 37 percent. And
5 we found that about 60 percent of that based on
6 their own data would take Route I-90 the Mass.
7 Pike West. And that's a significant amount of
8 traffic for the entire -- it's about 25 percent
9 of the entire casino's traffic.

10 Then we asked ourselves if you were
11 at the casino and wanted to get to the Mass.
12 Pike going west, how would you do that? And
13 conversely if you were coming in on the Mass.
14 Pike passing 128, coming in on the Mass. Pike
15 and you were heading towards the casino, how
16 would you get there?

17 We also know from their own data
18 that the majority of people will be coming from
19 about a 30-minute to 90-minute drive. Those
20 patrons will know the local roads. They'll
21 have an understanding of what options they
22 have. They're not coming from Kansas. So,
23 they have an idea of what their options might
24 be.

1 And furthermore, we Googled that
2 question. And if you look at the next slide,
3 you'll see if you are traveling on Route 90,
4 and you ask how to get to the Wynn facility,
5 they give you two options. One is staying on
6 Route 90 coming to 93 and then getting off and
7 going through Andrew Square.

8 The alternative is getting off at
9 the Brighton-Allston toll, going across the
10 river, taking Memorial Drive through the Land
11 Boulevard, Memorial Drive turns into Land
12 Boulevard, crossing McGrath Highway right about
13 here. And that's a congested intersection.
14 One that they analyzed and one that by the way
15 has a level of service F, and one that they did
16 not project any traffic going through.

17 So, if you're coming down the Mass.
18 Pike going to the casino or conversely if
19 you're at the casino trying to get to the Mass.
20 Pike West, you might reasonably take this
21 alternative. In fact, the Google map tells you
22 at certain points of the day it is certainly a
23 shorter ride and in some cases it's a quicker
24 ride, depending obviously on the congestion on

1 the Pike, 93, and then along Memorial Drive.

2 We all know that there's some
3 congestion getting across the river. There's
4 some congestion at the intersection. But
5 nevertheless, these are reasonably -- two
6 reasonable options to get there.

7 The traffic engineers did not
8 anticipate that any of this traffic would go on
9 Memorial Drive which we think is difficult to
10 justify. That some percentage of that traffic
11 would go on Memorial Drive. We estimated that
12 would be somewhere in the neighborhood of eight
13 to 10 percent.

14 So, we have two issues now. We have
15 the one issue up here on Route 16. And then we
16 have the issue on Memorial Drive, both the
17 Route 16 intersection in Cambridge out here and
18 the Memorial Drive section in Cambridge.

19 So, if we go to the next slide and
20 look at some numbers, we can see that Route 16
21 has about 3300 vehicles in that section in
22 Cambridge. The casino would put approximately
23 100 vehicles on that section. And that would
24 be a three percent increase. Memorial Drive

1 similar numbers, it's about the same volume,
2 slightly more vehicles, a slightly higher
3 percentage, almost five percent.

4 Just for full disclosure, if you
5 look at the Route 16 traffic, those numbers are
6 predicted based on Wynn data that we took right
7 out of the Wynn report. We didn't have to do
8 any additional calculations to come up with
9 those numbers.

10 The Memorial Drive numbers because
11 they neglected to look at Memorial Drive or
12 that split of that large 37 percent, we made
13 those splits. So, we acting on behalf of the
14 Gaming Commission made those splits and came up
15 with about eight percent of the casino traffic
16 on Memorial Drive. Hence this five percent
17 increase and hence this impact. So, the
18 numbers come from slightly different locations.

19 Both roadways, both Route 16 and
20 Memorial Drive have intersections that are
21 failing. On the Route 16 side, it's the
22 Alewife Brook/Route 2 interchange, and to a
23 slightly lesser degree the Mass. Avenue
24 interchange. That operates at a slightly

1 better service and level of service F but again
2 there are individual turning movements that are
3 problematic.

4 For example, going north on Mass.
5 Avenue turning left that movement can back up
6 almost into Porter Square. So, that's a level
7 of service F that one turning movement.

8 On Memorial Drive, you have the
9 issue both at the intersection when you right
10 get off at the tolls and getting across the
11 river, but more importantly you have the
12 intersection at Land Boulevard and 28, which is
13 right at the Museum of Science. That
14 intersection operates at level of service F.

15 As I said before, the traffic
16 analysis assumed there would be no traffic
17 going through that intersection from the
18 casino. We find that to be implausible. And
19 whether it's eight percent or seven percent or
20 10 percent, there will be what we consider a
21 significant amount of traffic taking that
22 option to get to the casino.

23 And because we have degraded
24 intersections both on 16, which is maybe a

1 little closer call, but when you add the issue
2 on 16 with the issue on Memorial Drive, which
3 we would say is a little bit more problematic
4 than the 16 issue, you add them together and
5 it's our conclusion that there's a significant
6 adverse impact to the roadways in Cambridge.

7 COMMISSIONER MCHUGH: How do you
8 account, Mr. Moore, for the fact that neither
9 DOT nor the planning council mentioned either
10 of those roads?

11 MR. MOORE: You found that in
12 several of the other cases as well. The
13 highway department is looking primarily at the
14 main arterial roads. They do, as you get
15 farther away from the point of the project get
16 less interested. And they're trying to focus
17 on specific locations that are close to the
18 project that have very direct impact.

19 We judge here that one of the
20 intersections was included. It was the Land
21 Boulevard/28. That was included in the
22 analysis. It's our judgment that it wasn't
23 included properly in terms of the amount of
24 traffic coming from the casino.

1 I agree that the Route 16 issue is
2 more of a stretch. And if that was the only
3 issue that we were talking about in Cambridge,
4 it would be a very close call and could go
5 either way. But we think because of that Land
6 Boulevard, which is included in the analysis
7 and you add them together, it tips it in the
8 favor of a determination.

9 COMMISSIONER MCHUGH: Okay. Thank
10 you.

11 COMMISSIONER ZUNIGA: Mr. Moore, you
12 mentioned familiarity with the roadways and
13 some of the difficulties. This is purely
14 anecdotal, but I am familiar with Memorial
15 Drive. I avoid it at all costs just on the
16 pedestrians. The difficulty in going through a
17 green light and pedestrians not obeying their
18 do not walk sign around Harvard Square --

19 COMMISSIONER MCHUGH: It's
20 Cambridge.

21 COMMISSIONER ZUNIGA: Right. Is
22 that something as the crow flies or as Google
23 tells us that may be a direct route, but there
24 is something about those kinds of headaches

1 also as evidenced by the fact that some of
2 those intersections are already failing at a
3 level of service that you say that may yield at
4 least some drivers to avoid that altogether.

5 How does that factor into your
6 analysis?

7 MR. MOORE: I think you are dead on.
8 And the traffic engineers made that same point
9 that if you are on the Interstate you have no
10 interference with pedestrians or bikes of
11 traffic lights. That is the judgment you make
12 in taking the alternative.

13 I used to also commute that route.
14 And every time I came to the Allston-Brighton
15 toll, I made a judgment as to whether to get
16 off on either Memorial Drive or Storrow Drive
17 or staying on the Turnpike. I didn't have to
18 negotiate the leg of 93 that goes from the end
19 of the Turnpike up to Sullivan Square. That's
20 probably the most problematic segment,
21 particularly in the five o'clock hour.

22 And if that is congested and if that
23 backs up onto the Mass. Pike or if the Copley
24 Square off-ramp backs onto the Mass. Pike, and

1 the Mass. Pike through the middle of downtown
2 and 93 are congested, it's clear to me that
3 Memorial Drive or even Storrow Drive are
4 preferable alternatives.

5 And I think the point is we could
6 argue the exact percentages given the level of
7 analysis we did. But to say it's zero is not
8 plausible in our opinion.

9 CHAIRMAN CROSBY: How did the other
10 consultants come down? You had the same
11 trifecta, right? You had the three groups
12 looking at this.

13 MR. MOORE: Yes.

14 CHAIRMAN CROSBY: And where did the
15 others come down?

16 MR. MOORE: They came down clearly
17 there was a very, very strong opinion that
18 Memorial Drive is a credible alternative here.

19 CHAIRMAN CROSBY: They both came
20 down, I think recommending that Cambridge
21 should be a surrounding community for purposes
22 of traffic at those two sites, right?

23 MR. ZIEMBA: Yes.

24 CHAIRMAN CROSBY: There was no

1 difference of opinion amongst the consultants?

2 MR. MOORE: No. But there was a
3 good deal more discussion, as I said, on the
4 Route 16.

5 CHAIRMAN CROSBY: But that was more
6 marginal.

7 MR. MOORE: That was a marginal
8 call, but clearly the Memorial Drive is what
9 made it.

10 CHAIRMAN CROSBY: Thank you.

11 COMMISSIONER MCHUGH: Thank you.

12 MR. MOORE: Just for the record
13 there was no impact on water or sewer or
14 construction vehicles.

15 CHAIRMAN CROSBY: Okay.

16 MR. ZIEMBA: Mr. Chairman, with that
17 I think we can move to operation, if you take a
18 look at page 86 in your packets.

19 The city of Cambridge is concerned
20 that because of Cambridge's proximity to
21 Everett, additional impacts on social services
22 and public safety in the community are
23 expected. Cambridge is also concerned about
24 the impact on Cambridge's smaller and midsized

1 entertainment venues by the additional
2 competition from subsidized casino
3 entertainment.

4 With that I'll ask Lyle to give us
5 the benefit of his analysis. Some of the
6 analysis, obviously, that he did for the prior
7 applicant carries forward in this. But I'll
8 ask him to give specific concerns relative to
9 this applicant.

10 And then to the extent those
11 discussions carried forward to the next
12 petitioner, Saugus, we can just take advantage
13 of the efficiencies there.

14 MR. HALL: Sure. Thanks, John.
15 Just a quick reminder to the three things that
16 we are looking at on an overall basis was the
17 lack of demand substitution, the repatriation
18 of gaming dollars and the positive impacts and
19 consider those in Cambridge as well as the
20 other locations.

21 Also just a quick recap on the Wynn
22 proposal which is somewhat different than the
23 Mohegan Sun proposal. Gaming floor about
24 170,000 square feet, quite similar although

1 more slot machines in Wynn than in Mohegan Sun.

2 One 500-room hotel, so the same
3 number of rooms but only one property. Eight
4 food and beverage outlets with 1000 seats,
5 somewhat less food and beverage activity than
6 Mohegan Sun. A thousand-seat multipurpose
7 space, a large sports bar, an outdoor
8 amphitheater and about 90,000 square feet of
9 retail space. So, similar but some differences
10 that are reflected in the operating parameters
11 of those two gaming companies.

12 John mentioned this, but just let me
13 hit on it again. The city of Cambridge claim
14 in its statement regarding impact is, and I'll
15 quote: "Negative impacts on Cambridge's smaller
16 and midsized entertainment venues by the
17 additional competition from subsidized casino
18 entertainment."

19 Cambridge doesn't specify any
20 specific venue or quantify the impacts in any
21 way. And it is also worth knowing that there
22 were no ILEV petitions from Cambridge. So,
23 from the point of view of the operators of
24 those facilities there appeared to be no

1 impact.

2 Wynn submitted a range of background
3 documents that talked to some of the positive
4 impacts from operation. Broadly speaking,
5 these are similar to what I reviewed for
6 Everett. First of all, I'll mention a couple
7 of points. Employment in the same order of
8 magnitude although several hundred more
9 employees in Wynn than in Mohegan Sun, just
10 over 3000. Purchases of goods and services in
11 the same range but \$100 million for the
12 commitment to spend between 40 and 50 in the
13 immediate area. And an estimate of about three
14 and half million visits from those living
15 between 60 and 200 miles from the casino, in
16 addition to tourists already coming to Boston
17 and those tourists that are incited to visit
18 the Wynn facility by Wynn's own sales and
19 marketing activities.

20 As a result and again just a quick
21 summary, we don't see any negative impacts with
22 respect to the Category 1 on Cambridge. And
23 Cambridge did not identify what those were
24 beyond a broad sweeping statements. So, we

1 would conclude there is no negative and
2 potentially several positive impacts as a
3 result of the Category 1 licensee, John.

4 MR. ZIEMBA: Thank you, Lyle. Any
5 questions, Commissioners? Lynne, if you can
6 give us your presentation.

7 MS. SWEET: Sure. So, Cambridge
8 did not mention housing or schools or
9 infrastructure as an impact in their petition.
10 I went over the regional overview and we pretty
11 much studied the same areas. The Wynn is
12 proposing 3287 permanent jobs on-site of which
13 20 percent were supervisory. They really
14 didn't speak to where they were going to draw
15 their employees from.

16 The other differences is that they
17 are offering to provide a shuttle service to a
18 transportation hub in Malden versus using the
19 Blue Line. And that will also get you pretty
20 much access to most of the MBTA lines in
21 greater Boston.

22 We looked at demographics in seven
23 communities this time. And we also note that
24 Cambridge does not physically abut Everett. It

1 is to the south and the west and it is also
2 separated Routes 16 and 93.

3 So, our research on unemployment
4 showed 28,000 unemployed people as of December
5 2013 plus an additional 2400 in Cambridge.
6 Approximately nine times more unemployed
7 persons in our small study area than the number
8 of employees that are proposed.

9 Housing and vacancy, there's
10 approximately 30,000 vacant housing units in
11 the seven town study area plus another 3000 in
12 Cambridge. That's also nearly 10 times more
13 vacant housing units than jobs to be filled.
14 And as mentioned previously the 30,000 units in
15 the greater Boston pipeline.

16 Our findings were that Cambridge
17 will not be significantly and adversely
18 affected by the operation of a Category 1
19 gaming establishment after its opening due to
20 housing impacts resulting from the facility.
21 And given the high unemployment and housing
22 vacancy rates in the area, it is more likely
23 than not that the Category 1 casino will be
24 beneficial to the housing market in Cambridge,

1 and therefore add to the real estate tax base
2 as well as increase overall consumer spending
3 in the area.

4 CHAIRMAN CROSBY: Thank you.

5 MR. ZIEMBA: Mark.

6 MR. VANDER LINDEN: So, in the city
7 of Cambridge petition to be designated as a
8 surrounding community by Wynn, they cited
9 generally that there would be "additional
10 impacts on social service and public safety
11 that could accompany a casino in close
12 proximity to their residents". Cambridge did
13 not specify or quantify the specific services
14 or resources that would be impacted. They
15 employed the services of RKG Associates to help
16 evaluate those general issues.

17 They did not provide any specifics
18 other than to say that the resort casino will
19 utilize its state-of-the-art construction, in-
20 house security systems along with the large
21 security team to offset some portion of the
22 additional municipal services. And that would
23 also carry out into the neighboring
24 communities.

1 The research and evidence that I've
2 presented to you in the previous petition would
3 apply to this is well. I really don't have any
4 additional evidence to present to you to
5 support or not support the petition of
6 Cambridge.

7 CHAIRMAN CROSBY: Okay.

8 MR. ZIEMBA: Thank you, Mark. There
9 were no other impacts. So, we can move to
10 positive impacts. Cambridge asserted no
11 positive impacts.

12 The Wynn applicant noted significant
13 positive impacts upon the community, many of
14 which you've heard. And they did try to do an
15 estimate of specific earnings for each of the
16 different communities. But in general they
17 referenced the significant numbers of new jobs
18 and revenues and spending within the region as
19 you just heard.

20 With that Commission, I ask that you
21 deliberate.

22 CHAIRMAN CROSBY: Anybody?

23 COMMISSIONER STEBBINS: I think
24 similar to the previous presentation we had, we

1 have clearly identified even though it probably
2 hasn't been studied as thoroughly as Route 16
3 was in the previous deliberation, but it
4 certainly sounds like from our experts that
5 there is going to be some impact on Memorial
6 Drive as it cuts through Cambridge with people
7 trying to get around the Mass. Turnpike to 93
8 connection.

9 I think everything else can't be
10 substantiated. Or certainly there isn't enough
11 evidence or data to have our consultants
12 suggest that there would be an impact either on
13 business or housing or the other factors. I'm
14 not opposed to making them a surrounding
15 community designation just based on the traffic
16 and maybe even be able to limit it to where we
17 see a problem on Memorial Drive through the
18 neck of the woods by the Science Museum.

19 COMMISSIONER ZUNIGA: I have a
20 general question that applies more and more to
21 some of these topics that include some level of
22 assumptions by necessity. That is the Gaming
23 Act does provide for the community mitigation
24 fund and gives us the authority to look -- as

1 the trustees of those funds to entertain and
2 receive requests in the future for addressing
3 some of these problems, if you will, some
4 mitigation needs.

5 I'm just throwing it out there is
6 this something we need to contemplate more and
7 more as some of these issues continue to be
8 compounded just by the complexity of the
9 roadways, some of the roadways being -- the
10 complexity of many factors, some of those
11 roadways already operating at levels of service
12 in deficiency and the number of surrounding
13 communities.

14 CHAIRMAN CROSBY: I was having some
15 of the same thought. As the negative effects
16 get more and more marginal, there's the offset.
17 We do have the capacity to offset. And the
18 positives are nontrivial in terms of employment
19 and supplier purchases and the impact of wages
20 and salaries and repatriated dollars, the whole
21 bit.

22 At some point, we might get to the
23 point where albeit a negative impact, it is
24 modest enough. In this case we're really

1 talking about for sure that one segment. It
2 seems to me it's close to saying, yes, there is
3 a negative but there is a community mitigation
4 fund if it really becomes a problem. And there
5 is all of the positive impacts.

6 I think it starts to work its way
7 towards an offset. It's kind of a fine line.
8 But the Route 16 -- You could have made the
9 same case about Route 16 but that goes right
10 through the heart of a city. It seems to me
11 that was a little more serious. But I'm mixed
12 on the issue.

13 COMMISSIONER MCHUGH: I've always
14 understood and our prior discussions haven't
15 really come to grips in terms of a firm policy
16 with the notion. But I've always thought of
17 the community mitigation fund as designed to
18 deal with the unanticipated consequences of
19 what these casinos produce. And that to the
20 extent one could anticipate consequences, they
21 ought to be dealt with upfront.

22 I agree with the theory that at some
23 point they become more attenuated but if we can
24 identify them and identify them as worth

1 mitigating before they start, it seems to me we
2 should do that. And it seems to me that 4.7
3 percent increase in that area the Land
4 Boulevard/McClellan Highway intersection --

5 MR. MOORE: McGrath.

6 COMMISSIONER MCHUGH: Pardon me?

7 MR. MOORE: It's McGrath Highway.

8 COMMISSIONER MCHUGH: -- McGrath
9 Highway, sorry. It doesn't take much to make
10 that horribly more --

11 CHAIRMAN CROSBY: It's already a
12 mess.

13 COMMISSIONER MCHUGH: It's a mess.

14 CHAIRMAN CROSBY: It's a total mess.

15 COMMISSIONER MCHUGH: So, putting a
16 layer of traffic on top of that it seems to me
17 is something we can foresee the need to do and
18 we ought to deal with it now -- they ought to
19 deal with it.

20 COMMISSIONER CAMERON: Mr. Moore, we
21 didn't ask you the specific mitigation
22 measures. Would you be talking about signal
23 changes as well as maybe lane improvements or
24 left-hand turn improvements as you did when you

1 explained the Route 16 issue similar here?

2 MR. MOORE: Yes. I think given the
3 level of impact, the most cost-effective would
4 be to look at a modification of the signal
5 timing, maybe some restriping. You'd have to
6 look at the intersection in a lot more detail
7 as many, many lanes coming in from many
8 different directions.

9 CHAIRMAN CROSBY: If there were any
10 easy fixes there, you think they would've been
11 done by now. I'm seeing Mr. Tramontozzi
12 nodding his head.

13 Those two places have been a
14 nightmare for a very long time. That's one
15 thing that concerns me. I think that's a very
16 good question. You were quick about the issues
17 on Route 16. That because of the width of the
18 median strip and so forth, there are some
19 possibilities. Fixing the exit onto Storrow or
20 Memorial at Allston and the Science Museum
21 bridge --

22 COMMISSIONER ZUNIGA: I guess that
23 was a little bit part of my point. What could
24 reasonably be expected of the applicant in each

1 one of these cities to negotiate for
2 mitigation?

3 COMMISSIONER MCHUGH: I'm not a
4 traffic person, but it seems to me you can't
5 really consider this in isolated chunks. It
6 seems to me theoretically, and I throw this
7 out, that if you could fix the Sullivan Square
8 area so that you had a better place to dump
9 that traffic that came across, you'd open up
10 more things that signaling could do for you.
11 You'd have a longer flow across there or
12 something.

13 But now I feel like I'm buying into
14 Frank's admonition that everybody that drives a
15 car thinks he's a traffic engineer.

16 MR. MOORE: That I believe
17 Commissioner is a bit of a stretch.

18 CHAIRMAN CROSBY: Just like we can
19 all manage the Red Sox. The law does suggest
20 the possibility of a trade-off. And we haven't
21 ever really used that clause. But it does
22 suggest net negative.

23 Do you have any sense? You've
24 looked at the overall picture. You've talked

1 about the positive benefits. You're the ones
2 who made the judgments about the traffic
3 problems. How do you see it on the net basis?
4 Lynne, your face was getting all wound up when
5 I was talking. So, any of you?

6 MR. MOORE: My reaction is the
7 numbers that they're talking about in terms of
8 benefits had a lot of zeroes after them and
9 they were impressive, in terms of jobs and
10 economic benefits.

11 COMMISSIONER CAMERON: So, you're
12 suggesting there would be a net positive; is
13 that what I'm hearing?

14 MR. MOORE: Yes. I think that's a
15 useful discussion to have. You can't trade a
16 job for better traffic but it's not an
17 unreasonable discussion to have.

18 CHAIRMAN CROSBY: In this particular
19 case, Frank, you can really speak to this, but
20 in this particular case, I could be completely
21 wrong about this, but it does feel to me like
22 biting off that segment of Memorial Drive from
23 the Land intersection to the exit from the
24 Turnpike that seems to me like you're biting

1 off a very big bite and it's a problem which is
2 already very severe. Yes, this might make it
3 somewhat worse.

4 Is that right or wrong? If we put
5 this on the table as something that might need
6 to get accommodated within a surrounding
7 community agreement, are we being realistic
8 here?

9 MR. TRAMONTOZZI: Mr. Chairman, I
10 think you are correct. The problem that exists
11 there in front of the Museum of Science has
12 been there for years. It has been looked at
13 I'm sure by many different firms.

14 The DCR owns that intersection.
15 Their priority is pedestrian first and vehicle
16 second. It's possible that with new technology
17 that being camera detection versus loop
18 detection in the roadway and some optimization,
19 they may be able to improve it somewhat. It'll
20 probably still be at a level of service F but
21 you may be able to reduce the delays somewhat.

22 So, it's a big challenge. I don't
23 think that it will be solved very easily, if at
24 all. And that intersection will remain a

1 challenge. So, some people will try to avoid
2 it.

3 On the other side, Commissioner
4 McHugh mentioned Sullivan Square. Some of you
5 may remember there was an overpass. You have
6 the underpass there now for Route 99. And
7 there used to be an overpass so you could avoid
8 the rotary at Sullivan Square. That was taken
9 down probably 20 years ago because it was
10 beyond economical repair. So, that was
11 removed, and then the congestion at Sullivan
12 Square became worse.

13 There are some long-range plans for
14 Sullivan Square and Rutherford Avenue but those
15 plans are not to widen. They're actually to
16 reduce roadway width and do more landscaping
17 and that along the Rutherford Avenue corridor
18 in Boston in particular. But there are things
19 I think that can be done at Sullivan Square to
20 try and improve what the traffic operation is
21 out there.

22 CHAIRMAN CROSBY: What about the
23 Brighton-Allston exit off the Pike?

24 MR. TRAMONTOZZI: Similarly, there

1 had been some improvements that had been done
2 over the years. It should be looked at again.
3 I'm not suggesting that the applicant, either
4 one of them, would be able to solve the
5 problem. But it does deserve another look. I
6 don't think it's been looked at for quite some
7 time, probably not since the Coke plant was
8 closed down. So, it's been a long time since
9 that intersection was looked at.

10 MR. MOORE: Just as a point, the
11 problem on that end of the link is in Boston;
12 it's not in Cambridge. It's on the Boston side
13 of the river. So, if you are strictly looking
14 at Cambridge, by the time you get to Cambridge
15 you are done. You are on your way.

16 CHAIRMAN CROSBY: That's a good
17 point.

18 MR. TRAMONTOZZI: So, there would be
19 a little bit of a bottleneck on the Boston side
20 trying to get into the Cambridge side.

21 MR. MOORE: That is a problem.

22 CHAIRMAN CROSBY: Yes. That's what
23 I meant.

24 COMMISSIONER MCHUGH: The net effect

1 of this is that you have -- we've dealt with
2 this before -- an incremental impact on an
3 already level of service F intersection. And
4 it's not reasonable, one would think, to put
5 the cost of fixing the level F intersection on
6 the applicant.

7 What is reasonable is to mitigate
8 the effect of the additional incremental
9 impact. And you wonder if you're just talking
10 about metaphysics when you start talking that
11 way. How are you going to figure out a neutral
12 impact of an incremental change that will make
13 the addition of this small amount but
14 significant amount of traffic neutral insofar
15 as the level of service is concerned. And
16 that's a hard thing to get your head around,
17 isn't it?

18 MR. MOORE: Yes. To get the
19 incremental improvement may be a very, very
20 large dollar amount.

21 COMMISSIONER MCHUGH: Right, right.

22 MR. MOORE: However, we are in
23 Cambridge. The technology that Frank was
24 talking about, what better place to look at the

1 future of traffic.

2 CHAIRMAN CROSBY: Right next to MIT,
3 Ed Land would appreciate it.

4 COMMISSIONER ZUNIGA: Are there
5 other things that the applicant could come up
6 with? For example, I know I became very aware
7 of free play as a result of all of these
8 analysis. Are there ways to incentivize
9 patrons to come at different times in the day,
10 for example? Come to cash in your free play if
11 it's after eight o'clock Friday nights not
12 before. Have you seen instances of that Lyle
13 as we sit here?

14 MR. HALL: I think that's distinctly
15 possible, certainly whether you're programming
16 entertainment or programming different
17 marketing promotions on different days or times
18 of the week.

19 The reality is in most major urban
20 centers rush-hour happens at certain times in
21 the morning and certain times in the afternoon.
22 You simply can't change that. I think we've
23 looked at this in other jurisdictions before --
24 I do own a car, but I am not a traffic

1 engineer. -- where the impacts simply, people
2 will learn how to drive to where they need to
3 get to.

4 As Mr. Moore was saying, if Memorial
5 Drive becomes a problem, you're going to put
6 the traffic back on the Interstate. And if it
7 takes somebody 15 minutes longer to get where
8 they're going, thinking of a casino customer,
9 then that's what it's going to take. They're
10 not going to put themselves on a route that's
11 going to take them longer simply because an
12 intersection is there or not there.

13 I think there is probably very
14 limited ability you're going to have to change
15 behaviors through those prime congestion
16 periods of the day.

17 COMMISSIONER STEBBINS: That was the
18 point I was going to make. I do spend a lot of
19 time on the Turnpikes, so I do consider myself
20 a traffic engineer.

21 The fact that if I am living to
22 those areas kind of to the south and west of
23 Everett, and I pull up my Google map and it
24 sends me through Cambridge, and I realize that

1 I'd rather be sitting there somewhere else
2 poking my eyes out with a needle, I will find
3 another route.

4 Is there an expectation that what
5 can be a problem and you've identified it as
6 having an impact, but does your experience tell
7 you that overtime that sometimes that volume of
8 a problem drops if it becomes such an
9 inconvenience or such a headache to get through
10 a suggested route?

11 MR. MOORE: I think you are seeing
12 great strides in giving information to drivers
13 to make that right decision. And I think as
14 time goes by, certainly over the next five or
15 10 years, you'll see that whatever the real-
16 time condition is on those roads will be
17 available to drivers to make that decision.
18 And it'll be day-by-day as to which route is
19 better.

20 COMMISSIONER STEBBINS: I know we're
21 a long way from thinking about policy to
22 Commissioner Zuniga's point around the
23 community mitigation fund, but I kind of find
24 myself swayed to think about this. I'm

1 throwing something out there because we love
2 deliberating in public.

3 Making a ruling of not a designated
4 surrounding community but obviously that
5 reflecting the Commission's interest in
6 obviously this is a particular area of interest
7 and this may guide our future community
8 mitigation fund decisions and actions, but
9 there are so many other moving pieces. There's
10 so many other moving pieces from other
11 agencies, reflecting long-term transportation
12 plans of their own that I'm kind of backing
13 away from kind of making this singular decision
14 thinking that we're going to be the end-all,
15 be-all to the problems that already exist, as
16 Commissioner McHugh mentioned.

17 CHAIRMAN CROSBY: So, let's resolve
18 this. It sounds like we've got two
19 possibilities. One is to say it's not a
20 surrounding community because the damage isn't
21 big enough and the positive benefits are pretty
22 substantial and the likelihood of fixing
23 particularly the Land Boulevard with small
24 money isn't great.

1 Or calling it a surrounding
2 community but directing the arbitrator in
3 effect, making it as narrow and modest a review
4 process as possible. Just basically saying
5 take a quick look and see if there's any modest
6 reasonable way to do it. Those are the two
7 options I see us talking about.

8 COMMISSIONER ZUNIGA: Or even before
9 the arbitrator hopefully the parties.

10 CHAIRMAN CROSBY: Preferably the
11 parties, right. I'm with you. I don't like
12 the idea of pre-committing the community
13 mitigation. I've said not only unanticipated
14 but unanticipatable, both. I don't want to
15 have us already half committed big chunks of
16 that. So, I'm with you. I think I kind of
17 lean towards trying to direct the parties to
18 hear what we're saying and be narrow and
19 realistic. And realize that it's a nontrivial
20 issue but to be reasonable in trying to
21 approach it.

22 MR. ZIEMBA: Mr. Chairman, I was
23 going to say that I think it was important to
24 note that we're not asking any applicants to

1 fix pre-existing problems. We're trying to
2 address anything that is caused over and above
3 those.

4 But how you address a problem can be
5 subject to a lot of creativity and flexibility.
6 For example, I think the city of Cambridge has
7 indicated that it is very interested in
8 different modes there of how do you get people
9 off of the roads. How much attention does any
10 of these applicants make to public transit
11 services, improving their outreach to make sure
12 that their employees get on buses etc., etc.

13 So, potentially there's some room
14 for flexibility on the parties.

15 CHAIRMAN CROSBY: You'd send the
16 Wynn catamaran up the river, pick them up at
17 Brighton maybe at the BU boathouse.

18 COMMISSIONER MCHUGH: The
19 imagination of -- I'm not buying into that idea
20 necessarily. But the imaginative use of
21 traffic conduction through other modes or
22 figuring out how to make it more attractive for
23 people to come in off the Red Line and change
24 to the Orange Line to go over there and those

1 kinds of things is really interesting.

2 COMMISSIONER ZUNIGA: Running buses
3 is another thing that casinos often use to
4 bring -- It could be a drop off and a pick up.
5 It's not easy conceivably.

6 CHAIRMAN CROSBY: Does somebody want
7 to pose something?

8 COMMISSIONER MCHUGH: I move that
9 with respect to the intersection at Land
10 Boulevard and the McGrath and O'Brien Highway,
11 Cambridge be designated as a surrounding
12 community.

13 CHAIRMAN CROSBY: The context
14 they'll see in the transcript.

15 COMMISSIONER MCHUGH: Because of --
16 Let me rephrase that. That because of the
17 impact of traffic on the intersection of Land
18 Boulevard and the McGrath and O'Brien Highway,
19 the city Cambridge be designated as a
20 surrounding community.

21 CHAIRMAN CROSBY: Second?

22 COMMISSIONER STEBBINS: Second.

23 CHAIRMAN CROSBY: Any other
24 discussion? Are you guys all right? All in

1 favor of the motion to make Cambridge a
2 designated community as described, a
3 surrounding community as described, aye.

4 COMMISSIONER MCHUGH: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? Are you
9 abstaining?

10 COMMISSIONER CAMERON: No, I said
11 aye. Sorry, I didn't say it loud enough.

12 CHAIRMAN CROSBY: So, the ayes have
13 it five-zero.

14 MR. ZIEMBA: Thank you, Mr.
15 Chairman. Moving onto Saugus, proximity page
16 five. Saugus states that it sits in proximity
17 to Everett. The distance from the closest
18 point on Route 1 in Saugus to the proposed
19 casino site is about 4.5 miles.

20 CHAIRMAN CROSBY: Where are you?
21 Page five of what?

22 MR. ZIEMBA: Page five of the Saugus
23 petition.

24 CHAIRMAN CROSBY: That's the first

1 petition.

2 MR. ZIEMBA: Tab one.

3 CHAIRMAN CROSBY: Got it.

4 MR. ZIEMBA: Saugus's closest border
5 is approximately 1.9 miles from the host
6 community Everett measured from border to
7 border on Route 1. Then with that I'll ask Mr.
8 Moore to give us the benefit of the traffic
9 analysis.

10 MR. MOORE: We'll start with the
11 same map. The Wynn site is in the middle. We
12 just spoke about two-thirds of the traffic that
13 was basically exiting to the south. Now we
14 have a third of the traffic exiting to the
15 north. And of that third of the traffic, about
16 two percent go up to Route 16 continue onto
17 through the circle and up Route 99.

18 Another nine percent get on Route 16
19 in the east direction hit Route 1 and then go
20 up to Route 1. So, we have nine percent north-
21 south on Route 1, two percent on 99. Right at
22 about the top of the map here, those two roads
23 come together right about the border of Saugus,
24 which as John said about 4.5 miles north of the

1 site.

2 Then the combined 11 percent are on
3 Route 1. And if you just look over to this
4 map, it's a little small, but this is 128.
5 This is the section of Route 1 in Saugus. It's
6 again about 4.5 miles. 99 and Route 1 join
7 right about here.

8 And that 11 percent run along that
9 section of Route 1, which is a divided highway,
10 three lanes in each direction in Saugus. There
11 are four interchanges. There are no signalized
12 interchanges along that length of Route 1.
13 However, certain of the off-ramps are
14 signalized at the top of the off-ramp where
15 they have a turning movement onto the
16 crossroads.

17 One important feature about Route 1
18 there is all of the curb cuts in all of the
19 retail facilities on both sides. And basically
20 that takes the right-hand lane or the slow lane
21 and prevents it from being a free-flowing lane.
22 Because of all of the conflicts, you can't get
23 the kind of traffic volume through that third
24 lane that you would in a normal limited access

1 interstate highway.

2 So, and coming in the southbound
3 direction it is further complicated because
4 when you get -- if you are driving south and
5 right as you get out of Saugus, the three lanes
6 neck down to two lanes. So, effectively you
7 have two-lane capacity south of Saugus and that
8 generally causes a backup or can potentially
9 cause a backup in the southbound direction.

10 If we look at the next slide, the
11 capacity of Route 1 -- I'm sorry the volume on
12 Route 1 today is about 10,000 vehicles in the
13 peak hour. That's a Friday afternoon peak
14 hour. That's about 60 percent going northbound
15 and about 40 percent going southbound. That
16 would be about equivalent of 6000 vehicles
17 going northbound.

18 If you had a limited access
19 interstate highway, the numbers would suggest
20 you were at capacity. However, because of
21 those curb cuts in the right-hand lane and you
22 don't have full capacity in the right-hand
23 lane, it's our judgment that the roadway in the
24 Friday peak is at or in many cases

1 overcapacity. And that's why you see the
2 congestion on Route 1 if you've ever driven it
3 in the PM peak, particularly on Friday.

4 Going southbound you have about 4000
5 vehicles. So, it's less. So, you would say it
6 has some available capacity except for the fact
7 that those three lanes neck down to those two
8 and that puts effectively the three lanes going
9 southbound, the one inside lane is compromised
10 already. And then you're necking down into two
11 lanes.

12 So, it's our judgment that Route 1
13 in that section of Saugus is at or over
14 capacity today without any additional traffic.

15 Now Mass. DOT did not make any
16 comments nor did MAPC about that section of
17 Route 1. And it wasn't studied in the traffic
18 analysis. But again, it's our contention just
19 like we were talking about the Land Boulevard
20 intersection that the roadway is already
21 congested and in many occasions overcapacity.
22 Part of that as the second bullet mentions is
23 because of that driveway. And in some cases
24 those signals on the ramps cause backup onto

1 the main line which further congests the free
2 flow of traffic.

3 So, again because we're starting
4 with a congested, in our judgment overcapacity
5 highway, and we're adding 185 vehicles in that
6 hour to the roadway, although it looks like a
7 modest two percent increase, because we're
8 starting with that overcapacity issue we
9 consider that that's a significant impact.

10 COMMISSIONER ZUNIGA: So, you are
11 adding the nine percent and the two percent.

12 MR. MOORE: Correct.

13 COMMISSIONER ZUNIGA: Doesn't that
14 assume -- You're assuming that 11 percent comes
15 from north of that split.

16 MR. MOORE: That's correct.

17 COMMISSIONER ZUNIGA: Why would I
18 get off on 99 if I'm driving through Route 1?

19 MR. MOORE: If you are driving
20 south?

21 COMMISSIONER ZUNIGA: Yes.

22 MR. MOORE: You're going to the
23 casino?

24 COMMISSIONER ZUNIGA: Yes.

1 MR. MOORE: It's a congested route
2 because of signals, but again it's just a
3 preferential judgment. The traffic engineers
4 for Wynn suggested -- they made that split
5 based on travel times, based on gravity models,
6 based on their analysis.

7 We would generally conclude with
8 that whether it's one percent or two percent
9 depending on what day it is and what's
10 happening on Route 1 versus 99. But clearly,
11 if you were coming down Route 1, your
12 preference would be to stay on Route 1.

13 And of that 11 percent, nine percent
14 of the people or almost 90 percent of the
15 people are staying on Route 1 and 10 to 20
16 percent are going on Route 99.

17 COMMISSIONER ZUNIGA: What about
18 people who live in the vicinity of say Melrose
19 and Malden. That 11 percent assumes that
20 people are going further from that split.

21 MR. MOORE: I believe, it's hard to
22 read, but I think that's Malden. You can see
23 these arrows are the local traffic. That's
24 actually two percent and that's one percent.

1 Basically, the traffic engineers judged that
2 local traffic will go to some of those local
3 communities in that particular percentage
4 level.

5 CHAIRMAN CROSBY: How does Mohegan
6 Sun deal with Route 1?

7 MR. MOORE: Say again.

8 CHAIRMAN CROSBY: How does Mohegan
9 Sun deal with Route 1? It must be pretty much
10 the same projected traffic.

11 MR. MOORE: It's about 18 percent.
12 And I believe Saugus is a surrounding community
13 to Mohegan Sun.

14 In this case, we're talking about 11
15 percent of the traffic from Wynn. Mohegan Sun
16 estimates about, I believe, it's about 18
17 percent of the traffic will go to Route 1. So,
18 it's a bigger impact from Mohegan Sun.

19 CHAIRMAN CROSBY: I don't quite see
20 why that would be. But John, is Saugus a
21 surrounding community for Mohegan Sun?

22 MR. ZIEMBA: Yes.

23 MR. MOORE: I don't know what
24 they're negotiating.

1 CHAIRMAN CROSBY: Right.

2 MR. MOORE: It's 19 versus 11 and
3 considering both generate about the same amount
4 of traffic, it's the same amount of vehicles
5 proportionately.

6 COMMISSIONER MCHUGH: 19 versus 11
7 but the relevant number is the two percent
8 peak hour increase, right?

9 MR. MOORE: I'm sorry?

10 COMMISSIONER MCHUGH: The relevant
11 number is the two percent peak hour increase.

12 MR. MOORE: That's right and the 18
13 percent would be presumable about a three or
14 four percent increase.

15 COMMISSIONER MCHUGH: Right.

16 MR. MOORE: I think you can see that
17 number if you can read the chart on the first
18 page.

19 COMMISSIONER MCHUGH: Right, right.

20 CHAIRMAN CROSBY: Okay. I guess
21 we're done with traffic infrastructure.
22 Nothing else on infrastructure.

23 MR. MOORE: Just the standard two
24 statements that there are no water and sewer

1 impacts and there are no significant
2 construction vehicle impacts.

3 CHAIRMAN CROSBY: Right. Next?

4 MR. ZIEMBA: Now we turn to
5 operations. There was no significant housing
6 concerns that was put forward by the town of
7 Saugus. So, I'm going to ask Lyle and Mark to
8 address their concerns regarding public safety
9 and economic development concerns.

10 Saugus raised significant questions
11 regarding the impact on businesses along that
12 stretch because they depend significantly on
13 that for their tax revenue base.

14 MR. HALL: Yes. The basis for
15 Saugus's petition is effectively their concern
16 over a lost meals tax from restaurants located
17 along Route 1.

18 And the thinking there is that the
19 traditional patrons of those restaurants will
20 be going to the casino and spending dollars
21 there instead. Again, we've dealt with that
22 before and the concept of the demand
23 substitution on dollars spent one place or the
24 other. The Saugus restaurants generate about a

1 million dollars in meals tax annually, which
2 represents about 1.25 percent of the town's
3 budget. So, it's not an insignificant number.

4 The town did provide some more
5 background than some of the other communities
6 have in terms of standing behind these numbers.
7 They produced what I could best call an
8 informal survey of five restaurants where the
9 economic development coordinator spoke to those
10 restaurateurs about their concerns on future
11 lost business.

12 Then perhaps not surprisingly and
13 perhaps I don't know how the questions were
14 framed there was concern on the part of those
15 restaurateurs that there would be potential
16 loss. We, frankly, put relatively limited
17 weight on that survey given the size of the
18 sample and the qualitative nature.

19 The town also provided a study
20 roughly 10 years old that was done looking at
21 the impact of a casino on restaurants in
22 particular. The study was done in a more, I'll
23 call, rural context not in a large urban
24 center. So, again, we discounted that as not

1 being particularly relevant to the Saugus and
2 greater Boston situation.

3 The town also claimed, and we didn't
4 take this into account, but the town also
5 claimed that it was not well-positioned to
6 benefit from visitation to the casino as its
7 current zoning prohibited mixed-use projects,
8 so projects that include a hotel or other
9 benefits which I thought as somewhat
10 contradictory.

11 Because on the one hand they're
12 suggesting that they were going to lose
13 business to the casino, but on the other hand
14 not being able to take advantage of it because
15 their own zoning bylaws prohibited the ability
16 to construct those commercial activities that
17 might be able to benefit.

18 As a result, and again similar to
19 what we found in Cambridge, Wynn's background
20 documents spoke to significant employments,
21 some 3000 FTEs, significant purchases of goods
22 and services and about three and a half-million
23 visitors coming through that corridor.

24 Again, we believe that Saugus's

1 concerns are not founded. In fact, just in
2 what Mr. Moore was saying in terms of the
3 increased visitation in traffic through that
4 road, if anything, you're putting more people
5 in front of those places of business and likely
6 would siphon off additional capacity.

7 Just as an overall comment, I was
8 just thinking of it as we were talking on this
9 last issue, we talk about repatriation of
10 gaming to Massachusetts. To the extent anybody
11 Saugus and north including up into New
12 Hampshire are going south to Connecticut and
13 Rhode Island to gamble, if those trips are not
14 being captured by a casino in the greater
15 Boston area, they are trips that already exist
16 that are coming off that road and now going to
17 a local casino.

18 So, there's a certain extent of
19 traffic that's gaming related now that's going
20 to be just diverted to a location that's much
21 closer.

22 Let me close with we don't feel that
23 there is any substantive, really any potential
24 negative impact from loss of in this case of

1 meals tax to Saugus.

2 MR. ZIEMBA: Thank you, Lyle. Mark?

3 MR. VANDER LINDEN: In the Saugus
4 petition they cited a couple of social impacts
5 that they felt would accompany a casino located
6 in Everett. The town of Saugus shares in
7 public safety resources with the host community
8 Everett.

9 In the event that Everett faces
10 increased demand for its own emergency and
11 police services resulting in a casino, such as
12 those through road crashes in connection with
13 alcohol use, these mutual aid calls would
14 necessarily increase due to an accompanying
15 spillover effect.

16 The second impact that they cited
17 would be that social costs accompanying a
18 casino being in close proximity to the
19 community. This could take place through
20 Saugus's own residents confronting gambling
21 addiction personally due to the close proximity
22 of the casino.

23 In response, again, Wynn used the
24 RKG and Associates. Their response was that

1 the casinos will utilize its state-of-the-art
2 construction, in-house security systems along
3 with a large security team to offset some
4 portion of the additional municipal services.
5 This would also carry over to the neighboring
6 communities.

7 I've shared with you previously the
8 evidence regarding road crashes in proximity to
9 a casino. I've also shared with you the
10 evidence regarding gambling disorders and
11 problem gambling in close proximity to a
12 casino.

13 I think that there is some evidence
14 that would suggest that both of those concerns
15 are true, the extent to which are not known.
16 And there's again many, many variables that are
17 at play that would potentially impact the
18 actual effect of a casino being located in
19 Everett. Thank you.

20 COMMISSIONER MCHUGH: Thank you.

21 MR. ZIEMBA: Mr. Chairman, Saugus
22 did raise another issue under five. But Lyle
23 mentioned that in his analysis regarding the
24 zoning question. So, I'll turn to the positive

1 impacts. I think we've had a fairly good
2 recitation of the positive impacts. Again, the
3 Wynn team did estimate potential earnings for
4 each of the applicant cities. And that's
5 included in your packets for overall
6 significant number of jobs and revenues for the
7 area.

8 CHAIRMAN CROSBY: Okay. Who wants
9 to hazard an opinion?

10 COMMISSIONER ZUNIGA: It would
11 appear -- We had a very similar discussion just
12 a few minutes ago relative to Cambridge. I
13 think the issues are relative to traffic
14 apparently or as the opinion of our
15 consultants. They address levels of service
16 that are already close to or at failing.

17 So, it gets complicated in terms of
18 how much is added to a failing or a set of
19 failing intersections. It would appear that
20 when it comes to traffic, it's something that
21 we need to look at.

22 CHAIRMAN CROSBY: Again, we're
23 talking about, we're starting to parse down to
24 really minor -- Here you're talking about

1 something like 100 or 120 cars out of 6000 --
2 on top of 6000 during Friday night, the single
3 worst time of the weekend. So, meaning it's
4 somewhat less than that any other time of the
5 week, basically.

6 If we're going to call it a
7 surrounding community because of that, again, I
8 think we should be very clear that we're
9 talking about a minimal situation.

10 COMMISSIONER CAMERON: Two percent.

11 COMMISSIONER MCHUGH: I'm at the
12 point of uncomfortable.

13 CHAIRMAN CROSBY: Diminishing
14 returns.

15 COMMISSIONER MCHUGH: Right. 4.7,
16 there are no bright lines here. And two
17 percent at a peak time and less than two
18 percent at all other times. That's basically
19 what the presentation is.

20 CHAIRMAN CROSBY: It might be the
21 same two percent, but it's two percent of a
22 much lower number. So, it doesn't create the
23 problem. It might still be two percent but
24 it's two percent of 4000 or 3000 not two

1 percent of 6000.

2 COMMISSIONER MCHUGH: But in terms
3 of overall impact, it's two percent of
4 capacity. It's two percent added to an
5 overcapacity of traffic at one point during the
6 week.

7 CHAIRMAN CROSBY: Right.

8 COMMISSIONER MCHUGH: And going back
9 to the word significant, adverse both --
10 significant is hugely imprecise meaning. But
11 we're getting to the point where I think we're
12 stretching all the meaning out of it.

13 CHAIRMAN CROSBY: And putting the
14 applicant in a really tough position.

15 COMMISSIONER CAMERON: In addition
16 to just the standard jobs in the region, we
17 also have a consultant analysis that says
18 rather than decrease, be a problem for those
19 restaurants, they actually see an increase that
20 they will do better because of this. So, it's
21 an additional positive here that we did not
22 consider with the last one.

23 CHAIRMAN CROSBY: The motels I would
24 think too.

1 COMMISSIONER CAMERON: That's
2 another factor to weigh other than jobs to the
3 region, which is standard for all of these
4 communities.

5 MR. MOORE: Mr. Chairman, one point
6 that Frank made is that I made a point that
7 going the southbound direction, the three lanes
8 neck down to two. There is a plan well
9 advanced to improve that and add that third
10 lane to Route 1 Southbound which would to some
11 degree take away, largely take away the issue
12 southbound.

13 COMMISSIONER MCHUGH: Which is going
14 to happen regardless of what we do here today.

15 MR. TRAMONTOZZI: Yes. It was being
16 proposed by a developer to actually straighten
17 out the curve section also. It's actually on
18 hold. I don't see any proponent of a casino
19 ever solving that problem completely, but
20 perhaps one piece of mitigation, if you will,
21 might be to participate in the design. That
22 might help solve that problem in the future.
23 Participation could be a small participation or
24 a large participation, but not necessarily

1 solving the problem completely.

2 COMMISSIONER STEBBINS: One of the
3 issues that kept coming up was the whole
4 interchange, the exit that 1 and 99, I believe,
5 and that exit is already under plans through
6 Mass. DOT to be refurbished or renovated in
7 2016, if I read it correctly.

8 MR. MOORE: I'm not sure it's that
9 soon, but yes, you are correct.

10 CHAIRMAN CROSBY: I didn't hear what
11 you said.

12 COMMISSIONER STEBBINS: I think it's
13 the exit where 99 and 1 separate has always
14 been a site of accidents and fatalities. But
15 Mass. DOT already has kind of on their project
16 board to spend money on it.

17 COMMISSIONER MCHUGH: This might be
18 an ideal place for the community mitigation
19 fund if you got to that point and some extra
20 dollars were needed in order to complete it.
21 That might be the place.

22 CHAIRMAN CROSBY: Or to do the
23 design as Frank said.

24 COMMISSIONER MCHUGH: Yes. To put

1 in some money and some help to make that a
2 reality --

3 CHAIRMAN CROSBY: Right.

4 COMMISSIONER MCHUGH: -- rather than
5 imposing the burden of trying to figure out how
6 neutralize the impact from the get-go.

7 CHAIRMAN CROSBY: I'm comfortable
8 with Commissioner McHugh's position.

9 COMMISSIONER ZUNIGA: Same here. I
10 was actually uncomfortable with Cambridge.

11 COMMISSIONER MCHUGH: I move --

12 COMMISSIONER CAMERON: I agree.

13 COMMISSIONER STEBBINS: Thinking
14 about this and obviously hoping that there is a
15 spirit of cooperation between the communities
16 and an applicant who may or may not be an
17 eventual licensee but it might be interesting
18 to have this be a topic of conversation if we
19 do award a license that somehow cooperation or
20 urging cooperation becomes a condition of their
21 license.

22 I'm trying to think of how to keep
23 the parties involved at the table but not look
24 to our licensee as the end-all be-all to solve

1 a problem.

2 COMMISSIONER MCHUGH: Right.

3 CHAIRMAN CROSBY: Okay.

4 COMMISSIONER MCHUGH: So, I would
5 move that the committee deny the petition of
6 Saugus to be designated as a surrounding
7 community.

8 CHAIRMAN CROSBY: Second?

9 COMMISSIONER CAMERON: Second.

10 CHAIRMAN CROSBY: Any more
11 discussion? All in favor of the motion signify
12 by aye, aye.

13 COMMISSIONER MCHUGH: Aye.

14 COMMISSIONER CAMERON: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER STEBBINS: Aye.

17 CHAIRMAN CROSBY: Opposed? The ayes
18 have it unanimously. All right folks, we have
19 a decision to make.

20 MR. ZIEMBA: So, Commissioners if
21 you turn to your regular packets for your March
22 20, not your surrounding community packets.

23 COMMISSIONER MCHUGH: Thank you.

24 Thank you to the consultants, very helpful.

1 COMMISSIONER STEBBINS: Thanks a
2 lot.

3 MR. ZIEMBA: Thank you so much. In
4 item 8c there was an involuntary disbursements
5 petition from the town of Saugus.

6 CHAIRMAN CROSBY: Move to deny.

7 MR. ZIEMBA: So, I guess the one
8 point of consideration is number one. In our
9 prior meeting on this matter there's a
10 reasonable likelihood that the community will
11 be designated as a surrounding community
12 pursuant to 205 CMR 125.01.

13 CHAIRMAN CROSBY: Which is we can't
14 meet that standard. So, this is open and shut,
15 right?

16 COMMISSIONER MCHUGH: No. You look
17 at it as of the time the petition was filed,
18 because these are costs incurred in preparing
19 the petition.

20 COMMISSIONER ZUNIGA: All of them?

21 COMMISSIONER MCHUGH: You can have a
22 reasonable likelihood of something that doesn't
23 happen even though you know it's not going to
24 happen.

1 CHAIRMAN CROSBY: This ex post
2 facto.

3 COMMISSIONER MCHUGH: Right.

4 COMMISSIONER ZUNIGA: How much of
5 these costs have already been expended?

6 MR. ZIEMBA: This is a petition for
7 a grant. But it's obvious that some at least
8 legal work has been incurred in the compilation
9 of the petition for surrounding community.

10 COMMISSIONER ZUNIGA: Is it fair to
11 say that you don't know the exact answer to
12 that question?

13 MR. ZIEMBA: Yes, that's fair.

14 COMMISSIONER MCHUGH: I would like
15 to hold this petition until we find out what's
16 been spent, unless the Commission's of the view
17 that there's just no way that they can meet the
18 standard.

19 COMMISSIONER STEBBINS: Have we
20 approved any other involuntary disbursements
21 for a community that we found -- that we did
22 not designate?

23 MR. ZIEMBA: Today was our first
24 involuntary disbursement.

1 CHAIRMAN CROSBY: So no is the
2 answer.

3 MR. ZIEMBA: I'm sorry. I'm not
4 answering very straightforward.

5 COMMISSIONER ZUNIGA: It's 5:00.

6 COMMISSIONER STEBBINS: Cut to the
7 chase.

8 COMMISSIONER ZUNIGA: I think we
9 should try to determine what has been spent --
10 what was spent as of today relative from this
11 petition because whatever has not been spent
12 should be eliminated from the petition since
13 our recent decision five minutes ago. But what
14 was spent should be entertained relative to
15 your point Commissioner that they had a
16 reasonable assumption.

17 COMMISSIONER MCHUGH: Maybe they
18 did. I'd like to have that discussion. We may
19 conclude that they didn't.

20 COMMISSIONER CAMERON: I don't
21 recall them having when they came before us to
22 talk about their petition, they did not have
23 consultants and they did not come in with any
24 analysis. They had the one survey, which was

1 we had a person stop into a couple of
2 restaurants and oh, yeah, we think will be
3 affected. That's all I recall at all. They
4 did not have any facts or information research
5 they had done.

6 CHAIRMAN CROSBY: Mr. Moore talked
7 about that they had pulled up some old surveys
8 and stuff. There was no original research.
9 Did they present any original research?

10 MR. MOORE: I'm sorry?

11 CHAIRMAN CROSBY: Did Saugus present
12 any original consulting work on the issues of
13 whether they should be a surrounding community
14 or not?

15 MR. MOORE: I don't believe they
16 did.

17 MR. ZIEMBA: So, I can get back to
18 the Commission as to what has been expended to
19 date.

20 CHAIRMAN CROSBY: Okay.

21 COMMISSIONER ZUNIGA: As of today.

22 MR. ZIEMBA: Yes.

23 COMMISSIONER ZUNIGA: We will
24 postpone this petition?

1 CHAIRMAN CROSBY: So, we will
2 postpone the final resolution of this until we
3 get the answer. So, we have one item left and
4 it's quarter of five. And we have the master
5 licensing schedule for Region C, which is a
6 nontrivial item.

7 MR. ZIEMBA: In this matter, Mr.
8 Chairman, I don't think we intended to discuss
9 and decide on any of the issues that were
10 raised. But the intent of my presentation
11 today was just to give you the flavor of the
12 issues that have been put forward and to get
13 direction on how we should proceed in analyzing
14 these to the degree that the Commission wants
15 to analyze these.

16 We received a total of four comments
17 as of this morning. One from the city of New
18 Bedford, one from KG Urban Enterprises. The
19 city of New Bedford is from their counsel
20 Kopelman and Paige. Then we received a comment
21 from the Fall River Economic Development
22 office.

23 The New Bedford letters urged the
24 Commission for various reasons to extend the

1 deadline by which applicants have to submit
2 their RFA-2 application. And by way of
3 background that is July 23 deadline.

4 Additionally, we received another
5 letter from Donnelly Clark on behalf of Mass.
6 Gaming and Entertainment. They also requested
7 an extension of the deadline to December 31,
8 2014.

9 But they also put forward a question
10 regarding the Commission's capital requirements
11 that are the minimum -- the determinations of
12 our minimum capital requirements and what the
13 Commission includes or excludes in the
14 compilation of that requirement. And asked for
15 the Commission take a look at that as a part of
16 variance request for the region citing
17 competition concerns in the region and other
18 uncertainties in the region.

19 CHAIRMAN CROSBY: There were also
20 six or seven members of the New Bedford City
21 Council who wrote. Do you have that?

22 MR. ZIEMBA: I didn't have that
23 letter.

24 CHAIRMAN CROSBY: Maybe that got

1 short-stopped at my desk. It wasn't all of the
2 city councilors, but a number of the city
3 councilors including the city council president
4 wrote and called for an extension until I think
5 at least October.

6 MR. ZIEMBA: On the extension
7 request what I was going to recommend for the
8 staff to be tasked with analyzing who was
9 asking for what dates, how that matches with
10 our background checks. The background checks
11 were put forward as one of the reasons. And
12 then we can come back to the Commission with an
13 analysis of that for the next meeting.

14 And if indeed the Commission wants
15 to explore that as an issue, we can then put
16 that forward for just further comment on
17 whether or not the Commission should consider
18 moving forward on any sort of amendment to that
19 application deadline. Because we just put
20 forward a general question about what do you
21 think about the competition, the competitive
22 environment in Region C? What do you think
23 about the deadline? If there is a specific
24 task to review whether or not that deadline

1 works or not, undoubtedly, we might get further
2 comments that might be valuable for the
3 Commission's consideration.

4 On the second matter, perhaps the
5 Commission could task staff and/or our
6 consultants to review the matter on whether or
7 not this make sense as an issue within the
8 context of the region. And then we could bring
9 that report back to the Commission at the next
10 meeting.

11 There was a specific variance
12 request that was put forward by MG&E. So,
13 potentially we can do the staff review. I'm
14 not certain if you would want to actually hear
15 from anyone at the next meeting or following
16 meetings. But those are some alternatives for
17 consideration.

18 CHAIRMAN CROSBY: I was going to
19 invite you to give your comments on this,
20 because I think it was significant.

21 COMMISSIONER ZUNIGA: I think we
22 should look at that variance request relative
23 to the capital investment in the context of
24 that region.

1 I would note that as we reviewed the
2 Region B eligible and ineligible costs relative
3 to that application, because that's part of a
4 finance review, it is a very close to the
5 threshold that we set forth in regulation.

6 CHAIRMAN CROSBY: Region B is?

7 COMMISSIONER ZUNIGA: Region B is,
8 yes.

9 COMMISSIONER MCHUGH: Would you say
10 that again? I didn't quite follow.

11 COMMISSIONER ZUNIGA: MGM, the
12 applicant for Region B is very close to the
13 threshold of \$500 million when you exclude the
14 ineligible costs as interpreted in our
15 regulations which is the medium-size region of
16 all three.

17 So, Region C is further below terms
18 of market penetration which is why I think we
19 should entertain the variance request that has
20 been put forward. This was not an issue in
21 Region A, but we always knew that that's the
22 most lucrative region, if you will, in terms of
23 market penetration.

24 There is still and I say may because

1 there is still some leeway as to how some of
2 these costs are interpreted or broken down, but
3 nonetheless, that was a case from our review so
4 far of Region B.

5 CHAIRMAN CROSBY: And you had the
6 other point about the schedule that's
7 important.

8 COMMISSIONER ZUNIGA: Yes, that's
9 important. You touched on this but there's two
10 important elements on both sides at the
11 beginning or prior to and after the vote that
12 takes place in a host community or the
13 scheduling of that referendum.

14 One is before, which is our own
15 investigations. That was a big effort that all
16 happened at once and very intense in the both
17 regions, but one that we really need to
18 understand of all of the applicants and we look
19 forward from to direct feedback in terms of
20 timing from Director Wells.

21 But the other one is a reality that
22 no applicant really sat down to look at the
23 surrounding communities and negotiate all of
24 the surrounding communities until they actually

1 had a vote, which is very reasonable.

2 To spend some real resources in
3 terms of legal fees and traffic analysis beyond
4 the host community until they really know
5 whether their application is viable or not.
6 And you will recall in our schedule, we always
7 assumed that those two activities would take
8 place in parallel, but the reality is that they
9 never did. There's no reason really to spend a
10 lot of resources negotiating surrounding
11 community agreements without a vote of the host
12 community.

13 CHAIRMAN CROSBY: So, that would be
14 a factor when you're doing your assessment. I
15 think it does make sense particularly on the
16 schedule, just to think through if we were
17 going to entertain -- as we are thinking about
18 entertaining an extension, what exactly are the
19 implications of that from all of these
20 standpoints?

21 But I also think we ought to try to
22 get this resolved pretty quick. And I think
23 time is running for people what are trying to
24 decide -- excuse me. It's like waiting for

1 Commissioner Stebbins' vote.

2 Anyway, I'm not sure how many more
3 times we ought to postpone this, but I think
4 certainly especially considering but I think we
5 should ask you all to look into the schedule
6 and say if we were going to extend it, what
7 makes sense all things considered.

8 And if you wanted, I am pretty
9 comfortable about the idea of the waiver,
10 frankly, but if you wanted to have HLT or
11 somebody take some rational look at it. I
12 would listen to the market on that one. I
13 wouldn't want to superimpose our judgment to
14 that. But either way, I think we should make
15 the decision.

16 MR. ZIEMBA: Mr. Chairman, I'm not
17 saying we would be complete with our analysis,
18 but perhaps if you would like to hear from the
19 MG&E team at the next meeting, we could
20 determine where we are in our analysis. We
21 could tentatively schedule that if you would
22 like.

23 CHAIRMAN CROSBY: I don't need to
24 hear from the MG&E team.

1 COMMISSIONER MCHUGH: Who is MG&E?

2 CHAIRMAN CROSBY: That's the person
3 who asked for the waiver.

4 COMMISSIONER MCHUGH: I don't think
5 we do either.

6 COMMISSIONER ZUNIGA: I think we
7 should rather hear from HLT in terms of some of
8 the analysis that they help us do already on
9 Region B. When I first heard of the gap, if
10 you will, between eligible and ineligible costs
11 it struck me as rather wide. But as I really
12 looked at this in the context of Region B, it
13 really is not.

14 Some of those costs, we took the
15 position of the discretion that we were
16 afforded and the Gaming Act gives us all the
17 discretion to include them as part of the
18 capital investment or not.

19 COMMISSIONER MCHUGH: That's right.
20 But we had reasons for doing it. I share your
21 thought. We ought to have a discussion about
22 that.

23 CHAIRMAN CROSBY: Okay. If we could
24 make this decision in two weeks that would be

1 desirable.

2 MR. ZIEMBA: The agenda for a couple
3 of weeks is getting rather big.

4 COMMISSIONER MCHUGH: Could we drill
5 down a little bit in that. There are some
6 pieces of this we probably could decide in two
7 weeks, the extension and the waiver piece. The
8 extension piece, the rationale set out for it
9 in some of these letters is very interesting
10 and it seems to me it's time sensitive. So,
11 that even if we couldn't figure out the
12 monetary piece, maybe we could figure out the
13 waiver piece and the deadline extension piece
14 at the next meeting. And then as fast as we
15 can the waiver piece too.

16 CHAIRMAN CROSBY: I don't feel
17 either one of them is a terribly difficult
18 question, frankly. I don't know exactly what
19 extension date makes the most sense, but I am
20 predisposed in favor of doing it.

21 COMMISSIONER MCHUGH: As am I.

22 CHAIRMAN CROSBY: And on the waiver
23 as well, so if we can do it in two weeks,
24 great. If we can't, we can't.

1 COMMISSIONER MCHUGH: But we are
2 prepared to break it into pieces. That's all I
3 was trying to say. It really is.

4 CHAIRMAN CROSBY: Yes.

5 COMMISSIONER MCHUGH: Let's get out
6 of here.

7 MR. ZIEMBA: Mr. Chairman, I just
8 wanted to mention, Director Day asked me, I
9 think I mentioned in my remarks Fall River
10 submitted a comment and they were opposing an
11 extension. Rick was not sure if I mentioned
12 that.

13 CHAIRMAN CROSBY: I'm not sure you
14 did but that was what triggered Commissioner
15 Zuniga's --

16 COMMISSIONER ZUNIGA: Yes. From
17 their perspective it makes sense but from our
18 perspective there's a lot of surrounding
19 communities that this affects and background
20 investigation that gets prior to which is very
21 relevant.

22 CHAIRMAN CROSBY: Remembering all of
23 the difficulty that we had with the Foxwoods
24 background check, getting the information

1 completed that might be a word to the wise.

2 Okay. Do we have anything else on the agenda?

3 COMMISSIONER MCHUGH: Motion to
4 adjourn.

5 COMMISSIONER CAMERON: Second.

6 CHAIRMAN CROSBY: All in favor, aye.

7 COMMISSIONER MCHUGH: Aye.

8 COMMISSIONER CAMERON: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER STEBBINS: Aye.

11 CHAIRMAN CROSBY: Thank you to Mayor
12 Walsh for joining us today.

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14 (Meeting adjourned at 4:58 p.m.)

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1 ATTACHMENTS:

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3 1. Massachusetts Gaming Commission March 20,
4 2014 Notice of Meeting and Agenda

5 2. Massachusetts Gaming Commission Minutes of
6 February 24, 2014

7 3. Massachusetts Gaming Commission Minutes of
8 February 25-28, 2014

9 4. Massachusetts Gaming Commission March 4,
10 2014 Memorandum Regarding Policy and
11 Financial Process Recommendations

12 5. DRAFT Massachusetts Gaming Commission
13 Travel Policy and Guidelines

14 6. DRAFT Massachusetts Gaming Commission
15 Procurement Card Policy

16 7. DRAFT Massachusetts Gaming Commission
17 Transportation Commuting Benefits

18 8. Massachusetts Gaming Commission March 19,
19 2014 Regarding Oversight Project Manager
20 RFR

21 9. 205 CMR 125.01(6)(c) as Amended

22 10. March 14, 2014 Suffolk Downs Letter
23 Regarding Request to Amend Racing Schedule

24

- 1 ATTACHMENTS (continued):
- 2
- 3 11. March 15, 2014 Plainridge Racecourse
- 4 Letter Regarding Request to Amend Racing
- 5 Schedule
- 6 12. Massachusetts Gaming Commission March 20,
- 7 2014 Memorandum Regarding Proposed
- 8 Amendment to Contract with Problem
- 9 Gambling Solutions, Inc.
- 10 13. Commission Analysis Mohegan Sun/MA,
- 11 Everett
- 12 14. Commission Analysis Wynn MA, LLC/
- 13 Cambridge
- 14 15. Commission Analysis Wynn MA, LLC/
- 15 Saugus
- 16 16. Surrounding Community Petition Response:
- 17 Transportation
- 18 17. City of Boston Letter March 19, 2014
- 19 18. City of Boston Cover Letter and
- 20 Declaration of Host Community Status -
- 21 Mohegan Sun
- 22 19. City of Boston Cover Letter and
- 23 Declaration of Host Community Status -
- 24 Wynn MA, LLC

1 GUEST SPEAKERS:

2 Lyle Hall, HLT Advisory

3 Rick Moore, City Point Partners

4 Lynne D. Sweet, LDS Consulting Group

5 Frank Tramontozzi, Green International

6 Marlene Warner, Massachusetts Council on
7 Compulsive Gambling

8

9 City of Boston:

10 The Honorable Martin Walsh, Mayor of Boston

11 Thomas C. Frongillo, Esq., Fish & Richardson

12

13 MASSACHUSETTS GAMING COMMISSION STAFF:

14 Catherine Blue, General Counsel

15 Richard Day, Executive Director

16 Dr. Jennifer Durenberger, Director of Racing

17 John Lennon, Chief Financial and Accounting
18 Officer19 Mark Vander Linden, Director of Research and
20 Problem Gambling

21 John Ziemba, Ombudsman

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 24th day of March, 2014.

LAURIE J. JORDAN My Commission expires:
Notary Public May 11, 2018