

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #119

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

Bruce W. Stebbins

Enrique Zuniga

James F. McHugh

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May 2, 2014 10:35 a.m.

BOSTON EXHIBITION AND CONVENTION CENTER

415 Summer Street, Room 102

Boston, Massachusetts

1                   CHAIRMAN CROSBY: Sorry for the  
2 delay. We are calling to order public  
3 meeting 119 of the Massachusetts Gaming  
4 Commission. We are at the Convention  
5 Center as usual. It is about 10:35 in the  
6 morning.

7                   There were a couple of loose ends  
8 maybe from yesterday. I think the way we  
9 set these agendas that it's okay if we  
10 close the loop leftover from yesterday?

11                  MS. BLUE: Yes. Any matters that we  
12 didn't finish up on yesterday we can take  
13 up today.

14                  CHAIRMAN CROSBY: Right, okay. So,  
15 before we get into these items, were there  
16 any leftover loose ends from yesterday?

17                  COMMISSIONER ZUNIGA: Well, just  
18 perhaps just a minor one. So, are we  
19 scheduling a hearing like yesterday's for  
20 next Thursday; was that understood or  
21 pick a date to schedule?

22                  MS. BLUE: We took the Commission's  
23 direction to schedule it on the 8th. We  
24 could schedule it on the 8th or the 9th.

1 It was more convenient either way.

2 CHAIRMAN CROSBY: Yes. I had --  
3 originally I had said let's let a couple of  
4 days go by before we decide because on the  
5 theory that maybe there's a lot of action,  
6 and maybe things would get resolved  
7 quickly, and maybe it wouldn't be  
8 necessary. But now I'm not sure how much  
9 action there is. I just don't have any  
10 idea.

11 So, we don't really have to cross  
12 this bridge at the moment but it was  
13 certainly going to be the 8th or the 9th.  
14 The 8th is Thursday?

15 COMMISSIONER CAMERON: Yes. I'm  
16 out-of-state on the 9th.

17 CHAIRMAN CROSBY: So, Commissioner  
18 Cameron is out-of-state on the 9th. So, it  
19 looks like it's going to be on the 8th, but  
20 that is not absolute.

21 COMMISSIONER ZUNIGA: You have 48  
22 hours before that time.

23 CHAIRMAN CROSBY: Right, 48 hours,  
24 right. So, that means certainly no later

1 than Monday morning we have to make a final  
2 decision. But there are some conflicts on  
3 in the morning, not that whole day, but  
4 we'll fix them if we have to.

5 We do have, you know,  
6 non-attributable tax. We know about the  
7 documents that we are working on, but it  
8 looks like we may be stuck with the 8th if  
9 the 9th isn't a possibility. But the 8th,  
10 will it be all right with everyone?

11 COMMISSIONER ZUNIGA: Yes.

12 CHAIRMAN CROSBY: Anything else?

13 COMMISSIONER MCHUGH: We don't  
14 necessarily have to start at 10:30, right?

15 CHAIRMAN CROSBY: No. We can start  
16 whenever we wanted.

17 COMMISSIONER MCHUGH: Okay.

18 CHAIRMAN CROSBY: Right, okay.

19 So, we are to item number two, the  
20 Ombudsman Report, Ombudsman Ziemba.

21 MR. ZIEMBA: Thank you, Mr.  
22 Chairman, Commissioners. So, we have a  
23 couple of items up for consideration today.

24 As you know, Longmeadow and West

1 Springfield and MGM have concluded their  
2 arbitrations and the arbitrators have  
3 issued their reports. All of those parties  
4 submitted fundamental, fundamental  
5 inconsistent petitions to the Commission.  
6 We are hearing those today. Counsel Blue  
7 will take us through that process.

8 MS. BLUE: Thank you.

9 For the benefit of the folks in the  
10 audience and for the folks who are watching  
11 us at home, I thought I'd put a little bit  
12 of a background on the record so we can  
13 kind of understand where we are at this  
14 point.

15 Section 15 of Chapter 23K requires  
16 that applicant provide to the Commission  
17 signed agreements with surrounding  
18 communities. The statute further provides  
19 the surrounding community shall include --  
20 surrounding community agreement rather  
21 shall include a community impact fee and  
22 all stipulations of responsibilities  
23 between the applicant and the community,  
24 including stipulations of known impacts

1 from the development and operation of the  
2 gaming establishment.

3 The Commission in its regulations,  
4 in particular 205 CMR 125, established the  
5 process for determining surrounding  
6 communities in the execution of surrounding  
7 community agreements. 205 CMR 125.01(6)  
8 describes the two phases of the process,  
9 the negotiation phase where the applicant  
10 and the community have 30 days from the  
11 time the Commission makes a surrounding  
12 community designation to negotiate an  
13 agreement, and the arbitration phase when  
14 the applicant and the community failing to  
15 negotiate an agreement have a roughly 30  
16 day period to engage in arbitration to  
17 arrive at an agreement.

18 The Commission's regulations  
19 regarding arbitrations require that each  
20 party submit a best and final offer in the  
21 form of a surrounding community agreement.  
22 The arbitrator is required to pick one of  
23 the offers, incorporate that offer into a  
24 report. That becomes a surrounding

1 community agreement. The parties have five  
2 days after the arbitrator's award to sign  
3 the surrounding community agreement that  
4 contains the terms of the best and final  
5 offer selected by the arbitrator.

6 At the Commission's March 4th  
7 meeting, a concern was raised about a  
8 situation where both parties to an  
9 arbitration may make potentially  
10 unrealistic offers and how the arbitrator  
11 could address that situation.

12 The Commission reviewed the issue  
13 and recommended that the arbitration  
14 regulations be amended to provide a safety  
15 belt, an option for the Commission to  
16 review the arbitrator's award to determine  
17 if any of the provisions of the award are  
18 fundamentally inconsistent with the terms  
19 of Chapter 23K.

20 If the Commission finds that a  
21 provision of the arbitrator's award is  
22 fundamentally inconsistent with Chapter  
23 23K, the Commission can modify or amend  
24 that provision.

1           The amended regulations require that  
2           if a party believe that the provisions of  
3           the other party's best and final offer  
4           contain provisions that are fundamentally  
5           inconsistent, the party has five days after  
6           filing of the best and final offers to file  
7           a petition outlining its objections and the  
8           provisions objected to with the Commission.

9           The regulations requires that the  
10          Commission hold a hearing after the  
11          arbitrator's award to consider objections  
12          raised in the petition filed by the party  
13          whose best and final offer was not  
14          selected.

15          In Region B there were two  
16          arbitrations. One between MGM and West  
17          Springfield and one between MGM and  
18          Longmeadow. The parties selected an  
19          arbitration panel for each arbitration. A  
20          hearing was held where testimony was taken  
21          and documents submitted. Both parties to  
22          each arbitration filed petitions with the  
23          Commission citing provisions in each  
24          agreement that they believed were

1           fundamentally inconsistent with Chapter  
2           23K.

3                     The arbitration panel in West  
4           Springfield selected the West Springfield's  
5           best and final offer as the surrounding  
6           community agreement. The arbitration panel  
7           in Longmeadow had a split decision and  
8           selected the Longmeadow best and final  
9           offer as the surrounding community  
10          agreement.

11                    CHAIRMAN CROSBY: Excuse me, did you  
12          say the West Springfield was unanimous?

13                    MS. BLUE: Yes, it was. In the  
14          Commission packet today, you have the best  
15          and final offer from each municipality; the  
16          petition from MGM outlining their  
17          objections to certain provisions in the  
18          municipality's best and final offer; the  
19          arbitrator's award for each arbitration and  
20          a chart put together by staff listing MGM's  
21          objections to each municipality's best and  
22          final offer, including the recommendation  
23          by staff as to whether the provision  
24          objected to is fundamentally inconsistent

1 with Chapter 23K.

2 The Commission can review the  
3 objections made and determine if the  
4 provision objected to is fundamentally  
5 inconsistent. If the Commission finds the  
6 provision is fundamentally inconsistent  
7 with 23K, it can amend or modify the  
8 provision. And that includes making a  
9 change to that provision or deleting it in  
10 its entirety.

11 Once the Commission completes its  
12 review, the agreement either as is or if  
13 modified becomes a surrounding community  
14 agreement and must be executed by the  
15 parties and filed with the Commission.

16 Are there any questions I can  
17 answer?

18 COMMISSIONER MCHUGH: I think that's  
19 very helpful and distinct analysis.

20 MS. BLUE: I would use -- the  
21 easiest way is to maybe start with your  
22 charts and go through the objections one by  
23 one, discuss them and determine whether you  
24 agree with staff's recommendation or have

1 other questions or concerns.

2 MR. ZIEMBA: Counsel, we should  
3 probably mention that there were  
4 submissions by the parties, one as recently  
5 as last evening. There was a submission by  
6 MGM. I believe it's approximately 270  
7 pages with exhibits. And then after that  
8 filing, there was an objection to that  
9 filing from the Town of Longmeadow.

10 We have not had the opportunity to  
11 review in depth those filings. But, I  
12 think perhaps there are a couple of ways  
13 that we can deal with those filings today.

14 And, again, Counsel, would you like  
15 me to give the recommendation?

16 MS. BLUE: Yes, go ahead.

17 MR. ZIEMBA: So, one potential  
18 recommendation, Commissioners, is that the  
19 Commission could make their determination  
20 today based on the filings that were made,  
21 the initial fundamental inconsistency  
22 petition filing, make their determination  
23 based on that filing and in the context of  
24 the staff recommendation.

1           To the degree that upon any further  
2 review by the Commissioners over the next  
3 few days, if they deem anything in the  
4 subsequent filings that were put forward by  
5 the parties, if they deem that those would  
6 otherwise change any determination on the  
7 fundamental inconsistency petition matter,  
8 then at its next meeting the Commission  
9 could reorder or take another look at that  
10 filing.

11           The reason why I am recommending the  
12 split on that initial determination today  
13 and reviewing the manner subsequently at  
14 the next meeting is because we are hoping  
15 to conclude our -- we're hoping to issue an  
16 award shortly in Region B.

17           If we wait until our next meeting,  
18 which would probably be Thursday, under our  
19 regulations after we make our  
20 determinations on fundamental inconsistency  
21 petitions, there are five working days,  
22 five working days after our decision before  
23 the agreement becomes final, if you add  
24 those five working days, we would not be

1           able to have our closing of our hearing in  
2           Western Mass. to enable us to issue our  
3           award.

4                   CHAIRMAN CROSBY: We would not be  
5           able to have a closing to our hearing when?

6                   MR. ZIEMBA: Because we are  
7           anticipating that the close of our hearing  
8           would be on May 14th, which would enable us  
9           to issue the determination of an award on  
10          June 13th.

11                   So, if you add the five working days  
12          to next Thursday, we would not be able to  
13          do the closing of the hearing the following  
14          week.

15                   CHAIRMAN CROSBY: Wouldn't that just  
16          mean instead of June 13th we'd be at  
17          June 18th?

18                   MR. ZIEMBA: We would be at  
19          June 18th. We would have to refigure all  
20          of our calenders obviously to see if we  
21          could make our award decisions at a later  
22          date. But what this would allow is if the  
23          Commission makes a determination today that  
24          the parties could utilize that five days

1           that we have included in our regulations to  
2           determine whether or not they want to have  
3           some sort of an alternative surrounding  
4           community agreement instead of the  
5           Commissioner's -- excuse me -- instead of  
6           the arbitrator's decision.

7                     During that five-day period that  
8           we've added to our decisions, we would then  
9           make any determination if we need to  
10          reverse any decisions that are made today.  
11          So, if we reverse those decisions, we would  
12          reopen it and then we would have to delay  
13          the issue of the Region B award.

14                    But other than that, I don't think  
15          that we can recommend making a  
16          determination on that, at least on that 275  
17          page filing without being able to fully  
18          review it.

19                    CHAIRMAN CROSBY: I agree with that.  
20          I haven't seen it. Is there anything in  
21          the reg. that pertains to submissions that  
22          come in last night; wasn't there a time  
23          frame during which people could submit?

24                    MS. BLUE: The regulations provide

1 for really two forms of filings. The  
2 filing of the petitions with the best and  
3 final offer at the start of the process.

4 CHAIRMAN CROSBY: Which is what we  
5 have.

6 MS. BLUE: Which is what you have.  
7 And then filings that have been filed with  
8 the arbitrator. The regulation does not  
9 provide for any post-arbitration award  
10 filings, which is what these are.

11 CHAIRMAN CROSBY: So, we could  
12 ignore it or not ignore it.

13 MS. BLUE: That's correct.

14 CHAIRMAN CROSBY: Presumably it's  
15 material it must be -- I don't know why  
16 they would submit it if it wasn't  
17 materially different from the one that  
18 we've already got.

19 COMMISSIONER MCHUGH: Well, Mr.  
20 Chairman, we are now getting to a stage in  
21 which we are getting from a number of  
22 fronts an 11 plus hour filing. We got one  
23 yesterday, the day before yesterday and we  
24 got one -- we got two yesterday, one 207

1 pages in length last night. I haven't seen  
2 it either.

3 And I think that throughout the  
4 process, we have tried to be accommodating  
5 and bend over backwards to be accommodating  
6 to accept everybody's information and that  
7 to be as informed as we possibly can before  
8 we make these important decisions. I think  
9 that we need to continue to do that to --  
10 that is unclear.

11 I think we need to continue of  
12 course to be as fully informed as is  
13 reasonably possible as we move this process  
14 forward. But I don't think we can continue  
15 to take action that encourages filings at  
16 4:00, 5:00, 8:00 on a night before a  
17 meeting occurs.

18 So, I would be prepared to say our  
19 regulations do not apply -- do not permit  
20 these filings and we are going to ignore  
21 them and move forward. There is always the  
22 risk, I think that that in doing that you  
23 ignore something of this material but it  
24 seems to me that this has gotten to a stage

1           where the sound progress of our processes  
2           is being jeopardized by what's happening.  
3           So, that's what I recommend doing.

4                     If the Commission is not in  
5           agreement with that, then I think the  
6           alternative is to proceed today under the  
7           suggestion that was just made and take a  
8           look at the filings that were made.  And if  
9           there is anything in there that causes us  
10          or any one of us to think that we need to  
11          reconsider the decision be made today, then  
12          to reopen the hearing and have that  
13          discussion publically.

14                    The other problem of course is that  
15          we can't discuss any of this in private, so  
16          that -- and we can't have a meeting to  
17          discuss it unless we have a two-day  
18          posting.  So, as with the number of other  
19          things, for example, that if we hadn't  
20          already scheduled a meeting, we could have  
21          discussed the request in more time that we  
22          got at 4:00 yesterday or Wednesday.  I am  
23          rambling now.  I've made my point.

24                    MR. ZIEMBA:  One other fact, I think

1 we should mention is that -- so, the filing  
2 as of last evening was one of the  
3 filings -- we did receive filings earlier  
4 in the week from -- West Springfield  
5 concluded its arbitration last week. We  
6 received a comment letter from the Town of  
7 West Springfield earlier in the week.

8 We had advised all the parties that  
9 under our regulations there are no formal  
10 submissions allowed. But as is always been  
11 our practice, if anyone submits a comment  
12 letter about anything, our practice has  
13 been that we read it.

14 So, unfortunately, when we mentioned  
15 that to them, the parties, that we read  
16 everything, I think it spurred further  
17 ability to submit filings even though when  
18 that's not contemplated under our  
19 regulations.

20 COMMISSIONER MCHUGH: I think that's  
21 a valid point, and I guess I was expressing  
22 a little frustration. When I think things  
23 through, I would favor under those  
24 circumstances that the moving forward today

1 and reading it and if there is anything  
2 that causes us to reconsider what we have  
3 done and we reopen the hearing.

4 I think we need to move forward, and  
5 I think we need to consider the materials  
6 coming in that I think that is the fairest  
7 way to proceed.

8 CHAIRMAN CROSBY: Go ahead.

9 COMMISSIONER CAMERON: I would  
10 agree. I think it's important to follow  
11 our regulations, to meet our deadlines when  
12 at all possible and make a decision. And  
13 if there is something that really with this  
14 material, we will have an opportunity to  
15 address it.

16 CHAIRMAN CROSBY: The way the reg.  
17 works is when the BAFO is submitted, there  
18 is an opportunity for comment on whether or  
19 not it is fundamentally -- believed to be  
20 fundamentally inconsistent. Both parties  
21 do it because no one knows which BAFO is  
22 going to be picked, but nothing can change  
23 because the BAFO can't be moderated.

24 So, is there anything that has

1           happened that happens in the process  
2           between the time the first -- the  
3           appropriate opportunity for filing comment  
4           on fundamentally inconsistent feature is  
5           filed and now or did it -- did they just  
6           not do enough work? Nothing has changed,  
7           right? Whatever is in that 275 page  
8           document could have been in the original  
9           filing. It's not a structural  
10          inconsistency that we've opened up here.

11                 MS. BLUE: I think that's true. The  
12          only change, material change is the  
13          arbitrators issued an award, you know. I  
14          will say that we have obviously applicants  
15          and municipalities who are represented by  
16          very good counsel. And, in general,  
17          counsel feel as though they want to  
18          zealously advocate for their clients and  
19          they'd like to submit comments in  
20          situations where, you know, for example,  
21          the award has been issued.

22                 So, there may be comments that may  
23          be more directly pointed towards the award  
24          and how that award was phrased by the

1 arbitrators. But the fundamental  
2 provisions of the agreement did not change,  
3 no.

4 COMMISSIONER MCHUGH: I think I  
5 agree with General Counsel Blue, but I also  
6 think that the big change is the  
7 arbitration proceedings themselves.

8 And I noticed in some of the  
9 filings, we received references to the  
10 transcript. And it may well be that the  
11 filing last night talked about last the  
12 evidence that was presented to the  
13 arbitrator and the resulting award being in  
14 some view wholly inconsistent, therefore,  
15 fundamentally inconsistent and I think  
16 that's the big change that occurred.

17 I have got substantive views as to  
18 that, but I do think that that may be part  
19 of what's at issue.

20 MR. ZIEMBA: And what I'd like to  
21 mention is our regulations, Mr. Chairman,  
22 they only contemplate that you have the  
23 filing where you're objecting to a certain  
24 provision. There is no provisions in our

1 reg. that allow for a response to the  
2 objection.

3 So, even though there was nothing  
4 changed between that period of time, the  
5 party that whose best and final is being  
6 objected to never had the opportunity under  
7 our reg. to file a defense on their  
8 agreement.

9 COMMISSIONER ZUNIGA: How much time  
10 are they given either by regulation or by  
11 the schedule between the time that they  
12 receive each others BAFOs and the time that  
13 they file the fundamentally inconsistent  
14 petition?

15 MS. BLUE: They have five days. And  
16 as we count, it's a period of time less  
17 than seven. So, we could count -- so,  
18 probably could potentially have a little  
19 more than five days but roughly five days  
20 after they share their best and finals to  
21 provide their objections and file with the  
22 Commission.

23 MR. ZIEMBA: And that period was  
24 done purposely to send a message to all of

1           the parties that this process was not meant  
2           as an appeal of an arbitrator's award. It  
3           was meant to cure the fundamental  
4           inconsistencies with the statute.

5                     And, so, I think we have heard from  
6           the other parties recently saying, oh, we  
7           will have all of our objections ready on  
8           best and final offers, et cetera. We'll  
9           make a very large submission.

10                    I don't believe that that was ever  
11           the intention of the Commission that we  
12           will open up an opportunity for folks to  
13           submit issues on everything that are more  
14           relative to whether or not the award is  
15           sound or not.

16                    COMMISSIONER ZUNIGA: That's a good  
17           point. However, some of those submissions  
18           were quite lengthy, the BAFOs themselves.  
19           They included big binders with many  
20           studies. And, you know, in the worse-case  
21           scenario, the other party may have or may  
22           not have seen some of those materials.

23                    MS. BLUE: Well, those materials  
24           were submitted to the arbitrator. And in

1 the arbitration proceeding, they would have  
2 had the opportunity to respond to that or  
3 to submit other evidence.

4 COMMISSIONER ZUNIGA: Oh good.

5 MS. BLUE: Yes. They should have  
6 been exchanged and responded to.

7 COMMISSIONER CAMERON: They had a  
8 hearing, an all day hearing, right, where  
9 testimony was taken --

10 MS. BLUE: They did.

11 COMMISSIONER CAMERON: -- by the  
12 arbitrators. All of that information was  
13 their chance to explain and a chance to  
14 make their argument.

15 MS. BLUE: That's correct.

16 CHAIRMAN CROSBY: Before the BAFO  
17 was presented.

18 MS. BLUE: No, as part of the  
19 arbitration.

20 COMMISSIONER CAMERON: As part of  
21 the arbitration process.

22 COMMISSIONER MCHUGH: The BAFOs are  
23 relatively the same.

24 CHAIRMAN CROSBY: Are we

1           anticipating that the parties are going to  
2           speak? I notice Attorney Silverstein is  
3           here, MGM is here.

4           MS. BLUE: The Commission can --  
5           according to our regulations, the  
6           Commission can take oral testimony in its  
7           sole discretion. We had advised the  
8           parties earlier that the Commission would  
9           not be taking oral testimony, but this was  
10          before we got some of these additional  
11          filings.

12          CHAIRMAN CROSBY: Okay. So, the  
13          question on the table is: Do we take your  
14          recommendation? And I'm still not quite  
15          sure why we couldn't just add five days  
16          onto the end, but I guess it really doesn't  
17          matter.

18          If we take your recommendation and  
19          we may have to add the five days if we  
20          decide that we have to reopen it but then  
21          maybe we don't, so no point in debating  
22          that.

23          So what do you folks think about the  
24          recommendations on the table? The process

1 recommendation that we go ahead and make a  
2 decision, and that is the decision unless  
3 we find something that --

4 MR. ZIEMBA: Mr. Chairman,  
5 separately if you wanted to consider now,  
6 it appears that all of the parties are  
7 here. If you wanted to consider that they  
8 be able to speak for five minutes, that is  
9 also a potential that can aid in your  
10 decision-making. We had advised them all  
11 in fairness to them that that would not be  
12 the process.

13 CHAIRMAN CROSBY: Well, I think your  
14 point -- we know we have opened a can of  
15 worms here. We have to keep our -- we will  
16 stay focused on exactly what this was when  
17 it came up, which is a very narrow and  
18 specific function that we meant to be  
19 protecting.

20 And, of course, you know, everybody  
21 is going to jump into that wedge and make  
22 it as wide as they possibly can and it's up  
23 to us to make sure that we don't let them  
24 get opened up.

1           Having said that, I am inclined to  
2           let people speak their peace. I mean, that  
3           is sort of consistent with what we have  
4           been doing here.

5           So, you know, my inclination would  
6           be to go on the process that you have  
7           suggested and to offer the two parties or  
8           three parties, I guess, an opportunity to  
9           speak for relatively a few minutes to make  
10          their critical highlight points.

11          COMMISSIONER MCHUGH: I'm not sure I  
12          understand what you mean by "opened a can  
13          of worms," Mr. Chairman. What worms and  
14          what can?

15          CHAIRMAN CROSBY: The worms are that  
16          the fundamentally inconsistent clause has  
17          given, as counsel was saying, the loser an  
18          opportunity to appeal on a whole host of  
19          grounds.

20          COMMISSIONER MCHUGH: That's not my  
21          view of it at all, Mr. Chairman. That is  
22          partly what we're attempting to demonstrate  
23          today. My view is that we have a very  
24          narrow standard. We have said that from

1 the beginning that we have a very narrow  
2 standard; that this is not an appeal; that  
3 this is an opportunity to prevent something  
4 that is fundamentally inconsistent with the  
5 statute from going forward.

6 And to characterize it as an appeal,  
7 I think does both today's proceedings and  
8 the record that we're trying to create in a  
9 clear manner as we can at this service.

10 So, I retreat entirely from that  
11 characterization of what we're doing.

12 CHAIRMAN CROSBY: I'm on your side  
13 with this. This is not an appeal but they  
14 are trying to construe it as such and  
15 claiming points that you might, for  
16 example, going back into the transcript and  
17 deciding whether the hearing was conducted  
18 properly. That's not, that's not within  
19 the realm of what we have here.

20 COMMISSIONER MCHUGH: Yes, sir.

21 CHAIRMAN CROSBY: And I agree with  
22 you. I think as a practical matter I'm  
23 pretty sure when we see that 275 pages it's  
24 going to have a lot more than what we were

1           anticipating as a fundamentally  
2           inconsistent claim.

3                         But our job is to make sure that we  
4           stick with what we're talking about, which  
5           is this very, very narrow standard. This  
6           is not an appeal or a decision. I'm  
7           totally with you on that. That was their  
8           characterization, not mine.

9                         MR. ZIEMBA: Yes. I apologize for  
10          bringing up the word "appeal." When I  
11          mentioned that, I was mentioning that so to  
12          forestall any future submissions where  
13          people might think that it is an appeal,  
14          exactly what Commissioner McHugh had just  
15          stated as well.

16                        CHAIRMAN CROSBY: I agree too. Are  
17          we agreed to go forward with this process  
18          as proposed and to let the applicants  
19          speak?

20                        COMMISSIONER CAMERON: Well, I guess  
21          I have an issue with the process. They  
22          were told they would not have an  
23          opportunity to speak here today. They were  
24          told that by our staff and now we're, you

1 know, we are changing what the staff has  
2 told people would be the process and I  
3 just -- I frankly don't see a need to  
4 hear -- we have heard from these folks on  
5 this matter a number of times.

6 And I was -- you know, personally  
7 thought the arbitration process when I read  
8 through it was very thorough. Lots of  
9 opportunities to speak and present  
10 witnesses' testimony and documents. I am  
11 frankly not convinced that we need to do  
12 that at this phase.

13 COMMISSIONER ZUNIGA: Maybe I'm  
14 putting a very fine point into that but  
15 they were told they do not have an  
16 opportunity to speak before this meeting to  
17 the 270 pages; is that correct?

18 MS. BLUE: That's correct.

19 COMMISSIONER ZUNIGA: Right. So, if  
20 we wanted, I am curious as to what does  
21 that contain? What -- you know, I would be  
22 curious to hear if they are willing to tell  
23 us, you know, a five minute summary of what  
24 has been submitted. But I agree with

1 making a decision today, reading any  
2 materials that they send us, you know, when  
3 our time and schedule permits it and, you  
4 know, then making a decision whether to  
5 open it or not at a later time -- whether  
6 to reopen it or not.

7 CHAIRMAN CROSBY: So, you're  
8 inclined to let people speak?

9 COMMISSIONER ZUNIGA: Yes.

10 CHAIRMAN CROSBY: Commissioner  
11 Stebbins?

12 COMMISSIONER STEBBINS: I agree with  
13 the general notion of making a decision  
14 today and giving staff the chance to review  
15 anything that has come in. We might find  
16 ourselves if we offer the parties a chance  
17 to speak that maybe we won't need to  
18 entertain that time to go through the 270  
19 page brief or any of the other filings from  
20 the other parties, and that next step we  
21 might not have to undertake it depending on  
22 what is told to us today.

23 CHAIRMAN CROSBY: So, maybe a soft  
24 majority for speaking.

1                   COMMISSIONER MCHUGH: I would just  
2                   like to add that I have no objection to  
3                   brief speaking. But if they were told that  
4                   they were not going to speak and are not  
5                   prepared to speak, I think it's unfair.  
6                   So, it's at their option. And if they  
7                   exercise their option not to speak, that is  
8                   not something that will be held against  
9                   them. I think that is essential.

10                  Careful lawyers are weary of  
11                  speaking in this kind of an environment  
12                  extemporaneously without careful  
13                  preparation. So, that's their option and  
14                  nothing will be held against them if they  
15                  elect not to do it.

16                  CHAIRMAN CROSBY: Agree.

17                  COMMISSIONER ZUNIGA: Agree.

18                  COMMISSIONER STEBBINS: Agree.

19                  CHAIRMAN CROSBY: So, I guess what's  
20                  the protocol for who goes first?

21                  MR. ZIEMBA: So, I think what we  
22                  should do is we should go in alphabetical  
23                  order by community and first we would have  
24                  the community speak and then the brief

1 response, the very contained whatever  
2 period you think is fair, Mr. Chairman,  
3 then we would go to West Springfield and  
4 then a final response from MGM.

5 CHAIRMAN CROSBY: I'm just going to  
6 say arbitrarily, you know, ten minutes is  
7 max. I hope that you will take seriously  
8 what we're saying about that there's a  
9 narrow window here.

10 If you've got stuff that honest to  
11 god, no kidding you really fundamentally  
12 believe is inconsistent with Chapter 23K  
13 and not other chaff, lay it out there. But  
14 please don't take our time for stuff  
15 that's, you know, a waste of our time.

16 So with that, I guess it would be  
17 counsel for Longmeadow if he or she chooses  
18 to speak. That's a bad sign.

19 MR. MOSS: Good morning, members of  
20 the Commission. My name's Brandon Moss. I  
21 am here on behalf of the Town of  
22 Longmeadow. As a town manager, I have  
23 Marie -- Steven Crane and Marie Angelides  
24 is the chair of the select board. I don't

1 intend to have them speak. I just want to  
2 point out that they are in the room.

3 This is a bad sign, but it was a bad  
4 sign for the arbitrator. It's not a bad  
5 sign for this Commission. We had a very  
6 thorough process. And as the staff  
7 recommendations on the chart that I've seen  
8 that's in the Commissioner's packet  
9 reflects these are not issues of  
10 fundamental inconsistency in terms of the  
11 Longmeadow best and final offer.

12 The 270 page filing that I received  
13 yesterday at 4:30 attempts to basically get  
14 a third bite at the apple. But in track  
15 changes mode making changes to a number of  
16 provisions that could have, could have been  
17 made back on April 3rd, before April 3rd  
18 when MGM's objection was filed.

19 The requested changes from  
20 yesterday, they do not relate to --  
21 although there's a transcript and that  
22 gives counsel the bulk of what was  
23 submitted yesterday afternoon, the changes  
24 are not anything that relates to -- you

1 know, frankly, it doesn't make changes  
2 based on this binder, based on the  
3 transcript, which I took the liberty of  
4 putting that into a second binder. We got  
5 our exercise with this case with the number  
6 of binders we have. But, frankly, these  
7 issues could have been raised back in with  
8 the objection that I warrant.

9 In terms of the changes that MGM has  
10 now proposed, there are a number of  
11 completely different arguments. The  
12 objection that was filed by MGM back on  
13 April 3rd dealt with -- it dealt with  
14 alleging the taking -- that it was taking  
15 the alleging amounts for taxes for  
16 mitigation, alleging that positive impacts  
17 should offset negative impacts to  
18 essentially reduce the mitigation payments  
19 and also trying to have an arbitrary cap on  
20 consulting and legal fees. Those are the  
21 arguments made.

22 The arguments, you know, that came  
23 in last night or yesterday afternoon, I'm  
24 sorry, tried to create substantive changes

1 to the Longmeadow best and final offer  
2 agreement that the majority of the  
3 arbitration panel accepted. They tried to  
4 create a new adjustment procedure for  
5 payments. It tries to create a new  
6 procedure for determining adverse impact  
7 amounts.

8 One of the components of Longmeadow  
9 agreement, and when we were here back in  
10 January, we were here back in February, we  
11 had the report, the 170 page report by the  
12 Commission's consultants. We listed,  
13 Longmeadow listed housing, schools, a  
14 number of issues, code enforcement, water  
15 sewer. The Commission's own consultants  
16 said they were non-impacts. So, we didn't  
17 put those in the Longmeadow agreement.

18 We only focused on two issues of  
19 traffic and public safety that our experts  
20 in this binder in part demonstrated that  
21 there are going to be traffic and public  
22 safety issues and considerations.

23 MGM is now substantively with some  
24 of the reply from yesterday in Exhibit A,

1 study scope, MGM is attempting to take that  
2 and put that now into a study scope area to  
3 basically offset and pass. That's  
4 substantive. That is not fundamentally  
5 inconsistent.

6 What I -- the standard is very  
7 narrow, and it is a very specific standard.  
8 These issues are not issues of fundamental  
9 inconsistency. These are really an attempt  
10 to take a third bite at the apple. And,  
11 certainly, where there is a dispute on some  
12 of the provisions, frankly, the Expanding  
13 Gaming Act authorizes -- requires an  
14 applicant to provide mitigation, and that's  
15 what the Longmeadow agreement does.

16 But it's not an issue of fundamental  
17 inconsistency, you know, the issues that  
18 MGM is raising. And that's a very high  
19 standard. It can be -- to uphold to an  
20 agreement, it must be consistent with the  
21 act. But to adjust the terms, it has to be  
22 fundamentally inconsistent and certainly  
23 that's not the case.

24 So, that is what I am here to say

1           this morning. I certainly welcome any  
2           questions from the Commission.

3                   CHAIRMAN CROSBY: Anybody,  
4           questions? Thank you.

5                   MR. MOSS: Thank you.

6                   CHAIRMAN CROSBY: MGM. Good  
7           morning.

8                   MR. STRATTON: Good morning,  
9           Commissioners, Seth Stratton. I am local  
10          counsel for MGM. With me you, of course,  
11          recognize Mr. Mathis.

12                   Let me start out by just addressing  
13          the question of the volume of this  
14          submission. It was approximately 200 page  
15          -- 270 page submission. It's a four-page  
16          brief. The 270 pages is the transcript  
17          from the arbitration proceedings, because  
18          there are certain references in both  
19          party's submissions to that proceeding, and  
20          we thought the Commission would benefit  
21          from having that available should it choose  
22          to reference it.

23                   But the issue raised by MGM is a  
24          four-page brief raising one issue, which is

1 the very same issue raised in the  
2 underlying objection that was filed to the  
3 BAFO five days after the astringent was  
4 filed.

5 And that's the issue that we've had  
6 all along and that we raised with the  
7 arbitrators, which is that there is a  
8 fundamental inconsistency with fixed  
9 payment amounts that are not tied to known  
10 impacts.

11 COMMISSIONER MCHUGH: Not tied to  
12 what?

13 MR. STRATTON: That are not tied to  
14 known impacts, and that is exactly what we  
15 objected to early on. And the issue we had  
16 and the reason for the subsequent filing is  
17 that you will see from our papers that we  
18 believe the arbitrators felt constrained by  
19 the change in the regulations, the early  
20 regulations that allowed them some ability  
21 to alter to address fundamental  
22 inconsistencies and the removal of that.

23 It's clear if you see the  
24 transcripts and what we've highlighted that

1 the arbitrators felt that their hands were  
2 tied. And while they might have liked to  
3 make some changes to make it more -- to  
4 address those consistencies, they weren't  
5 able to do so.

6 And we believe that when the  
7 Commission made that change, it reserved it  
8 to itself its ability to address exactly  
9 that issue and that's the only issue that  
10 we are raising. We are not appealing --

11 CHAIRMAN CROSBY: Exactly that issue  
12 meaning fundamental inconsistencies?

13 MR. STRATTON: Fundamental  
14 inconsistency of having fixed payments  
15 which we believe are not tied to actual  
16 known impacts, and that's the only issue we  
17 raise again. We are willing -- we are  
18 disappointed with the results. We are not  
19 seeking to change the numbers. We are  
20 willing to live with those.

21 But what we submitted to the  
22 Commission is a proposal which we think the  
23 Commission could act upon to cure that one  
24 inconsistency, which is the lap of time

1 known impacts to the amounts. And the way  
2 we do that is, keep in mind, is that we  
3 have this look-back program and our concern  
4 is that to have these much larger fixed  
5 payments which we believe aren't tied to  
6 known and specific impacts paired with a  
7 broad and open-ended look-back guarantees a  
8 floor but also has the look-back so there  
9 is a potential for windfall.

10 All we're asking to do is to adjust  
11 the look-back so that it can go both ways.  
12 If these Look Back Studies show known  
13 impact or less than the payments, then they  
14 can be adjusted either way and we believe  
15 that would adjust the inconsistency.

16 And, so, what we've attached is  
17 rather than just asking the Commission to  
18 address that, we have attached a proposal  
19 that the Commission could act on which we  
20 believe would keep the same agreements,  
21 90 percent of the agreements the same, the  
22 money the same but changes the program, the  
23 look-back so that it goes both ways. And  
24 that's the proposal that we've attached to

1 the consideration of the Commission, which  
2 we believe addresses exactly our underlying  
3 objection.

4 CHAIRMAN CROSBY: Where do you come  
5 up with the Chapter 23 fundamental  
6 commitment of surrounding community  
7 mitigation fees must be tied to known  
8 demonstrable impacts; where is that?

9 MR. STRATTON: We believe that  
10 that's referenced specifically in -- well,  
11 there are a number of references. I think  
12 Chapter 23K Section 15 Subsection 9 refers  
13 to known impacts from the development.

14 CHAIRMAN CROSBY: I have that  
15 section here and it says: Surrounding  
16 community agreements must, quote, include a  
17 community impact fee for each surrounding  
18 community and all stipulations of  
19 responsibilities between these surrounding  
20 community applicants, including  
21 stipulations of known impacts from the  
22 development and operation of the gaming  
23 establishment.

24 That sounds to me like it says that

1 the surrounding community agreement must  
2 stipulate known impacts, but I don't see  
3 any tie between the community impact fee  
4 and the known impacts.

5 MR. STRATTON: So, we believe if you  
6 read the statute as a whole, and as we've  
7 listened and as we read the regulations and  
8 listened to the Commission throughout this  
9 process, we believe there have been  
10 numerous references to noble and actual  
11 impacts and that the process is directed at  
12 figuring out what the actual impact is  
13 going to be so that these communities don't  
14 get a windfall.

15 And that's the major of our  
16 objection, frankly, is that the legal  
17 objections which were filed is that  
18 these -- if MGM is forced to pay payments  
19 that don't have a nexus to actual impact,  
20 that's an unlawful tax and a governmental  
21 taking and those are the legal objections  
22 underlying our position.

23 And, so, we believe that Chapter 23K  
24 is consistent with having these impact

1 payments tied to actual impacts. And the  
2 reason we took the approach of a Look Back  
3 Study is that that is inherently hard to  
4 do. It was hard for us to do. I think it  
5 was very hard for the community to do. It  
6 was hard for the arbitrators to do and,  
7 frankly, hard for this Commission to do.  
8 And that is why we proposed this Look Back  
9 Study and we understand that the  
10 communities think it's imperfect and the  
11 arbitrators had concerns with it.

12 So, the increased dollars that the  
13 arbitrators have said are appropriate  
14 address the concern of not having enough  
15 money to address impacts up-front. We've  
16 resigned ourselves of that. But we are  
17 saying if you're increasing these numbers  
18 and it shows it turns out that by using  
19 this money you mitigate the impacts and  
20 five, ten years down the road they are not  
21 there or the fears and concerns didn't  
22 materialize, why have these higher floors?  
23 Why can't the look-back adjust downward as  
24 well as upward.

1           We are giving the benefit to the  
2           communities of having the ability to  
3           mitigate the risk of the number being wrong  
4           to above well mitigating the risk of it  
5           being too high as well and allowing it to  
6           be downwardly adjusted is more consistent  
7           we believe with the gaming.

8           MR. MATHIS: Commissioners, if I  
9           can, I just want to say briefly, it's hard  
10          for me to say this and it's hard for our  
11          company to say this because we really  
12          believe in our position but we accept that  
13          we lost each of those arbitrations.

14          We are not here to appeal those. We  
15          want the process to move forward. And if  
16          you were to accept the BAFOs of each of  
17          those communities in a whole, we would  
18          accept that and move on.

19          What we've offered today is what we  
20          believe is a way to accept those BAFOs and  
21          cure what we think is a fundamentally  
22          inconsistent provision of those BAFOs,  
23          which establishes minimum payments  
24          regardless of impact. That just strikes as

1 inconsistent with the act and inconsistent  
2 with the way we treated our other six  
3 surrounding communities.

4 So, we are not only here on our  
5 behalf but we are here, frankly, on behalf  
6 of those communities where that agreed to  
7 our look-back approach and an attempt to  
8 make these agreements consistent with those  
9 discussions and those representations.

10 So, with that, I don't know if you  
11 have any questions for us. But, again,  
12 appreciate the process, want to move it  
13 forward and we will accept the decision by  
14 this Commission either way.

15 MR. STRATTON: And, Commissioners,  
16 it's the exact same response, I believe, to  
17 what will be raised by West Springfield.  
18 So, unless there is something new or a  
19 question that comes up, that is our  
20 position and I don't think we need to  
21 respond.

22 CHAIRMAN CROSBY: What is the fixed  
23 ongoing; is that 275,000?

24 MR. STRATTON: For Longmeadow the

1 BAFO award was 275 fixed, for West  
2 Springfield 425 and in comparison the  
3 communities -- the larger cities under our  
4 surrounding community agreements are  
5 getting 150,000 and the smaller communities  
6 100. So, these are two -- the up-front  
7 payments are significantly higher than the  
8 other and the fixed payments --

9 CHAIRMAN CROSBY: I am just  
10 wondering what the -- so, it's the annual  
11 payments of -- ongoing annual are 275 and  
12 425?

13 MR. STRATTON: That's right.

14 CHAIRMAN CROSBY: Any other  
15 questions, thoughts?

16 COMMISSIONER MCHUGH: Thank you.

17 CHAIRMAN CROSBY: I have just this  
18 piece of Section 59. Is there any other  
19 guidance in the statute? I don't know that  
20 I -- my memory of reading of it is that  
21 the -- that it is fundamentally  
22 inconsistent with Chapter 23K that there be  
23 a payment in a surrounding community  
24 agreement that happens to be in excess of a

1 direct impact. But is there anymore  
2 guidance in the statute than the section  
3 that you have in your analysis?

4 COMMISSIONER MCHUGH: I am not  
5 looking at the statute, but I have an idea.  
6 I have thoughts about the question you just  
7 asked but --

8 MS. BLUE: I have always looked at  
9 Section 9 and Section 15 and I don't  
10 believe -- but I have not gone through the  
11 statute recently in that detail -- but I  
12 don't believe there is anything that ties  
13 it specifically to impact.

14 CHAIRMAN CROSBY: In terms of what  
15 was the spirit was, okay.

16 COMMISSIONER MCHUGH: I don't think  
17 there is any provision that specifically  
18 talks about that, but I think that the  
19 clear import of the statute is that there  
20 be a nexus between impacts of the facility  
21 and the remediation cost of those impacts.

22 So that is -- that seems to me the  
23 principle, and I do intend to comment on  
24 that as we get into this further in one

1 instance. But how you determine what those  
2 impacts are is an entirely different story,  
3 and the statute is silent as to that.

4 The look-back provision is one way  
5 of doing it. It's not the only way.  
6 Arbitrators, judges, courts frequently are  
7 engaged in projection of future losses,  
8 future impacts, future consequences of a  
9 present act.

10 And, so, the fact that an arbitrator  
11 chooses or is bound to choose between two  
12 competing ways of looking at how to measure  
13 the impact, it seems to me does not make  
14 either method fundamentally inconsistent in  
15 the statute.

16 So, I would tie it to impacts as  
17 opposed to tribute or something else and  
18 but say that there are at least two ways of  
19 measuring or attempting to measure that  
20 impact.

21 CHAIRMAN CROSBY: So, how does that  
22 cut bottom line?

23 COMMISSIONER MCHUGH: Well, in so  
24 far as this is concerned, this award is

1 concerned, I think there are areas in here  
2 that are within the arbitrator's discretion  
3 and most of them in my view are. You know,  
4 I'm happy to go through them one by one.  
5 We can talk about that, because I don't  
6 know what -- how you would plan to do that.

7 CHAIRMAN CROSBY: But, so, as you  
8 apply the analysis that you just got  
9 through discussing, your bottom line is  
10 that you don't see any fundamental  
11 inconsistency; is that what your bottom  
12 line is?

13 COMMISSIONER MCHUGH: Well, I do  
14 see -- I do not see any fundamental  
15 inconsistency between the up-front payment  
16 of \$850,000 for the purchase of state and  
17 the statute. I don't see any fundamental  
18 inconsistency.

19 If you want me to disagree with the  
20 number, there may be evidence in the record  
21 that supports a different number but I  
22 think that is something that's within the  
23 arbitrator's call. I don't see any  
24 fundamental inconsistency between the

1           \$275,000 annual payment or the cost  
2           escalader and the purposes for which those  
3           moneys are to be devoted.

4           I will note, however, that it seems  
5           to me that the public safety component of  
6           that expenditure, and I am quoting now: To  
7           mitigate significant and adverse impacts  
8           within the community consistent of  
9           projecting traffic and roadway  
10          infrastructure impacts and public safety  
11          personnel and response cost impacts for  
12          public safety.

13          And response cost impacts is  
14          troublesome to me, not a potential  
15          troublesome to me not because it's  
16          fundamentally inconsistent with the statute  
17          but because of the Emerson College case  
18          which talks about the difference between  
19          the fee and the tax and I make no judgment  
20          about that. That's not part of our  
21          purview, but it is there and it is an  
22          issue.

23          I think there are differences  
24          between what we can do voluntarily in a

1 community agreement surrounding the host  
2 and what can be compelled by the state to  
3 do in a community agreement surrounding the  
4 host.

5 So, the bottom line for that is I  
6 don't see any fundamental inconsistency in  
7 the statute to that \$275,000 payment. I do  
8 see one other -- I do see one fundamental  
9 inconsistency and that I will put on the  
10 table and that is the legal fees.

11 The provision in the agreement as it  
12 presently reads says, and I quote:  
13 Notwithstanding anything otherwise provided  
14 in this agreement at the time of the  
15 execution hereof, the community may provide  
16 MGM with invoices evidencing legal and  
17 consulting fees and expenses the community  
18 has incurred for the time period through  
19 the date of this agreement in connection  
20 with evaluating potential impacts from the  
21 project seeking designation from the  
22 Commission as a surrounding community and  
23 negotiating a potential surrounding  
24 community agreement including through

1 arbitration.

2 I think that is a provision that  
3 does not qualify those invoices with the  
4 word "reasonable" is fundamentally  
5 inconsistent with the statute.

6 And, again, that goes back to the  
7 idea that the thrust of the statute is to  
8 mitigate the adverse impacts of the project  
9 and not to allow somebody, town,  
10 subcontractor with the town to reap the  
11 windfall.

12 So, I would -- I think that anything  
13 that simply requires the applicant to pay  
14 whatever fees for whatever costs are  
15 provided to it in connection with the  
16 process is fundamentally inconsistent and  
17 there needs to be a reasonable clause, a  
18 reasonable word in there. So, I would  
19 alter the agreement with that one word.

20 CHAIRMAN CROSBY: Does the absence  
21 of that word, I see why you were a judge by  
22 the way, but does the absence of that word  
23 permit unreasonable fees or does the law  
24 impute the word?

1                   COMMISSIONER MCHUGH: I don't  
2 think -- as it goes, this is a contract in  
3 which that word isn't there. This is going  
4 to be viewed as a contract, which that word  
5 isn't there.

6                   CHAIRMAN CROSBY: So, okay. If it  
7 were treated as a windfall for them and if  
8 it were handled in bad-faith in the fact  
9 that MGM wouldn't really have any recourse  
10 without that word.

11                   COMMISSIONER MCHUGH: Right, that is  
12 certainly a risk. We are the enforcing  
13 body I would think in the first instances  
14 administrative proceeding, but that's a  
15 risk. Without that we wouldn't be able to  
16 enforce it.

17                   CHAIRMAN CROSBY: Other thoughts or  
18 comments?

19                   COMMISSIONER ZUNIGA: I would agree  
20 with that. I think legal fees in the  
21 context of a long-term open-ended nature  
22 can amount to substantial amounts, and it  
23 does sound like not the intention of  
24 impacts versus mitigation moneys.

1                   COMMISSIONER MCHUGH:  These legal  
2 fees are a one-time thing.

3                   COMMISSIONER ZUNIGA:  Just a  
4 one-time payment?

5                   CHAIRMAN CROSBY:  Right, up to and  
6 through this.

7                   COMMISSIONER MCHUGH:  Through the  
8 agreement, but it still doesn't contain any  
9 reasonableness limitation.  I mean,  
10 presumably it is going to be reasonable and  
11 that is not a problem.  But there are  
12 situations at times in which things aren't.

13                   CHAIRMAN CROSBY:  Anything else?  To  
14 me the key -- I take your point on the  
15 reasonable.  I wouldn't have missed that,  
16 but that sounds appropriate to me.  An  
17 important finding of the reasonableness or  
18 the relevance of the size of the impact  
19 payments and if they are tied to actual  
20 impacts or not, I think is anticipated by  
21 the arbitrator who said that the proposed  
22 payments appear to be lower than the actual  
23 cost the towns -- town will incur in  
24 responding to the likely impacts relating

1 to traffic and public safety.

2 So, within the context of their  
3 capacity, you know, they did make the  
4 decision. They did believe as a matter of  
5 fact that from what they knew, those were  
6 going to be tied de facto too. So, I think  
7 it's a really interesting point in whether  
8 it's inconsistent, fundamentally  
9 inconsistent or not is worth talking about.

10 But in the other context, I think  
11 this finding makes it clear that the  
12 arbitrator did not see this as tribute or  
13 as a fee or as a tax or whatever it was but  
14 saw it as within the reasonable range of  
15 the cost of impacts.

16 COMMISSIONER ZUNIGA: But those  
17 amounts were submitted to the arbitrator?

18 MS. BLUE: Yes, they were.

19 COMMISSIONER ZUNIGA: I understand  
20 they were not part of the 850.

21 MS. BLUE: Well, the amounts of the  
22 legal fees I don't know but the number --

23 CHAIRMAN CROSBY: No. This is  
24 talking about the two payments, the

1 up-front, the one-time and the ongoing 275.  
2 The arbitrator was saying among other  
3 things, not the legal fees.

4 COMMISSIONER ZUNIGA: Sorry, I was a  
5 little sleepy.

6 CHAIRMAN CROSBY: I don't know why.  
7 This is really interesting. I don't know  
8 why you went to sleep.

9 So, any further discussion,  
10 thoughts? So, we will need a motion, I  
11 guess, and we will probably turn to our  
12 motion man.

13 COMMISSIONER MCHUGH: I move that  
14 we -- that the Commission deny the  
15 objections on grounds of fundamental  
16 inconsistency filed by MGM to the award of  
17 the arbitrators in the case of the Town of  
18 Longmeadow with the exception of the  
19 objection in so far as invoices for legal  
20 and consulting fees are concerned; and that  
21 in so far as that provision of the  
22 agreement is concerned that the Commission  
23 modify the language currently existing in  
24 the best and final offer with the word

1 "reasonable" so that, or "reasonably," so  
2 that the provision reads that the community  
3 may provide MGM with invoices reasonably  
4 evidencing -- with invoices evidencing  
5 reasonable legal and consulting fees and  
6 expenses that the community has incurred.

7 CHAIRMAN CROSBY: Second.

8 COMMISSIONER CAMERON: Second.

9 CHAIRMAN CROSBY: Any further  
10 discussion?

11 COMMISSIONER STEBBINS: What section  
12 of the BAFO are you incorporating that  
13 into?

14 COMMISSIONER MCHUGH: Section 2,  
15 which is on the final page of the staff  
16 recommendation.

17 CHAIRMAN CROSBY: Got it,  
18 Commissioner?

19 COMMISSIONER STEBBINS: Mm-hmm.

20 CHAIRMAN CROSBY: Any further  
21 discussion? All in favor of the motion as  
22 proposed signify by saying aye?

23 COMMISSIONER CAMERON: Aye.

24 COMMISSIONER MCHUGH: Aye.

1 COMMISSIONER ZUNIGA: Aye.

2 COMMISSIONER STEBBINS: Aye.

3 CHAIRMAN CROSBY: All opposed  
4 signify by saying nay? The ayes have it  
5 unanimously.

6 Okay, West Springfield.

7 MR. SILVERSTEIN: Good morning,  
8 Commissioners. Jonathan Silverstein for  
9 the Town of West Springfield. I will be  
10 brief in my -- the Commission's actions  
11 upon the bid to Longmeadow's best and final  
12 offer.

13 Maybe I will make a couple of points  
14 in response to discussions among the  
15 Commissioners -- anticipating Commissioner  
16 McHugh's motion -- and I said this, by the  
17 way. You may not have had a chance to read  
18 every page that was filed with the  
19 arbitration proceedings. But I  
20 specifically stated in my brief to the  
21 arbitral panel that of course the town  
22 acknowledges and accepts that any fees for  
23 which it seeks extreme reimbursement must  
24 be reasonable.

1           And on behalf of the town, I would  
2 suggest and agree that the term  
3 "reasonable" be included at the end of the  
4 fifth line in Section 1 so that it would  
5 read: MGM shall reimburse the town for the  
6 actual and reasonable expenses incurred by  
7 the town. Certainly it was never the  
8 intention of the town to the contrary.

9           And I will note that MGM offered in  
10 its BAFO \$125,000 specifically for  
11 consulting and legal expenses. That  
12 presumedly was not intended to address the  
13 increased costs to the town having to go  
14 through the arbitration process because at  
15 no point did MGM actually negotiate. They  
16 simply said, "Well, this is the agreement  
17 that we gave to Agawam and Chicopee and  
18 take it or leave it."

19           And that's why we ended up having to  
20 go through a very lengthy and expensive  
21 arbitration proceeding. And there were  
22 certainly additional costs to the town as a  
23 result that I don't think the town should  
24 have to incur. The town is probably going

1 to be looking for around 25 or 30,000  
2 dollars above what MGM had already offered  
3 for consulting and legal fees. So, we are  
4 not talking orders of magnitude difference.  
5 In any case, certainly we'll agree to the  
6 insertion of the term "reasonable."

7 I do want to note also the mayor had  
8 been planning to attend today. But when we  
9 were informed there would be no statements  
10 from the parties, he decided it wasn't  
11 worth the rather lengthy trip out. So, I  
12 will just note that his absence certainly  
13 is not an indication of the degree of  
14 importance that he views this proceeding.  
15 This is a matter of utmost concern to him.

16 And, I think if you look at the  
17 arbitration transcript, if you're having  
18 trouble sleeping at night, perhaps you'd  
19 want to do that and you'll see that he was  
20 extremely earnest and eloquent in his  
21 statement of the concerns of the town  
22 regarding this project.

23 I guess I want to address some of  
24 the other comments made by MGM, because I

1 think they were adequately addressed. I do  
2 note that we had an extremely distinguished  
3 arbitral panel of three very respected  
4 jurists who unanimously determined not only  
5 that the town's BAFO was more fair and  
6 reasonable but that it dramatically  
7 understated and we will get -- talk about  
8 the issue of the nexus between impact  
9 payments and impacts.

10 The arbitral panel unanimously  
11 stated that the payments called for in the  
12 town's BAFO are much lower than the impact  
13 is going to actually experience. And, so,  
14 I don't think there is any question about a  
15 nexus.

16 I think the Commission has  
17 acknowledged its role is not to double --  
18 second-guess factual findings like that by  
19 the Commission -- by the panel and clearly  
20 I think it's not fundamentally  
21 inconsistent.

22 As to the issue of MGM wanting to  
23 have a look-back process, look-back both  
24 ways, we made our best and final offer

1 incorporating the exact look-back process  
2 that MGM had been pushing, and we submitted  
3 in much lower impact payment than the  
4 impacts we actually believe we will  
5 experience specifically based on that  
6 framework.

7 We would have come up with a  
8 different BAFO if it had been a framework  
9 such as what MGM is suggesting, and they  
10 didn't include it in their initial  
11 fundamental inconsistency petition. So, we  
12 never had the ability to address that  
13 issue.

14 CHAIRMAN CROSBY: Are you saying  
15 that the MGM BAFO had a look-back revision  
16 which did not permit the payment to go  
17 down?

18 MR. SILVERSTEIN: Exactly. The only  
19 difference -- I viewed as closely as  
20 possible to MGM's form, which they  
21 repeatedly throughout the process said it  
22 was very important for them. Really, the  
23 primary differences are just the payment  
24 amounts, and that's a factual determination

1           that the arbitral panel unanimously made.

2                       MGM makes one argument in their  
3           filing last night that they didn't make in  
4           their FIP and it's this. The up-front  
5           payment by that they are to pay West  
6           Springfield \$665,000 for a study of the  
7           Memorial Avenue reconstruction project,  
8           they claim that that would be a windfall  
9           for the town because there is a provision  
10          in the transportation bond bill for  
11          \$3 million of funding for that project.

12                      Let me make a couple of very quick  
13          points on that. They were made at the  
14          arbitration proceeding, and the arbitral  
15          panel clearly considered those in making  
16          its decision.

17                      Number one, the \$3 million has not  
18          been approved. It's a provision in the  
19          bill, pure and simple. Number two, the  
20          \$3 million represents 50 percent of the  
21          actual construction costs of that project;  
22          number three, that \$3 million does not  
23          include its \$6 million of construction  
24          costs, \$665,000 entirely separate for

1 design, permit and engineering. That is  
2 what the up-front payment is for, two  
3 separate issues.

4 The \$3 million under the bond bill  
5 could not be used for that purpose, and so  
6 there is no suggestion of a windfall here.  
7 The town is committed to using that money  
8 for the stated purpose. With that I'll  
9 rest.

10 I will note that to the extent that  
11 MGM thinks that there's some risk of an  
12 enormous windfall to the town, there is a  
13 reopener provision in the Commissioner's  
14 regulations. And if there is an adverse,  
15 unexpected adverse circumstance that could  
16 trigger that reopen provision, MGM can take  
17 advantage of it.

18 I'll note that they wanted to force  
19 the town to waive that provision in their  
20 best and final offer. We did not include  
21 such a waiver for either party in ours.  
22 So, they will have the full ability if  
23 there is some major adverse unpursued  
24 circumstance to take advantage of that if

1           they so choose.

2                   CHAIRMAN CROSBY:   Would a major  
3           adverse circumstance be if the annual  
4           payments was demonstrably higher than the  
5           actual impacts?

6                   MR. SILVERSTEIN:   I can't speak to  
7           what that might include.   I bet ultimately  
8           that would be for the Commission to  
9           determine, I think.   But I think that, for  
10          instance, if the town were to receive 100  
11          percent funding for the Memorial Avenue  
12          project, including engineer, design and  
13          permitting, perhaps that MGM might be able  
14          to make the argument that really this is  
15          just a windfall for the town.

16                   CHAIRMAN CROSBY:   Because you're  
17          suggesting that the reopener is a  
18          protection for the interest that they are  
19          trying to protect, which suggests that if  
20          there were a discrepancy between the  
21          payments and the actual -- demonstrable  
22          actual cost that you would consider that a  
23          legitimate reason for reopening.

24                   MR. SILVERSTEIN:   I think that's an

1 argument MGM could make depending on the  
2 actual circumstances.

3 CHAIRMAN CROSBY: I'm just pointing  
4 out that you're setting that out as a  
5 protection for MGM. You're persuading us  
6 that was a good clause, because it gives  
7 them a way to sort of backdoor this issue.

8 MR. SILVERSTEIN: I think every case  
9 would have to be dealt with on the merits,  
10 Mr. Chairman. I don't mean to evade. But  
11 if MGM comes in and says, look, we think  
12 we're paying \$50,000 a year too much,  
13 here's our items. That the impacts are  
14 really only 325,000, our impact payment is  
15 only 375,000, then I don't think that is  
16 the type of magnitude that the regulation  
17 contemplates.

18 So, I think there are different  
19 circumstances under which MGM could try to  
20 make that argument. I'm not going to sit  
21 here and make it for them in any particular  
22 circumstance. I do think there is some  
23 protection built into the regulations, but  
24 nothing MGM has argued demonstrates a

1 fundamental inconsistency with the statute.

2 CHAIRMAN CROSBY: Questions?

3 COMMISSIONER CAMERON: No.

4 COMMISSIONER MCHUGH: Section 2, in  
5 Section 2 when talks about --

6 CHAIRMAN CROSBY: Section 2 of what?

7 COMMISSIONER MCHUGH: Of West  
8 Springfield BAFO, Section 2 of the West  
9 Springfield BAFO. Following the  
10 description of the amounts that are to be  
11 paid, there is this sentence: The parties  
12 acknowledge that the community should be  
13 free to direct the annual mitigation  
14 payment and the annual study cost  
15 reimbursement together with the annual  
16 payments to any uses it deems appropriate  
17 and shall not be restricted to use the  
18 funds for any purpose set forth herein.

19 How is that -- why is that not  
20 fundamentally inconsistent with the  
21 statute?

22 MR. SILVERSTEIN: Commissioner, as I  
23 indicated, I tried my best to keep to the  
24 exact language of MGM's BAFO as possible.

1 That exact language is in Section 2 of  
2 MGM's BAFO.

3 So, number one, I think it's not  
4 appropriate for MGM to contest that  
5 language where it comes from their  
6 language. But the other thing I would  
7 suggest, Commissioner, is that nothing  
8 in -- the town is going to incur these  
9 costs. The arbitral panel found that.

10 Nothing in the statute states that  
11 particular payments have to have a linear  
12 relationship to how the town addresses  
13 impacts. It requires an impact fee. It  
14 requires an assessment of impacts. All of  
15 that has been done by the arbitral panel.

16 I would also note that this language  
17 I suspect was added by MGM after a number  
18 of communities raised concerns about the  
19 fact that in Massachusetts municipal  
20 finance laws restrict the ways in which  
21 funds that are paid to a municipality can  
22 be earmarked for particular purposes.

23 Under Chapter 40 of the General  
24 Laws, there are very strict limits on the

1           ways in which final state to a municipality  
2           will be earmarked. Only under certain  
3           circumstance -- in fact, I think the  
4           Commission adopted its letter of  
5           authorization process in response to  
6           exactly that concern.

7                        Because this can't be considered a  
8           gift under Section 53A Chapter 40. It  
9           can't be considered a revolving account or  
10          an enterprise fund or any of the other very  
11          narrow class of special funds that can be  
12          set up by a municipality and many cases  
13          staying to the proposition that you cannot  
14          bind the hands of the appropriation  
15          authority through a contract or any other  
16          instrument without statutory authorization  
17          to do so.

18                       So, I think this is simply  
19          consistent with municipal finance laws. It  
20          doesn't change the fact that there is a  
21          stated nexus as found by the panel, the  
22          arbitral panel between the impact that the  
23          town will experience and the payments that  
24          are being made. How the town chooses to

1 deal with those impacts and utilize the  
2 funds, that's a matter that cannot be  
3 limited by a contract.

4 COMMISSIONER MCHUGH: I hear you.

5 CHAIRMAN CROSBY: Any other  
6 questions for Attorney Silverstein?

7 Thank you.

8 MR. SILVERSTEIN: Thank you for the  
9 opportunity.

10 CHAIRMAN CROSBY: MGM.

11 MR. STRATTON: Sorry. Of course you  
12 always end up eating those words when you  
13 say you won't say anything, very briefly.

14 Commissioners, Attorney Silverstein  
15 just mentioned something, which I think is  
16 important for the Commissioners to think  
17 about. He said that the arbitration panel  
18 found that the town is going to incur these  
19 costs.

20 All we're saying is if they were  
21 wrong, if they don't -- let us get a credit  
22 towards future payments. We are doing the  
23 studies anyways. It's in the agreement.  
24 We are doing it with all the communities.

1 We are looking at the tax.

2 The panel had to choose between two  
3 numbers and that, I think if you look at  
4 the papers we submitted, that was their  
5 concern and why we think that we disagree  
6 that they found this to be the impact  
7 number, because they were just choosing  
8 between two. If they thought it was 200,  
9 they wouldn't want to give them only 100  
10 but --

11 CHAIRMAN CROSBY: They didn't find  
12 it to be the impact numbers. They said  
13 they appear to be lower than the actual  
14 cost the town will incur.

15 MR. STRATTON: Fair enough,  
16 Chairman. And, I guess the point is if  
17 they are wrong, all we're saying is if the  
18 money for Memorial Drive fixes the issue  
19 and there are known impacts and the impact  
20 studies showed that, maybe those impacts  
21 won't be there and why not give us a  
22 credit.

23 That said, so that is just to  
24 highlight a potential that if they were

1 wrong and we are being forced to pay money  
2 in addition to being taxed, then there is a  
3 potential for a trigger. And if the  
4 Commission is comfortable with that subject  
5 to our ability to reopen, then MGM is  
6 willing to live with it.

7 But we just want to highlight that  
8 by pairing the guess on what the impact  
9 will be, which I agree with you, Judge  
10 McHugh, they have the ability to do that.  
11 But then to pair it with the Look Back  
12 Study as well and not allow a downward  
13 adjustment, certainly there is a potential  
14 for a tribune but subject to the reopener  
15 as long the Commission is comfortable with  
16 that potential.

17 CHAIRMAN CROSBY: Did I hear,  
18 Attorney Silverstein correct me, in your  
19 BAFO with -- I'm sorry, in your agreements  
20 with the other towns, the look-back does  
21 not have the reduction clause in it?

22 MR. STRATTON: That's right.  
23 Because we voluntarily offered those and we  
24 were comfortable with the at the threshold,

1 the number threshold that there wouldn't  
2 be.

3 CHAIRMAN CROSBY: I got that. But  
4 the finder of fact here in this case found  
5 the threshold to be a legitimate threshold  
6 too. The finder of fact here the  
7 arbitrator disagreed with your judgment  
8 that this was not a reasonable number; in  
9 other words, the finder of fact believed  
10 this was a reasonable estimate as to the  
11 costs and, therefore, with your principle  
12 not having a reduction in place.

13 MR. STRATTON: I agree with you,  
14 Chairman. I guess our only point is that  
15 because this is -- we disagree that that --  
16 with that threshold but it's essentially  
17 government compel threshold. It's  
18 different than we are offering it.

19 And if it's wrong and the Look Back  
20 Study showed that it's way above what the  
21 actual impact is, then it is you need a  
22 tribune and so long as the Commission is  
23 comfortable --

24 CHAIRMAN CROSBY: I think also,

1 Attorney Silverstein, you said that if  
2 it's -- I forgot what the word was. You  
3 modified it substantially different. There  
4 is a real significant difference between  
5 the real cost and the payment and even  
6 Attorney Silverstein suggested that the  
7 real cost might be applicable. So, it  
8 sounds like a pretty good argument if it's  
9 a big problem here that you already have a  
10 protection against.

11 MR. STRATTON: Thank you.

12 CHAIRMAN CROSBY: Discussion.

13 COMMISSIONER MCHUGH: I had two  
14 concerns, two concerns. One of was  
15 Mr. Silverstein has conceded on, I think we  
16 formalized that, and that is in both  
17 Section 1 and Section 2 in the fee and  
18 expense reimbursement provisions, there is  
19 no reasonable qualification but  
20 Mr. Silverstein said that was intended. It  
21 seems to me we ought to make that formal.

22 The other thing I question  
23 Mr. Silverstein on is that provision that  
24 says that the parties acknowledge that the

1 communities made shall be free to do --  
2 direct the annual and mitigation and study  
3 cost reimbursements to any uses it deems  
4 appropriate and shall not be restricted to  
5 use the funds for any purpose set forth  
6 here. That strikes me as tribute, not  
7 accounting.

8 We can account for any way they want  
9 but that strikes me as allowing the use of  
10 these moneys to keep the swans in the town  
11 pond, and that's not part of mitigation.  
12 So, I would strike that clause from the  
13 best and final offer.

14 Again, I make the distinction  
15 between what parties can do voluntarily and  
16 what they can do under the compulsion of  
17 the state. And it is the provision that  
18 one could not object to, would not object  
19 to perhaps if it were in a voluntary  
20 agreement. But this is not in the  
21 voluntary agreement, so I would just strike  
22 that.

23 CHAIRMAN CROSBY: That doesn't seem  
24 right to me. It seems to be the tribute is

1 the purpose for which the moneys are  
2 provided, not represents for which the  
3 moneys are spent. And whether or not this  
4 is, in fact, money generated because of  
5 impacts is dealt within this decision that  
6 the arbitrators felt that these numbers  
7 were, in fact, representational of likely  
8 actual costs as best they were able to  
9 figure out. So, in their view this money  
10 will be paid as a consequence of impacts.

11 If a city or town says, you know  
12 what, we have a higher priority than  
13 filling all those potholes and has to hire  
14 another teacher, yes, we are going to take  
15 the money that we got for the potholes and  
16 put it to the teacher. I don't see that as  
17 changing the nature of the relationship --  
18 the nature of the payment to make the  
19 changer of the use of the payment which  
20 seems to ought to be completely for the  
21 discretion of the town.

22 COMMISSIONER MCHUGH: I disagree.

23 CHAIRMAN CROSBY: That's fair.

24 COMMISSIONER ZUNIGA: I am only

1 somewhat familiar with the point  
2 Mr. Silverstein was making relative to  
3 municipal finance law. But would it be  
4 relevant to insert operation in that  
5 language that would read something like  
6 subject to the requirements or constraints  
7 of municipal findings?

8 CHAIRMAN CROSBY: There already is.

9 COMMISSIONER ZUNIGA: There already  
10 is.

11 CHAIRMAN CROSBY: That doesn't go to  
12 Commissioner McHugh's point anyway. Other  
13 than that issue, this is treading trod  
14 ground we've already discussed. The issues  
15 exactly now as to the Longmeadow issues.

16 COMMISSIONER MCHUGH: Yes.

17 CHAIRMAN CROSBY: So, we can agree  
18 on having the "reasonable" word. We agreed  
19 that the others are not fundamentally  
20 inconsistent -- the other objections are  
21 not fundamentally inconsistent. The only  
22 question is whether we agree or not with  
23 Commission McHugh's line on that. With  
24 that said --

1                   COMMISSIONER CAMERON: I note that  
2                   our legal staff did not pick that piece up  
3                   as something you felt was fundamentally  
4                   inconsistent; is that correct?

5                   CHAIRMAN CROSBY: None of us has a  
6                   nerve to disagree with Judge McHugh.

7                   COMMISSIONER MCHUGH: No, no.

8                   COMMISSIONER ZUNIGA: I actually  
9                   disagree with him often.

10                  CHAIRMAN CROSBY: On issues like  
11                  this?

12                  MS. BLUE: We looked at what was  
13                  objected to by MGM, and that provision was  
14                  not objected to by MGM. I am not familiar  
15                  with municipal finance law so I really  
16                  can't speak one way or the other as to what  
17                  issue that could raise.

18                  CHAIRMAN CROSBY: I don't think they  
19                  said they have anything to do with  
20                  municipal finance law.

21                  MS. BLUE: I don't know.

22                  CHAIRMAN CROSBY: Anybody else want  
23                  to weigh in on that, explore it more?

24                  COMMISSIONER CAMERON: It would be

1 an opinion that is not based on necessarily  
2 what the law says. So, that's why I asked  
3 our legal staff to help there if they had  
4 any knowledge of this matter.

5 CHAIRMAN CROSBY: If the question  
6 is, does it -- does this, you know, in a  
7 significant way suggest tribute as opposed  
8 to impact, the way does this clause really  
9 make this tribute enforcing an illegitimate  
10 tax on a community.

11 COMMISSIONER MCHUGH: That's the  
12 essence of it and I understand that your  
13 thoughtful suggestion that the measurement,  
14 the measurement of the payment is the  
15 impact, the dollar value impact. And then  
16 once the payment is received, the town can  
17 choose to use it for things other than  
18 mitigating the impact, so I understand  
19 that.

20 My thought is that, particularly  
21 under the force of a state mandate, the  
22 moneys to be consistent -- not  
23 fundamentally inconsistent with the statute  
24 have to be used to mitigate impacts and

1           this allows use of those moneys for  
2           something else and is therefore  
3           fundamentally inconsistent with the  
4           statute. Those are the two different  
5           suggestions.

6                   CHAIRMAN CROSBY: I actually don't  
7           think the law says anything about, you  
8           know, they weren't thinking about this for  
9           sure but it was to compensate for the  
10          impacts. I would have said not to fix the  
11          impacts.

12                   COMMISSIONER MCHUGH: Surely there  
13          is no expressed language, but I disagree  
14          with that.

15                   CHAIRMAN CROSBY: Okay.

16                   COMMISSIONER MCHUGH: We are just  
17          bound to disagree.

18                   COMMISSIONER ZUNIGA: I agree with  
19          Commissioner McHugh's suggestion of  
20          striking that provision.

21                   COMMISSIONER CAMERON: Yes. I am  
22          going to weigh in on that side as well  
23          frankly. The argument makes sense. And  
24          having been in a position over the years of

1           trying to enforce using certain moneys for  
2           the right things, that would make sense to  
3           me too that that was the intention to use  
4           it for impacts.

5                   CHAIRMAN CROSBY:   Because your  
6           experience in trying to enforce the uses of  
7           the right things.

8                   COMMISSIONER CAMERON:   Yes.

9                   CHAIRMAN CROSBY:   That that is a  
10          constructive strategy that is supportive of  
11          this.

12                   COMMISSIONER CAMERON:   Yes.

13                   CHAIRMAN CROSBY:   Well, I disagree.

14                   COMMISSIONER STEBBINS:   No big  
15          surprise.   I mean, I am going to be for it.  
16          The parties acknowledges the community  
17          shall be free -- you know, it's talking  
18          about any money going into an annual  
19          mitigation, paying annual costs, study  
20          costs reimbursements.   I simply have a  
21          problem with it being used for something  
22          beyond.

23                   CHAIRMAN CROSBY:   I'm sorry?

24                   COMMISSIONER STEBBINS:   I simply

1 have a problem with it being used for  
2 something beyond that.

3 CHAIRMAN CROSBY: Well,  
4 interestingly, in that case, if there were  
5 a big difference between the actual impacts  
6 and the money being paid, there would be a  
7 kitty being built up. That will probably  
8 never happen.

9 COMMISSIONER ZUNIGA: That's right.  
10 This most likely will be a multiyear  
11 evaluation of things, and I will reserve  
12 maybe very helpful in actual future impact  
13 mitigation.

14 COMMISSIONER MCHUGH: But it also  
15 potentially feeds into the discussion you  
16 had with Mr. Silverstein about what happens  
17 if there's a big bill.

18 CHAIRMAN CROSBY: Right, okay. Do  
19 you want to put that into a motion?

20 COMMISSIONER MCHUGH: I move that  
21 the Commission reject -- that the  
22 Commission deny the objection MGM to the  
23 arbitrator's award of the best and final  
24 offer to West Springfield with the

1           exception of adding the word "reasonable"  
2           in the two sections, Section 1 and 2, that  
3           discuss payments of legal fees and other  
4           expenses. And with the exception of  
5           striking from Section 2 the phrase, quote:  
6           The parties acknowledge that the community  
7           shall be free to directly and/or mitigation  
8           payment and annual study costs  
9           reimbursement together with the annual  
10          payments to any uses it deems appropriate  
11          and shall not be restricted to use the  
12          funds for any purpose set forth herein,  
13          closed quote, period.

14                    COMMISSIONER STEBBINS: Second.

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

17                    COMMISSIONER ZUNIGA: Aye.

18                    COMMISSIONER CAMERON: Aye.

19                    COMMISSIONER MCHUGH: Aye.

20                    COMMISSIONER STEBBINS: Aye.

21                    CHAIRMAN CROSBY: All opposed, nay  
22          for the reason I -- everything else I'm  
23          agreeing with but not that one clause. I  
24          think that is it for item A.

1 MS. BLUE: Commissioner Chairman, it  
2 might be helpful at this point to just for  
3 the record to state that we will take no  
4 further filings or comments on this matter.  
5 That we have completed it and no further  
6 submissions will be necessary.

7 COMMISSIONER STEBBINS: I was about  
8 to say that the preliminary motion that  
9 subsequently review doesn't have to take  
10 place.

11 MS. BLUE: I think if the Commission  
12 is comfortable with that, that will be  
13 fine.

14 CHAIRMAN CROSBY: Yes. I think we  
15 got the synopsis from MGM's counsel, and  
16 they have dealt with the substance of that.  
17 Thank you.

18 Out of respect for our Western Mass.  
19 media and other reasons, let's take a quick  
20 break and come back for item 2B.

21 Thank you, folks.

22  
23 (A recess was taken)  
24

1                   CHAIRMAN CROSBY: We are reconvening  
2 public meeting or commission meeting number  
3 119 at about 12:20. We do have a few  
4 things left on the agenda but I thought we  
5 ought to be able to get through them and we  
6 won't take a lunch break.

7                   So, we are on Ombudsman Report B,  
8 item B.

9                   MR. ZIEMBA: Item B, Chairman,  
10 Commissioners, this should be a simple one.

11                   The first item is in relation to our  
12 FIP hearing schedule for Region A under our  
13 regulations 205 CMR 125.01(6). No later  
14 than three days after the conclusion after  
15 the arbitrator's report is issued, the  
16 Commission shall hold its FIP hearing. At  
17 our last meeting where we agreed to the  
18 flexible 14, so numerous communities and  
19 applicants might be coming in at different  
20 times.

21                   So, the recommendation here is  
22 instead of having numerous states where FIP  
23 hearings come before the Commission that we  
24 take a variance to our own requirement to

1 have that FIP hearing within three days so  
2 that we can consolidate the number of the  
3 days for that FIP hearing, and it will be a  
4 much more efficient process.

5 We wouldn't have to have counsel  
6 being paid for many days and hopefully we  
7 can get it done within one day or two days  
8 or however we see fit. But I thought it  
9 would be important to take a variance from  
10 that bill in the flexible 14 days.

11 COMMISSIONER STEBBINS: I don't  
12 know. I thought this was kind of fun. I  
13 want to spread it over as many days as  
14 possible.

15 CHAIRMAN CROSBY: Well, also as part  
16 of our full employment policy for lawyers  
17 in the Commonwealth, you know, we don't  
18 want to break tradition.

19 MR. ZIEMBA: So, that would be a  
20 variance to our regulations. I believe it  
21 --

22 MS. BLUE: Requires a vote.

23 COMMISSIONER ZUNIGA: But the waiver  
24 would be to have that within three days of

1 the last.

2 COMMISSIONER STEBBINS: The last  
3 one.

4 COMMISSIONER ZUNIGA: Right. I  
5 don't know if you mentioned that.

6 MR. ZIEMBA: Or however the  
7 Commission sees fit. I don't know if we  
8 need to. In the usual practice, the reason  
9 why we put that three days in there is to  
10 provide a signal again to all the parties  
11 that we need to do is deal with the mature  
12 issues and that it shouldn't be a prolonged  
13 period requiring the filings of and filings  
14 itself, so it would be up to us when we  
15 schedule that hearing. I don't know if we  
16 need to regulate ourselves in our  
17 regulation.

18 MS. BLUE: You may want to suggest  
19 that we consolidate the hearings on the  
20 next available Commission meeting date.  
21 That might make it simpler so that we are  
22 not taking things out of the Commission's  
23 schedule.

24 COMMISSIONER ZUNIGA: Yes, as many

1           hearings as possible, I guess.

2                   CHAIRMAN CROSBY: Do you want to  
3 bring that to motion?

4                   COMMISSIONER ZUNIGA: Yes. And I  
5 will need to ask for an actual number of  
6 the regulation for the waiver. Which one  
7 would that be?

8                   MS. BLUE: It's 205 CMR 125.01  
9 Section 6.

10                  COMMISSIONER ZUNIGA: So, I move  
11 that the Commission waive the requirement  
12 containing regulation 205 CMR 125.01  
13 Section 6 relative to the hearings on  
14 petitions -- for fundamentally inconsistent  
15 petitions and allow flexibility to schedule  
16 any petitions as they may come on the next  
17 available Commission meeting date.

18                  COMMISSIONER STEBBINS: Second.

19                  CHAIRMAN CROSBY: Any other  
20 discussion? All in the favor?

21                  COMMISSIONER ZUNIGA: Aye.

22                  COMMISSIONER CAMERON: Aye.

23                  COMMISSIONER MCHUGH: Aye.

24                  COMMISSIONER STEBBINS: Aye.

1                   CHAIRMAN CROSBY: All opposed? Ayes  
2                   have it unanimously.

3                   MR. ZIEMBA: The next proposal that  
4                   Counsel Blue and I were going to put before  
5                   you we've reconsidered and we think it's  
6                   not probably a good idea as we once thought  
7                   it was.

8                   COMMISSIONER MCHUGH: We have a lot  
9                   of those.

10                  MR. ZIEMBA: So, currently under our  
11                  regulations for a selection of arbitrators,  
12                  if the parties each choose an independent  
13                  neutral arbitrator but they don't agree on  
14                  a single arbitrator, if no third arbitrator  
15                  can be chosen by those arbitrators, then it  
16                  is up to the Commission or the Commission's  
17                  designee to select that third arbitrator.

18                  And what we were going to recommend  
19                  was that the Commission designate to  
20                  Counsel Blue the ability to put forward to  
21                  choose that third arbitrator. Because of  
22                  timeliness concerns, we don't know when we  
23                  are going to go before the Commission.  
24                  But, I think that that recommendation

1 regarding the timeliness is outweighed  
2 regarded versus the value of bringing the  
3 parties before the Commission so that they  
4 can explain why we cannot have a third  
5 arbitrator chosen.

6 Given that there are 320,000,000 or  
7 so people in America and 6 million or so in  
8 the State of Massachusetts, we would hope  
9 that parties could find some way to choose  
10 arbitrators to fulfill this task. And if  
11 they can't, we hope that we can bring that  
12 before the Commission.

13 COMMISSIONER STEBBINS: So, the  
14 community and an applicant are not finding  
15 an agreement on either of the arbitrators  
16 they selected, a mutual arbitrator that  
17 would be for us?

18 MS. BLUE: Right now what we are  
19 seeing is we are not seeing an agreement on  
20 any arbitrators at the moment. And, so,  
21 under the regulations, there is a  
22 possibility that the parties can file a  
23 petition and its a petition for failure to  
24 participate or refusal to participate in

1 arbitration.

2 So, we're thinking that giving the  
3 issues that are coming to us it makes much  
4 more sense to bring the parties in front of  
5 the Commission and let them explain the  
6 problems that they are having and let the  
7 Commission hear them and then react to  
8 them.

9 CHAIRMAN CROSBY: So, I thought you  
10 were talking only about appointing of a  
11 third. But are you talking about the  
12 appointment of any commissioners --  
13 arbitrators?

14 MR. ZIEMBA: Exactly. Our proposal  
15 was in regard to make it easier to choose  
16 the third but we are having some  
17 difficulties at least in one particular  
18 situation where we can't even reach the two  
19 that we choose the third. And, so, instead  
20 of making it easier to have a dispute, I  
21 think we should keep the current regulation  
22 which allows it to come before the  
23 Commission to make that determination.

24 CHAIRMAN CROSBY: So, you're

1 thinking that if we delegated that say to  
2 Counsel Blue that that makes it easier for  
3 them to not agree because it's not as big a  
4 deal to come up with?

5 MR. ZIEMBA: Yes.

6 MS. BLUE: I think that's right.

7 CHAIRMAN CROSBY: On the other hand,  
8 you're sort of dignifying what's really a  
9 non-dignified process, which is not being  
10 able to pick arbitrators by bringing them  
11 in here and talk it out. It sort of  
12 implies that we think there must be some  
13 really good reason here. Let's hear it.  
14 In a way, I would say let the staff -- if  
15 they can't do what most folks can do, let  
16 the staff do it.

17 COMMISSIONER CAMERON: No. I think  
18 it may be the parties would look at coming  
19 before us and know the seriousness and  
20 possibly not want to do that and it may  
21 help, it may help them do their jobs and  
22 not lay it on our doorstep because they may  
23 not know the kind of reaction they'll get.

24 CHAIRMAN CROSBY: I understand, and

1 I don't disagree with that. I hear that  
2 point. I just think that there is another  
3 way to look at it, which is it dignifies  
4 the process.

5 COMMISSIONER MCHUGH: But it's an  
6 undignified process, and it seems to me  
7 this is a forum that demonstrates to  
8 everybody the lack of dignity and process  
9 of trying to get one back in a more  
10 dignified track. I hear what you're  
11 saying.

12 But it seems to me if we don't try  
13 to do that, then that lack of dignified  
14 approach is going to permeate the  
15 arbitration proceedings themselves and it's  
16 going to be a mess. It may be a mess  
17 anyway and we are faced with all kinds of  
18 objections to this, to that and hopefully  
19 to try and nip that in the bud or at least  
20 indicate that we are not going to have much  
21 basis for that as the arbitration  
22 proceedings proceed would be a helpful  
23 thing.

24 CHAIRMAN CROSBY: But another way to

1 do that would be to, you know, tighten --  
2 put in a time frame that says if the  
3 arbitrators aren't selected by such and  
4 such a time, our general counsel will do  
5 it, will appoint it.

6 COMMISSIONER MCHUGH: That solves  
7 the problem of the arbitrator. It doesn't  
8 solve the bigger problem of the way the  
9 parties are approaching. And just from  
10 experience, I always found -- I think it is  
11 always useful, I think it is useful to get  
12 people in and try and understand what is  
13 going on.

14 This has just been locked up. They  
15 can't or is there some concrete issue that  
16 we could actually sell. It's standing in  
17 the way of moving forward with this  
18 seemingly simple thing. This is a symptom  
19 of some underlying problem we can solve, so  
20 I understand what you're saying.

21 MR. ZIEMBA: And we don't mean to  
22 say that any concerns raised by any of  
23 these parties that they may or may not be  
24 legitimate. But what we are saying is that

1           there are probably other ways to overcome  
2           issues if people try to work together  
3           rather than continual dispute.

4                   CHAIRMAN CROSBY:  So, play this out  
5           time wise.  What is the -- okay, we get to  
6           the arbitration decision.  So, it's the 30  
7           days are over.  They can't come to an  
8           agreement.  They go to arbitration.  What  
9           is the time they have to pick arbitrators;  
10          what's the process?

11                   MR. ZIEMBA:  Within five days.

12                   CHAIRMAN CROSBY:  Within five days  
13          of the time to --

14                   MS. BLUE:  When it starts.

15                   CHAIRMAN CROSBY:  When they start.  
16          All of the arbitrators need to be?

17                   MR. ZIEMBA:  Yes.

18                   MS. BLUE:  Yes.

19                   CHAIRMAN CROSBY:  And what happens  
20          now if that hasn't happened?

21                   MS. BLUE:  Well, what has happened  
22          now is that the parties are deadlocked and  
23          they are contemplating filing petitions  
24          with the Commission to say that the other

1 party is failing or refusing to  
2 participate.

3 CHAIRMAN CROSBY: When we've already  
4 gotten letters to that effect.

5 MS. BLUE: Yes, that's right.

6 CHAIRMAN CROSBY: So, what your  
7 proposal would do is to have us put in our  
8 next agenda, in our next meeting and  
9 resolve it ourselves. I'd perfectly be  
10 happy to just say let the five days go by,  
11 the general counsel resolves it. I don't  
12 want to be bothered with mickey mouse BS.

13 COMMISSIONER ZUNIGA: By selecting,  
14 the only ability she has would be to select  
15 a third arbitrator.

16 MS. BLUE: Yes. Our regulations now  
17 don't contemplate anything other than the  
18 selection of a third arbitrator if the two  
19 arbitrators don't agree.

20 CHAIRMAN CROSBY: I know. But  
21 you're expanding this now from the third to  
22 all. That's what I'm trying to say.

23 MR. ZIEMBA: No, no. I guess given  
24 the experience that we have had with just

1 finding the two, we've reconsidered our  
2 thoughts that we should just delegate to  
3 choosing the third arbitrator because it  
4 would just make things easier actually for  
5 dispute. But there's the underlying issue  
6 regarding this particular circumstance  
7 regarding the two.

8 And the only provision that can be  
9 utilized by the parties if they can't  
10 resolve that, the two issues is they would  
11 appeal to the Commission saying that the  
12 other party is not participating in  
13 arbitration. So, therefore, they should be  
14 either knocked out or the Commission would  
15 determine a remedy. So, that's the current  
16 proposal on the regulation.

17 CHAIRMAN CROSBY: Right. And my  
18 suggestion would be whether they can't pick  
19 one or they can't pick the other or they  
20 can't pick the third by five days that the  
21 general counsel picks it.

22 COMMISSIONER MCHUGH: The nature of  
23 the current problem, Mr. Chairman, is as I  
24 understand it from the letters that I have

1 read is not that they can't pick the two.  
2 They can't -- they don't have to agree.  
3 They can't agree that one of the two is  
4 neutral.

5 CHAIRMAN CROSBY: Right.

6 COMMISSIONER MCHUGH: But we have no  
7 power and I would be reluctant to try to  
8 create a power to pick an arbitrator for  
9 one of the two. It's a different thing to  
10 pick a third neutral.

11 CHAIRMAN CROSBY: Then you could say  
12 if you can't settle on the three person  
13 process, then it will be the one person  
14 process and we will pick a person.

15 COMMISSIONER MCHUGH: You could, but  
16 that's not a regulation.

17 MS. BLUE: Yes, that's not a  
18 regulation.

19 CHAIRMAN CROSBY: None of this is in  
20 the regulations we are talking about.

21 COMMISSIONER MCHUGH: The third is.

22 CHAIRMAN CROSBY: It is now, but we  
23 are talking about a new plan here that will  
24 require a change in the regs. We are

1 talking about a change in our regs. I  
2 understand that.

3 MS. BLUE: No. If we were to  
4 propose that the Commission would pick a  
5 single arbitrator when people couldn't  
6 agree, that is not in our regs now.

7 COMMISSIONER MCHUGH: But it says  
8 the Commission will pick the third, right?

9 MS. BLUE: Yes, that's right.

10 COMMISSIONER MCHUGH: The Commission  
11 can always delegate to somebody. That's  
12 the standard. So, I mean, that is  
13 perfectly consistent with our current  
14 regulations. We need to go through the  
15 formality of the delegation. We have done  
16 a number of other cases.

17 But the picking, picking one of the  
18 two or two of two assigning, what we're  
19 saying if you can't agree on the two, the  
20 neutrality of the two, then there's going  
21 to be one and we pick the one. That's got  
22 huge implications. We can't do that  
23 without a change in the regs.

24 CHAIRMAN CROSBY: So, if they can't

1           agree with that, what are you suggesting  
2           that happens if they can't agree on each  
3           others' choices of the three tribunal  
4           process; what are you suggesting happens?

5                    COMMISSIONER ZUNIGA: Well, our  
6           current regs would have the parties come  
7           before us, which what you suggest we let  
8           that happen.

9                    MS. BLUE: They would file a  
10          petition, each party, and they would say  
11          that the other party is failing or refusing  
12          to participate and they would have to  
13          provide evidence as to what the failure or  
14          refusing to participate means. And then  
15          the Commission would review that petition  
16          and act on that petition.

17                   Now, the Commission has certain  
18          remedies it can impose. For an applicant,  
19          for example, it can deny their RFA-2  
20          application. For a community, it can  
21          determine that it's going to impose a  
22          mitigation fee and certain conditions on  
23          the license in favor of that community if a  
24          license is awarded.

1           So, our regulations do talk about  
2           certain remedies but the form would be  
3           through a petition for failure to  
4           participate or refusing to participate.

5           CHAIRMAN CROSBY: And one of the  
6           remedies apparently is not we would either  
7           directly or indirectly make the decision on  
8           whether candidate X has to be accepted or  
9           not. That is not one of the things we  
10          would entertain apparently.

11          MS. BLUE: That's not specified in  
12          our regs, no.

13          COMMISSIONER MCHUGH: Well, if there  
14          is a petition, if there -- let's, first of  
15          all, let's separate the two from the three.  
16          Let's stick with the two for a minute. It  
17          seems to me it is perfectly consistent with  
18          our regulations.

19          If somebody says there is a  
20          non-participation because a non-neutral  
21          arbitrator has been appointed, for us to  
22          impose a remedy, we have to find first that  
23          there is a non-neutral arbitrator, right?

24          MS. BLUE: Yes.

1                   COMMISSIONER MCHUGH: I mean, if the  
2 non-participation is the appointment of a  
3 non-neutral arbitrator, if that's the  
4 non-participation, then in order to impose  
5 a remedy, we have to find that that's an  
6 accurate statement and then impose whatever  
7 remedy we want.

8                   If we find that it's not an accurate  
9 statement, i.e. the arbitrator is neutral,  
10 then the petition for a position remedy is  
11 denied, off they go to arbitration. If we  
12 find that the remedy -- that the arbitrator  
13 is non-neutral within the whatever meaning  
14 we assign to that term, then we can impose  
15 a remedy which could include find another  
16 arbitrator or could be in the alternative.  
17 We have enormous flexibility at that point.

18                   But it seems to me that is the way  
19 that it will play out in the manner that is  
20 perfectly consistent with our existing  
21 regulations. Then if we -- so, I will stop  
22 there.

23                   CHAIRMAN CROSBY: You would be  
24 reluctant to delegate that function you

1 just walked through to staff.

2 COMMISSIONER MCHUGH: Yes,  
3 particularly that one. I would be less  
4 reluctant to delegate the third to. That  
5 one I would not be willing to delegate to  
6 staff.

7 CHAIRMAN CROSBY: I get that.

8 COMMISSIONER CAMERON: I agree  
9 that's our responsibility.

10 CHAIRMAN CROSBY: Any other  
11 thoughts?

12 COMMISSIONER ZUNIGA: No, I agree  
13 with that. Is it fair to say that we leave  
14 the regulations as they are?

15 MS. BLUE: Yes. I think the  
16 regulations as they stand are appropriate.

17 COMMISSIONER ZUNIGA: As they stand.

18 MS. BLUE: If we do end up in a  
19 situation where there are two agreed to and  
20 we need to pick a third, we can always come  
21 back to the Commission and ask for a  
22 delegation, if that's appropriate.

23 CHAIRMAN CROSBY: The timing is, I  
24 think of some sensitivity here. That is

1           what part of my concern about not  
2           delegating it because -- and, you know, if  
3           maybe it requires special meetings to let  
4           this be just another way to come up with a  
5           another week, another week or two weeks  
6           because we don't have a meeting scheduled,  
7           you know, at some point everybody is just  
8           going to throw up their hands here if we  
9           can't get this done.

10                        So, if that comes up, I think we  
11           should predispose to move quickly and even  
12           if we had to schedule an emergency meeting  
13           or something to get those things resolved  
14           so we don't let squabbling over your  
15           arbitrators being material delay.

16                        COMMISSIONER MCHUGH: I fully  
17           support that.

18                        COMMISSIONER CAMERON: Yes, agree.

19                        COMMISSIONER ZUNIGA: I agree with  
20           all of that, but this really matters on the  
21           last arbitration. Remember the last  
22           community -- the last round of community  
23           drags the process. Everyone else is  
24           scheduled to speak it floats.

1                   CHAIRMAN CROSBY: Okay, so that one  
2 is done. How about number C, letter C.

3                   MR. ZIEMBA: I'll just be very  
4 brief, Mr. Chairman.

5                   So, we just recently issued another  
6 schedule. We tried to make it as not  
7 confusing as possible. But now with the  
8 flexible 14, there are a couple of  
9 different dates by which the close of  
10 arbitration will conclude. And if the full  
11 14 days are utilized, it looks like  
12 June 12th would be the date for the  
13 conclusion of Region A non-Boston  
14 arbitrations.

15                   If we ever had the situation where  
16 none of those 14 days, it would have been  
17 May 30th. But we've already had a number  
18 of communities that have taken advantage of  
19 the flexible 14 days, and that has actually  
20 proven to be fairly beneficial to parties  
21 in reaching negotiations. So, that is all  
22 we wanted to add to that.

23                   COMMISSIONER STEBBINS: John, what  
24 count do we have excluding Boston, how many

1 communities are proceeding to arbitration?

2 MR. ZIEMBA: So, we have two on the  
3 Wynn side and then for Mohegan -- Kevin,  
4 you might be little bit quicker than I.

5 SPEAKER: Two in arbitration.

6 MR. ZIEMBA: Two in arbitration.

7 CHAIRMAN CROSBY: Okay.

8 COMMISSIONER MCHUGH: It's up to  
9 four total.

10 CHAIRMAN CROSBY: And just now on  
11 the Boston side, we have ended up with  
12 decision time was mid-August. Is that  
13 still where we are?

14 MR. ZIEMBA: It would be --

15 CHAIRMAN CROSBY: Where we are plus  
16 this grace week.

17 MR. ZIEMBA: Right. It would have  
18 been mid-August without the use of the  
19 flexible 14. If the 14 days were utilized,  
20 it would be the end of August and now add a  
21 week to that.

22 CHAIRMAN CROSBY: Yes.

23 MR. ZIEMBA: But that's assuming  
24 that arbitration goes to the very bitter

1 end.

2 CHAIRMAN CROSBY: Goes through the  
3 whole process, yes.

4 COMMISSIONER STEBBINS: Let's not  
5 use the word "bitter" here.

6 MR. ZIEMBA: Well, it's usually  
7 pretty bitter.

8 CHAIRMAN CROSBY: It's too soon to  
9 worry about this because enough change  
10 things come around. But at some point, we  
11 are going to get a big vacation scheduled  
12 for a lot of folks and some of us made  
13 plans not knowing we were going to be in  
14 the midst of this. But we will cross that  
15 bridge when we get to it, okay.

16 COMMISSIONER MCHUGH: It's all going  
17 to work out, no problem.

18 CHAIRMAN CROSBY: Great. Everybody  
19 is going to get together and hold hands.

20 We are onto item three. General  
21 Counsel Blue, 3A.

22 MS. BLUE: 3A is regarding Caesar's  
23 Divestiture and last October the Commission  
24 required Sterling Suffolk to provide a plan

1 to the Commission regarding the divestiture  
2 of Caesar's interest in Suffolks  
3 application. Suffolk did provide a plan,  
4 part of which required the Caesar's  
5 interest to go into a divestiture trust.

6 I spoke with representatives of  
7 Caesars this week. They advised that they  
8 have selected a trustee. That trustee is  
9 currently going through the Caesar's  
10 compliance review process. I will work  
11 with the IEB to reach out to that person  
12 that they selected so that they can go  
13 through the IEB process.

14 I expect to bring to the Commission  
15 at the meeting on the 15th the actual name  
16 of the trustee and the trust form itself  
17 and then we should be able to have the  
18 Commission review and act on that at that  
19 time.

20 CHAIRMAN CROSBY: Great.

21 COMMISSIONER CAMERON: Thank you.

22 COMMISSIONER STEBBINS: It's good  
23 news.

24 CHAIRMAN CROSBY: So, the only other

1 item, am I right, is the Wynn land issue?

2 MS. BLUE: That's correct.

3 CHAIRMAN CROSBY: Is anyone else  
4 going to have anything else? Because I  
5 made a point of not being involved in that  
6 topic from the day that the controversy  
7 surfaced, so I think I would keep that up.  
8 So, I am just going to leave if it's going  
9 to be -- do you have any idea how long it  
10 might be?

11 MS. WELLS: I'm going to be very  
12 brief in my remarks.

13 MS. BLUE: It will be very brief.

14 CHAIRMAN CROSBY: I won't pack up  
15 everything. I will just step out until you  
16 guys get done. If you want to take over,  
17 Commissioner McHugh.

18 COMMISSIONER MCHUGH: Sure, I  
19 certainly can.

20 All right, Chairman Crosby has left.  
21 General Counsel Blue.

22 MS. BLUE: As the Commission recalls  
23 last December, the Commission required that  
24 the members of FBT Realty sign a document

1           stating that they are the exclusive  
2           recipients of the proceeds should the  
3           property be sold to the applicant.

4           The Commission didn't set a time  
5           frame for the resolution of this matter,  
6           although it must be resolved obviously  
7           before the award of a license. The  
8           Commission also did not set a particular  
9           form of this document but left that to the  
10          parties to work out.

11          The Commission has received  
12          certifications from two of the three FBT  
13          members. I have been in ongoing  
14          conversations with the applicant and the  
15          applicant's representatives. They are  
16          working diligently to bring this to  
17          resolution.

18          I am optimistic that they will be  
19          able to do so and I am hopeful that when  
20          they do, I can bring something before the  
21          Commission for their consideration in the  
22          near future. So, I am in frequent contact  
23          with them. We have ongoing discussions.  
24          They are working very hard to resolve this.

1                   COMMISSIONER MCHUGH:  When you say  
2                   proceeds, that is the equity proceeds, the  
3                   debt was any noteholder could be paid.

4                   MS. BLUE:  That's correct.  That's  
5                   right.

6                   COMMISSIONER MCHUGH:  So far as we  
7                   know there are none.

8                   MS. BLUE:  Mm-hmm.

9                   COMMISSIONER CAMERON:  Director  
10                  Wells.

11                  MS. WELLS:  Good afternoon,  
12                  Commissioners.  For the record, I am Karen  
13                  Wells, Director of the Investigations  
14                  Enforcement Bureau.  That bureau is a  
15                  primary enforcement agent for regulatory  
16                  matters under the Expanded Gaming Act.

17                  About a week or two ago, I asked for  
18                  the IEB to put me on the agenda today so  
19                  that the Commission and the public can be  
20                  assured that the IEB is following through  
21                  with matters related to FBT Realty in  
22                  accordance with the IEB to on behalf of the  
23                  public to investigate matters related to  
24                  gaming licensure.

1           This morning I just wanted to  
2 address, briefly address the following  
3 issues: One, the initial FBT Realty  
4 investigation; two, the Commission's  
5 directives as a result of the IEB findings;  
6 three, the continuing nature of this  
7 investigation; and four, updating the  
8 Commission before a licensing decision is  
9 made.

10           Regarding the initial investigation,  
11 as you're aware on December 13, 2013, the  
12 Commission held a hearing based upon  
13 concerns raised by the IEB relative to the  
14 ownership of the property for the proposed  
15 Wynn Casino Project. The property is  
16 currently being held by FBT Realty, LLC.

17           After several months an intense and  
18 independent investigation conducted by the  
19 IEB staff, including the Massachusetts  
20 state police along with consultants  
21 investigators for Michael and Carol, the  
22 IEB submitted its findings in a report to  
23 the Commission detailing our significant  
24 concerns about the sellers of the property.

1 Those findings were given separately to the  
2 Commission as part of the December 13th  
3 hearing and were part of the final  
4 suitability report for the Wynn Mass. LLC.

5 Now, reading from page 87 of the  
6 suitability report, the IEB concluded that  
7 a substantial basis exist to believe that  
8 material information was being withheld by  
9 the sellers from both the applicant and the  
10 IEB investigators.

11 False and deceptive information and  
12 documents were being provided and  
13 significant evidence existed that at least  
14 one of the sellers, that is Charles  
15 Lightbody, possessed a significant criminal  
16 history and took affirmative steps to  
17 conceal his role and interest in the  
18 transaction so as to avoid jeopardizing the  
19 sale of the property to the applicant, Wynn  
20 Mass., LLC and thus preserve the  
21 opportunity to share in the enhanced  
22 financial awards due to the site's  
23 potential casino use.

24 So, regarding the Commission's

1 directives as a result of the IEB findings.  
2 After a hearing on the Wynn application  
3 proposed resolution of the IEB's concerns  
4 about FBT Realty, the Commission required  
5 the IEB to refer the matter to the district  
6 attorneys office, the attorney generals  
7 office and the US attorneys office. Such  
8 action has, in fact, been taken in this  
9 case.

10 And as General Counsel Blue also  
11 mentioned, the Commission also required  
12 that in accepting a resolution that the  
13 three named members of FBT Realty sign a  
14 document under oath that they are the  
15 exclusive recipients of the proceeds from  
16 the contract of the sale.

17 Now, as to the continuing nature of  
18 the investigation, as is our duty, the IEB  
19 continues to follow through on obtaining  
20 relevant information regarding the sellers  
21 of the property. We do this not only to  
22 ensure compliance with the Commission's  
23 directive but also to investigate any new  
24 developments regarding the circumstances.

1           It is important to emphasize as part  
2 of the IEB's mission to bring to the  
3 attention to the Commission any facts and  
4 findings relevant to the Commissions  
5 ultimate decision in awarding a gaming  
6 license. It's our duty to the public.  
7 It's our duty to the Commission.

8           As is obvious from the suitability  
9 report submitted to the Commission, the IEB  
10 has serious concerns regarding this issue  
11 and we continue to be concerned about the  
12 cast of characters at FBT Realty.

13           Now, as to a final update consistent  
14 with established protocol, as we did with  
15 the Category 2 license applicant, the IEB  
16 will provide a final update on all Category  
17 1 license applicants before any licensing  
18 decision is made. That update will include  
19 matters related to suitability and also any  
20 issues with the potential to be detrimental  
21 to the public or our communities.

22           As always during the course of our  
23 investigation, the IEB is receptive to any  
24 information or intelligence related to any

1 of the casino license applications. As is  
2 our practice, all investigations will be  
3 done in a comprehensive manner and facts  
4 confirmed before any public release of  
5 information.

6 The public can expect we will  
7 continue to do our job and we'll provide  
8 information to the Commission particularly  
9 as it relates to the FBT land deal and the  
10 interested parties that we are talking  
11 about today.

12 Those are my comments for this  
13 morning or for this afternoon.

14 COMMISSIONER MCHUGH: Okay. Any  
15 comments, questions for either director --

16 COMMISSIONER STEBBINS: No.

17 COMMISSIONER MCHUGH: Very good,  
18 Director.

19 I think the bottom line here is  
20 really pretty straightforward. Both of  
21 these reports were helpful. The Commission  
22 has taken this -- the IEB has taken this  
23 seriously. We had a hearing we instituted  
24 a remedial protocol that had to be carried

1 out. That's a simple matter, a  
2 straightforward matter, the requirements  
3 that we made. The references to the  
4 relevant law enforcements agencies have  
5 been made. We expect them to follow  
6 through to the extent they deem  
7 appropriate. They are, all three of them,  
8 able, thorough and thoughtful body.

9 Our remedy is for a statement to be  
10 signed. We expect that statement to be  
11 signed. We have not set a deadline for the  
12 statement to be signed, but obviously it  
13 has to be signed before any license award  
14 can be made. It's a condition for a  
15 proceeding.

16 So, we are continuing obviously from  
17 what we just heard to follow those closely  
18 and the public can be assured that we are  
19 doing so and we'll continue to do so. And  
20 we are not, on the other hand, going to  
21 respond to take action with regard to or  
22 otherwise deal with in that concrete  
23 fashion other than to note their existence.

24 Hypotheticals and plans and things

1           that may be contingent that people may be  
2           talking about and reach out and inject  
3           ourselves in the middle of issues that  
4           plans approaches and things that are not  
5           fully formed, that doesn't make any sense.  
6           That doesn't help the public. It doesn't  
7           help us.

8                         And we will deal with concrete  
9           issues when and as they arise but we'll do  
10          so thoroughly and in keeping with the  
11          protocols and investigations that we have  
12          conducted thus far.

13                        I think I've summarized everything  
14          fairly, and that is what we need to do.  
15          Any comment on anything?

16                        COMMISSIONER CAMERON: I would just  
17          reiterate that it's a very serious matter  
18          and investigations are confidential. But I  
19          am pleased to hear that we are following-up  
20          on every lead and our legal staff is  
21          following-up on legal requirements as well.

22                        So, we certainly anticipate and have  
23          always anticipated resolution before a  
24          license decision is made here and that is a

1 resolution that would be acceptable.

2 So, I thank you for continuing this  
3 work because it is important to us if the  
4 matter is resolved.

5 COMMISSIONER ZUNIGA: Director, you  
6 mentioned your ongoing concerns with the  
7 parties at FBT. But I also remember from  
8 the December proceedings that in your  
9 investigations you had not found that the  
10 applicant had had a role into or knowledge  
11 rather --

12 MS. WELLS: That is correct.

13 COMMISSIONER ZUNIGA: Into the  
14 evidence to conceal the ownership.

15 MS. WELLS: We looked. We found no  
16 evidence that they were complicit with the  
17 activities going on.

18 COMMISSIONER ZUNIGA: Is that still  
19 the case in your opinion?

20 MS. WELLS: Yes, that is correct.

21 COMMISSIONER ZUNIGA: Thank you.

22 COMMISSIONER MCHUGH: Okay. Any  
23 further comments, questions, opinions? All  
24 right. Thank you both very much.

1 COMMISSIONER STEBBINS: Good work.

2 COMMISSIONER ZUNIGA: Thank you.

3 COMMISSIONER CAMERON: Thank you.

4 COMMISSIONER MCHUGH: All right. I  
5 think that that brings us to the end of the  
6 agenda. Are there any other agenda items?  
7 I know that the Chair is out of the room,  
8 but I feel confident that he would allow us  
9 to proceed in his absence with a motion to  
10 adjourn.

11 COMMISSIONER CAMERON: So moved.

12 COMMISSIONER ZUNIGA: I second that.

13 COMMISSIONER MCHUGH: All in favor?

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER STEBBINS: Aye.

17

18 (Meeting adjourned at 12:56 p.m.)

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1 GUEST SPEAKERS:

2

3 Brandon Moss, Town of Longmeadow

4 Steth Stratton, Counsel for MGM

5 Michael Mathis, MGM

6 Jonathan Silverstein, Counsel for West Springfield

7

8

9 MASSACHUSETTS GAMING COMMISSION STAFF:

10

11 Catherine Blue, General Counsel

12 Richard Day, Executive Director

13 Todd Grossman, Deputy General Counsel

14 Karen Wells, Director of Investigations and  
15 Enforcement Bureau

16 Jon Ziemba, Ombudsman

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COMMONWEALTH OF MASSACHUSETTS

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I, KRISTEN M. EDWARDS, COURT REPORTER, do  
hereby certify that the foregoing is a true and  
accurate transcription of my stenographic notes,  
to the best of my knowledge and ability.

WITNESS MY HAND, this 6th day of May,  
2014.

\_\_\_\_\_  
Kristen M. Edwards