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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #70

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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June 27, 2013, 9:30 a.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street Room 106

Boston, Massachusetts

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

CHAIRMAN CROSBY: I will call to order the 70th public meeting of the Massachusetts Gaming Commission on Thursday, June 27, 2013. Today, we are having our meeting at the Boston Convention Center instead of our usual 1000 Washington Street. I am going to start out with the approval of the minutes, Commissioner McHugh.

COMMISSIONER MCHUGH: Thank you, Mr. Chairman. The minutes are in the meeting binder. They are prepared in their now customary format. And I tender them for comments and if none, approval.

COMMISSIONER STEBBINS: I wasn't at the meeting, so I enjoyed having a chance to catch up on the meeting that I did miss. I found one typo. We have a new Commissioner onboard, apparently. Commissioner Ziemba was referenced on page two.

COMMISSIONER MCHUGH: On page what?

COMMISSIONER STEBBINS: On page two in the second paragraph.

1                   COMMISSIONER MCHUGH: Commissioner  
2                   Ziemba, all right.

3                   COMMISSIONER STEBBINS: I know I  
4                   missed a meeting. Is there something I ought to  
5                   know?

6                   COMMISSIONER MCHUGH: We'll make  
7                   that change.

8                   CHAIRMAN CROSBY: I had a question  
9                   on page three, the 10:30 a.m. paragraph. I  
10                  wasn't here either. As I read that, I wasn't  
11                  sure whether that just scanned properly. If  
12                  you've read it, I guess it must read properly.  
13                  Does that say what we intended it to say?

14                  COMMISSIONER MCHUGH: Let me just  
15                  quickly look at it again.

16                  CHAIRMAN CROSBY: Take a minute.  
17                  Particularly starting with the sentence that  
18                  says response to public records request.

19                  COMMISSIONER MCHUGH: The phrasing  
20                  is a little awkward, Mr. Chairman. The thought  
21                  is there. We can change that, make no  
22                  substantive change but make it more easy to  
23                  read. It's a three-phase process, basically.

24                  CHAIRMAN CROSBY: Right. The first

1 phase it says the actual application form.

2 COMMISSIONER MCHUGH: That is the  
3 form -- I think that's intended to be the form  
4 with --

5 CHAIRMAN CROSBY: -- the summary  
6 boxes.

7 COMMISSIONER MCHUGH: -- the summary  
8 boxes. And that whole thing gets released  
9 without the attachments and without any -- And  
10 that can be done quickly.

11 CHAIRMAN CROSBY: It might make  
12 sense to say the application form. Actual is  
13 sort of an odd word. The application form will  
14 be released with no redactions and with no  
15 attachments.

16 COMMISSIONER MCHUGH: Right, right.  
17 Then the second phase is there's a brief review  
18 of the attachments that were not marked  
19 confidential.

20 That review is going to be extremely  
21 brief. Basically, if people have not marked  
22 things confidential, we'll take them at their  
23 word. It's their responsibility. This is a  
24 little different than the Phase 1 applications

1 where we dealt with personal data in which we  
2 have an independent obligation not to release  
3 it. That's what lead to a lot of difficulties  
4 with processing those.

5 But this case is likely to be  
6 different. So, those will be briefly reviewed  
7 and released. And then the third on a case-by-  
8 case basis and look at confidentiality requests.  
9 So, we'll make those changes.

10 CHAIRMAN CROSBY: I think it's a  
11 great process. I like the way it works. I just  
12 want to make sure that we say it clearly,  
13 because I didn't quite understand.

14 Similarly, at the 10:49, I remember  
15 and I'm not sure if I was there or not, but I  
16 know we talked about not accepting physical  
17 models. Have we made clear that we would be  
18 willing to see physical models somewhere during  
19 the course of the process?

20 I know there is one apparently  
21 already available. It wouldn't surprise me that  
22 other bidders will put them together. And I for  
23 one would be interested in seeing it as part of  
24 the review of the application. Have we said

1 anything about if you have them, we'd like to  
2 see them somewhere in the process?

3 COMMISSIONER CAMERON: That was  
4 never discussed, Mr. Chair. That was never part  
5 of the conversation.

6 COMMISSIONER MCHUGH: Right.

7 CHAIRMAN CROSBY: Does this mean  
8 we're discouraging it? We don't want physical  
9 models?

10 COMMISSIONER MCHUGH: It means that  
11 we don't want to accept as part of the filing,  
12 to take as part of the filing a physical model.

13 I think the point you're making is  
14 worth mentioning. That was not discussed at  
15 all, but I think it's worth mentioning in this  
16 week's minutes that we are eager to see physical  
17 models on display some place during the process.  
18 And we're not discouraging their creation.

19 COMMISSIONER CAMERON: Maybe that  
20 could be part of the 90-minute presentation?

21 COMMISSIONER MCHUGH: Right.

22 COMMISSIONER CAMERON: They could  
23 bring the physical model in for observation.

24 CHAIRMAN CROSBY: Or have them

1 somewhere for us to see.

2 COMMISSIONER MCHUGH: Right.

3 CHAIRMAN CROSBY: That was the point  
4 I wanted to make. So, that the bidders know  
5 that if they want to do physical models, there  
6 is an opportunity. There will be opportunities  
7 for us to see them.

8 COMMISSIONER MCHUGH: And I think  
9 the minutes of this meeting should reflect that.

10 CHAIRMAN CROSBY: Right. Good.  
11 Anything else? Do we have a motion on the  
12 minutes as discussed?

13 COMMISSIONER ZUNIGA: I move that  
14 the minutes be approved with the amendments,  
15 with the slight corrections as discussed.

16 COMMISSIONER CAMERON: Second.

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

19 COMMISSIONER CAMERON: Aye.

20 COMMISSIONER MCHUGH: Aye.

21 COMMISSIONER ZUNIGA: Aye.

22 COMMISSIONER STEBBINS: Abstention.

23 CHAIRMAN CROSBY: Opposed? Ayes  
24 have it unanimously. Okay. Executive Director

1 Day, you're up next.

2 MR. DAY: Chairman Crosby, members  
3 of the Commission, good morning.

4 COMMISSIONER CAMERON: Good morning.

5 MR. DAY: As we start, I would just  
6 like to note that our next meeting, Thursday  
7 July 11th, and we plan to begin consideration of  
8 Category 2 Investigations and Enforcement Bureau  
9 suitability reports and recommendations, provide  
10 a little bit more discussion about that in an  
11 introductory fashion as we talk about the master  
12 schedule in a few minutes.

13 CHAIRMAN CROSBY: Okay.

14 MR. DAY: What I think is because we  
15 do plan on a guest coming in and joining me up  
16 front here as soon as she gets here, what I'd  
17 like to be able to do is maybe move into the  
18 budget conversation, if I could.

19 CHAIRMAN CROSBY: Sure.

20 MR. DAY: And that's under tab 3A is  
21 our revised budget proposal for 2014 for the  
22 Commission's consideration and hopeful approval.

23 We introduced the preliminary plan  
24 at our June 13 meeting. Today's proposal



1 includes input we received in the last two  
2 weeks. To accomplish this purpose, I'd like to  
3 defer to Treasurer Zuniga who has done the work  
4 to get the proposed budget ready for the  
5 Commission's consideration.

6 I know we have as well in this  
7 discussion a couple of key -- in particular one  
8 key question about long-time financing for the  
9 Commission. I would also confer, if our guest  
10 hasn't arrived yet, that possibly we could take  
11 the issue regarding the gaming consultants  
12 during our budget discussion.

13 CHAIRMAN CROSBY: I'm sorry. I  
14 didn't hear what you said.

15 MR. DAY: The other issue that we  
16 have is the gaming consultants' contract.  
17 Perhaps we can deal with that while we talk  
18 about the budget.

19 CHAIRMAN CROSBY: Yes. Just  
20 interrupt any time if want to introduce your  
21 guest, whenever you're ready. Just stop us  
22 whenever you want.

23 MR. DAY: You may see her come in  
24 before I do.

1 CHAIRMAN CROSBY: She's right there.

2 MR. DAY: Oh, she is here. In that  
3 case, join me, please.

4 CHAIRMAN CROSBY: Welcome.

5 MR. DAY: Thank you, Chairman, for  
6 pointing that out to me. I appreciate it. What  
7 I'd like to do is it gives me great pleasure  
8 this morning to announce that we have selected a  
9 candidate for the Director of Workforce Supplier  
10 and Diversity Initiatives. And more importantly  
11 than selected is that she has accepted.

12 Jill Griffin, who is sitting next to  
13 me right now, will start with the Commission at  
14 the end of the month. She comes to us from the  
15 Boston Foundation. And prior to the Foundation,  
16 she worked as assistant director program manager  
17 for the Boston Redevelopment Authority. Jill is  
18 also a member of Massachusetts Service Alliance  
19 Board.

20 You'll find Jill's resume under tab  
21 three 3A. And I turn this discussion over to  
22 Jill if she would have any comments to the  
23 Commission and perhaps the Commissioners would  
24 have any questions for Jill.

1 MS. GRIFFIN: Great, thank you.  
2 I'll just say I am very excited and I was so  
3 pleased to accept the offer. And I look forward  
4 to working with the Commission. Thank you.

5 CHAIRMAN CROSBY: Great. Does  
6 anyone have questions or comments for Jill? I'd  
7 be interested and I know you've been thinking  
8 about this. We've talked with you for a while.  
9 The areas of focus when the Commission decided  
10 that we wanted to make the issue of preparing  
11 the workforce for these expanded gaming  
12 facilities and preparing Massachusetts suppliers  
13 for these facilities, because we are going to  
14 put pressure on the licensees to use the local  
15 workforce and to use local suppliers, and we  
16 have some obligation to make sure we have a  
17 workforce and suppliers that are ready to do the  
18 work. Because we wanted to make that  
19 commitment, we thought we ought to make a  
20 director position that is at the level, senior  
21 level of all of the other things we are doing  
22 here.

23 And intertwined throughout that is  
24 the commitment to diversity and an inclusive

1 culture that will permeate, we hope and we  
2 expect, both the workforce and the supplier  
3 bases.

4           You've now had a chance to think  
5 about that. And I just wondered what kind of  
6 sense of priorities have you got? What have you  
7 thought about doing your first day or two? How  
8 do you think you're thinking about approaching  
9 this?

10           MS. GRIFFIN: I think partnerships  
11 will be very important. As you can see by my  
12 background, I've worked in both workforce and  
13 economic development, focusing on helping  
14 underemployed and unemployed in Massachusetts  
15 and low-income communities get connected to  
16 resources to help them improve their skills and  
17 help them get employed. So, it's a real passion  
18 of mine.

19           Also you will see that I've  
20 experience in economic development, working with  
21 both small and large businesses. So, I was so  
22 please to see that the Commission had this as a  
23 priority, a real priority. That's why I was  
24 pleased to accept this position.

1           So, I think partnerships with  
2 business groups and workforce training providers  
3 will be really important. I'd also seek to  
4 create an advisory council, perhaps an internal  
5 advisory council of people who can help me think  
6 through some of those priorities.

7           CHAIRMAN CROSBY: Great. Anybody  
8 else questions?

9           COMMISSIONER ZUNIGA: Ms. Griffin,  
10 there is usually -- as you know there's large  
11 goals relative to supplier diversity and  
12 minority participation all over the Gaming Act,  
13 which we take to heart and we will continue  
14 thinking hard on implementing them.

15           But it occurs to me that there's  
16 usually this tension, if you will, between the  
17 lofty goals that everybody may have and the  
18 actual implementation when it comes to -- in the  
19 context of a project that by necessity will have  
20 to be moving very quickly. There's a lot of  
21 pressure to get some of these facilities open  
22 once they are awarded a license.

23           What could you share with us  
24 relative to bridging that gap? Obviously,

1 partnerships that you mentioned could go a long  
2 way. Could you expound a little bit in terms of  
3 bridging that gap between goals and  
4 implementation?

5 MS. GRIFFIN: First, I think it  
6 would be important to see the company's history  
7 in working in this area. So, do they have  
8 experience in creating opportunities for small  
9 and local businesses? Do they work with  
10 Veterans? Do they hire locally? Because these  
11 businesses, these casinos have been around a  
12 long time, so what's their history, first of  
13 all?

14 But I think in addition to -- I  
15 think looking at opportunities perhaps to break  
16 up the RFPs into smaller pieces. Sometimes  
17 small businesses can't respond to a very large  
18 contract. So, there may be opportunities to  
19 look at pieces of the job or to have a large  
20 responder partner with a small company.

21 And I think also there are  
22 nonprofits and other business groups that give  
23 technical assistance to ensure the local small  
24 business is actually able meet the requirements.

1 And if they get the job, they can actually  
2 respond well and keep the opportunity.

3 COMMISSIONER ZUNIGA: Thank you.

4 CHAIRMAN CROSBY: Anybody else?

5 COMMISSIONER MCHUGH: First of all,  
6 I'm delighted that you are here and that you're  
7 going to take over this critically important  
8 role. This is a jobs creation legislation. And  
9 we've been working thus far on little pieces of  
10 it and trying to pull all of that together is a  
11 critically important part of our task. I'm  
12 delighted that you are here.

13 One of the things that we've  
14 encountered at least in some areas is the  
15 expectation that a large number of jobs in a  
16 particular area will become available, but the  
17 supply of trained people to fill those jobs  
18 won't be there with the likelihood or the fear,  
19 concern that the result is going to be migration  
20 from out-of-state, leaving behind the in-state  
21 people who we would really like to employ. I'm  
22 sure you have encountered that before. Do you  
23 have any thoughts about how you deal with that?

24 MS. GRIFFIN: I think it's a valid

1 fear. Luckily, the Commission had the foresight  
2 to hire someone early on, right? And I think  
3 there's enough leeway that community colleges  
4 have already put in a plan to start thinking  
5 about meeting this gap. And I think there could  
6 be other nonprofit providers who also work on  
7 this.

8 But it is a valid fear. And I think  
9 there will be other requirements that limit  
10 candidates perhaps. And I know everyone won't  
11 have to go through the lengthy background check  
12 that I did, but they may have to go through some  
13 of that.

14 So, it will be really important to  
15 focus early on before the casinos are built and  
16 to really look at the existing training  
17 programs. One of the things I was pleased to  
18 see was the diversity in the types of jobs,  
19 everything from building security to the back-  
20 office finance to the hotels and the hospitality  
21 opportunity. There's a real diversity in the  
22 types of jobs. And that's a great thing.

23 COMMISSIONER MCHUGH: Would you be  
24 prepared as part of your job to make



1 recommendations to the Commission about the kind  
2 of background investigations that ought to be  
3 implemented for various categories of  
4 employment? There are some set by statute, but  
5 there are other areas where we have broad  
6 discretion. So, you probably haven't thought  
7 about this piece yet, but --

8 MS. GRIFFIN: No, but I'd be glad to  
9 perhaps look what other states have implemented  
10 and make some recommendations.

11 CHAIRMAN CROSBY: This has been an  
12 area that we have already had issues with. The  
13 legislation targets the casinos hiring, the  
14 gaming facilities hiring in areas of  
15 underemployment and economic disadvantage. And  
16 by definition you get a population which  
17 frequently has credit problems sometimes CORI  
18 problems. And yet those are precisely the  
19 targeted audiences that we would like to have  
20 the most impact by legislative mandate.

21 You must have had some experience  
22 trying to reconcile those conflicting realities.  
23 Any thoughts about how we might work that out?

24 MS. GRIFFIN: If you have been

1 unemployed for any length of time, you may run  
2 into some credit issues. There are  
3 organizations who work with individuals to try  
4 to clean up those credit problems and help them  
5 get on the right track.

6           So, perhaps that is something that  
7 could work and perhaps looking at the  
8 circumstances that those people encountered  
9 those difficulties. How long ago were those  
10 credit problems? Were they five or 10 years ago  
11 and that sort of thing. So, I think there are  
12 all sorts of things you could look at.

13           CHAIRMAN CROSBY: The lead time is  
14 important here as it was with hiring a director.  
15 If the target audience knows that there's a  
16 period of time during which credit issues have  
17 to be addressed and so forth, but also helping  
18 us understand what kinds of standards are  
19 realistic that are consistent with our law  
20 enforcement and our integrity standards on the  
21 one hand, but also consistent with our wish to  
22 address difficult to employ audiences. So,  
23 helping guide us through that will be a  
24 priority.

1 MS. GRIFFIN: Right. And I think  
2 looking, truly looking to establish partnerships  
3 with organizations that already work with these  
4 populations.

5 CHAIRMAN CROSBY: Yes, great. I saw  
6 you at the Urban League meeting the other night.  
7 Folks that the Urban League are very much geared  
8 up to try to support our initiatives. I agree  
9 with that. That partnership concept is really  
10 important.

11 MS. GRIFFIN: Exactly.

12 CHAIRMAN CROSBY: Anybody else,  
13 other questions or thoughts?

14 COMMISSIONER STEBBINS: Welcome  
15 aboard.

16 COMMISSIONER CAMERON: Yes, welcome.  
17 I look forward to working with you.

18 CHAIRMAN CROSBY: Our apologies to  
19 our friends at the Boston Foundation for  
20 sneaking you away. But we really have high  
21 aspirations for local employment, for local  
22 suppliers and for genuinely representative and  
23 inclusive workforce and supplier base. We hope  
24 you will lead us to excellence in that area.

1 MS. GRIFFIN: Great. Thank you so  
2 much. I am very pleased to join you.

3 CHAIRMAN CROSBY: Great.

4 COMMISSIONER MCHUGH: Great, thank  
5 you.

6 COMMISSIONER ZUNIGA: Thank you.

7 CHAIRMAN CROSBY: Thank you, Jill.

8 MS. DAY: Thank you, Jill, for  
9 taking the time to visit with us this morning.  
10 I appreciate it.

11 MS. GRIFFIN: Thank you.

12 MR. DAY: And welcome aboard. We  
13 will see you again. I do want to thank  
14 Commissioner Stebbins as well. He did an awful  
15 lot of work to make sure the Commission had a  
16 great choice for candidates. And it was a tough  
17 decision. Anyway, Bruce, I want to thank you  
18 very much.

19 COMMISSIONER STEBBINS: Thank you.

20 CHAIRMAN CROSBY: See you in a few  
21 weeks.

22 MS. GRIFFIN: Bye now.

23 MR. DAY: With that maybe I'll get  
24 back on the regular schedule here, because I did

1 want to cover a couple of other administrative  
2 deals, details. We've also reached a decision  
3 regarding our Director of Licensing. And we  
4 hope to be able to finish that process and be in  
5 front of the Commission on that topic before the  
6 end of the month as well.

7           We are moving forward with --  
8 Commissioners Zuniga and Stebbins and I are  
9 continuing to develop resources to allow the  
10 Commission to address areas of expertise. As I  
11 mentioned last time, financial advisor responses  
12 are due on the 28th of June. Building and site  
13 design RFR was posted on June 21. Economic  
14 development draft has been completed and is in  
15 the final review process.

16           The project manager coordinator RFR  
17 was released on June 17 with responses due July  
18 9. And our recommendation plan to get back to  
19 the Commissioners on -- Excuse me I said June 9,  
20 I meant July 9. The months are going by faster  
21 than I would not appreciate. It seems to be  
22 when I'm commenting about a month behind in my  
23 dates. A recommendations to the Commission on  
24 July 25. And John Ziemba is working hard to

1 arrange consultation with the Departments of  
2 Transportation and Energy and Environmental  
3 Affairs.

4 CHAIRMAN CROSBY: I am pleased to  
5 see that Commissioner Ziemba has joined us.

6 MR. DAY: Welcome, Commissioner.  
7 Then that will get us to our budget discussion,  
8 if I might. What we were talking about is we do  
9 have -- at the last Commission meeting,  
10 Commissioner Zuniga and I introduced the budget,  
11 proposed budget for fiscal year 2014 to the  
12 Commissioners.

13 It was in draft form. We were  
14 looking for some input and discussion as we move  
15 forward and added to that budget. We've  
16 accomplished that purpose. We come back with a  
17 proposal and hopefully for consideration by the  
18 Commission and approval if you feel we've got to  
19 that point.

20 I know Treasurer Zuniga is prepared  
21 with some particular policy areas. And then  
22 possibly we can also get catch that section  
23 regarding the gaming consultant contract in this  
24 budget discussion before we move on. And then

1 I'll come back with the master schedule  
2 discussion as well. Commissioner Zuniga.

3 COMMISSIONER ZUNIGA: Thank you. I  
4 will highlight perhaps the points that are the  
5 main differences from the previous presentation.  
6 And I can of course take any questions or have  
7 any one of the topics for discussion.

8 The monies that we have available to  
9 pay for the Racing Operations come from the  
10 Racing Oversight Trust Fund, which we control  
11 and has a positive balance. So, the shortfall  
12 that I projected and now project a little larger  
13 for racing can and should be, in my opinion,  
14 funded out of that Oversight Trust Fund. So,  
15 there's no need aside as we may have discussed  
16 last meeting whether to fund that shortfall in  
17 racing out of the gaming operations. So, we  
18 don't have a consolidated cash flow. It's still  
19 two cash flows, one for racing, one for gaming.

20 In addition to that, I am now  
21 assessing, like we discussed and the Chairman  
22 suggested, an overhead rate for what I believe  
23 is a fair assessment to the Racing Oversight  
24 Trust Fund to central office. That proration is

1 -- There's two prorations, if you will, or two  
2 basis. One on FTEs, all costs that are central  
3 office in nature. Administrative, rent are  
4 going, I suggest, to be prorated on an FTE  
5 basis. In the case of racing, there's three  
6 FTEs compared to 30 overall. So, racing gets  
7 assessed at 10 percent of those costs.

8           Similarly, there's other costs  
9 relative to IT. Those are costs that I have  
10 identified supporting our network computers.  
11 And those costs, I suggest they be prorated on a  
12 computer basis. In the case of racing that  
13 percentage is higher because there's computers  
14 on the field. So, our IT costs get prorated on  
15 that basis.

16           In any event, those costs are not  
17 reflected as an out from racing and as an in for  
18 gaming because we are expending them out of the  
19 Gaming Oversight Trust Fund. And they need to  
20 be credited to the Racing Oversight. I am  
21 suggesting that assessment be made for this  
22 fiscal year before it is done. And I'm only  
23 projecting to be trued up at the end of the  
24 fiscal year the next amounts.



1                   CHAIRMAN CROSBY: My point was even  
2 if there were a negative, even if the Gaming  
3 Commission were having to subsidize the Racing  
4 Commission, we should still accrue that  
5 obligation, because who knows what's going to  
6 happen. At some point, there might be money in  
7 the Racing Division, which could pay back the  
8 Racing (SIC) Commission. So, it's a protection  
9 against us in case the Racing Division does get  
10 -- does stay a positive cash flow.

11                   COMMISSIONER ZUNIGA: Right.  
12 Another point, since the last budget that was  
13 presented, I had assumed that we would assess  
14 our applicants for the \$600 a year that the  
15 statute speaks about on slot machines. That is  
16 section 56a.

17                   Commissioner McHugh rightly pointed  
18 out that that assessment can only be done in  
19 July. The statute does speak to July. So, I  
20 have a eliminated that assessment from this  
21 projection.

22                   I want to point out too the gaming  
23 projection has a low point of \$662,000 in July  
24 -- I'm sorry, in April 2014. And this is the

1 policy question that Director Day and I were  
2 talking about has to be discussed here whether  
3 this Commission would set a threshold much like  
4 we have with our investigations, a minimum  
5 balance, if you will, at which point we can use  
6 our ability under section 56C to assess our  
7 licensees for all costs that are necessary for  
8 the ongoing oversight of the Commission.

9           For example, we could decide that  
10 that threshold be \$500,000. Under this  
11 projection, we don't hit that threshold.  
12 There's no need for an assessment. If we  
13 decided that that threshold should be higher,  
14 then we'd have to think about just how and when  
15 really depending on our operations to make those  
16 assessments.

17           Those assessments are done or the  
18 statute speaks about that assessment being done  
19 annually --It doesn't say when. -- on our  
20 licensees.

21           In other words, what is highlighted  
22 here in yellow is no longer -- doesn't have a  
23 number, if you will, but is the plug that we can  
24 use if we see some of this cash flow dip, I

1 guess, lower than what we would like.

2 So, that's the general mechanics of  
3 this. I've made a couple of additional edits in  
4 consultation with the Director Day relative to  
5 some other costs that we need to consider. But  
6 those were the main changes that I wanted to  
7 highlight. I can take any questions if anybody  
8 wants to.

9 CHAIRMAN CROSBY: Go ahead.

10 COMMISSIONER MCHUGH: I had a couple  
11 of questions. One is a very minor one. I  
12 apologize for not getting to you yesterday, but  
13 I just ran out of time. That is in the Racing  
14 page one. Note one has a figure of 117,000 and  
15 topic five has a figure of 119,000. Is that  
16 just a typo?

17 COMMISSIONER ZUNIGA: It's a typo,  
18 yes. It should be 119,000 in the note to  
19 reflect the cash.

20 COMMISSIONER MCHUGH: Sorry that I  
21 didn't get back to you with that. I have two  
22 questions about the substantive thing. And I've  
23 forgotten whether we talked about this the last  
24 time. But what is the source of the numbers

1 that are in item five for revenues that's the  
2 Public Health Trust Fund, 622 in January and  
3 \$1.2 million in May and June?

4 COMMISSIONER ZUNIGA: This is an  
5 assumption that we would assess our licensees  
6 proportionately. I chose the same proportion of  
7 anticipated slot machines, the monies we need to  
8 cover the expenditures that we have for the  
9 research project.

10 CHAIRMAN CROSBY: For the funding?

11 COMMISSIONER ZUNIGA: Yes.

12 CHAIRMAN CROSBY: If I could say it  
13 another way, we can assess the Public Health  
14 Trust Fund as soon as people are licensed. So,  
15 the slots parlor will be licensed earlier, so we  
16 can assess them.

17 There's no written mechanism for --  
18 What the law says is we assess \$5 million  
19 dollars on the licensees. If there's only one  
20 licensee, theoretically, I think within the  
21 rules, we could assess the full \$5 million on  
22 that one licensee. We wouldn't for obvious  
23 reasons.

24 I think what Commissioner Zuniga has

1 done for the sake of discussion, and this is not  
2 necessarily cast in stone, is assuming that we  
3 had all licenses and prorating using the number  
4 of slots machines as the divisor to figure out  
5 what the pro rata share. So, as soon as a  
6 licensee comes on board, they then get assessed  
7 their pro-rata share of the \$5 million. It  
8 could be done other ways, but that's what you're  
9 doing for the purposes of this cash flow.

10 COMMISSIONER ZUNIGA: That's right.

11 COMMISSIONER MCHUGH: But the  
12 assessment is based not on slot machines but on  
13 numbering of gaming positions, right?

14 COMMISSIONER ZUNIGA: Right.

15 CHAIRMAN CROSBY: I thought it was  
16 slot machines.

17 COMMISSIONER ZUNIGA: It is gaming  
18 positions. I took the slot machines as a proxy  
19 because we don't really know -- I didn't make a  
20 projection for gaming positions.

21 COMMISSIONER MCHUGH: When you get  
22 to the end, you've got \$3.1 million after all of  
23 the licenses have been awarded?

24 COMMISSIONER ZUNIGA: Yes.

1                   COMMISSIONER MCHUGH: As opposed to  
2 the five?

3                   COMMISSIONER ZUNIGA: Yes.

4                   COMMISSIONER MCHUGH: Why that?

5                   COMMISSIONER ZUNIGA: Because the  
6 costs are \$3.1 million for this fiscal year. I  
7 am only assuming we would assess the costs we  
8 need for this fiscal year. There's additional  
9 costs coming and I guess we could easily assess  
10 in advance of those costs on the research  
11 project.

12                   But my assumption in this projection  
13 was mostly to maintain a revenue neutral type of  
14 projection. If I assess the \$5 million, that  
15 would perhaps show that there's a positive  
16 balance.

17                   COMMISSIONER MCHUGH: Thank you.  
18 Final question in this area then is the  
19 Commissioner of Public Health is the trustee of  
20 this fund.

21                   CHAIRMAN CROSBY: The Secretary of  
22 Health.

23                   COMMISSIONER MCHUGH: I mean the  
24 Secretary of Health and Human Services, excuse

1 me. How do we know that the monies that we  
2 collect for this fund are monies we'll be able  
3 to spend on the study?

4 COMMISSIONER ZUNIGA: Well, the  
5 Secretary is a trustee and may expend funds to  
6 do the research project with the advice and  
7 consent of the Commission. We need to have the  
8 conversation. That's an ongoing. There has  
9 been a lot of transition at both the Executive  
10 Office and the Department of Public Health.

11 COMMISSIONER MCHUGH: Right.

12 COMMISSIONER ZUNIGA: But more  
13 importantly, this was a project that had to be,  
14 in our view, started.

15 COMMISSIONER MCHUGH: No, no, I'm  
16 not questioning not. I'm not questioning that.  
17 So, I guess maybe there is one more question.  
18 The Public Health Trust Fund assessments are  
19 going to be in our view, in our mind, in our  
20 planning, the source of the revenues to pay for  
21 the study?

22 COMMISSIONER ZUNIGA: Fundamentally,  
23 yes.

24 CHAIRMAN CROSBY: After-the-fact

1     however.

2                   COMMISSIONER MCHUGH:   I understand  
3     that.

4                   CHAIRMAN CROSBY:   The reason we're  
5     talking about it, the issue of a cash issue is  
6     because the law required this study.  And it  
7     required it to be paid out of the Public Health  
8     Trust Fund.  And there is no Public Health Trust  
9     Fund, but the study had to get going.

10                  So, the law didn't anticipate our  
11     need for an extra \$3 or \$4 million before there  
12     was a Public Health Trust Fund, which creates  
13     this problem.

14                  COMMISSIONER MCHUGH:   And the reason  
15     for between my asking the questions is looking  
16     at the dip, at the minimum dip and trying to  
17     think ahead.  And you've already thought ahead  
18     as to what we're going to do if some of these  
19     revenues don't work and that's one area.

20                  CHAIRMAN CROSBY:   I'm sorry.

21                  COMMISSIONER MCHUGH:   The final  
22     area, the final question I had was --

23                  CHAIRMAN CROSBY:   Excuse me, while  
24     you're on this topic.  You raised a really



1 important issue about how do we know the  
2 Secretary is going to be okay with us spending  
3 money this way. We've now met with two  
4 secretaries and three public health  
5 commissioners because there's been this massive  
6 turnover.

7 The Department of Public Health was  
8 represented on our procurement team when we  
9 procured this contract. We've been in constant  
10 conversation with them. We are still in  
11 constant conversation with them. There is a  
12 representative of DPH on the Gaming Policy  
13 Advisory Committee, on the Public Health  
14 subcommittee of the Gaming Policy and on the  
15 informal advisory committee that we put  
16 together. So, we've done everything in our  
17 power to make sure that they are with us side-  
18 by-side as we go through this because we need  
19 them as you're saying.

20 COMMISSIONER MCHUGH: That's great,  
21 great. The final question that I had is we are  
22 going to make a large IT procurement in the  
23 near-term.

24 COMMISSIONER ZUNIGA: Yes.

1                   COMMISSIONER MCHUGH:  Where is that  
2                   in here?

3                   COMMISSIONER ZUNIGA:  That would be  
4                   under the number 2.2 consulting and service  
5                   providers that is non-evaluation.  I have at  
6                   \$1.3 million, \$1,380,000 for the year of fiscal  
7                   year '14.  I've assumed \$500,000 for a licensing  
8                   IT procurement.  And I believe \$125,000 for an  
9                   ongoing document management type system.

10                   And whether -- how they are  
11                   integrated or not that's a big question for  
12                   others to consult.  But that's the order of  
13                   magnitude that I figured for this fiscal year  
14                   may be necessary.

15                   COMMISSIONER MCHUGH:  But some of  
16                   that would be capital costs as opposed  
17                   operational costs, right?

18                   COMMISSIONER ZUNIGA:  Yes, some of  
19                   that can be characterized as a capital cost,  
20                   right.

21                   COMMISSIONER MCHUGH:  Does that take  
22                   into account whatever software we're going to  
23                   need for ongoing monitoring of the licensees  
24                   revenues and the other kinds of monitoring we

1 need to do?

2 COMMISSIONER ZUNIGA: That does not.  
3 With the exception of the slots parlor, the need  
4 for Category 1's is much later.

5 COMMISSIONER ZUNIGA: Probably for  
6 the slots as well, isn't it? Probably we award  
7 the license but they won't be operational this  
8 fiscal year.

9 COMMISSIONER ZUNIGA: Yes. That's  
10 one of the large policy discussions that I  
11 suggest we start thinking about. Much like we  
12 did for our evaluation criteria, the policy  
13 questions with the research that we undertook  
14 and our consultants and staff helped us with.  
15 There's a number of policy -- that's one of  
16 them, how much it's going to cost to oversee  
17 some of these operations.

18 COMMISSIONER MCHUGH: Right, right.  
19 Thank you.

20 CHAIRMAN CROSBY: In case something  
21 else came up, we've assumed no assessments on  
22 our licensees for our operating costs here. We  
23 can assess our operating costs on the licensees  
24 as soon as the licenses are awarded.

1           So, if we need and the bidders all  
2 to need to know, it's part of why we are having  
3 this conversation, is that the licensees should  
4 expect, the winners of the licenses should  
5 expect that we will begin assessing the Public  
6 Health Trust Fund and shortly thereafter our  
7 operating costs of the Commission virtually  
8 immediately upon on issuing the licenses.

9           And they're nontrivial numbers. And  
10 that ought to be something that the bidders are  
11 very much aware of as they're go through this  
12 process.

13           COMMISSIONER ZUNIGA: Right. On  
14 that note, I will highlight another comment from  
15 last meeting that was also modified a little  
16 bit. That is the consulting and service and  
17 providers for the evaluation.

18           I brought down some of those  
19 assumptions. They are now at \$5.8 million. You  
20 may recall I had them at \$6.5 million. Those  
21 I'm assuming would be spread through all  
22 applicants because we are doing the ongoing  
23 review investigation of those large  
24 applications. And we may need to, depending on

1 how these RFRs come back and how we negotiate  
2 them, we'll have to actualize those costs in my  
3 projection.

4 CHAIRMAN CROSBY: This just seems to  
5 me to be a huge amount of money. And I know you  
6 walked me through it. And as you did it, I  
7 understood it. I still think we ought to give  
8 this a real hard look when the RFRs come in.  
9 That is just a ton of money for help.

10 COMMISSIONER MCHUGH: And your point  
11 about how -- We posted a schedule of fees for  
12 the Phase 1 investigations, hourly fees for  
13 various people. How we approach that same --  
14 the actualization I guess is the word you used.

15 COMMISSIONER ZUNIGA: Yes.

16 COMMISSIONER MCHUGH: And the  
17 apportion of these costs is an important thing  
18 as well. So, we've got to give people notice in  
19 advance.

20 COMMISSIONER ZUNIGA: That's right.

21 COMMISSIONER CAMERON: Commissioner,  
22 I was interested in how you assessed the  
23 investigator cost for Region C. Did you project  
24 a number?

1                   COMMISSIONER ZUNIGA: What I am  
2 assuming on Region C is that we would receive  
3 two additional responses. It could be less, it  
4 could more, but let's see what happens. I've  
5 take the costs that we've had and averaged all  
6 of the investigations. So, I've taken the  
7 average of our current costs, assume that we  
8 would get two average investigation bills.

9                   I then assumed that the involvement  
10 of the IEB would be higher than that of  
11 consultants. But there is still consultant  
12 participation assumed. It remains to be seen  
13 just how much. And split the costs accordingly,  
14 because the costs for IEB, we already have  
15 those. We are already incurring them. Then  
16 it's incumbent upon us to use more of that.  
17 We're really a lot more cost-effective, frankly.  
18 But we recognize that there will be still a lot  
19 of involvement from the consultants.

20                   COMMISSIONER CAMERON: When you  
21 picked the number two, were you just thinking  
22 there would be less interest? Or were you  
23 thinking possibly others that may have already  
24 had their suitability investigations completed

1 and may move to the region?

2 COMMISSIONER ZUNIGA: That's both.  
3 Yes. I was thinking maybe one or two of our  
4 current unsuccessful may decide to move there.  
5 Maybe we get the same average that we got in  
6 other regions, three or four applicants in the  
7 end.

8 CHAIRMAN CROSBY: But nobody should  
9 take any meaning from that. It's totally  
10 arbitrary.

11 COMMISSIONER CAMERON: No, I  
12 understand. I just was wondering.

13 COMMISSIONER ZUNIGA: It's not a  
14 discouragement or encouragement. I'm just  
15 making an assumption for cash flow purposes.

16 CHAIRMAN CROSBY: This doesn't  
17 change our numbers at all because however much  
18 comes in also goes out. So, it doesn't change  
19 our bottom line at all.

20 COMMISSIONER ZUNIGA: Right.

21 COMMISSIONER CAMERON: Thank you.

22 CHAIRMAN CROSBY: The last thing  
23 I'll mention and I mentioned this before and I  
24 assumed that Director Day and you would

1 coordinate on this. It seemed to me that the  
2 number of additional FTEs was relatively modest  
3 given the speed of the ramp up that I thought we  
4 would be getting to by then.

5           So, I know you don't know for sure.  
6 You're still working on the numbers of bodies  
7 that we're going to be needing, but that seemed  
8 to me to be a little low for the numbers of  
9 people that I would have thought we would be  
10 adding through the course of this next year.

11           MR. DAY: As a matter of fact, we  
12 had addressed some of the FTEs we were  
13 projecting that we would need. But then we went  
14 back and took an additional look. Just for  
15 reference purposes, we will have the Director of  
16 Licensing and some sufficient help to make sure  
17 we are up and running on the licensing side.  
18 And prepared to follow through with the  
19 evaluation team screening, the application  
20 screening and then the registrations that are  
21 required for the slot license.

22           We also, of course, have the CIO,  
23 the CFAO both included. We are also looking at  
24 an addition in the accounting fiscal staff,



1    however you want to take a look at it, and some  
2    additional support with the IEB in order to help  
3    them get prepared for the massive information  
4    they have to be ready for in the Category 1.

5                    So, I think for this term through  
6    July we're are doing pretty good with the number  
7    of FTEs.  It will be really dependent on how  
8    fast things come up and operating.  Once we get  
9    the licensing team in and have a better idea of  
10   how many people we're going to need to process  
11   that initial information, I'll have some  
12   determination.  But I think at this point we're  
13   pretty close to what we'll need FTE wise as we  
14   get through this fiscal year.

15                   CHAIRMAN CROSBY:  Okay.  Fine.  
16   Good.

17                   COMMISSIONER ZUNIGA:  On that note,  
18   I have assumed a five percent increase halfway  
19   through the year on the number of all FTEs.  
20   That could be for a number of purposes.  One  
21   could think of it as a contingency, if you will,  
22   but importantly to give Director Day the  
23   flexibility to increase salaries where they may  
24   be needed.  We might be getting at that point,

1 but also bring in additional FTEs that we maybe  
2 didn't contemplate, redefine or repurpose job  
3 descriptions, etc.

4 CHAIRMAN CROSBY: Okay. Great.

5 MR. DAY: Chairman that brings us --

6 CHAIRMAN CROSBY: Can everybody hear  
7 in the back okay? Can you hear Director Day  
8 back there? Okay.

9 MR. DAY: Before we leave that  
10 discussion, I want to make sure I'm in  
11 connection with the Commission. Because one of  
12 the key areas that Commissioner Zuniga mentioned  
13 was that ability to prorate licensees as they  
14 come on and what might be the trigger point to  
15 do that.

16 And problematic in there is that  
17 obviously we can't run in that red. So, at some  
18 point as we move forward in this fiscal year, we  
19 need to be prepared -- as those licenses come  
20 on, be prepared to make that assessment. One of  
21 the ways we specifically discussed as Enrique  
22 mentioned is something fairly direct, which is  
23 if working capital balance falls below two  
24 months at that point we assess for the balance

1 of the fiscal year those costs.

2 That will help us make sure that we  
3 do not get into the red and yet be a pretty  
4 consistent approach. So, I think that's one  
5 thing we're looking at recommending that we'd  
6 like to see if the Commission would accept that  
7 as a process to move forward with into the  
8 budget.

9 Then one of the other questions we  
10 do need is if the Commission concurs on that  
11 contract extension but on a project by project  
12 basis for the consulting group.

13 CHAIRMAN CROSBY: Let's come back to  
14 that one in a second. From my standpoint, the  
15 issue with how we figure out a trigger mechanism  
16 for assessments, I'd like to hear about it, but  
17 I'm sure you guys will come up with a good plan.

18 The thing I'm particularly sensitive  
19 of is making sure that the applicants and  
20 eventually licensees are very much aware of  
21 this. And I don't know whether it needs to  
22 being in our regs. anymore than it is, when  
23 assessments will start.

24 I just want to make sure everybody's

1 got a heads up, whatever the mechanisms and  
2 timing are that it's well understood by our  
3 applicants. I'd be inclined to defer to you as  
4 to when you want to cause the assessment  
5 triggers. Anybody else on that?

6 COMMISSIONER MCHUGH: I share the  
7 desirability of having the assessment process  
8 outlined in regulations or at least in a policy  
9 that's well thought out, adopted by the  
10 Commission and posted on our website. And the  
11 sooner we get to that I think the better.

12 So, that nobody is surprised. And  
13 so that any difficulties or concerns about that  
14 can be flushed out, discussed, dealt with well  
15 in advances of the time when we need to call on  
16 the funds. So, whether we go by regulation, we  
17 have another set of regulations we're going to  
18 promulgate, or by a policy. Perhaps the policy  
19 would be a better way to go if we can. I think  
20 we ought to do that soon.

21 COMMISSIONER ZUNIGA: I've looked at  
22 the regulations that we currently have for this  
23 and many other areas. I think we have the  
24 flexibility there. We could further clarify it

1 by additional regulation or additional policy  
2 statements.

3           What we don't have, which is I know  
4 one part of what you're referring to is the  
5 actual numbers, the schedule, the timing.  
6 Whether we're going to do it on a particular  
7 month of every year, the beginning of the fiscal  
8 year, as soon as our balance comes under a  
9 certain threshold, etc., that could easily be  
10 and should be clarified.

11           I suggest, however, that there's a  
12 lot of things happening between now and when we  
13 are approaching that point that we come back and  
14 talk about it some more in the future, not too  
15 much in the distant future but in the future.

16           COMMISSIONER MCHUGH: I agree. We  
17 have to maintain some flexibility because  
18 there's lot of assumptions here.

19           COMMISSIONER ZUNIGA: Yes.

20           MR. DAY: Relative to the budget, do  
21 we consider it approved? Or how does the  
22 Commission want to address that for moving  
23 forward as far as what we've outlined at this  
24 point?

1 I think we can at least start with a  
2 policy on a specific recommendation for a  
3 suggestion for that assessment. I think that  
4 would be very helpful. And I think that would  
5 accomplish what the Chairman's looking for too,  
6 make sure it's clear what that would be in the  
7 future.

8 CHAIRMAN CROSBY: I think we ought  
9 to have a motion on the budget. I think we  
10 should formally adopt the budget each year. So,  
11 maybe you want to lead that?

12 COMMISSIONER ZUNIGA: Sure. We did  
13 that last year. I would then move that this  
14 Commission approve the budget as presented and  
15 discussed in this and prior meetings for the  
16 fiscal year '14 as presented in the attachment.

17 COMMISSIONER CAMERON: Second.

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

20 COMMISSIONER CAMERON: Aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER ZUNIGA: Aye.

23 COMMISSIONER STEBBINS: Aye.

24 CHAIRMAN CROSBY: The ayes have it

1 unanimously.

2 MR. DAY: Thank you, Commission.  
3 That brings us back to the contract issue.

4 CHAIRMAN CROSBY: Right.

5 MR. DAY: The recommendation is in  
6 the memo from Commissioner Zuniga found under  
7 tab 3C. Essentially, at the back the  
8 recommendation is, and we've already touched on  
9 the situation what the recommendation is to  
10 extend the current contract duration. But in  
11 lieu of monthly retainer, specify a project  
12 based approach for compensation for future work.

13 That future work may be in support  
14 of the Commission's regulations, general  
15 implementation discussion and miscellaneous  
16 topics Commission may move forward. The  
17 proposed effective term would be on July 1, 2013  
18 to the end of 2014. The extension would have an  
19 effective duration of 12 additional months. But  
20 really essentially simply a project by project  
21 basis rather than a retainer. Commissioner  
22 Zuniga?

23 COMMISSIONER ZUNIGA: Sure. The  
24 only thing I would add to that is to highlight

1 what is in the memo that our current contract  
2 with our two sets of consultants, gaming  
3 consultant is set to expire on June 30 of this  
4 fiscal year, really this week.

5 That contract was the basis -- the  
6 basis for those two contracts was a monthly  
7 retainer. I believe that served us very well in  
8 last few months, nine months that we had them.  
9 We needed them on a number of ad hoc capacity,  
10 if you will, a number of questions, a lot of  
11 issues that came around. I believe that we may  
12 not need that monthly retainer anymore hence the  
13 recommendation.

14 But I am proposing that we extend  
15 the time of that contract. So, the  
16 recommendation is not to extend -- does not have  
17 a numerical number. It only has a time  
18 extension. And we figure out on a project basis  
19 going forward what we may need them on. And  
20 whatever we agree on, come back to the  
21 Commission for approval on a project basis for a  
22 discrete task only. That's fundamentally the  
23 nature of this recommendation.

24 MR. DAY: Commissioner Zuniga, so



1 there is no confusion in that. This wasn't  
2 relative to investigations. It's just relative  
3 to monthly retainer.

4 COMMISSIONER ZUNIGA: Yes. This is  
5 not the investigations. This keeps those two  
6 contracts intact. We could decide that as part  
7 of this task order if we need them for a  
8 particular task relevant to evaluations, we have  
9 the flexibility to do that depending on how and  
10 what we get in terms of responses from our RFRs  
11 for evaluation.

12 As I point out here, there's a lot  
13 of work that we need to do on Phase 3  
14 regulations, although we have a lot of great  
15 capacity in-house already. So, figuring out the  
16 mix is something that we can do in the short  
17 future. Again, hence this recommendation.

18 CHAIRMAN CROSBY: I didn't think  
19 about this until just now, but did we talk about  
20 this with the consultants before them hearing  
21 about this for the first time?

22 COMMISSIONER ZUNIGA: Well, not at  
23 great length. We did touch base with Kathy  
24 O'Toole who has helped us with the coordination

1 of both sets of consultants. We have not  
2 discussed in much detail with both sets of  
3 consultants. I think this is merely a mechanism  
4 to keep the contract alive and start those  
5 discussions really.

6 CHAIRMAN CROSBY: Okay. We should  
7 have given you guys a heads up and chatted with  
8 you a little bit about this. The concept, I  
9 think, makes sense. For their planning  
10 purposes, we're going to have to do some kind of  
11 thinking about what our expectations are likely  
12 to be and so forth.

13 But I think for the time being, this  
14 is the right thing to do. This will mean that  
15 we have the ability, assuming that the  
16 consultants are okay with it, to dip into their  
17 pool of resources both Spectrum and Michael &  
18 Carroll as needed assuming that they are  
19 available and that it's okay with them.

20 COMMISSIONER ZUNIGA: Right.

21 CHAIRMAN CROSBY: And we work out  
22 cost per project each time we wanted to do that.

23 COMMISSIONER ZUNIGA: Because I have  
24 this and I know Commissioners and staff have

1 this, we pick up the phone and call them on a  
2 number of questions from time to time.  
3 Sometimes more often than not.

4 On all those sort of general ad hoc  
5 type of inquiries that elicit a memo or some  
6 research or their expertise, we could agree, but  
7 this is something that we need to talk about on  
8 some hourly base. Not necessarily a project  
9 base, because it could be very hard to quantify  
10 those little projects, let's say. Again, that's  
11 something that we should contemplate. Because  
12 we've had that ability and I suspect will  
13 continue to use it.

14 COMMISSIONER CAMERON: That was my  
15 one concern was the ability to use that  
16 expertise. I know that a call, this is not  
17 regarding investigations, a call to one of the  
18 consultants regarding table of organization led  
19 to a recommendation for a licensing director  
20 candidate.

21 So, just things like that that I  
22 think those issues are very valuable. And we  
23 need to have -- at least I know that's important  
24 to me, to be able to pick up the phone and it

1 leads to a memo.

2 Anything we've needed so far, we've  
3 utilized their expertise. And I know that I  
4 don't feel like we're at a stage yet when we --  
5 I think it would be a great loss to not have  
6 that ability because it's not in the contract.

7 So, I think that conversation would  
8 be a good one to have, Commissioner. How do we  
9 figure out moving forward the best way to  
10 continue to have that expertise?

11 COMMISSIONER ZUNIGA: Absolutely.

12 COMMISSIONER CAMERON: And some of  
13 it is outside the realm of investigations.

14 COMMISSIONER ZUNIGA: Absolutely.  
15 Frankly, if we arrive at the place that we have  
16 been, a monthly retainer, well, let's do that.  
17 Let's figure it out.

18 CHAIRMAN CROSBY: The problem we're  
19 dealing with it is the contract runs out before  
20 our next meeting. And so, we wanted to renew  
21 the contract, which is tomorrow. So, we wanted  
22 to renew the contract while it was still going  
23 on rather than rewrite, try to re-procure a  
24 contract.

1                   And for the short-term, we're just  
2 going to assume it's a project basis. But I  
3 agree with Commissioner Zuniga that if it turns  
4 out that it's better to negotiate a retainer  
5 structure, it will be less of a retainer, but  
6 whatever it is, we're perfectly happy to do  
7 that. But we did want to renew the contract  
8 before this one ran out.

9                   COMMISSIONER MCHUGH: I have two  
10 questions. One, how does this new -- How have  
11 we estimated the total cost of needed services  
12 from the consultants for the upcoming year? As  
13 I look at 2.2, no -- 2.2 yes, we've got a number  
14 there but that number in our last discussion  
15 indicated includes about \$600,000 for capital,  
16 noncapital IT stuff.

17                   COMMISSIONER ZUNIGA: Correct.

18                   COMMISSIONER MCHUGH: So, how do we  
19 know where we are?

20                   COMMISSIONER ZUNIGA: The assumption  
21 can be obviously revised is that there will be  
22 an incremental \$250,000 for regulation type  
23 writing, non-evaluation number on gaming  
24 consultants. That could be low. I don't know.

1 And that there would be \$500,000 for the year on  
2 evaluations. So. the total really that I've  
3 allowed for is \$750,000.

4 COMMISSIONER MCHUGH: For the regs.  
5 and the other kind.

6 COMMISSIONER ZUNIGA: For the regs.  
7 and the other kinds of consulting services.

8 COMMISSIONER MCHUGH: Consulting  
9 services.

10 COMMISSIONER ZUNIGA: I made the  
11 distinction between the two numbers because the  
12 evaluation costs we will assess to the licensees  
13 -- I'm sorry, the applicants.

14 COMMISSIONER CAMERON: I understand  
15 that. But it's the advice to us that's really  
16 overhead stuff that goes into the 750, right?

17 COMMISSIONER ZUNIGA: The 250.

18 COMMISSIONER MCHUGH: Into the 250?

19 CHAIRMAN CROSBY: Because the 500 is  
20 for evaluation, which can be assessed  
21 independently.

22 COMMISSIONER ZUNIGA: I've assumed  
23 that --

24 COMMISSIONER MCHUGH: I thought that

1 was the 2.3, I don't want to be picky but --

2 COMMISSIONER ZUNIGA: Which one?

3 No, it's 250 is part of the 1,380,000.

4 COMMISSIONER MCHUGH: That I  
5 understood. But I thought that covers the  
6 regs., the Phase 3 regs.

7 COMMISSIONER ZUNIGA: Correct.

8 COMMISSIONER MCHUGH: Does it also  
9 cover the 250 in your projection the kinds of  
10 other projects that may be tasked to the  
11 consultants?

12 COMMISSIONER ZUNIGA: As long as  
13 they're non-evaluation. There's projects that  
14 we could assume are evaluation related which I  
15 see this year to be very much intensely around  
16 it. Then we have allowed ourselves 500,000 for  
17 gaming consultants.

18 COMMISSIONER MCHUGH: I see. I  
19 understand that.

20 COMMISSIONER ZUNIGA: Questions  
21 about other jurisdictions, the way they've done,  
22 etc.

23 COMMISSIONER MCHUGH: Okay. Thank  
24 you.

1 CHAIRMAN CROSBY: All set?

2 COMMISSIONER MCHUGH: Yes.

3 CHAIRMAN CROSBY: Okay.

4 COMMISSIONER STEBBINS: I had a  
5 quick question, you talked about task order. If  
6 we asked them for additional work based on a  
7 project basis be submitted to you or to the  
8 Commission for approval, do you have some sense  
9 of is it a dollar benchmark where you would  
10 maybe bring it to the Commission? Or is it a  
11 project basis that you would bring it before the  
12 Commission? You talk about approvals either by  
13 us or by you.

14 COMMISSIONER ZUNIGA: I actually I  
15 wrote that.

16 COMMISSIONER STEBBINS: Then I'll  
17 turn to you. I mean we want to give him the  
18 flexibility to his job. I'm just wondering kind  
19 of at what level does it come to us or what  
20 level do we entrust the Executive Director to  
21 make some of those spending choices?

22 COMMISSIONER ZUNIGA: That's a  
23 question for us. If we feel we could or we  
24 should for administrative purposes a certain



1 threshold and give Director Day all discretion  
2 under that. And over, bring to the Commission  
3 for discussion, that's one approach.

4 We've sort of done that in matters  
5 of racing, for example. But that's not a  
6 foregone conclusion. We could keep all  
7 financial commitment discussions to be approved  
8 by the Commission, if we thought that was what  
9 we wanted to continue doing.

10 MR. DAY: Mr. Chairman, Commissioner  
11 Stebbins, if I just might offer a suggestion in  
12 that area. If the Commission is inclined to  
13 extend the contracts and then we can engage in  
14 discussion with our consultants about the  
15 concept of specific projects and ongoing  
16 consultation, then from my perspective I could  
17 just come back with that to the Commission so  
18 you can see what that structure might be like  
19 and see if it satisfies the concerns we've  
20 expressed.

21 CHAIRMAN CROSBY: That's talking  
22 about just this one contract.

23 MR. DAY: Yes.

24 CHAIRMAN CROSBY: But Commissioner

1 Stebbins was talking about in general, the  
2 process in general. So, should there be a  
3 threshold, a number threshold where -- So, it  
4 was a general thing, not just related to this  
5 particular contract. Having you come back with  
6 a proposal on this contract is fine.

7 For my money, at this stage of the  
8 game, I think the answer to the question is we  
9 ought to pretty well keep a pretty tight hand on  
10 contracts and expenditures beyond just the  
11 trivial.

12 Once we are up and steady-state  
13 operations, once we have a financial department  
14 which doesn't include our Commissioner, then I  
15 am sure we will change. We will delegate away a  
16 high degree of independence. But I think at  
17 this stage of the game, we ought to keep pretty  
18 careful overview. It sort of happens perforce  
19 because you're used to the function of a CFO at  
20 this point. That would be my thought,  
21 Commissioner Stebbins.

22 COMMISSIONER ZUNIGA: That's totally  
23 fine.

24 MR. DAY: And I am comfortable with

1 that as well.

2 CHAIRMAN CROSBY: So, I think we  
3 need a motion on extending the contract as  
4 proposed.

5 COMMISSIONER ZUNIGA: I'd be happy  
6 to make it. As the author of the memo that's  
7 included in the packet that the Commission  
8 approve extension in time of the current two  
9 contracts with our gaming consultants for the  
10 next fiscal year expiring June 30, 2014 and  
11 consider compensation based on future  
12 negotiations on a project or task order basis.

13 CHAIRMAN CROSBY: Or as proposed by  
14 Director Day.

15 COMMISSIONER ZUNIGA: Or as  
16 recommended by the Executive Director.

17 COMMISSIONER STEBBINS: Second.

18 CHAIRMAN CROSBY: Further  
19 discussion? All a favor, aye.

20 COMMISSIONER CAMERON: Aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER ZUNIGA: Aye.

23 COMMISSIONER STEBBEINS: Aye.

24 CHAIRMAN CROSBY: Opposed? The ayes

1 have it unanimously. Before you go, are you  
2 done?

3 MR. DAY: No. I have got the master  
4 schedule.

5 CHAIRMAN CROSBY: That's good.  
6 That's was what I --

7 MR. DAY: And then I won't be going  
8 very far.

9 CHAIRMAN CROSBY: You're not going  
10 back to Washington on us. It's too late. You  
11 sold your house, man. You can't go back.

12 MR. DAY: Do you want me to go ahead  
13 with the master schedule?

14 CHAIRMAN CROSBY: Yes. Go ahead,  
15 sorry.

16 MR. DAY: So, in your packet, you  
17 have the master schedule behind 3B. And Artem I  
18 know has got it up on the screen, which is very  
19 helpful. The changes are not extreme but I  
20 wanted to talk and just to point them out  
21 because what it is in Category 2 is the primary  
22 area.

23 Today's meeting sort of starts that  
24 process with discussion about considerations and

1 assessments with suitability determination. So,  
2 as the Commission begins its process of  
3 suitability determination, today's meeting will  
4 talk about what that includes, what the  
5 assessment is, what the process is, is an  
6 integral part of moving forward with the process  
7 of suitability determination as we get into the  
8 reports themselves.

9           What the master schedule indicates  
10 essentially is up on the left hand corner of the  
11 chart you can see the evaluation reports. We  
12 anticipate the evaluation reports themselves  
13 will begin at the Commission meeting on July 11.  
14 At this point, we're projecting that will be  
15 most likely through at least as the regulations  
16 provide a combination, depending on applicant  
17 selections, of public hearings and adjudicatory  
18 hearings to reach essentially at least by August  
19 27 the necessary decisions, orders that come out  
20 relative to the Commission in that process. So,  
21 that's a little bit different from what we had  
22 before.

23           CHAIRMAN CROSBY: Do you want to use  
24 this so you can show the audience what you're

1 talking about?

2 MR. DAY: So, it'd be right in this  
3 area of the Category 2 process. And what it  
4 does is start a process of notification to the  
5 applicants, anticipates beginning the  
6 suitability report presentation.

7 You'll have more detail on that  
8 discussion of what that might actually entail.  
9 Questions from the Commission about how that  
10 process works and that assessment between the  
11 consultants and the IEB today later on in the  
12 agenda.

13 The two dates here are just  
14 projected dates really to anticipate any needed  
15 adjudicatory hearing, because there is a notice  
16 time length that we have to give of about 30  
17 days. Then there's allowance, if that's the  
18 case, for preparation of the orders for  
19 decisions of the Commission and the ability to  
20 finalize the process.

21 So at this point, we are  
22 anticipating that that will get taken care of by  
23 the end of August at the latest. That is a  
24 later date than what were previously on the

1 master schedule.

2           It still does allow for a shorter  
3 period though. We are talking about receipt of  
4 applications the week of October 4. The  
5 deadline for Category 2 applications is October  
6 4. The determinations themselves in the  
7 suitability process of course the determination  
8 themselves, I'm not talking necessarily about  
9 any orders that come, we anticipate by early  
10 August. That's the change in the master  
11 schedule.

12           CHAIRMAN CROSBY: On the second or  
13 third page, third page I guess, there is a  
14 reference to additional office space. I guess  
15 that's referring to the space we already have on  
16 the 10th floor be prepared.

17           MR. DAY: Yes, I would assume that's  
18 what it is as well.

19           CHAIRMAN CROSBY: What is the plan  
20 on that now for that space?

21           MR. DAY: That space, I know the  
22 architectural designs are prepared. The plan is  
23 to actually create an area that provides for a  
24 secure reception. Then our licensing unit will

1 essentially will be located in that corner of  
2 the building.

3 CHAIRMAN CROSBY: And that will be  
4 ready more or less when?

5 MR. DAY: I believe as I recall the  
6 timetable is about eight weeks.

7 COMMISSIONER ZUNIGA: Two months.

8 CHAIRMAN CROSBY: Then our  
9 expectation is that our existing office space,  
10 which includes the new space, will last us --  
11 does that accommodate our full growth this  
12 fiscal year, those 14 FTEs? Can we fit 14 FTEs  
13 in our existing space?

14 MR. DAY: We think we've anticipated  
15 where we can locate everybody. We are as well  
16 talking to DCAMM today, as a matter of fact. We  
17 will -- pretty much projecting that we will be  
18 in our existing office space through this fiscal  
19 year by the time we get the process done.

20 CHAIRMAN CROSBY: Through this full  
21 fiscal year.

22 MR. DAY: Yes, we refer to April but  
23 it just makes sense we're going to be at least  
24 another three months.



1                   CHAIRMAN CROSBY: That's fine as  
2 long as we can fit. But if you've anticipated  
3 space for those 14 people through the fiscal  
4 year then that's fine.

5                   MR. DAY: We have charted it out.

6                   CHAIRMAN CROSBY: Commissioner  
7 Ziemba has a roommate.

8                   MR. DAY: Two.

9                   COMMISSIONER ZUNIGA: There is more  
10 cubes. There will be more cubes available than  
11 office space. We may find ourselves having that  
12 somebody may have to be in a cube temporarily.

13                  CHAIRMAN CROSBY: Obviously, we've  
14 got time. But I want us to move expeditiously.  
15 It's just tremendous pain in the neck to have  
16 deadlines slip and slip and slip for space, and  
17 have people not know where they're going to sit  
18 and doubling up. We shouldn't have to do that.  
19 We've got enough time. We ought to be able to  
20 get this done right. So, whatever the schedule  
21 is for finding our permanent space and getting  
22 into it, we ought to try to do it right if we  
23 can, obviously.

24                  MR. DAY: Part of the reason for

1 today's meeting with DCAMM is I'm just not real  
2 familiar with the process here in Massachusetts.  
3 So, I am asking them to reeducate about how that  
4 goes, who is responsible for what.

5 CHAIRMAN CROSBY: It's like  
6 everything else. You're going to have to sit on  
7 it. You or somebody is going to have to sit on  
8 it to make it happen quickly.

9 MR. DAY: I'm collecting volunteers.

10 CHAIRMAN CROSBY: Okay, great. I'm  
11 sure Commissioner Cameron will be willing to  
12 help.

13 COMMISSIONER CAMERON: I did have  
14 one question. We refer to the Director of  
15 Licensing as a deputy. And every other person  
16 we've brought in so far is a director level.  
17 That's on page three of the master schedule here  
18 as well. It may just be a --

19 MR. DAY: On the master schedule, we  
20 actually have not changed that. That was the  
21 original. We haven't changed those.

22 COMMISSIONER CAMERON: Very good,  
23 thank you.

24 COMMISSIONER MCHUGH: I had one

1 question and I apologize to you as I did to  
2 Commissioner Zuniga. It strikes me as perhaps a  
3 typo. It's on page one of the schedule. But I  
4 didn't have a chance to catch up with this until  
5 last night.

6 In the Category 2 licenses, SCAs  
7 executed that last line, do you see where that  
8 is? SCAs executed/Category 2, the last line  
9 under Category 2 licenses, at the end of that it  
10 says results, which is seems to me belongs after  
11 the line immediately above that talks about the  
12 HCA referendum.

13 COMMISSIONER ZUNIGA: That's  
14 correct, yes.

15 CHAIRMAN CROSBY: You've been doing  
16 your homework. I thought you were in Paris.

17 COMMISSIONER MCHUGH: Believe me, I  
18 didn't do this in Paris. That's the kind of  
19 typo that in an ideal world I would have simply  
20 told you that.

21 COMMISSIONER ZUNIGA: Yes, the  
22 results is of the election not the surrounding  
23 community agreements.

24 COMMISSIONER MCHUGH: Okay.

1 MR. DAY: Anything else about the --

2 CHAIRMAN CROSBY: I just had one  
3 question. We talked last week I think it was  
4 about the importance of having a briefing  
5 meeting with you and probably the IEB Director  
6 on the application form with all of the  
7 applicants. You were going to have sort of a  
8 planning meeting, a prep meeting so they really  
9 understood what the application form is all  
10 about. Is that in the pipeline somewhere?

11 MR. DAY: Chairman, yes, it is. As  
12 a matter of fact, we've already had one  
13 applicant ask us that and they are making  
14 appointments through the Executive Director's  
15 office.

16 CHAIRMAN CROSBY: Okay, great. How  
17 did that first meeting go? What was the  
18 reaction to the application?

19 MR. DAY: We haven't actually had  
20 the meeting yet. We are set in negotiations on  
21 the date.

22 CHAIRMAN CROSBY: Let me know. I'm  
23 curious. All right. Great. Thank you.

24 MR. DAY: Thank you, Chairman,

1 Commissioners.

2 COMMISSIONER CAMERON: Thank you.

3 CHAIRMAN CROSBY: Let's take a very  
4 quick break.

5

6 (A recess was taken)

7

8 CHAIRMAN CROSBY: We will reconvene  
9 the 70th meeting the Gaming Commission. And we  
10 will turn to Director Jennifer Durenberger of  
11 the Racing Division

12 DR. DURENBERGER: Good morning, Mr.  
13 Chair, Commissioners. I have a fairly  
14 comprehensive administrative update for you this  
15 morning. At the 69th public meeting of the  
16 Commission, we had some authorities that were  
17 dedicated to Director Day and to the Director of  
18 Racing to approve certain statutory funds under  
19 128A 5(h) and for the Director of Racing to  
20 consider certain track matters. So, I'd like to  
21 give you a report of the activity that's taken  
22 place since that meeting.

23 The following matters have been  
24 considered and approved. We had from Plainridge

1 Racecourse request for approval of an additional  
2 racing official, an association veterinarian.

3 And approval was given pending successful  
4 completion of the requisite background check,  
5 which is what we've done for previous requests.

6 We had a request for some 128A 5(h)  
7 monies. These funds in the amount of \$65,000  
8 are payable annually to an organization that  
9 represents the majority of jockeys who are  
10 licensed by the Commission regularly ride in the  
11 commonwealth for the purpose of providing health  
12 and other welfare benefits to active. disabled  
13 or retired jockeys.

14 We are pleased to recognize the  
15 Jockey's Guild which is a national organization  
16 as the organization that represented the  
17 majority of licensed jockeys in the Commonwealth  
18 during the 2012 racing season. So, that amount  
19 \$65,000 was approved pursuant to 128A 5(h).

20 We had a request from Suffolk Downs  
21 for some additional export of their live racing  
22 signal and comingling of pools with various  
23 outlets. That was going to be approved pending  
24 execution of contracts and approval of the New

1 England Horsemen's Benevolent and Protective  
2 Association. The Commission is in receipt of  
3 such approval. And the following entities  
4 include Greyhound Park at Post Falls, Social  
5 Gaming Technologies, Incorporated, Watch and  
6 Wager.com, the Racing Network International,  
7 Monarch Management and Racing Today, LLC. So,  
8 the Suffolk signal will be going to those  
9 outlets as well.

10 We also received a request from  
11 Suffolk Downs to amend their live racing  
12 schedule. This is a recent request to  
13 eliminate from the racing program Thursday, July  
14 4 and Tuesdays, July 9 and 16. Replacing them  
15 with Tuesdays in October, October 8, 15 and 22.  
16 That was recently approved.

17 CHAIRMAN CROSBY: What is the logic  
18 behind that generally speaking?

19 DR. DURENBERGER: It's kind of a  
20 multifactorial thing like so many things in  
21 racing. There is a horse shortage right now.  
22 There's a number of reasons for that. One is  
23 that because of the length of time it takes to  
24 plan your breeding of your horses, the horses to

1 be born, the horses to get old enough to run and  
2 the horses to be ready to run that we are now  
3 facing that crunch time.

4           So, we saw the biggest decline  
5 nationally in the foul crop in 2008, 2009 with  
6 the recession. So, we are not the only place  
7 that is struggling to fill races right now.  
8 There have been a couple of neighboring  
9 jurisdictions that have had the same trouble  
10 we've had. So, the result is shorter field  
11 sizes in general.

12           And we have to have, as you know, in  
13 the Commonwealth seven races on a day to make a  
14 racing performance. There are a number of other  
15 things that are in the way. One is the fact  
16 that purse money in Massachusetts is not  
17 comparable to that of neighboring states. So,  
18 people may be choosing to run horses elsewhere.  
19 But the horse shortage is something we are  
20 facing nationwide right now.

21           There are some other meets, some  
22 short-term meets in the area. For example,  
23 Colonial Downs right now that have horses  
24 running that will be available late in the



1 season.

2 CHAIRMAN CROSBY: Where is that?

3 DR. DURENBERGER: That's in  
4 Virginia. They have a 22-day thoroughbred meet  
5 this year. And so the thought is apparently,  
6 and I'm new here, in the past the horse  
7 population available to Suffolk tends to  
8 increase as the season goes on. And that they  
9 tend to be relatively flush with horses in  
10 September and October. So, that's the logic  
11 there.

12 COMMISSIONER MCHUGH: What's the  
13 logic of not racing on July 4?

14 DR. DURENBERGER: I don't know why  
15 that particular day.

16 COMMISSIONER ZUNIGA: People go to  
17 Boston Pops or something.

18 COMMISSIONER MCHUGH: Right.

19 COMMISSIONER ZUNIGA: Or barbecuing.

20 DR. DURENBERGER: And the final  
21 thing that I wanted to talk about was our  
22 financial reporting which we are still dependent  
23 on, because we have not completely crossed over  
24 to our new auditing software.

1           We had some sort of a bug that  
2 affected the live racing programs at Suffolk on  
3 June 8 and June 10. So, we have given Suffolk  
4 Downs of the commissions that the Commission is  
5 due for those two billing periods. The first  
6 billing period that was affected was June 1  
7 through 8. The second was June 9 through 15.

8           It only seems to be affecting those  
9 two days at Suffolk. Previous days of live  
10 racing are unaffected. Subsequent days have  
11 been unaffected. But the point is that the  
12 final numbers do not match.

13           So, we have software support that  
14 will be arriving at the racetrack tomorrow to  
15 see if they can't fix that bug. And at that  
16 time that we fix that we can submit the revised  
17 summary sheets for the billing period reflecting  
18 the actual monies that are due to the  
19 Commission. It's not affecting any of the  
20 simulcasting that they're doing just the live  
21 racing. That's my administrative update.

22           CHAIRMAN CROSBY: Is KPMG scheduled?  
23 What is the status of that series of audits?

24           DR. DURENBERGER: Vis-à-vis the

1 current audit that they're doing or vis-à-vis  
2 the auditing software?

3 CHAIRMAN CROSBY: No, no, no. The  
4 current audit not the software, the ex post  
5 facto audits that they were doing for the prior  
6 year.

7 DR. DURENBERGER: They're currently  
8 looking at some telephone account wagering  
9 programs.

10 COMMISSIONER ZUNIGA: Yes, the  
11 account wagering one.

12 DR. DURENBERGER: So, Raynham Park  
13 and Plainridge Racecourse will have telephone  
14 account wagering programs set up. So, they're  
15 reaching a conclusion on that. We had a status  
16 update on Tuesday of this week,. And we are  
17 expecting a final report sometime in the next  
18 seven to 10 days.

19 CHAIRMAN CROSBY: Are there going to  
20 be other -- Are they looking at the  
21 distributions even to cities and towns going  
22 back in prior years?

23 DR. DURENBERGER: That will be the  
24 next part of the --

1 CHAIRMAN CROSBY: That's still to  
2 come.

3 DR. DURENBERGER: The next project,  
4 yes.

5 CHAIRMAN CROSBY: Okay, good.

6 DR. DURENBERGER: Item 4b, unless  
7 you had any other administrative questions for  
8 me.

9 CHAIRMAN CROSBY: I don't think so.

10 DR. DURENBERGER: Item 4b, you'll  
11 recall back in March that the Commission enacted  
12 certain rules on an emergency basis in order to  
13 have them take effect prior to the live racing  
14 season because the Racing Division has a very  
15 unique rulemaking requirement.

16 We are pleased to report that we're  
17 ready to complete the regular rulemaking process  
18 there. And part of the process of course  
19 includes the filing of a small business impact  
20 statement. So, that's in your packet as item  
21 4b. I'm happy to answer any questions about it.  
22 But we will be ready to file that upon your  
23 approval.

24 CHAIRMAN CROSBY: Anybody else, any

1 questions?

2 COMMISSIONER MCHUGH: No, pretty  
3 straight forward

4 COMMISSIONER ZUNIGA: No questions.

5 CHAIRMAN CROSBY: We need a motion  
6 somebody, Commissioner McHugh?

7 COMMISSIONER MCHUGH: I move that  
8 the amended small business impact statement  
9 contained in the Commissioners meeting packet  
10 today dated June 24, 2013 be approved.

11 CHAIRMAN CROSBY: Second?

12 COMMISSIONER STEBBINS: Second.

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

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER STEBBINS: Aye.

19 CHAIRMAN CROSBY: Opposed? The ayes  
20 are having a big day.

21 DR. DURENBERGER: That's usually a  
22 good thing.

23 CHAIRMAN CROSBY: Okay.

24 DR. DURENBERGER: Item 4c, let me

1 just me give you a little background on why this  
2 became an agenda item. At the previous meeting,  
3 I introduced the subject to you of the state tax  
4 withholding in Massachusetts that was affected  
5 by the Expanded Gaming Act. I outlined the  
6 change in the law and I am going to review that  
7 again for you today.

8           And I discussed some differences  
9 between the Massachusetts and the federal tax  
10 treatment of not only pari-mutuel but also  
11 gaming winnings. Since that time, an amendment  
12 to the supplemental budget was introduced in the  
13 house. And I thought coming from the industry  
14 advocacy side, I thought it should be an agenda  
15 item.

16           So, in the memo that is in your  
17 packet, I've summarized last meeting's  
18 discussion. And then since that time, I've  
19 looked to some of our surrounding states for  
20 instruction, on their experience with similar  
21 taxes, if any. So, I'd just like to draw your  
22 attention to a few things.

23           Again, what the memo does is it  
24 outlines the very different requirements, the

1 very different tax treatments between the  
2 federal and the state withholding. That burden  
3 falls on our racetrack licensees in terms of the  
4 number transactions they do at point of  
5 redemption as well as reporting requirements.

6 I've requested of our licensees the  
7 number of individual reportings that they have  
8 to do under the current federal guidelines. And  
9 between the three licensees, they've issued over  
10 6000 individual W-2G's in calendar year 2012.  
11 So, I just want to point out to you that these  
12 transactions occur at a special window with  
13 specially trained mutual clerks.

14 The redeemer of the ticket has to  
15 produce a photo ID and proof of Social Security  
16 number, otherwise they are subject to backup  
17 withholding tax. So, there is a something to  
18 this. There is a waiver cost to this. There's  
19 also some optics too, I would imagine. I've  
20 never had -- I'm not much of a wager. But I've  
21 never had to cash a ticket at an IRS window, but  
22 I would imagine there's some optics there as  
23 well.

24 I would imagine that this much lower

1 trigger for reporting requirement, instead of  
2 \$600 would be 300 to one odds or greater where  
3 the proceeds of more than \$5000. We've now  
4 lowered that in the Commonwealth to a reporting  
5 requirement of \$600 winnings regardless of the  
6 amount wagered or the payoff odds.

7           So, I would imagine with that much  
8 lower tripwire that the amount of transactions  
9 that occur at that window at the racetrack are  
10 significantly increased. And this has only been  
11 a couple weeks, but I intend to ask our  
12 licensees at the end of the month what their  
13 month-end total was for the amount of times that  
14 that reporting requirement was tripped.

15           In summary, I guess from the pari-  
16 mutuel customer's perspective as opposed to the  
17 racetrack licensee, the pari-mutuel customer  
18 sees this as creating a Massachusetts product,  
19 simulcasting product or live racing product as a  
20 little less attractive. Of course, we want to  
21 be the most attractive product that we can.

22           So, I think we talked most last week  
23 about the difference in the end of the year  
24 deduction. So, again the Massachusetts versus



1 the federal tax treatment. Where the federal  
2 tax you can deduct your winnings up to losses  
3 but that's not true in the Commonwealth, unless  
4 you meet the gambling or trade as a business  
5 criteria.

6 So, I went over an example with you  
7 last week. And I put it in writing here for you  
8 instead, because those things are often hard to  
9 visualize. And then I spent some time looking  
10 at New Hampshire. Because when I looked at the  
11 other surrounding jurisdictions, I wasn't able  
12 to find much of a comparable tax as it affected  
13 pari-mutuel winnings.

14 New Hampshire did enact a 10 percent  
15 as opposed to five percent in Massachusetts, a  
16 10 percent withholding tax on all gambling  
17 winnings in 2009, which is fairly recent. I  
18 want to draw your attention in the memo to a  
19 quote I found in the 2010 annual report of the  
20 New Hampshire Racing and Charitable Gaming  
21 Commission. That should be on page four of that  
22 memo.

23 The conclusion there I think is  
24 rather chilling. This is the introduction to

1 the 2010 annual report. And it says this tax  
2 has left our pari-mutuel industry at a large  
3 disadvantage to other states. The net effect  
4 was a marked decrease in simulcast handle. The  
5 public records show that that was in the amount  
6 of about 20 percent.

7 So, however much of that was  
8 attributable to that state withholding tax, I  
9 don't know, but the national decline in  
10 simulcast handle during that same time period  
11 was about 8.6 percent. And in Massachusetts, it  
12 was only 4.8 percent.

13 So, I do feel comfortable concluding  
14 that at least some portion of that 20 percent  
15 decline of handle in New Hampshire was related  
16 to this new tax.

17 It was repealed in 2011 after some  
18 interesting public hearings that I did listen  
19 to. So, I just wanted to throw that out to you.  
20 Connecticut has appeared to look at in 2002. It  
21 passed the House at one point but not the  
22 Senate. And I haven't found any comparable  
23 neighboring jurisdictions with that state  
24 withholding tax for pari-mutuel wagering.

1           The amendment to the House  
2 supplemental budget was entitled an Act Relative  
3 to Wagering Taxation. This was introduced by  
4 Representative Einstein. And it would amend the  
5 tax chapter 62B section 2 language to mirror  
6 that of the federal tax code.

7           It is restorative from the gaming  
8 perspective. It would restore the pre-Expanded  
9 Gaming Act exemption from winnings from slot  
10 machines, Keno and bingo games. And it would  
11 elevate the trigger for the state reporting and  
12 withholding requirements for lottery and for  
13 pari-mutuel winnings to equal that of the  
14 existing federal requirements. It's not  
15 restorative in terms of pari-mutuel and lottery.  
16 It does not restore the Chapter to the pre-  
17 Gaming Act language.

18           I am new here to the Commonwealth.  
19 So, forgive me as I stumble over our process.  
20 So, it got out of House Ways and Means. The  
21 amendment was adopted on June 18. It appears as  
22 section 72 of House Bill 3522, which was  
23 referred to Senate Ways and Means on June 20.  
24 The Senate has been reporting out in part on

1 that. This amendment has not appeared in the  
2 parts that have been reported out. We are  
3 hearing perhaps today there may be some  
4 activity.

5 So, it kind of leads us to this  
6 section here of so what Dr. Durenberger? Why  
7 are you bringing this to us?

8 So, if nothing comes out of the  
9 Senate on this, I think we are going to watch  
10 this very closely. The Racing Division will  
11 watch what happens next because I would  
12 anticipate that if nothing comes right out that  
13 there will be something coming up later.

14 So, we will watch it very closely.  
15 We will report back to the Commission on what we  
16 see, especially now that I know how to do bill  
17 searches and have our ear to the ground. So,  
18 we'll certainly report on that.

19 If something comes out today and  
20 that amendment appears in there, I guess the  
21 question would be whether or not this is  
22 something you're interested in discussing or  
23 taking a position on given that the end of the  
24 budget period is coming up pretty quick.

1 I understand that there are special  
2 sessions scheduled for the rest of the week  
3 through Saturday. So, we may know a lot more in  
4 the next couple of days than I'm able to present  
5 to you right now. So, I'm happy to have any  
6 debate back and forth with you, if any or answer  
7 any other questions. I'm also looking for  
8 advice from you.

9 My recommendation is though that we  
10 need to look at this really closely because our  
11 operating budget is one thing that would be  
12 affected by a decrease in handle. So, the  
13 health of the industry that we regulate as well  
14 as our advocacy in regulating it would be  
15 affected.

16 We also have seven stakeholder  
17 groups that the monies that they get from our  
18 statute, those monies are tied as a percentage  
19 to handle. So, any decrease in handle, they  
20 feel a decrease in funding that goes to them.  
21 We also have four other programs that are  
22 predicated upon having sufficient funds. So, if  
23 racing revenue does not have sufficient funds  
24 those groups, which include local aid and

1 compulsive gambling monies, also are jeopardized  
2 by this.

3           So, to me when we look at the  
4 legislation, which says we have a duty to reduce  
5 potential negative or unintended consequences of  
6 the gaming legislation on the horseracing  
7 industry that's where I bring it to you, because  
8 this could be an unintended consequence.  
9 Certainly, it's a revenue building piece of  
10 legislation and I don't want to interfere with  
11 that. But I also do feel that I have a duty to  
12 speak up for my industry.

13           CHAIRMAN CROSBY: Anybody?

14           COMMIOSSE MCHUGH: I think it's a  
15 very thoughtful and comprehensive memo. It  
16 strikes me that this is a much more complex  
17 issue than simply withholding piece. The  
18 withholding piece is simply a device for  
19 ensuring that taxes are paid.

20           And it seems to me that the real  
21 issues here are the deductibility of gaming  
22 losses and the tax on the gross and not the net  
23 as your illustration indicates. Then the impact  
24 on out-of-state bettors as opposed to in-state

1     bettors who would be able to on their state  
2     taxes if the deduction rules were changed recoup  
3     the losses even if they were taken out earlier.

4             So, it seems to me those three  
5     pieces of this puzzle have to be considered.  If  
6     all of those pieces of the puzzle remain in  
7     place, then I am not sure that an effective tax  
8     collection mechanism is a bad thing.

9             It seems to me dealing with the  
10    underlying issues is more important and more  
11    complex than dealing with the enforcement  
12    mechanism.

13            CHAIRMAN CROSBY:  Is the  
14    deductibility issue, the second two issues that  
15    you talked about, those are the case in  
16    Massachusetts prior to this amendment, right?

17            COMMISSIONER MCHUGH:  Right.

18            CHAIRMAN CROSBY:  So, the only thing  
19    that has changed is the withholding mechanism,  
20    the standards of withholding.

21            COMMISSIONER MCHUGH:  Right.

22            CHAIRMAN CROSBY:  And the industry  
23    wasn't up in arms about the other two things  
24    which you think they would be because they're

1 interesting, but in terms and Reinstein's  
2 amendment, if I'm not mistaken, only addresses  
3 the withholding mechanism.

4 COMMISSIONER MCHUGH: Right.

5 CHAIRMAN CROSBY: So, we could get  
6 into the other two issues and they are very  
7 interesting. They struck me as grossly unfair  
8 frankly in some respects. But they aren't  
9 really the issues that are on the table as far  
10 as the industry is concerned or the Legislature  
11 as best we can tell.

12 COMMISSIONER MCHUGH: No, I think  
13 that's right. And I guess my windy point was  
14 that if the decrease -- If the elimination of  
15 the exemption was designed to ensure that taxes  
16 were paid that's a hard thing to argue against  
17 even if ensuring that taxes are paid has a  
18 negative impact on patronage. At least that's a  
19 discussion point.

20 CHAIRMAN CROSBY: What is the  
21 tracking mechanism? Prior to the amendment, if  
22 you didn't qualify -- if you had winnings but  
23 you didn't qualify for a withholding on the  
24 spot, what record does the Department of Revenue



1 or the Commonwealth of anybody have of your  
2 winnings?

3 DR. DURENBERGER: If you have an  
4 account, a telephone wagering account or if you  
5 go through an ADW, you get an itemized report.

6 CHAIRMAN CROSBY: Who is you? You  
7 is the bettor?

8 DR. DURENBERGER: You the account  
9 holder.

10 CHAIRMAN CROSBY: But the  
11 Commonwealth, is there some report made to the  
12 Commonwealth?

13 DR. DURENBERGER: Only if that  
14 trigger is met.

15 CHAIRMAN CROSBY: So, as a practical  
16 matter, there is nobody that knows that you've  
17 won. And your ability to avoid paying taxes on  
18 the winnings is substantial?

19 DR. DURENBERGER: Substantial, I  
20 don't know, but yes.

21 CHAIRMAN CROSBY: Up to the  
22 threshold. That's what I'm talking about. The  
23 threshold has changed. That's the point, right?

24 COMMISSIONER ZUNIGA: Right.

1           CHAIRMAN CROSBY:  Whether this was  
2 an unintended consequence and nobody really  
3 thought it through.  Or whether this was DOR  
4 saying we are getting tricked.  People aren't  
5 paying their taxes and we don't really know.  It  
6 sounds like it may have been an unintended  
7 consequence.  But an unintended consequence  
8 which is theoretically a pretty good policy and  
9 that DOR, the Department of Revenue would like.

10           It didn't quite dawn on me that  
11 there was no mechanism, there's no reporting.  
12 So, there's no institutional structure, no  
13 institutional pressure on a bettor to pay any  
14 taxes up to the threshold.

15           COMMISSIONER ZUNIGA:  That's true  
16 everywhere else as well at the federal level as  
17 well.  Keep in mind however that the bettor has  
18 already with the takeouts --

19           COMMISSIONER MCHUGH:  Has to what?

20           COMMISSIONER ZUNIGA:  -- with the  
21 takeouts that happen effectively on the odds  
22 that you're betting on, there's already an  
23 effective tax on everybody that is being  
24 assessed.  Regardless of the threshold,

1 regardless of the income and the winnings that  
2 the state and everybody derives great benefit  
3 from.

4 CHAIRMAN CROSBY: I see what you're  
5 saying, because there's a tax on the gross.

6 COMMISSIONER ZUNIGA: There's a tax  
7 on everything. Yes, on the gross, yes.

8 CHAIRMAN CROSBY: Right, never mind  
9 the winnings.

10 COMMISSIONER ZUNIGA: Yes. And I  
11 don't think we can look -- nobody does look at  
12 just the winnings in a vacuum for economic  
13 benefit. I think lowering the threshold in my  
14 view has the potential -- and that was done by  
15 the Gaming Act. Now the question is whether  
16 that gets restored or not. And that is the  
17 privilege of the Legislature, obviously.

18 But it has the impact I view of  
19 making Massachusetts racing and then effectively  
20 gaming later on uncompetitive. Because of the  
21 simulcasting, because of bettors that come from  
22 out-of-state, if they know that the winnings  
23 were such but they walk up to the window and get  
24 less because that's being withheld from them, in

1 my opinion, that would have a chilling effect on  
2 their ability to come back or their intention to  
3 come back.

4 To me there's this large goal of the  
5 legislation, which was recoup gamers and create  
6 these destination entities here with destination  
7 resorts. This is now being viewed through the  
8 eyes of racing but this has an impact on the  
9 slots machines as well in our gaming licensees.

10 Because presumably if somebody puts  
11 in let's say \$1000 into a slot machine, the  
12 minute they get a \$600 or more payout, they will  
13 get withholding, because the machine will not  
14 know whether you've been there all day or you  
15 just walked up to the machine. And you're  
16 getting withheld on \$600, but you're really out,  
17 you're really in the negative.

18 From a large perspective I think, in  
19 my opinion, we should inform to the extent that  
20 we can to those who want to hear it at the  
21 Legislature what this sort of threshold does for  
22 the current industry, the one that we regulate  
23 and the one we are about to award as well, which  
24 is our gaming licensees.

1                   COMMISSIONER MCHUGH: But that goes  
2 to what's being taxed rather than the method for  
3 collecting the tax, right? The problem is, if  
4 there is a problem, and some would think there's  
5 not, is that you can't offset your winnings with  
6 your losses. And that this impacts out-of-state  
7 bettors, who even if you could offset the  
8 winnings against the losses would not be able to  
9 recoup it at the end of the year when they filed  
10 their tax return.

11                   And the adjustment of the level be  
12 it \$600, \$5000, \$10,000 whatever that is, is  
13 just to mechanism for collecting a tax that has  
14 been dictated by policies independent of the  
15 collection mechanism.

16                   So, it seems to me that if we were  
17 to take a position, the position would be better  
18 aimed at what's taxed than how the tax is  
19 collected. Because otherwise you're simply  
20 saying that we prefer a looser tax collection  
21 mechanism because it makes it more attractive  
22 for bettors who are not going to report the  
23 stuff that they're supposed to report. It seems  
24 to me that's where you come out. The chilling

1 effect is there but it's a chilling effect that  
2 is based on tax evasion. I don't think I can  
3 put it that much more succinctly

4 COMMISSIONER ZUNIGA: I'm not sure I  
5 understand the distinction. I'm trying to draw  
6 a parallel with the threshold that exists on  
7 charitable contributions for individuals.

8 You're supposed to keep records if  
9 you make a donation to charity over \$400. Maybe  
10 that's wrong. And thinking about what the  
11 effect of that threshold may be for tax evaders  
12 maybe a good discussion. But there's the  
13 administrative burden, which you have referred  
14 to and that's maybe not inconsequential.

15 And the tax authorities have decided  
16 to try to place that wherever they think is  
17 reasonable. Now, there's this dichotomy I  
18 believe that is very important between the  
19 federal and the state. I don't know if this  
20 would be one area of research, but other states  
21 by mirroring the federal approach, in my view,  
22 may be more competitive to Massachusetts if we  
23 have a lower threshold and all of a sudden you  
24 have to have two administrative processes for

1 one.

2 DR. DURENBERGER: Or they have an  
3 exemption as Massachusetts did before the Gaming  
4 Act.

5 COMMISSIONER ZUNIGA: That's right,  
6 as Massachusetts once did. I think it begs the  
7 question if there was an exemption before, I'm  
8 going to guess that the intent there may have  
9 been to support the industry. Because there is  
10 already a lot of collection that happens on the  
11 gross.

12 What was the intent on the Gaming  
13 Act, I don't know. There's amendments to this.  
14 I believe we should explain it -- And I'm not  
15 shy about taking a position. I'll take one now.  
16 I think we should support it. Support the  
17 threshold being higher if that can make this  
18 industry more competitive, which I believe it  
19 could.

20 CHAIRMAN CROSBY: You made another  
21 interesting point. And I'm having a hard time  
22 keeping all of these points and data points in  
23 my head. A person bets \$100 at a racetrack,  
24 independent of winning or losing, the track

1 takes a percent of that of the gross dollars  
2 that are bet, right?

3 COMMISSIONER ZUNIGA: Correct.

4 DR. DURENBERGER: As soon as that  
5 goes in, if it's a win, place or show wager, 19  
6 percent is taken out, 26 percent if it's an  
7 exotic bet. And the rest is returned to the  
8 pari-mutuel pool. It's very different than  
9 gambling against the house.

10 So, then of that, how does that  
11 break out? It does depend on the type of signal  
12 in Massachusetts. So, it gets a little  
13 convoluted. But there are six or seven  
14 different places where that money goes.

15 One is of course to the Commission.  
16 But then there are these other stakeholder  
17 groups. So, purses for the horseman is a big  
18 piece. Monies to the thoroughbred breeders  
19 program, monies to the standard bred breeders  
20 program, monies to capital improvements and  
21 promotional trust funds, monies to Tufts  
22 Veterinary School, monies to the Racing  
23 Stabilization Fund. So, that piece that comes  
24 out gets distributed, the pieces of the pie.



1                   CHAIRMAN CROSBY:  So in  
2 Massachusetts, if you do pay your taxes on your  
3 winnings, you're actually paying two taxes.  
4 You're paying your income tax on your winnings  
5 and you're paying a racing tax or call it what  
6 you will.

7                   If you don't pay your income taxes,  
8 you're still paying some taxes whether it nets  
9 out to be more or less or whatever depends on  
10 how much you won or loss.  Even if you don't pay  
11 your income tax, you are still paying your  
12 racing tax, which is probably equal to or  
13 greater than your income tax.

14                  So in that context, your point about  
15 -- It sort of mediates your issue about you're  
16 paying the taxes, it seems to me.  In an  
17 absolute perfect world, it doesn't.  But in the  
18 larger sort of real world of trying to promote  
19 this industry, it seems to me that it does.

20                  And add in the additional point,  
21 which has not been raised by the industry  
22 apparently which is interesting to me about not  
23 being able to offset your winnings with your  
24 losings seems to me be just flat-out crazy and

1 irrational.

2 So, my inclination would be at the  
3 moment, and I sort of go back and forth on this,  
4 but at the moment I kind of lean towards being  
5 supportive of changing the exemption back, the  
6 level back (A). And taking a position on the  
7 offsetting winnings versus losings.

8 COMMISSIONER MCHUGH: Why not go  
9 whole hog, and take a position, if we're going  
10 to do that -- I still make a distinction between  
11 the tax collection mechanism and the tax. And I  
12 agree with you fully about the double taxation  
13 piece. You're paying the 19 percent tax on the  
14 takeout and you're paying an income tax on the  
15 winnings. Why shouldn't, if you're paying the  
16 19 percent tax we adopt a position if we're  
17 going to deal with this that you be exempt, it's  
18 not income. It's not reportable income.

19 There's other places where that  
20 occurs. All corporate dividends are net of  
21 corporate taxes, right? They're still  
22 reportable, albeit at a different rate perhaps.  
23 But it seems to me that's where the problem is.  
24 And that's a problem that does have an impact on

1 the industry.

2 And the other problem has an impact  
3 on the industry. I'm just repeating myself now.  
4 But it seems to me an impact --

5 CHAIRMAN CROSBY: We all do that.  
6 Why shouldn't you?

7 COMMISSIONER MCHUGH: I know, I  
8 know. It's not good. It's an impact based on  
9 nonpayment of a tax that you should be paying.

10 COMMISSIONER ZUNIGA: My guess, and  
11 I'm no expert in this obviously, that politics  
12 is the art of the possible. I look at this  
13 amendment and it might be easier -- I don't know  
14 what the future of that is. And I'm curious  
15 about it. But it might just be easier to go  
16 back to what was there before, the exemption, as  
17 opposed to trying to address the fairness in  
18 whole of a withholding mechanism. That's just  
19 my guess.

20 Taking positions is important. I  
21 agree with the whole hog one that could support  
22 the industry that is nascent by its very nature.  
23 I am not just thinking of racing. This is an  
24 immediate issue in racing but this is one that

1 shows up very quickly in my view with the slot  
2 machines.

3 CHAIRMAN CROSBY: Are we different  
4 from other commissions in slot machines too?

5 COMMISSIONER ZUNIGA: Yes. In  
6 other states that have mirrored, let's say, the  
7 federal withholding threshold, if you're in Las  
8 Vegas and you win \$5000, then somebody shows up  
9 and has to issue a ticket, because you get  
10 withholding taxes on that. Anything below that  
11 you can continue playing.

12 One would assume that with the  
13 current rules, the way they seem to be playing  
14 themselves out is that if that happens here in  
15 Massachusetts, the threshold would be \$600.

16 CHAIRMAN CROSBY: Is the \$5000, is  
17 that the federal standard?

18 COMMISSIONER ZUNIGA: The federal  
19 standard, right.

20 CHAIRMAN CROSBY: And most state  
21 jurisdictions -- consultants, everybody else, is  
22 it that \$5000? So, we're at \$600, which would  
23 be almost unique?

24 DR. DURENBERGER: Isn't there a

1 federal exemption for bingo, Keno and slot  
2 machines? I thought there was a federal  
3 exemption.

4 CHAIRMAN CROSBY: Lottery, I think.

5 COMMISSIONER ZUNIGA: The payout  
6 threshold would be similar to the federal. What  
7 I believe that does to the gamers that we're  
8 trying to recoup and the gamers we're trying to  
9 attract is a real chilling effect on the ability  
10 to continue playing or continue or returning to  
11 play.

12 DR. DURENBERGER: There is a federal  
13 withholding exemption for bingo, Keno and slot  
14 machines that's 26 USC 3402q(5).

15 COMMISSIONER ZUNIGA: On slot  
16 machines?

17 CHAIRMAN CROSBY: What does it say?

18 DR. DURENBERGER: It's a federal  
19 withholding exemption for bingo, Keno and slot  
20 machines.

21 CHAIRMAN CROSBY: Withholding  
22 exemption from what?

23 DR. DURENBERGER: So, in other  
24 words, the casino in that situation does not

1 have is to withhold.

2 COMMISSIONER ZUNIGA: Regardless of  
3 the threshold?

4 DR. DURENBERGER: There is an  
5 exemption for bingo, Keno and slot machines.

6 CHAIRMAN CROSBY: Regardless of the  
7 amount? Guy?

8 MR. MICHAEL: I think what happens  
9 is instead of withholding the amount, the casino  
10 issues a W-2G, which maintains a record of the  
11 actual winnings. So, the IRS will have a record  
12 of that and then you have to pay the taxes when  
13 you pay regular taxes.

14 CHAIRMAN CROSBY: About 5000 they  
15 issue a W-2G?

16 MR. MICHAEL: Right, right.

17 CHAIRMAN CROSBY: So, as a practical  
18 matter, it's the same thing.

19 MR. MICHAEL: But it's not withheld  
20 at the casino level.

21 CHAIRMAN CROSBY: Okay.

22 DR. DURENBERGER: And the chilling  
23 effect we see on the headlines from both the  
24 trades and the local paper. The Lowell Sun had

1 Massachusetts Bettors Getting Pockets Picked was  
2 the headline. The Daily Racing Forum, Horse  
3 Players Irate Over New Massachusetts Gambling  
4 Tax. So, that speaks to the chilling effect as  
5 you say. That's my concern is that decrease in  
6 the pari-mutuel handle. Because racing right  
7 now in the Commonwealth is very fragile. You  
8 talk about the nascent industry, but the  
9 horseracing is very fragile right now. It can't  
10 really take a whole lot of hits. That's why I  
11 bring this to you today.

12 CHAIRMAN CROSBY: I don't think this  
13 is going to be the death nail or not of racing.  
14 From what everybody tells us is whether they get  
15 licenses or not going to be the death nail or  
16 not of racing.

17 It sounds like emotionally you kind  
18 of feel like the right thing to do would be to  
19 support the Reinstein amendment but you didn't  
20 formally say that. Why is that?

21 DR. DURENBERGER; On a purely  
22 personal level, I think restoring the exemption  
23 is the way to go. Making the state mirror the  
24 federal is better than the existing, again just

1 purely personal. I don't know the effect on the  
2 revenue. I'm assuming it was a revenue  
3 increasing statute originally the legislation  
4 was intending on the revenue and perhaps some  
5 other considerations.

6           So, I don't know how much  
7 anticipated revenue was supposed result from  
8 this, but just at the visceral level, which I  
9 think is the question that you're asking, the  
10 visceral level is that we're at one level here.  
11 We were here and so perhaps this is somewhat  
12 meeting in the middle. But the whole hog  
13 approach would be to restore the exemption all  
14 together.

15           CHAIRMAN CROSBY: I have now  
16 forgotten. The amendment is?

17           DR. DURENBERGER: The amendment is  
18 not restored as it relates to pari-mutuel. It's  
19 to mirror the federal reporting and withholding  
20 requirements.

21           CHAIRMAN CROSBY: I'm of two minds  
22 on this. It's a really interesting conundrum.  
23 And probably even more interesting than we have  
24 -- the surface of which we've which scratched.



1 But given how complicated this is, a short-term  
2 negative hit, ill-thought through seems to me is  
3 sort of prima facie bad idea right now. If it  
4 were carefully thought through and it was a well  
5 thought out public policy decision, then that's  
6 what the Legislature gets paid to do, make those  
7 decisions.

8 But I think everybody would agree  
9 that this is not very well considered and does  
10 have a variety of different consequences at a  
11 time of great sensitivity of this industry.

12 But on the other hand, clearly it's  
13 much more complicated than just a matter of  
14 going back to the old standard. I kind of like  
15 Commissioner McHugh's idea of let's just go  
16 whole hog. I don't think we really know enough  
17 to go whole hog. And I don't know whether we  
18 know enough yet to take a position relative to  
19 its impact on gaming.

20 So, I kind of lean towards taking a  
21 position right now either of restoring the  
22 original status or supporting this amendment or  
23 both. Maybe saying to the Legislature one is  
24 preferable but if you can only do this, do this.

1           But then put ourselves, give  
2 ourselves the task of really thinking this  
3 through properly and trying to come up with a  
4 coherent, complete approach to what is the right  
5 way, what is the right level of taxation and  
6 what is the right means of collecting that tax  
7 first for the racing industry, because that's  
8 our job is to figure that out. And make a  
9 recommendations to the decision-makers.

10           And then second on the gaming side,  
11 and task out staff to come back to us as soon as  
12 possible first on racing and then on gaming.  
13 And let us have an opportunity to work out a  
14 really intellectually coherent response to both.

15           COMMISSIONER MCHUGH: I must say,  
16 Mr. Chairman, I have to disagree with the  
17 conclusion that this wasn't carefully thought  
18 out. I don't know that it was, but I don't know  
19 that we can conclude that it wasn't.

20           This was not included -- This is in  
21 section 28 of the Bill. It was not included in  
22 the gaming legislation. it was a separate  
23 section of Chapter 193 of the Acts of 211, in  
24 section 28. Section 28 is part of four or five

1 consecutive sections that all deal with taxation  
2 in different areas. So, somebody proposed a tax  
3 package as part of the Expanded Gaming  
4 legislation.

5 And it seems to me that before we  
6 take a position one way or the other on where  
7 this came from, it would be helpful to hear from  
8 - to (A) figure out where these sections came  
9 from. I suspect as we surmised earlier they  
10 came from DOR. And to get somebody from DOR to  
11 come in and explain that side of the issue.  
12 There may be projections as to lost revenues  
13 that were occurring. There may have been  
14 samplings. That doesn't mean the result was the  
15 right result as opposed to the focus on the  
16 underlying taxation.

17 But it seems to me that I'm not in a  
18 position to conclude that this was ill thought  
19 out. And I'm not in a position to -- And I  
20 would recommend that if we were going to take  
21 any position, we do so after hearing from  
22 somebody who might have been on the other side  
23 and be a proponent of this.

24 CHAIRMAN CROSBY: Anybody else? The

1 timing of this, this doesn't tie necessarily to  
2 the budget cycle. This law could be amended at  
3 any time, right? There is nothing about the  
4 budget cycle, which theoretically ends June 30,  
5 about fixing this law.

6 It's now an amendment to what?

7 DR. DURENBERGER: The House  
8 supplemental budget.

9 CHAIRMAN CROSBY: It's amended to a  
10 supp., right, which could go through any time.  
11 We don't know when they're going to go through.  
12 They don't have to go through in the fiscal  
13 year. The final supp. will end up a month or  
14 two from now.

15 Hey, John, do you happen to know  
16 what supp. this is attached to?

17 MR. ZIEMBA: As the Director  
18 reported, it's a supp. that's going forward  
19 right now. There could be action in the next  
20 couple of days. It potentially could go for a  
21 conference committee. We don't have a date by  
22 which it needs to be done. It's not the 112  
23 budget.

24 CHAIRMAN CROSBY: Is not the 112

1 budget. But there's a year-end final supp., a  
2 year-end reconciliation supp. that happens in  
3 like late July or early August.

4 MR. ZIEMBA: It's a little confusing  
5 because the Senate broke out the supp. in two  
6 different parts. One as it was described to be  
7 was the first part that it's been exec'd. out by  
8 what's referred to emergency items and that  
9 there are other items that are pending. So,  
10 it's a little bit difficult to put it into sort  
11 of the traditional characterization of these  
12 final budgets.

13 CHAIRMAN CROSBY: This one. But no  
14 matter what happens on this one, there will be a  
15 year-end reconciliation, another supp. that will  
16 the year-end reconciliation supp. after DOR says  
17 how much money has really come in and so on and  
18 so forth. That will allocate the excess to the  
19 rainy day fund and so on and so forth.

20 So, I think there are multiple  
21 opportunities to be attached to a budget bill.  
22 And there are any number of opportunities for it  
23 to be just a regular piece of legislation that  
24 could come through the pipeline some other way.

1           So, I don't we're up against that  
2 particular gun. I don't know enough about the  
3 subtleties of it to know whether there's some  
4 reason why it would have a better chance or a  
5 worst chance right now. If what I'm saying is  
6 right that we're not up against a timeframe gun,  
7 then Commissioner McHugh's insistence on  
8 prudence is probably not a bad idea,

9           DR. DURENBERGER: Which I think you  
10 will see that is reflected in my conclusion here  
11 where the visceral reaction I had, which I  
12 reported to you, the scientist in me wants to  
13 know more. I want to know more before I would  
14 stand wholeheartedly behind taking one position  
15 or another.

16           I take the position that detriment  
17 to handle is detrimental to our industry. But  
18 how to go about addressing that, I want to know  
19 more.

20           CHAIRMAN CROSBY: Right. Okay.  
21 That make sense to me. I agree. Would you be  
22 interested Commissioner, if we could tee up some  
23 people to come in at our next meeting to pursue  
24 this?

1                   COMMISSIONER MCHUGH: I think it  
2 would be worthwhile. If it is having an impact  
3 then I'd like to know more about it.

4                   COMMISSIONER CAMERON: Would we tee  
5 up just those from DOR or would we like to hear  
6 from others who could speak about the unintended  
7 consequences?

8                   CHAIRMAN CROSBY: I don't think we  
9 need anybody talk about things that we already  
10 know. I don't think we necessarily need the  
11 horsemen to come in and tell us why they don't  
12 like it, because that's why we don't like it  
13 either. We're already sold on that.

14                   But anybody that's got new opinions  
15 pro or con, I would think it would be useful. I  
16 don't think we need to get re-lobbied on things  
17 we already know about. But things we don't know  
18 about would be helpful.

19                   COMMISSIONER ZUNIGA: I'll mention  
20 this one thing since I saw the memo in the  
21 packet, I asked our consultants at Spectrum  
22 whether the projections that they made back in  
23 the 2010 report included the effect of taxes on  
24 winnings. And their answer was no, they did

1 not.

2 CHAIRMAN CROSBY: Say that again.

3 COMMISSIONER ZUNIGA: They did not  
4 include or quantify the effect of winnings on  
5 taxes at a lower threshold than say the federal  
6 withholding, what effect they may have had on  
7 the projections that they made.

8 In other words, the projections that  
9 they made in the report for the gaming industry  
10 as a whole, the basis on which casinos were  
11 approved to some degree, the \$3- to \$500 million  
12 that we strive to get, the effect on income  
13 taxes was not quantified.

14 I wonder, in agreement with others,  
15 to make that base assumption and decisions for  
16 support what effect that may have. I propose  
17 that it may have some effect. At least that  
18 report did not include those numbers.

19 CHAIRMAN CROSBY: Commissioner, did  
20 you have other people you wanted to come in?  
21 You're welcome to bring --

22 COMMISSIONER CAMERON: I am somewhat  
23 persuaded by Commissioner Zuniga's comments  
24 about our responsibility for competition and



1 bringing those in who have choices of where to  
2 go, what facilities to go.

3 I think what we're saying is most  
4 people follow the federal guidelines but that  
5 would be interesting to me to know has anyone  
6 looked at this matter and would it be a  
7 situation where we are less competitive because  
8 of it.

9 CHAIRMAN CROSBY: I agree with that.  
10 Maybe Director Day and Durenberger, if you could  
11 find out -- Clearly, we want to find out where  
12 this came from and who was behind it and what  
13 was the thought process and the analysis. If a  
14 Legislator was behind it, maybe we can hear from  
15 him. If DOR was behind it, maybe we can hear  
16 from them, whatever.

17 Anybody that has constructive  
18 analysis either way, why this is a good thing or  
19 why this a bad thing above and beyond just the  
20 rhetorical bombast I think would be helpful. It  
21 may well be that our consultants know people or  
22 themselves have ideas on the issues involved.

23 But it's a much more complicated set  
24 of issues that we're trying to get to grips

1 with. It's not just like is this going to  
2 reduce the handle? We accept that as sort of a  
3 premise. But it's all of the other permutations  
4 here that make this interesting.

5 COMMISSIONER ZUNIGA: I'm guessing  
6 the first project-based order for our  
7 consultants.

8 COMMISSIONER CAMERON: I was  
9 thinking the same thing.

10 COMMISSIONER STEBBINS: Even before  
11 they leave.

12 COMMISSIONER ZUNIGA: Even before  
13 they leave, they get another one.

14 CHAIRMAN CROSBY: Mr. Michael feels  
15 much better.

16 MR. MICHAEL: I feel much better  
17 now. First project, we'll have an answer for  
18 you later this afternoon.

19 CHAIRMAN CROSBY: It's incredibly  
20 interesting. This is one of these fascinating  
21 policy challenges that comes up where nothing is  
22 ever as it seems. And there are permutations  
23 and consequences and relationships and nuances  
24 that are really, really interesting. And I

1 think this will be fun but important to track  
2 through.

3           And I think presumably our  
4 constituents are watching but you can please  
5 tell them on our behalf we understand this a  
6 real issue and has gotten us into a bunch of  
7 stuff that's real issues. And we're going to  
8 try to figure our way through it.

9           So, if you could do that in two  
10 weeks that would be great. I know we've got  
11 some other things on our agenda for two weeks.  
12 But there is some sensitivity as to timing here.  
13 In fact, that may be another thing we can find  
14 out John and Jennifer, is there a time  
15 sensitivity to being able to amend this statute  
16 relative does it have to be associated with a  
17 supp.? Or is there another mechanism for  
18 getting it through? We can find that out too.

19           COMMISSIONER ZUNIGA: The one thing  
20 I wanted to mention is that these rules just  
21 came into effect, didn't they? They're not in  
22 effect yet? Yes, they just --

23           COMMISSIONER MCHUGH: They're in  
24 effect.

1                   COMMISSIONER ZUNIGA: They have been  
2 in effect for a while or --

3                   DR. DURENBERGER: About a month.

4                   COMMISSIONER ZUNIGA: So, in terms  
5 of immediacy, they will continue to have an  
6 effect the more time passes. It's become a bit  
7 of an issue because now it's at the forefront of  
8 our licensees. How do we do this? What is the  
9 administrative process etc., etc., but it will  
10 continue to be.

11                  CHAIRMAN CROSBY: Okay. Anything  
12 else?

13                  DR. DURENBERGER: No, I appreciate  
14 the opportunity to throw this out there and  
15 discuss it with you. Every week is a new set of  
16 professional development skills for me. So, I  
17 appreciate the opportunity.

18                  CHAIRMAN CROSBY: This one pulled on  
19 your lawyer skills as opposed to your veterinary  
20 skills.

21                  COMMISSIONER MCHUGH: Just for  
22 precision, these rules went into effect when the  
23 gaming legislation was passed that was November  
24 of 2011. They had a particular bite this year

1 when the DOR issued this revenue ruling, right?

2 DR. DURENBERGER: Right. There was  
3 technical information released from -- There was  
4 a series of clarification letters that have gone  
5 back and forth.

6 COMMISSIONER MCHUGH: That's right.

7 COMMISSIONER ZUNIGA: The latter one  
8 I was referring to.

9 COMMISSIONER MCHUGH: Yes.

10 COMMISSIONER ZUNIGA: Thank you.

11 COMMISSIONER MCHUGH: Thank you.

12 CHAIRMAN CROSBY: Okay. Let's see,  
13 who's up? Where are we? What day is this?  
14 Director Wells, Investigations and Enforcement  
15 Division and Ombudsman or Commissioner Ziemba.

16 MS. WELLS: Good morning. I will  
17 defer to Ombudsman on the first issue, the  
18 qualifier deadline discussion and then we'll  
19 segue into the suitability discussion.

20 MR. ZIEMBA: Thank you. At topic  
21 today are two separate deadlines for discussion.  
22 The first issue that we'll discuss is whether or  
23 not we should set a site determination deadline.  
24 As in for our existing applicants that have not

1 designated a site, should we set a deadline now?  
2 This has been something that the Commission has  
3 discussed in the past, but as we are getting  
4 closer to our licensing deadlines we thought  
5 that we would bring this up one more time.

6           The second deadline we will discuss  
7 is a staff idea of establishing a new deadline  
8 for qualifiers that if tripped would require the  
9 leave of the Commission to add new qualifiers.  
10 I'll get into more detail in a second.

11           In order to give a little bit of a  
12 context to both of these deadlines, Director  
13 Wells and I discussed the current status with  
14 the existing Category 2 applicants that do not  
15 have a publicly known site designation. And we  
16 thought we'd give you the results of those  
17 conversations, at least what is publicly  
18 reportable. So, the three that we'll report on  
19 are Penn National, Cordish and Mass. Gaming and  
20 Entertainment.

21           Penn National has reported to us, we  
22 just recently received a letter from Penn  
23 National asking that they could be considered  
24 for the Category 2 reviews. That was just

1 received as of last Friday or last Thursday,  
2 sometime last week. As you know, we have  
3 prioritized a number of different applicants,  
4 the four Category 2 applicants at that time for  
5 quicker reviews for the suitability  
6 determinations that are forthcoming. And Penn  
7 National has asked to be included in that.

8 Penn reports that at this point,  
9 they do not expect to be participating in any  
10 other bids in Western Mass. as in Category 1  
11 bids. Penn has been conducting diligence on a  
12 variety of sites for the slots license and has  
13 continued interest in the Southeast region.

14 CHAIRMAN CROSBY: Southeast region  
15 for slots?

16 MR. ZIEMBA: No, Southeast region  
17 for the Category 1.

18 CHAIRMAN CROSBY: Okay.

19 MR. ZIEMBA: And Penn generally  
20 believes that it has a reasonable shot of making  
21 an application at one of the sites. Penn  
22 understands the tight deadlines, for instance  
23 the October 4 deadline for the slots only  
24 application and with a host agreement completed

1 by early August. Penn further acknowledges that  
2 adding a partner that is a new filer to these  
3 tight deadlines may simply not work.

4 Cordish as has been publicly  
5 reported, Cordish met with the Salisbury Board  
6 of selectmen this past Monday to discuss a  
7 potential facility. The Board of Selectmen plan  
8 to hold an informal workshop at 4:30 on Monday,  
9 July 1 to scope out Cordish's proposal before  
10 taking a vote at 7:00 p.m. on whether or not to  
11 proceed with the project.

12 Cordish for that proposal has  
13 established a deadline of July 25 to execute a  
14 host community agreement and plans to have with  
15 that proposal an October 1 referendum. Cordish  
16 has considered additional sites and plans to  
17 choose a final site within the next two weeks.  
18 Cordish has noted that any additional land  
19 partners would have less than a five percent  
20 interest in the project. I don't know, Karen,  
21 if you want to talk about how that normally  
22 works or we can get into that later.

23 MS. WELLS: We can get into that  
24 later.



1 MR. ZIEMBA: I know that Karen can  
2 give a little more detail on MG and E. But the  
3 baseline information is that MG and E continues  
4 to pursue a slots facility. Some of its  
5 location information remains confidential  
6 because they are currently in the process of  
7 finalizing a location. And I don't know if  
8 there's anything else that's publicly  
9 reportable.

10 MS. WELLS: No, there is no  
11 additional publicly reportable information.  
12 What the Ombudsman has stated is correct.

13 MR. ZIEMBA: So, within that as a  
14 context, there's a question of whether or not  
15 the Commission should establish a deadline for  
16 determination of sites for the Category 2  
17 applicants. And I would just note that our  
18 current schedule basically has a de facto  
19 deadline.

20 Our application date is October 4.  
21 The referendum must occur prior to the  
22 application as a certified copy of the election  
23 results must be included in the application.  
24 Given that we have a two o'clock deadline on the

1 application day October 4, and elections would  
2 have to be -- the polls would have to be open  
3 until seven or eight o'clock, it couldn't be  
4 stretched out to the fourth.

5           So, the referendum would have to  
6 occur no later than October 3, within the caveat  
7 that state law requires that at least 10 days  
8 are necessary before election results can be  
9 certified in a city. And for a town, election  
10 results are contestable within that 10-day  
11 period. So, there's a 10-day period in our  
12 current application. And our regulations  
13 contemplate with our election results that the  
14 community shall submit a certified copy of the  
15 results.

16           So, even though theoretically a  
17 community could have an October 3 referendum, by  
18 our regulations, they are not allowed to have  
19 that referendum because the communities have to  
20 submit a certified copy.

21           So, in effect the date, if you back  
22 up the 10 days, the date for the referendum can  
23 be no later than September 23. In order to have  
24 a September 23 referendum date, the host

1 community agreement would need to be completed  
2 and the referendum scheduled no later than  
3 basically July 26. It's July 1 on Monday. So,  
4 we're getting pretty darn close in any event to  
5 all of these deadlines.

6 In addition, communities need time  
7 to process and schedule the votes, to schedule  
8 the referendum. Therefore, it's reasonable to  
9 allocate approximately at least a week before  
10 this date of July for the execution of the host  
11 community agreement. So, something akin to July  
12 19.

13 One recommendation that I would put  
14 up for consideration is that the Commission  
15 could potentially move to waive the requirement  
16 of the 10-day certification as an application  
17 requirement. So, even though the referendum  
18 would still have to be conducted prior to the  
19 submission of the application, the paper  
20 certification could follow sometime thereafter.

21 If that occurs, in the event of an  
22 October 3 referendum the host community  
23 agreement would need to be completed and the  
24 referendum scheduled no later than August 4,

1 which is 60 days prior to August 3, or August 3  
2 since August 4 is a Sunday. The host community  
3 will likely need a week to do pre-referendum  
4 scheduling. A week before August 3 is July 27.

5 The point of this long missive of  
6 dates is that we are basically at that deadline  
7 basically right now.

8 CHAIRMAN CROSBY: Thoughts?

9 COMMISSIONER CAMERON: It appears to  
10 me or by having conversations with the two of  
11 you that you feel like they're operating in good  
12 faith, right? This is not any kind of a  
13 situation where people are waiting  
14 strategically. It really is a case of finding  
15 an available site in which the officials will  
16 entertain dealing with entering into a host  
17 agreement or trying to anyway. Is that  
18 accurate?

19 MR. ZIEMBA: I think it's accurate.  
20 I think at least with the two applicants,  
21 they've already pursued other opportunities in  
22 other parts of the Commonwealth, and were  
23 rejected locally. So, this is a reaction to  
24 that.

1                   COMMISSIONER CAMERON: And your  
2 report on the three remaining, the three that do  
3 not or publicly do not have a site yet, they  
4 understand our deadlines. So, I don't know that  
5 there's a need to add an additional deadline,  
6 because they can do the math as well as we can.  
7 And they know they have a couple of weeks, maybe  
8 four weeks to get a host agreement done,  
9 correct?

10                   MR. ZIEMBA: That's right.

11                   COMMISSIONER CAMERON: So, if that's  
12 the case and they're dealing in good faith, I  
13 don't know that there's any need for us on top  
14 of that add a deadline because it is, as you  
15 say, a de facto deadline now.

16                   COMMISSIONER ZUNIGA: I agree with  
17 that with the nuance distinction that you make,  
18 which is relative to the certification of the  
19 vote whether that could come after the deadline  
20 for the Commission during the administrative  
21 review that we do conduct in those first few  
22 days, if you will.

23                   COMMISSIONER CAMERON: Have we  
24 spoken to the legal staff about the ability to

1 waive the certification? Is that problematic in  
2 any way?

3 MR. ZIEMBA: Yes. We've discussed  
4 it. And I think what we recommend is the best  
5 course is that the Commission instead of a  
6 broad-based policy that it would change the date  
7 for the certification that it would be upon an  
8 application.

9 COMMISSIONER CAMERON: Case-by-case  
10 basis.

11 MR. ZIEMBA: Case-by-case basis  
12 which would be a waiver request to the  
13 Commission.

14 CHAIRMAN CROSBY: Which we would  
15 somehow telegraph that we would accept?

16 MR. ZIEMBA: I think there'd be some  
17 worth in knowing that the Commission thinks this  
18 would be either a tremendously difficult thing  
19 for the Commission or whether or not it would be  
20 something that would likely result.

21 Specifically, we have a community that is going  
22 to be discussing some really tight timelines on  
23 Monday.

24 For example, the Cordish proposal

1 has an October 1 referendum date planned. An  
2 October 1 referendum date may not be possible  
3 within that 10-day certification. Again, it's a  
4 town, the Town of Salisbury. Potentially, its  
5 Town Clerk could certify the results even though  
6 they might still be contested. I'm not sure of  
7 whether or not that Town Clerk would be willing  
8 to do that or not.

9 CHAIRMAN CROSBY: But you can't tell  
10 a bidder we're 90 percent sure that if you wait  
11 until the first, you'll be all right because  
12 there's a 10 percent chance they couldn't do it.  
13 That wouldn't help them.

14 MR. ZIEMBA: It's certainly an  
15 option.

16 COMMISSIONER CAMERON: Couldn't they  
17 get the request into us soon, as soon as they  
18 have a host agreement. And then they're  
19 obviously going to back up, which would put them  
20 at October 1. They could at that time make the  
21 request to us.

22 CHAIRMAN CROSBY: If the request  
23 came now rather than with the application,  
24 right, that would be fine. So, I would strongly

1 say that we don't lose anything by waiving the  
2 10 days and maybe slightly enhance our  
3 opportunity for getting more competition. I see  
4 nodding heads.

5 COMMISSIONER ZUNIGA: Yes.

6 CHAIRMAN CROSBY: Commissioner  
7 Stebbins, you started to say something a minute  
8 ago.

9 COMMISSIONER STEBBINS: What's the,  
10 looking at the evaluation phase, kind of the  
11 internal checking of the application to make  
12 sure it conforms with the requirements that we  
13 need. Not the evaluation piece but kind of the  
14 administrative review of the application, we  
15 allowed 10 days? I'm trying to think on the  
16 schedule.

17 MR. ZIEMBA: No, because technically  
18 there has to be a determination of completeness  
19 before we begin our reviews.

20 COMMISSIONER STEBBINS: Right.  
21 What's the timing for that determination of  
22 completeness?

23 MR. ZIEMBA: I think it's as quickly  
24 as we can make that determination after all of



1 the materials have been submitted. But if  
2 there's one item that pursuant to our  
3 regulations has not been submitted, I guess I'd  
4 argue that it cannot be substantially complete.  
5 So, that might delay our ability to move forward  
6 with the review.

7 MS. BLUE: When we looked through  
8 the regulations, I believe we put in a seven-day  
9 period for something material and a 14-day  
10 period for something that wasn't. The  
11 certification would most likely be material.  
12 So, it would not be the 10 days.

13 CHAIRMAN CROSBY: We could waive for  
14 seven days.

15 COMMISSIONER MCHUGH: It strikes me  
16 that the certification doesn't go to the essence  
17 of anything. It is a stamp put on a result  
18 that's already known that says this is the real  
19 result. So, I hear the notion that it would  
20 that perhaps be material. I could make an  
21 argument that it is not material as well.

22 CHAIRMAN CROSBY: It's only not  
23 material unless it's material when there's fraud  
24 in the election.

1                   COMMISSIONER MCHUGH: That's right.

2                   The certification will -- the likelihood --

3                   CHAIRMAN CROSBY: I agree.

4                   COMMISSIONER MCHUGH: So, it seems  
5                   to me that if we get the request for a waiver in  
6                   early, we can grant, we can deal with that  
7                   request and put whatever conditions on it we  
8                   want. But at least look at it in context.

9                   But it seems to be going into that  
10                  the presumption ought to be at least that this  
11                  is not a material part of the application,  
12                  because it's simply a stamp.

13                  COMMISSIONER STEBBINS: Just to add  
14                  to the other point, I would also agree the idea  
15                  of setting another timetable -- and as  
16                  Commissioner Cameron pointed out, you start to  
17                  back out dates we are setting a de facto  
18                  timetable. And for us to debate two or three  
19                  days or a week on either side of it, I just  
20                  don't think that makes any sense.

21                  CHAIRMAN CROSBY: I agree with that.  
22                  We were concerned about timetables when it was  
23                  stalling the whole process when we hadn't yet  
24                  set deadlines for the application. Once we set

1 deadlines for the applications I think  
2 timetables, I agree with everybody else, kind of  
3 went away as a concern.

4 MR. ZIEMBA: Again, part of our  
5 review will be how complete their application  
6 is, how good a job that they've done. So, to  
7 the extent that applicants cannot do as good a  
8 job at surrounding communities or with their  
9 host communities that will be part of the  
10 review. But that is a position that the  
11 applicants have put themselves in or have been a  
12 result of circumstance that they're in that  
13 place now.

14 CHAIRMAN CROSBY: Right. It's a  
15 good point. Let me state this and make sure I'm  
16 saying it in a way people are in agreement with.  
17 We don't want to give the impression that we're  
18 going to be slipshod in our administrative  
19 review for completeness.

20 What we're saying here is, as best  
21 we can see it now, the issue of certification is  
22 really de minimis. And we don't want the issue  
23 of certification to get in the way of an  
24 otherwise sound bid. That does not mean that

1 people ought to say well, that they're not going  
2 to be too strict here. So, if we come in with a  
3 half whatever proposal that we won't pay  
4 attention, because we will. We are simply alone  
5 making the determination that certification is  
6 not a reason for cratering an otherwise  
7 legitimate proposal.

8 MS. WELLS: And we have had  
9 communication with the applicants that have not  
10 designated a site. From an investigative  
11 perspective, if they want to do this, they  
12 really have to engage in some kind of agreement,  
13 where they are not adding any qualifiers,  
14 because then I would not be able to complete the  
15 investigation. They could get a piece of  
16 property, but it outright. There are certainly  
17 ways to do that.

18 CHAIRMAN CROSBY: That was a  
19 separate issue now in my mind because we have  
20 taken the position, I think, that the changing  
21 of qualifiers is fairly predictable. We will  
22 generally speaking be receptive as long as we  
23 have been notified immediately that there are  
24 new players at the table. We will process that.

1 MS. WELLS: Right. I think that  
2 there is a difference between, and the  
3 consultants will be able to comment on this as  
4 well, is that it's a different -- if you have a  
5 board of directors on a casino company, and one  
6 resigns and you bring another one in to serve on  
7 the board of directors that's a different story  
8 than if you have two partners that are coming  
9 into like a 50-50 setup for a slots license.

10 So, I think we just look at that in  
11 particular. The applicants that we've been  
12 talking to understand that. And they've  
13 indicated they have no expectation that they  
14 would bring anyone in as a partner an additional  
15 qualifier. So, I feel very confident that  
16 they're being forthright with that.

17 CHAIRMAN CROSBY: That could change.  
18 What happens if somebody does? What if somebody  
19 brings in -- what would be the hypothetical, you  
20 don't have an agreement on your land yet. It's  
21 pretty hard to imagine, I guess.

22 COMMISSIONER ZUNIGA: I think the  
23 hypothetical is that if somebody comes in with  
24 in let's say somebody owning the land and that's

1 a significant new entity let's say of a number  
2 of qualifiers that have not gone through the  
3 investigations process. And what the Director  
4 is alluding to is there would have to be some  
5 time considered for that investigative process.

6 COMMISSIONER CAMERON: I think it  
7 also speaks to the snapshot of suitability. For  
8 example, right now a hypothetical, everything  
9 we've looked at, we make a determination that  
10 that entity is suitable. But someplace before  
11 an awarding of a license, a new qualifier comes  
12 in, the investigation is done and it's very  
13 problematic. I think that is always something  
14 we'll have to consider. Yes, you were suitable  
15 but this new person may not be suitable. And  
16 that will have to be dealt with accordingly.

17 So, I think that gets to our next  
18 discussion, which is suitability and what  
19 exactly does that mean at what point and how  
20 could that change if circumstances change, new  
21 information is developed. But I do agree with  
22 you, Director, that we are understanding and we  
23 are working in good faith with the applicant.

24 But they also understand that these

1 investigations are just about complete. And for  
2 them to bring in a whole new team would be  
3 unacceptable. One person is a different matter  
4 and that happens.

5 MS. WELLS: And ultimately an  
6 applicant can come to the Commission for  
7 consideration.

8 COMMISSIONER MCHUGH: I agree with  
9 your synopsis. Bring in a whole new team, a 50  
10 percent financial partner say at some point,  
11 maybe it's now would be entirely unacceptable.  
12 I guess your question should we have some kind  
13 of a deadline or some kind of a date beyond  
14 which changing of qualifier requires our  
15 permission. And then once the application for  
16 the new qualifier is made, we take a look at it  
17 and see if it's swapping out one director for  
18 another, which is perhaps no big deal, as  
19 opposed to a 50 percent partner and we're not  
20 going to allow it, because that would throw the  
21 whole timetable out of whack. Is at the essence  
22 of it?

23 MS. WELLS: Yes. And I agree with  
24 that option. We discussed how to do that. One

1 recommendation is that the Commission could sort  
2 of designate the authority to me to set that for  
3 investigative purposes. And I think that would  
4 help me because the entity can still change  
5 qualifiers, but if you're going to do that,  
6 you've going to have to put forth a reason and  
7 come before the Commission. I would just set  
8 the date.

9 COMMISSIONER CAMERON: I assume  
10 you've discussed this with our consultants and  
11 they've seen it in other jurisdictions?

12 MS. WELLS: Yes.

13 CHAIRMAN CROSBY: Which?

14 COMMISSIONER CAMERON: Does that  
15 sound acceptable at this time contemplate a  
16 deadline on qualifiers and any change that would  
17 have to have an approval process?

18 MR. MICHAEL: Yes. That would work  
19 as a practical matter, but with your  
20 understanding that there will be continual  
21 changes. As you rightly pointed out, there's a  
22 snapshot of an applicant at a particular space  
23 and time. Many of these applicants don't have  
24 all of their financing in place necessarily.



1 So, they will have to make financing  
2 arrangements. If that requires them to give up  
3 some equity, then there will be evaluations  
4 where that requires follow up qualifications of  
5 those equity holders and so on.

6 And we were just talking about it  
7 here. That continues throughout the entire  
8 length of the existence of the casino. There is  
9 never an end point to suitability because it's  
10 fluid. And at any time where circumstances  
11 change in a casino structure whether it's their  
12 management or ownership, the Commission has to  
13 reevaluate the new structure. But you're making  
14 a determination now on the basis of what's  
15 before you now.

16 CHAIRMAN CROSBY: There's two  
17 different issues here. The one about the  
18 snapshot in time of suitability I totally agree  
19 with. And it does bear on the rest of the  
20 conversation. I totally agree with you. But  
21 what we have to date officially that I'm aware  
22 of never said anything about a constraint on  
23 replacing qualifiers. And we even said quite  
24 the opposite that we expect this to be a routine

1 matter.

2           What we're now saying is you have  
3 said that as a practical matter you're telling  
4 people you can't change material qualifiers or  
5 some degree of materiality at some point. And I  
6 think I'm hearing some other Commissioners  
7 saying that they sort of agree with that.

8           But we have never articulated any  
9 such date nor have we come up that I'm aware of  
10 of any criteria for what would be a material  
11 change. So, I think we need to clarify that a  
12 lot.

13           COMMISSIONER MCHUGH: Certainly, the  
14 statute talks about after the award of a license  
15 if a qualifier is changed, they have to go  
16 through the whole process.

17           CHAIRMAN CROSBY: No, clearly that.  
18 Right.

19           COMMISSIONER MCHUGH: So, this is  
20 the first time I've thought about this. But  
21 what would we do if we get to -- Let's take the  
22 worst case. We get to Phase 2. The Phase 2  
23 application comes in. And then two weeks after  
24 the Phase 2 deadline, somebody changes a 50

1 percent financial participant. And the new  
2 financial participant is an offshore entity with  
3 multiple participants. It's like underwriters  
4 or lawyers. It's got 10 or 15 people that each  
5 have a piece of it.

6           What do we do at that point? We  
7 could have some kind of a process in which our  
8 permission is needed to do that. Or we could  
9 just allow that as a right and have that throw  
10 our whole deadline scheme into a cart path,  
11 basically, because that's what it would do.

12           COMMISSIONER CAMERON: So, far what  
13 we've been doing is taking things on a case-by-  
14 case basis, which I think makes a lot of sense.  
15 So, if we did have some kind of an approval --  
16 We're late in the game now. -- an approval  
17 process, we're not saying you can't change  
18 someone out. It happens in business all the  
19 time.

20           But do they have to come before us  
21 and lay out the scheme? At that time, if it  
22 really is impossible to do in a timely manner,  
23 we have the option of saying no. But I think  
24 that makes sense as we've done with everything

1 else, it's on a case-by-case basis.

2 CHAIRMAN CROSBY: It hasn't been on  
3 a case-by-case basis that the Commission had to  
4 approve. Right now anytime a qualifier changes  
5 they just change.

6 COMMISSIONER CAMERON: Decisions  
7 we've made, we haven't given any wholesale. We  
8 have done many things on a case-by-case basis.  
9 And that was going back to qualifier. That was  
10 a meeting with the entity and back-and-forth and  
11 case-by-case basis of who has to qualify.

12 For example, the five percent is not  
13 hard and fast. If someone has more control, it  
14 is a case-by-case basis. So, I agree with the  
15 idea of putting something in place that gives us  
16 -- You have to come in and ask permission. And  
17 we will evaluate on a case-by-case basis.

18 COMMISSIONER ZUNIGA: I am just  
19 going to agree with that. It would be too hard  
20 to try to forecast what sort of circumstances we  
21 would be up against. Companies get bought from  
22 time to time, sometimes without the knowledge of  
23 management. So, it would be unfair to say now  
24 that tripped certain threshold or what have you.

1 So, let's just look at the circumstances when  
2 they get here.

3 CHAIRMAN CROSBY: Commissioner  
4 Stebbins, you've got a question on your face.

5 COMMISSIONER STEBBINS: I tend to  
6 agree with that kind of a case-by-case  
7 presentation before the Commission. But I'm  
8 reflecting back on Commissioner McHugh's point  
9 of we're in that application period where we  
10 have some pretty hard and fast deadlines in  
11 which we wish to award a license. Could we  
12 discuss the general premise or a warning  
13 essentially of some recommendation to our  
14 applicants to say a serious deviation, even if  
15 you have a chance to come before the Commission,  
16 a serious deviation in your qualifiers, etc. may  
17 -- Jeopardize might be too strong a word. --  
18 but may jeopardize your ability to be a  
19 successful applicant.

20 COMMISSIONER CAMERON: But I think  
21 those conversations have been happening. I  
22 think this gets back to the good faith dealing  
23 with the applicant. They understand our time  
24 constraints. They understand that the

1 investigation is complete. They are all saying  
2 that that won't be the case. That we have a  
3 straight land deal or whatever the case may be.

4 This is kind of in case just to try  
5 to keep us on track time wise. But it sounds  
6 like they understand and they are working with  
7 us. And this probably will not be a scenario  
8 that occurs.

9 COMMISSIONER STEBBINS: And I don't  
10 see it necessarily being a scenario in our  
11 Category 2 review. And maybe I'm forecasting a  
12 little bit in looking further down the line to  
13 the Category 1's.

14 COMMISSIONER MCHUGH: There may be  
15 another way of looking at this in terms in  
16 picking up on your theme, Commissioner. Our  
17 current regulations say if you change a  
18 qualifier, you have to notify the Commission  
19 immediately and the new qualifier has to be  
20 referred to the IEB. That's basically what our  
21 scenario is now and that's been happening.

22 Perhaps it's sufficient to allow  
23 that process simply to continue with the  
24 understanding that nobody can be awarded a

1 license unless the qualifiers have been  
2 qualified. And there are time constraints on  
3 our ability to do the qualifications.

4 So, if somebody comes in with a 50  
5 percent partner with 10 subscribers two weeks  
6 after the Phase 2 application has been filed, we  
7 just may not be able to do the qualification by  
8 the deadline that we've set for awarding the  
9 licenses and we're not going to change the  
10 deadline. So, it works itself out practically.

11 CHAIRMAN CROSBY: That puts us in  
12 position of racing around full speed, can we get  
13 it done.

14 COMMISSIONER MCHUGH: No.

15 CHAIRMAN CROSBY: No what?

16 COMMISSIONER MCHUGH: Why do we have  
17 to? We do our best.

18 CHAIRMAN CROSBY: I agree it could  
19 work. Within the face of the regs. as they  
20 stand, it could work itself out. It seems to me  
21 it would be better if we said that at some point  
22 we change that. And we say from date X August 1  
23 to the end of the license award process no  
24 qualifier can be changed without the permission

1 of the Commission.

2 And the Commission then, if it's a  
3 50 percent -- If it's your scenario, we look at  
4 it. And we say we can't plausibly get that  
5 done. It's way too much of a change. This was  
6 not anticipated. We will not permit that  
7 change. If that craters the applicant, it  
8 craters the applicant.

9 If we decide it's something simple  
10 -- But we deal with it as a proposal for a  
11 change from a bidder during a certain window,  
12 which is somewhere between now and October 4 up  
13 to the license decision.

14 COMMISSIONER ZUNIGA: I think you  
15 were saying the same thing. And the reg. maybe  
16 sufficient.

17 CHAIRMAN CROSBY: No.

18 COMMISSIONER MCHUGH: You are saying  
19 something different. You're saying we change it  
20 to say not the automatic file and we'll check it  
21 out but you have to request permission to file.

22 COMMISSIONER CAMERON: Instead of  
23 notification, it's permission.

24 COMMISSIONER ZUNIGA: Oh, thank you.



1           CHAIRMAN CROSBY:  If something came  
2   in by September 4, we would have four months in  
3   which to complete a background check on a major  
4   new qualifier, which we could probably do if we  
5   wanted to.  Anything less than that, the October  
6   4, because everybody is going to be busy doing  
7   other stuff.  Who knows what's going to be going  
8   on.

9           COMMISSIONER ZUNIGA:  Region C.

10          CHAIRMAN CROSBY:  Yes, Region C will  
11   be in, right.

12          COMMISSIONER ZUNIGA:  For the IEB,  
13   for example.

14          CHAIRMAN CROSBY:  So, if we said  
15   between September 4 and the award of the  
16   license, any change in qualifier needs the  
17   approval -- even request for change of a  
18   qualifier needs approval of the Commission.  How  
19   does that sound?

20          COMMISSIONER MCHUGH:  The dates  
21   sound fine.  But I would make it -- I'm thinking  
22   about the function of all of this.  I would make  
23   it a function -- If we were going to go this  
24   route, make it a functional issue and say that

1 any time after the host community election, if  
2 there was a change in qualifiers. That may move  
3 it back little bit for some of these host  
4 community elections that are going to come.

5 But really in addition to putting a  
6 strain on our resources, the other impact of  
7 changing a qualifier is that voters may vote for  
8 an entity that is a different entity than turns  
9 up as the license applicant.

10 CHAIRMAN CROSBY: That doesn't make  
11 sense. If that were the case, why would it  
12 change once the license was awarded? If that's  
13 a significant concern, wouldn't that be a  
14 significant concern forever after the election?

15 COMMISSIONER MCHUGH: Yes, it might  
16 well be. And that's just the nature of things.

17 CHAIRMAN CROSBY: I think the  
18 functional drive --

19 COMMISSIONER MCHUGH: The functional  
20 drive you're suggesting is not really function,  
21 is more us.

22 CHAIRMAN CROSBY: Is our ability to  
23 get it done in time without crushing us.

24 COMMISSIONER MCHUGH: Maybe that's

1 right.

2 CHAIRMAN CROSBY: Is there any  
3 problem with us doing whatever it would take us  
4 to do to say that between September 4 and the  
5 award of the Category 2 license that changes in  
6 qualifiers may not happen without approval?

7 COMMISSIONER ZUNIGA: Major.

8 CHAIRMAN CROSBY: No, changes. We  
9 will decide whether it's major or not, any  
10 changes has to come before us for approval.

11 MS. BLUE: I think there's a couple  
12 of things you want to consider. I think we  
13 could certainly do something like that. We have  
14 a regulation now that says once the Commission  
15 takes action, the action in this case mailing  
16 out the notice of the adjudicatory proceeding,  
17 that any withdrawal has to be approved by the  
18 Commission.

19 So, a lot of times if there's a  
20 withdrawal there's also substitutions. So,  
21 there'd be some discussion about it they. Also  
22 our Phase 2 application asks the question as to  
23 whether there are any new qualifiers prior to  
24 the Phase 2 application. So, we contemplate

1 that perhaps there will be and there will be  
2 some more suitability discussion.

3           So, I think what we might want to  
4 address is that period in the middle between the  
5 time that we are ready to do our suitability  
6 report and the time that we get the Phase 2  
7 application. And we can address that in a  
8 couple of different ways. I think the  
9 Commission could set a deadline. And it could  
10 be for each category as we get to them depending  
11 on what the dates are.

12           Or we could change our regulations  
13 such that (A) it's not only a withdrawal but  
14 also any additions. Once some action has been  
15 taken, it has to be approved by the Commission.  
16 So, we could do a change to that regulation as  
17 well by a Commission decision on a particular  
18 freeze period, if you will.

19           CHAIRMAN CROSBY: Why does it have  
20 to be tied to some action of the Commission?  
21 Why is that relevant?

22           MS. BLUE: The act of the Commission  
23 is what really puts sort of an end date. What  
24 we've done in our regulation is it contemplate

1 there will be a time in which suitability  
2 reports will be done. This is for the Phase 1  
3 suitability process. And it does support the  
4 idea that once we are done that that's how you  
5 get your snapshot in time.

6 But it does assume that after that  
7 certain point, there's some point afterwards  
8 when you look at it again. That I think we've  
9 addressed in the Phase 2 application when we ask  
10 the question. We contemplate we will have to  
11 put an end date. But I think that having the  
12 Commission's permission if the Commission  
13 determines that it is a good idea or there is a  
14 particularly important reason why they should  
15 have a qualifier, then the Commission should  
16 weigh in on it and approve it or not.

17 CHAIRMAN CROSBY: I don't think I  
18 quite follow that. Is there some reason -- It  
19 seems to me like the simplest, best thing to do  
20 would be to figure out what mechanism we use to  
21 say any change in a qualifier for a Category 2  
22 license between September 4 and the award of the  
23 license needs the approval of the Commission,  
24 period.

1 MR. ZIEMBA: To sort of boil it down  
2 more simply on the Category 2's, the September 4  
3 date would be later than the current date that  
4 we have for Category 2's. Because once the IEB  
5 reports are sent out to the applicants, then it  
6 requires the permission of the Commission to add  
7 those.

8 MS. BLUE: To do a withdrawal.

9 MR. ZIEMBA: To do a withdrawal.

10 MS. BLUE: We could make a  
11 determination that they were going to not take  
12 additional qualifiers after a certain date yes,  
13 we can do that. We can do that by a vote of the  
14 Commission pertaining to the Category 2's.

15 If we wanted to address this on a  
16 more global basis, we could make that change to  
17 our regulation. Where we already have a  
18 regulation that says when the Commission takes  
19 an action and whatever those actions are, after  
20 that date you need Commission approval. We  
21 could just add not only a withdrawal but an  
22 addition of a qualifier.

23 CHAIRMAN CROSBY: I understand.

24 It's stumbling on the same issue that

1 Commissioner McHugh and I were talking about.  
2 This doesn't have anything to do with an action  
3 taken by the Commission. This has to do with  
4 how much time we can reasonably have to make  
5 changes. So, let's don't confuse the things.

6           What we're talking about is we're  
7 willing to make changes. We understand changes  
8 are part of the deal. We don't want to get in  
9 the way of their being changes unless  
10 functionally we can't accommodate a change and  
11 still make our critical deadlines. That's all  
12 we're talking about is the time that's required  
13 to make a change --

14           COMMISSIONER CAMERON: Doesn't that  
15 language accomplish that goal?

16           CHAIRMAN CROSBY: No, because it  
17 ties it to when you send the application out,  
18 which is whenever you have passed suitability.

19           COMMISSIONER CAMERON: No, the  
20 report. So, in other words, the report says  
21 hypothetically that someone is suitable.

22           CHAIRMAN CROSBY: Then you've  
23 created a timeframe which is longer than we  
24 really need. We don't need to prohibit

1     qualifier changes starting July 11 because we've  
2     got plenty of time to make qualifier changes.

3             COMMISSIONER ZUNIGA: Remember the  
4     distinction between notification and approval.  
5     That's what you're concentrating on. After the  
6     determination of suitability, there's some minor  
7     changes there's a notification. Major changes  
8     may require approval. That's I guess, what we  
9     continue to struggle with, isn't it?

10            COMMISSIONER MCHUGH: Any change in  
11     a qualifier has to get IEB approval. Whatever.  
12     The question is the threshold question. Do you  
13     have to get permission to make the change and  
14     get it sent to the IEB for investigation.  
15     That's the issue. And that if I understand you,  
16     Mr. Chairman, ought to be driven simply by the  
17     time -- our capacity to do it in a timely  
18     fashion.

19            CHAIRMAN CROSBY: That's what it  
20     seems to me. You could take a different view.  
21     You could make it materiality or something.  
22     Maybe you don't want to change the entity. But  
23     that's a very different conversation than we've  
24     had. To me, I think it should be driven by when



1 we could reasonably expect to make that change.

2 COMMISSIONER CAMERON: We just have  
3 to figure out a mechanism to include that,  
4 right?

5 COMMISSIONER ZUNIGA: Isn't that the  
6 IEB? The IEB has to approve that. They will be  
7 the best ones to come back and say what they've  
8 presented, we may not have enough time.

9 COMMISSIONER CAMERON: The  
10 permission piece is not there now.

11 CHAIRMAN CROSBY: It's not the IEB  
12 approval. It's the Commission's approval.

13 COMMISSIONER CAMERON: Correct.

14 MS. WELLS: As a practical matter,  
15 the Commission may be very generous with these  
16 the approvals. So, it may not be a hardship on  
17 the applicants in the process.

18 CHAIRMAN CROSBY: What you're  
19 saying is what Commissioner Cameron was saying.  
20 You don't anticipate this is going to be a  
21 problem.

22 MS. WELLS: No.

23 CHAIRMAN CROSBY: What you're saying  
24 is everybody has been operating on sort of an

1 assumption that this is the case. And everybody  
2 is telling us don't worry, we understand that.  
3 But who knows what'll happen.

4 So, we need to have something that  
5 is clear and understandable on the table in the  
6 event that a qualifier change comes about after  
7 September 4.

8 Guy and Bob, do you have something  
9 you want to contribute to this conversation? Or  
10 do you just want to sit back there and chat for  
11 a while?

12 MR. MICHAEL: We were debating it.  
13 We were talking just a practical possibility and  
14 maybe we're going a little too far afield of  
15 this. As we understand what you're proposing,  
16 an applicant would have to come before you if it  
17 wants to make a change in its qualifiers prior  
18 to a given date. If you feel that you can't  
19 complete the suitability investigation in  
20 sufficient time, then you will deny their  
21 ability to make that change.

22 Won't the impact of that be that you  
23 will then be evaluating an applicant that will  
24 not be what that applicant will look like later

1 on? If you find that applicant without the  
2 change suitable, then two weeks later they make  
3 the change.

4 CHAIRMAN CROSBY: No, no. They  
5 don't just make the change.

6 MR. MICHAEL: They ask you to make  
7 the change. You're correct. But the only  
8 criteria you have for not allowing them to make  
9 change is you didn't have enough time.

10 CHAIRMAN CROSBY: Right.

11 MR. MICHAEL: You'll have enough  
12 time after the license is issued. So, what  
13 criteria will you use to not allow them to make  
14 the change? If they're making the change after  
15 the license is issued, what were you evaluating  
16 when you issued the license?

17 CHAIRMAN CROSBY: So, what's the  
18 consequence of that? If that were a persuasive  
19 argument, which I'm not sure it is, but if it  
20 were, what's the consequence?

21 MR. MICHAEL: The consequence is  
22 that you may issue a license to a structure that  
23 won't look like that at all.

24 CHAIRMAN CROSBY: No, no. So, your

1 solution to this problem is what?

2 MR. MICHAEL: They have to ask  
3 permission. But qualifiers, there has to be a  
4 recognition that qualifiers change. If there  
5 are proposing a material change in their  
6 application that you can't complete by the time  
7 of the suitability, I think you're only duty at  
8 that point will be to say we can't find you  
9 qualified. Not that we're going to evaluate you  
10 on the basis of what will be an antiquated  
11 structure but we just are not going to be able  
12 to find you qualified.

13 CHAIRMAN CROSBY: But what's the  
14 difference between that and saying no, we're not  
15 going to accept your application? Isn't it the  
16 same thing?

17 MR. MICHAEL: No. You're not  
18 accepting the application of the new qualifier.  
19 So, you're going to be evaluating on the old  
20 qualifiers.

21 COMMISSIONER MCHUGH: The practical  
22 effect will be if they want a change, they can't  
23 do it with the old setup. So, the practical  
24 effect would be to knock them out of box.

1                   CHAIRMAN CROSBY:  If they want to  
2                   make a material change in a qualifier during  
3                   that window of time that we say forget about it.  
4                   You're out as an applicant.

5                   COMMISSIONER ZUNIGA:  Yes, you don't  
6                   get awarded the license.

7                   MR. MICHAEL:  If you can't complete  
8                   that investigation in time or you could say that  
9                   they can ever make that change even going  
10                  forward.

11                  CHAIRMAN CROSBY:  That doesn't make  
12                  any sense.

13                  MR. MICHAEL:  No, that doesn't make  
14                  any sense.

15                  COMMISSIONER MCHUGH:  No, it doesn't  
16                  make any sense.

17                  CHAIRMAN CROSBY:  You're right.  I  
18                  think what you're saying is that there's a  
19                  certain arbitrariness that comes here.  Because  
20                  we finally come up against the deadline.  After  
21                  all of this time, we finally come up against the  
22                  deadline, which is a deadline we really don't  
23                  want to slip.

24                  And in order to do that, there are

1 certain arbitrary things that have to happen,  
2 like qualifier background checks. If they  
3 didn't get done in time that's life. You can't  
4 play. But to say that you're automatically out  
5 as an applicant because of that doesn't make any  
6 sense.

7 MR. MICHAEL: Just a simplistic  
8 hypothetical, you're evaluating an applicant  
9 that has qualifiers A, B and C. They apply to  
10 you two weeks ago to say they want to change A,  
11 B and C to D, E and F. Not the board of  
12 directors but major big and you say no you can't  
13 do that. So, what are you going to do then,  
14 evaluate A, B and C? They're not going to be  
15 there.

16 CHAIRMAN CROSBY: We're not  
17 evaluating A, B and C. They've already been  
18 found suitable. They have been found suitable.  
19 They are suitable. We are now evaluating the  
20 proposal that came before them. It's got  
21 nothing to do with suitability. We accept the  
22 proposal. Then they come along after the  
23 proposal. They get the license. And they want  
24 to give us D, E and F. We look at D, E and F.

1 If D, E and F are suitable, fine. If they  
2 aren't they still got A, B and C.

3 COMMISSIONER MCHUGH: Guy's point,  
4 as I understand it, is if A, B and C are no  
5 longer capable -- Let's say A, B and C are the  
6 money. And they no longer don't have to have  
7 assets to do it. Something's happened. There's  
8 a reversal.

9 CHAIRMAN CROSBY: That's a whole  
10 different story.

11 COMMISSIONER MCHUGH: Well, they say  
12 so we're going to substitute D, E and F. We've  
13 got new money. And we say no, you can't do  
14 that. We're going to evaluate the proposal as  
15 it already existed with A, B and C.

16 CHAIRMAN CROSBY: It fails.

17 COMMISSIONER MCHUGH: It fails but  
18 it would have succeeded with D, E and F.

19 CHAIRMAN CROSBY: We don't know  
20 whether it would have, because they're not found  
21 suitable. We will never know whether D, E and F  
22 or not. Those people are out of luck, because  
23 they had money in place. Their deal fell apart.  
24 There's a deadline. Those things happen.

1                   COMMISSIONER MCHUGH: Okay. That's  
2 a permissible result.

3                   MR. MICHAEL: In that set of facts,  
4 that works. But suppose they want to have  
5 additional financing and they get a new Wall  
6 Street institution or some kind of funds that  
7 they want to bring in and it's only two weeks to  
8 go?

9                   CHAIRMAN CROSBY: Let's walk that  
10 sample through. They say it's a change, doesn't  
11 make the deal viable or not. It's just a  
12 change. It's not the A, B, C versus the D, E,  
13 F. This is just an additional source of funds  
14 or a partial change or whatever. We say we  
15 can't assess that qualifier. So, forget about  
16 it. That qualifier is out.

17                   We then go ahead and make a decision  
18 on the license. That award gets made. Then  
19 they come in with their new qualifier and we  
20 either qualify them or they don't. But we don't  
21 -- Either one of two things. We don't throw  
22 them completely because we can't qualify them  
23 (A). And (B) we don't slip our license date to  
24 wait until we qualify them.



1                   COMMISSIONER CAMERON: Aren't we  
2 making this more complicated than it is with  
3 scenarios that aren't real? And if we just have  
4 the word permission, then we get to evaluate  
5 whatever the circumstance is when it occurs.  
6 One word change from notification to permission.  
7 And then whatever circumstance occurs we can  
8 evaluate at that time.

9                   I know I'm confused listening to  
10 these hypotheticals scenarios that may never  
11 occur in this circumstance. But we do have the  
12 ability to evaluate anything.

13                  MR. MICHAEL: I don't want to beat a  
14 dead horse or anything, but I think we're going  
15 to wait and talk about this concept of relative  
16 suitability.

17                  COMMISSIONER CAMERON: Yes.

18                  MR. MICHAEL: And I think that plays  
19 into this. The fact that A, B and C are  
20 unqualified or they don't have enough money but  
21 maybe they're not as good as D, E and F so they  
22 don't get the license. Whereas if D, E and F  
23 had been there, they would have gotten the  
24 license.

1                   CHAIRMAN CROSBY: It doesn't matter,  
2 Guy. D, E and F weren't there. There's a  
3 deadline. You can't bring in D, E and F after  
4 the deadline. That's life. They lose. You're  
5 right. They lose. And that's the end of it.

6                   MR. MICHAEL: So, we're not just  
7 giving permission to them and saying we'll  
8 evaluate you as you are if they're suitable but  
9 they could've been better another way. I  
10 understand where you're going. I just think is  
11 going to be a complication.

12                   CHAIRMAN CROSBY: I think Gayle said  
13 it right. As long as from September 4 to the  
14 award of the license, a qualifier change needs  
15 permission for the qualifier change from the  
16 Commission.

17                   COMMISSIONER MCHUGH: After  
18 listening to this, I think that's a good  
19 solution.

20                   MS. WELLS: I think the expectation  
21 is that the Commission would be reasonable and  
22 look at the circumstances and if something  
23 works, then they get the permission. So, I  
24 don't think it's as draconian as we might --

1                   CHAIRMAN CROSBY: The only thing  
2 that I'm wrestling with is just how do we get  
3 this done in time and try to maximize  
4 competition and be as flexible as we can but  
5 also make sure we get done in time. There's  
6 going to be a certain period of time when the  
7 timeframe is going to exert arbitrary decisions.

8                   Don't you dare bring up a new  
9 variable.

10                  MR. MICHAEL: You've convinced me.  
11 You're absolutely right.

12                  CHAIRMAN CROSBY: Now there's a  
13 consultant I can pay for.

14                  MS. BLUE: Director Day and I had  
15 sort of a side conversation. It's not a new  
16 variable, but one of the things we thought of  
17 might be a suggestion is rather than picking a  
18 September 1 date that maybe what the Commission  
19 does is between the period when you do your  
20 initial suitability report and the filing of the  
21 Phase 2 part of the application, you institute  
22 what I would call a freeze on change in  
23 qualifiers.

24                  Because when you get the Phase 2

1 application, if there are new qualifiers and  
2 there will be new financial sources, there is  
3 some time while the evaluation is going on for  
4 the IEB to look at any new qualifiers and make  
5 some recommendations before you do the final  
6 award.

7           So, in the interim period, you could  
8 say the Commission has to approve it. Or you  
9 could say you can't add a qualifier between the  
10 time of suitability and the RFA-2 just to give  
11 the IEB some breathing space and to get things  
12 done. But we did contemplate in the RFA-2  
13 applications that there would be new sources of  
14 funding. There might be additional qualifiers.  
15 And there is that period which perhaps the IEB  
16 would have the time to look at it if there were  
17 an addition or a new financial source.

18           COMMISSIONER MCHUGH: Why would a  
19 freeze between the time of the -- for that  
20 interim period, why would that do anything that  
21 would be of utility?

22           CHAIRMAN CROSBY: Except take the  
23 time away from doing the background checks?

24           MS. BLUE: That is a valid point. I

1 think the bigger concern as we've discussed is  
2 sort of the period you have now when we're  
3 trying to get to the suitability reports, get  
4 them done and get at least a first pass on it.  
5 You don't want someone to come in two days  
6 before and say I'm adding someone new. So,  
7 maybe that's not the timeframe.

8 I think there's a more limited  
9 timeframe that the Commission can say we're not  
10 going to consider something now but then as part  
11 of a broader timeframe, you do consider it as it  
12 comes up. You do make your review.

13 CHAIRMAN CROSBY: I think,  
14 Catherine, that that would be part of we would  
15 say. If somebody applied during that window,  
16 applied for a change and the staff said to us,  
17 we are totally swamped. We are hitting the  
18 deadlines for the Category 1's. Half of the  
19 world of our staff is in Macau. We couldn't  
20 possibly get it done. Or if we did, something  
21 else would have to slip and we'd miss a Category  
22 1 deadline. Then we would deny that change.  
23 But if they could do it, why would we interpose  
24 an arbitrary window when we say no? It doesn't

1 make sense. It's all about time and efficiency.  
2 That is the only variable here. Do we have the  
3 capacity to get this done without screwing up  
4 our schedule?

5 COMMISSIONER CAMERON: Again, that  
6 gets back to the snapshot. Right now here's the  
7 report, hypothetical someone is suitable. Then  
8 a qualifier changes. And we are obligated to  
9 look at it and that may change. This person may  
10 not be suitable.

11 So, I think we're saying same the  
12 same thing. We're just trying to avoid this  
13 major change where it would make it impossible  
14 to keep the deadlines. And I think we can do  
15 that with the word just get our permission.  
16 That's all.

17 COMMISSIONER MCHUGH: If we had a  
18 rule that said after such and such a date,  
19 September 4, that any change in a qualifier  
20 could only be accomplished with the Commission's  
21 lead.

22 CHAIRMAN CROSBY: An application for  
23 -- Right, correct.

24 COMMISSIONER MCHUGH: They'd have to

1 apply to get the Commission's permission to  
2 change a qualifier. Once we change the  
3 qualifier, that would be your concern. I would  
4 be prepared to make a motion to that effect.

5 CHAIRMAN CROSBY: Yes.

6 COMMISSIONER MCHUGH: September 4  
7 the date we're looking at. Is there any other  
8 date?

9 COMMISSIONER ZUNIGA: Is that tied  
10 to Category 2's or it's for everybody?

11 CHAIRMAN CROSBY: Category 2's.  
12 This is only for Category 2.

13 COMMISSIONER ZUNIGA: Category 2 it  
14 is.

15 COMMISSIONER CAMERON: Is it  
16 September 4 or is it after initial suitability?

17 MS. WELLS: Or I'm wondering why not  
18 do it now, because that helps me. I'm doing  
19 these investigations right now and they are  
20 fluid. If for example right now if there's a  
21 change, they'd have to go to the Commission for  
22 permission. That actually helps me because --  
23 And I expect there will be changes. And if they  
24 make their cases and it's reasonable then you

1 can go ahead. I don't know the magic of the  
2 September 4 date.

3 CHAIRMAN CROSBY: I just made up  
4 September 4. That's totally fungible. The only  
5 thing is this is a change. We are making a  
6 change.

7 MR. ZIEMBA: Mr. Chairman, my  
8 recommendation would be why don't we have staff  
9 -- because obviously, there's a bunch of  
10 different ideas that are coming about as a  
11 result of this discussion. By the next meeting  
12 when we come together, why don't we take a look  
13 at what the existing regulation says, how the  
14 September 4 date would impact what already  
15 occurs with the existing regulation, whether or  
16 not we need that, a new portion of the  
17 regulation that deals with additions rather than  
18 subtractions. Whether or not the hard and fast  
19 deadline of September 4 is workable for the  
20 Category 1's. It may be workable for the  
21 Category 2's. And why don't we come back with a  
22 recommendation that is a little bit more well  
23 formulated.

24 CHAIRMAN CROSBY: Fine.



1 COMMISSIONER CAMERON: Good idea.

2 MR. ZIEMBA: This has been a  
3 tremendously useful conversation as a message to  
4 the community that we're dealing with that  
5 people need to really bear down now, because we  
6 have constraints on our resources. So, to the  
7 degree they need to make internal decisions now,  
8 they should be making those decisions now rather  
9 than a month or two months.

10 CHAIRMAN CROSBY: Fine. Good idea.  
11 This meeting, on the 11th, is looking like a  
12 big one.

13 COMMISSIONER ZUNIGA: We have  
14 another topic, right?

15 CHAIRMAN CROSBY: Yes, I would say.

16 COMMISSIONER ZUNIGA: I need a break  
17 before that.

18 CHAIRMAN CROSBY: Do we want a lunch  
19 break? It's now quarter to one. And we have  
20 the suitability assessment discussions, which  
21 are going to be substantial. So, I'll do  
22 whatever. We can take just a 15-minute break.  
23 We could take a half hour lunch break. I'll do  
24 whatever you guys want. Is Janice here? Is

1 there food in the building somewhere?

2 MS. REILLY: No.

3 CHAIRMAN CROSBY: No food in the  
4 building. Okay. Are the bathrooms still open?  
5 Let's break until one o'clock and I guess we're  
6 just going to try to bear on through without  
7 sustenance.

8

9 (A recess was taken)

10

11 CHAIRMAN CROSBY: Do you want to  
12 introduce this topic?

13 MS. WELLS: Yes, I do. I would like  
14 to introduce you to Steven Ingis from Spectrum  
15 Gaming, one of our consultants. We have Guy  
16 Michael and Robert Carroll from Michael &  
17 Carroll the other consultant team. Given that  
18 we are getting close to doing the official  
19 suitability reports for the Category 2  
20 applicants, I thought it would be appropriate to  
21 go through what the investigative process is for  
22 the Commissioners and also for the members of  
23 the public so they know what's been going on  
24 behind the scenes and what to expect.

1 I will give an overview of the  
2 investigative process. And then we can also get  
3 into a discussion about suitability and what  
4 you're looking for and what the criteria is.  
5 And things to consider when evaluating  
6 suitability. So, we can have that kind of open  
7 free form discussion for the benefit of the  
8 Commissioners. And we have the consultants here  
9 who have that expertise in gaming and a lot of  
10 experience in this area as a resource for you to  
11 work out some of these questions you may have.

12 So, I'll just start. Pursuant to  
13 Massachusetts General Laws Chapter 23K, section  
14 12 the Investigations and Enforcement Bureau of  
15 the MGC was tasked with consulting a suitability  
16 investigation for each of the applicants for the  
17 gaming licenses at issue here.

18 The Gaming Commission recognized  
19 these types of investigations were unprecedented  
20 in Massachusetts, and that it would be  
21 impractical to staff these investigations  
22 internally under the expected timeframes for  
23 licensure. Accordingly, recognizing the need  
24 for expertise in this area, the Commission

1 posted a request for response in order to obtain  
2 the services of expert gaming investigators to  
3 work with the IEB in this process.

4           There were two responses received by  
5 the Gaming Commission. And they the award to  
6 the joint application for the consulting firms  
7 of Spectrum Gaming and Michael & Carroll.  
8 Representative are here for you today.

9           Spectrum Gaming is an independent  
10 research and consulting firm entrusted by gaming  
11 commissions around the world to conduct entity  
12 and individual due diligence of casino  
13 applicants. The investigative team is headed by  
14 managing director, Frederic Gushin, a former  
15 assistant attorney general with the New Jersey  
16 Gaming Enforcement, and includes law enforcement  
17 personnel, former gaming regulators, attorneys,  
18 CPAs, analysts and former journalists.

19           Spectrum has provided investigative,  
20 regulatory and other services to governments in  
21 14 U.S. states and territories and international  
22 governments in Asia, Europe and the Caribbean.

23           Michael & Carroll is a New Jersey  
24 based law and consulting firm with extensive

1 experience in the area of gaming investigation.  
2 The principals, Guy Michael and Robert Carroll  
3 have personally conducted and/or supervised  
4 thousands of gaming applicant background  
5 investigations over the last 30 years. Michael  
6 & Carroll investigative group features a  
7 structured team of 19 investigators including  
8 retired FBI, state police, state investigators,  
9 gaming financial specialists, gaming attorneys,  
10 and other support personnel who have all worked  
11 on highly complex investigations for decades.

12 There are over 100 investigators  
13 coupled with the IEB personnel including the  
14 Massachusetts State Police who are working on  
15 all of these investigations.

16 For the purposes of the upcoming  
17 suitability reports, over the past several  
18 months, the IEB has supervised the contract  
19 investigative personnel and the Massachusetts  
20 State Police Gaming Enforcement Unit while they  
21 work together to conduct the statutory required  
22 suitability and background investigations.

23 This process commenced with a scope  
24 of licensing determination based on each

1 applicant's organizational structure. The  
2 interested parties were permitted to submit  
3 briefs and memoranda detailing the entities and  
4 individuals they believed were required  
5 qualifiers along with those they were statutory  
6 eligible to be waived from qualification.

7 The IEB, MSP and investigative staff  
8 participated in various meetings with the  
9 applicants to determine which entities and  
10 individuals required qualification as far as the  
11 RFA Phase 1 licensing process. After careful  
12 review of materials and discussions, the  
13 entities and individuals identified in the  
14 investigative reports that you will receive were  
15 required to qualify in accordance with the  
16 filing requirements established at 23K section  
17 14 and 205 CMR 116.02.

18 It should be noted that the  
19 applicants were given the opportunity to object  
20 to these determination and after review the IEB  
21 finalize this list of qualified applicants.  
22 That is we've had this discussion. This is an  
23 ongoing fluid process about qualifiers. And we  
24 are continuing to work with those entities and

1 their qualifiers.

2           The criteria used by the IEB in  
3 determination of who was going to be a qualifier  
4 is set forth in statutory provisions governing  
5 the scope of licensing issues. Additionally,  
6 the IEB applied all relevant sections of the MGC  
7 own regulations, specifically 205 CMR 116.01 to  
8 116.03 inclusive.

9           After the initial scope of licensing  
10 was determined, applicants then complied with  
11 the submission of the required application  
12 materials, privacy and liability waivers, the  
13 application fee and all information requested  
14 during the course of the comprehensive  
15 investigation of each qualifier.

16           The IEB also advised the applicant  
17 that it is required to establish suitability of  
18 all financial sources relating to the gaming  
19 establishment. All of these financial sources  
20 may not be known at this juncture, and any  
21 additional financial sources will need full  
22 disclosure, background and suitability  
23 investigation and evaluation when identified by  
24 the applicant. If the applicant approves the

1 applicant's -- Pardon me. If the Commission  
2 approves, the applicant advances to the Phase 2  
3 process.

4 As you know as part of the Phase 2  
5 application there is requirements of further  
6 scope of their project and their licensing. And  
7 we expect we can get a more detailed analysis of  
8 their financial situation at that time as well.

9 In order to achieve Phase 1  
10 suitability, an applicant for a casino gaming  
11 license and any person or entity deemed a  
12 qualifier pursuant 23K section 14 must provide  
13 all required application materials relevant to  
14 Phase 1 evaluations as well as satisfy the  
15 relevant statutory suitability criteria set  
16 forth in Massachusetts General Laws chapter 23K  
17 section 12 and 16 of the Act.

18 The standard for satisfaction of the  
19 suitability criteria requires that each  
20 applicant and qualifier to establish its  
21 qualifications for licensure by the Commission  
22 by clear and convincing evidence. The various  
23 statutory criteria with appropriate annotations  
24 are listed below.



1           So, these are the statutory criteria  
2 that members of public may be interested in.  
3 These are things that the Commission and the  
4 IEB, they're looking at when they're looking at  
5 is someone qualified to proceed in the process.

6           So, the questions are: Has the  
7 applicant or qualifier been convicted of a  
8 felony or other crime involving embezzlement,  
9 theft fraud or perjury? Has the applicant or  
10 qualifier submitted an application for a gaming  
11 license which contains false or misleading  
12 information?

13           Has the applicant qualifier  
14 committed prior acts which have not been  
15 prosecuted in which the applicant qualifier was  
16 not convicted or formed a pattern of misconduct  
17 that makes the applicant unsuitable for a  
18 license under the chapter?

19           Does the applicant or qualifier have  
20 affiliates or close associates that would not  
21 qualify for a license or whose relationship with  
22 the applicant may pose an injurious threat to  
23 the interests of the Commonwealth in the  
24 awarding of a gaming license to the applicant?

1                   Does the applicant or qualifier  
2 demonstrate integrity, honesty, good character  
3 and reputation? Does the applicant or qualifier  
4 demonstrate financial stability, integrity and  
5 background?

6                   Do the business practice and the  
7 business ability of the applicant or qualifier  
8 demonstrate the capacity to establish and  
9 maintain a successful establishment? Does the  
10 applicant or qualifier have an adverse history  
11 of compliance with gaming license requirements  
12 in other jurisdictions? Is the applicant or  
13 qualifier a defendant in litigation involving  
14 its business practices?

15                   Are all of the parties and interest  
16 including but not limited to affiliates, close  
17 associates and financial sources suitable to  
18 hold or participate in the gaming license? Is  
19 the applicant or qualifier disqualified from  
20 receiving a license under Massachusetts General  
21 Laws chapter 23K section 16?

22                   Has the applicant or qualifier  
23 failed to establish their integrity or the  
24 integrity of any affiliate, close associate,

1 financial source or any person required to be  
2 qualified by the Commission? Has the applicant  
3 or qualifier failed to demonstrate responsible  
4 business practices in any jurisdiction?

5 Has the applicant or qualifier  
6 failed to overcome for any other reason as  
7 determined by the Commission as to why it would  
8 be injurious to the interests of the  
9 Commonwealth in awarding the applicant a gaming  
10 license? And has the applicant or qualifier  
11 made any political contributions prohibited by  
12 Massachusetts laws chapter 23K?

13 Those are the statutory criteria.  
14 Those are the kinds of questions that the  
15 investigators are looking at when they're doing  
16 these investigations.

17 Now, going forward to the  
18 investigative process. I'll list below some of  
19 the steps, all of the steps that the  
20 investigators are taking when they're looking at  
21 these applicants. This process is extremely  
22 thorough. The qualifying entity must provide  
23 information to the investigators in order to  
24 prove their suitability. As I stated before,

1 the burden is on the applicant.

2           While the following items that I'm  
3 going to describe each contain specific areas of  
4 inquiry, such information is gleaned from many  
5 different and diverse databases. These services  
6 are initially focused on specific areas. For  
7 example, civil litigations, criminal conviction  
8 information, real estate and title records, etc.  
9 And then it's expanded as needed depending on  
10 the results.

11           If information is revealed then it  
12 is accumulated, cross-referenced and compiled  
13 into workable summaries for careful evaluation  
14 by analysts.

15           Thereafter from this mass of  
16 information, a database report is derived on  
17 each applicant or qualifier, and is then  
18 reviewed by a supervisor and a field  
19 investigator. And follow-up verifications of  
20 relevant important data, for example, licenses,  
21 compliance histories etc. And areas of concern  
22 are then the subject of follow-up investigative  
23 activities.

24           Qualifiers are interviewed in

1 person. And that interview is an opportunity to  
2 provide clarification on any issues in the event  
3 derogatory information is found during the  
4 investigation.

5 Next, an attorney review of the  
6 investigative results is conducted followed by  
7 detailed consultation between the legal and  
8 investigative teams. The materials are digested  
9 into a suitability report, which is submitted to  
10 final review to me, to the Massachusetts State  
11 Police and staff.

12 So, when a suitability report is  
13 completed, these are some of the things that the  
14 investigators have done in order for a complete  
15 investigation: public record database checks,  
16 which include but not limited to the  
17 following --

18 CHAIRMAN CROSBY: Let's not go  
19 through every one of those. I think it's worth  
20 saying the numbers but not the letters. And it  
21 may save you some time.

22 MS. WELLS: I can go through. The  
23 status of all current and expired licenses,  
24 especially gaming licenses of the entity or

1 individual person qualifiers have been verified.  
2 A compliance history of the applicant and/or  
3 owner's parent company or gaming related  
4 affiliates or subsidiaries in all gaming  
5 jurisdictions in which they operate have been  
6 examined and evaluated.

7           The company website and affiliated  
8 websites are examined and evaluated. As  
9 relevant, copies of stock certificates verifying  
10 each beneficial owner the company as well again  
11 if relevant copies of stock registry from the  
12 corporate secretary or registered agent are  
13 obtained. Verifications of the various  
14 qualifier entities and individual person  
15 qualifiers ownership interests are verified.

16           A certified public accountant  
17 conducts a financial integrity and stability  
18 analysis of the applicant owners and specific  
19 applicant affiliated entities relevant to the  
20 new applicant entities creation information.  
21 And a critical review of the owner's annual  
22 financial statements and tax entities are  
23 disclosed.

24           We also looked at compliance with

1 the Foreign Corrupt Practices Act and anti-  
2 money-laundering policy and protocol. An  
3 applicant policy and procedures as well as a  
4 sampling of internal and/or external  
5 investigations of relevant compliance  
6 hypothetical scenarios are included in the  
7 subjects of personal interviews with key owners,  
8 qualifiers and those were evaluated.

9 For publicly traded companies, a  
10 review of all noted checks and critical  
11 Securities and Exchange Commission filings  
12 including quarterly filings and annual reports  
13 filed by the company for the past three years is  
14 conducted. A check with the SEC and state  
15 security officials as to the applicant and any  
16 investigations conducted by these agencies over  
17 the past 17 years was performed.

18 For international companies and  
19 subsidiaries, steps are taken to replicate the  
20 investigatory steps for domestic entities and  
21 were executed to the extent possible.

22 The beneficial ownership of the  
23 entity is determined. And if applicable, a copy  
24 of the stock registry for the company's

1 registered agent is secured. A media search of  
2 the country where the applicant is incorporated  
3 and headquartered as well as the major countries  
4 where the company engages in business activity  
5 is also conducted.

6 They check the motor vehicle  
7 registrations, driver's license and driving  
8 history. Those are examined and verified. The  
9 investigative team also examines the applicant's  
10 and the qualifier's past business practices and  
11 business ability as well as qualifier's  
12 demonstrated history to launch and maintain a  
13 successful gaming establishment.

14 The applicant's or qualifier's  
15 history of compliance with gaming regulations is  
16 assessed. The applicant or qualifier's  
17 litigation history is assessed. The applicant  
18 or qualifier's record of political contributions  
19 in Massachusetts and if relevant other  
20 jurisdictions is assessed.

21 The Massachusetts State Police also  
22 conduct a federal -- thorough federal, state,  
23 and Commonwealth criminal history inquiry based  
24 on the applicant or qualifier's submission. And



1 also processes fingerprint examinations on all  
2 natural person qualifiers. And an inquiry is  
3 conducted to determine if any information  
4 existed in any databases online or available to  
5 law enforcement or regulatory sources regarding  
6 any applicant or qualifier involvement or  
7 affiliation with any organized criminal groups  
8 or persons with criminal history.

9           Each individual person qualifier's  
10 educational background is examined and verified.  
11 Each individual person qualifier's employment  
12 was examined and verified as necessary. All  
13 personal references for individual person  
14 qualifiers were conducted and interviewed.

15           All professional licenses of  
16 applicant qualifiers were examined and verified  
17 including specific verification of any gaming  
18 industry related licenses, permits or  
19 suitability determinations and applicant  
20 business affiliations for applicant entities and  
21 individual person qualifiers were examined and  
22 evaluated.

23           I realize that it's been long-  
24 winded. And I recognize it's somewhat of a list

1 for you to consider, but I think it's important.  
2 Given the scope of the investigation and given  
3 the cost of the investigation for the  
4 Commissioners and the public to know how  
5 extensive this was and the type of things that  
6 they were looking for.

7 As I said, there was over 100  
8 investigators that were working on this process  
9 and that have done that not only for the spots  
10 applicants but also considering doing --  
11 continuing to do that work for the Category 1  
12 applicants.

13 As we discussed prior, they will  
14 continue to investigate the background and  
15 qualifications of all applicants and ultimately  
16 all licensees. Suitability is an ongoing  
17 process. Although we take a snapshot for the  
18 report for you, the job does not end there. We  
19 continue to look at all of the applicants and  
20 assess suitability. Should additional  
21 information be gleaned from further inquiry, it  
22 would be appropriately reported to the  
23 Commission for further review.

24 It should also be understood that

1 any determination of suitability that might be  
2 made by the Commission based on this criteria in  
3 the report during the Phase 1 process will not  
4 constitute the final analysis in these matters.  
5 The suitability report becomes a part of the  
6 material considered part of the Phase 2 of the  
7 application evaluation process. As the  
8 Commission is empowered to also consider  
9 relative suitability of applicants when it makes  
10 its final license decision at the end of Phase  
11 2.

12 I think that's important that the  
13 information that you're getting in these report  
14 is also something that's going to be part of the  
15 package for Phase 2. So, all of that  
16 information still is relevant and still can be a  
17 part of the evaluation process for the ultimate  
18 license decision.

19 So, that's generally sort of the  
20 overview of what we've been doing, the  
21 background for what goes into those reports. I  
22 have the consultants with me today. We thought  
23 it would be helpful to have a discussion based  
24 on this investigative process what the

1 Commission is going to be looking at and some of  
2 the things, some of the hypotheticals of what  
3 they may be consider. So, I'd open that up for  
4 discussion.

5 MR. MICHAEL: Okay. I'll start if  
6 it's okay. We've discussed a number times that  
7 our view of the evaluation of these kinds of  
8 applications is really based on what is  
9 typically called a predictive judgment.

10 None of these statutory or  
11 regulatory criteria of the licensing process are  
12 intended to be penal in nature. It's not that  
13 you're looking at applicants and determining  
14 whether because they engaged in some misbehavior  
15 in the past, we're going to punish you for  
16 having done that and we're not going to give you  
17 a license.

18 The evaluation basically needs to  
19 take a look at the entirety of a person's  
20 experience, what kind of lifestyle have they  
21 lived? How have they demonstrated their  
22 character? And to then evaluate from that basis  
23 whether they can be trusted to act in a way that  
24 you would expect a good licensee to behave.

1 Will they follow the regulations?  
2 Will they be good citizens of the community?  
3 Will they give the Commonwealth the reputation  
4 that it deserves?

5 So, there isn't any single factor.  
6 The statute does talk about some criminal  
7 records that are automatic disqualifications.  
8 And those are legislative judgments that if a  
9 person engaged in that kind of activity, they  
10 just can't be trusted. But apart from those,  
11 there is really no single factor that you will  
12 be looking at or that we could present to you  
13 that automatically says this person is qualified  
14 or this company's qualified and this company is  
15 or is not.

16 It's a very subjective evaluation.  
17 And the standards that you seek to impose are  
18 those that have to take in a variety of both  
19 integrity and policy and policy factors. What  
20 do you want future applicants to -- how do you  
21 want them to view Massachusetts? How much are  
22 you going to take into account the regulatory  
23 records ex-prior licensing in other  
24 jurisdictions? Candidly, what weight will you

1 give to different jurisdictions in terms of  
2 whether they've licensed the company or not?

3           And a whole set of variables that we  
4 wish we could give you a checklist that you  
5 could just check off and say yes, no, yes, no.  
6 But unfortunately, it gets a lot more  
7 complicated than that. And suitability in some  
8 people's eyes may not be suitable in another.

9           There's a line in one of the casino  
10 license decisions that we refer to a lot that  
11 says that the character is that thread of  
12 intention that runs through the course of a  
13 person's lifetime. And they said poetically, I  
14 guess, is what you have to be looking at. What  
15 kind of person is this? It's not an easy  
16 judgment to make, but it's the judgment that  
17 you've being asked to make.

18           MR. CARROLL: I would just like to  
19 add a couple of things. Guy has, I think,  
20 mentioned some very important standards that  
21 obviously you'll be applying. I may just to  
22 finish out a portion of Karen's presentation.

23           This is our first meeting back  
24 before you after being involved in several very,

1 very intense months since these applications  
2 were received on January 15. To be very candid,  
3 the team that we put together has been  
4 exceptionally dedicated. The hours and the time  
5 and the weekends and the afterhours have been  
6 tremendous.

7           And your confidence in allowing us  
8 -- providing us the resources to conduct a full  
9 and complete investigation was much appreciated.  
10 I think some of this we only have to really say  
11 once, because we'll be back in front of you for  
12 the next several months presenting these  
13 suitability materials.

14           Just to give you a little more scope  
15 of some of the things that were done so that the  
16 record is complete in this regard. Just at a  
17 quick count, our people have been and Spectrum  
18 I'm sure can supplement this, we've been to 17  
19 states. We've been to Canada, Macau, Great  
20 Britain. And we've had a number of issues have  
21 come up that we've had to run down.

22           In some cases new issues that have  
23 not been present before in other jurisdictions.  
24 And as part of that among the states we've

1 submitted either MOU requests or requests for  
2 information. But the important part is we had  
3 to start by building a foundational basis for  
4 Massachusetts Gaming Commission to be on the  
5 map.

6 To create that level of demonstrated  
7 competence and confidence that they could have  
8 that what was being done in Massachusetts was  
9 being done to the highest standards. That was  
10 the bar you all set. That is what we instructed  
11 our people have maintained, the climate that our  
12 people must maintain. That's field  
13 professionalism. That's dealing with the  
14 applicants. Many of these applicants have been  
15 through this grist mill many times.

16 I know that some of them had  
17 questioned at some point about is it necessary  
18 to go back and examine the details of each of  
19 these qualifiers? And a decision was made by you  
20 all that you only get once to start this  
21 process. And we have seen some of the  
22 situations in other jurisdictions where they had  
23 stumbled. And they've recovered and they right  
24 themselves. But your mission was to not have



1 any stumbles. And you aggressively go the extra  
2 mile. And we believe we followed that.

3 Certainly, when you read these  
4 materials, you'll see there are details in there  
5 and you may have findings and concerns that you  
6 want us to follow-up on. And there will be  
7 processes that we discuss perhaps today and in  
8 the future weeks about that.

9 The reports we've got back from  
10 dealing with the other agencies in 17, 18 states  
11 and the other countries is going very well.  
12 There's been very good reception of the  
13 Massachusetts Gaming Commission.

14 I just want to give kudos to Karen.  
15 She's been a tremendous source of strength for  
16 everyone in terms of dealing with changes in  
17 direction, changes in issues that these  
18 investigations take you down. And we do  
19 appreciate your assistance and your direction  
20 and your expertise. It's been a very calming  
21 influence.

22 I just wanted to add those things.  
23 You are off to a good start to lead the  
24 industry. I don't know what feedback you're

1 getting on our particular group. But we hope  
2 that if there's anything that's ever done out  
3 there that is in any way something that you wish  
4 shouldn't be done, should be corrected,  
5 certainly we'll seize upon that and make certain  
6 corrections. But we've been very studious in  
7 trying to adhere to those levels of  
8 professionalism.

9           The last thing I just wanted to  
10 mention on is in going forward with all of the  
11 suitability investigations is that they don't  
12 stop. As we've said many times it's a fluid  
13 aspect. Suitability is continuing to have an  
14 obligation not only in an unfortunate change of  
15 circumstances or a change whether it's the  
16 qualifiers, the players, the structure, whatever  
17 it may be.

18           So, there is a fluid aspect to this.  
19 We believe that the database that we built that  
20 would be the formation of the IEB's origin of  
21 information going forward. Regardless of what  
22 the final decisions are on these applicants,  
23 you're going to have a real body of information  
24 that you'll have in your file and be able to

1 refer upon.

2           As these entities we expect to  
3 develop, enlarge and flourish that you'll always  
4 have a database that when we all move on that  
5 you'll have something to be proud of and very  
6 confident in our product. So, just thank you  
7 for that opportunity.

8           MR. INGIS: First I wanted to kind  
9 of hold onto the comments that Guy and Bob gave,  
10 particularly the respect, the appreciation of  
11 Karen's ethics throughout this whole process.

12           I'm going to take a bit of a  
13 different path. You've been presented what the  
14 licensing standards are, the statute and  
15 regulations have been clear.

16           I think the next issue that you need  
17 to determine is how you're going to go about  
18 evaluating such standards in terms of the nature  
19 of the hearing process that you envision. That  
20 could take different forms. You've had an  
21 opportunity, at least preliminarily to review  
22 the investigative reports on the Category 2  
23 applicants.

24           You've noticed and observed that

1 there are significant issues raised that  
2 potentially impact on findings of suitability.  
3 The initial threshold question you need to  
4 answer amongst yourselves is whether those  
5 significant issues rise to a certain level that  
6 you believe you cannot make a positive finding  
7 of suitability without having an evidentiary  
8 hearing at which time the applicant, whether  
9 it's the entity, representatives for it,  
10 particular individual qualifiers need to  
11 demonstrate to you through their testimony that  
12 they have thoroughly established their  
13 suitability under the law.

14 Alternatively, you may determine  
15 that the issues do not rise to that level. And  
16 that you are able to reach a decision on  
17 suitability based on a review of the background  
18 report and the question-and-answer process that  
19 necessarily will proceed at the public hearing.

20 Many jurisdictions have taken that  
21 latter approach and have forwarded contested  
22 cases to hearing examiners. I believe in  
23 Massachusetts the determination has been made  
24 that the Commission will hear all contested

1 cases. So, if there is a hearing qualifier that  
2 you believe needs to have an evidentiary  
3 hearing, that hearing would take place in front  
4 of the full Commission as part of the entity's  
5 license of suitability.

6 MS. WELLS: My expectation is that I  
7 will submit the final version of the suitability  
8 reports with a recommendation from me. If the  
9 recommendation is an unconditional positive  
10 determination of suitability, then that will go  
11 to that hearing. The applicant may waive the  
12 adjudicatory hearing and just go to a public  
13 hearing.

14 If there's not an unconditional  
15 recommendation of suitability, then they do not  
16 have that option to waive the adjudicatory  
17 hearing. It goes to the adjudicatory hearing.  
18 So, the expectation is that depending on what  
19 the recommendations is from the IEB, it could  
20 either go to the public hearing or an  
21 adjudicatory hearing in which case there will be  
22 --

23 CHAIRMAN CROSBY: So, the option of  
24 adjudicatory, given that it's adjudicatory

1 unless the bidder waives it, right?

2 MS. WELLS: Correct.

3 CHAIRMAN CROSBY: But we can also  
4 not permit them to waive it?

5 MR. INGIS: Based on the way the  
6 statute is written, if the IEB makes a  
7 recommendation that suitability cannot be found  
8 without an adjudicatory hearing, it would  
9 automatically have to go to an adjudicatory  
10 hearing.

11 CHAIRMAN CROSBY: Okay.

12 MS. WELLS: So, it's really that  
13 unconditional finding of suitability.

14 MR. INGIS: Just to elaborate a  
15 little bit, if you do have a public hearing and  
16 it's considered not to be an adjudicatory  
17 hearing, it still remains a possibility,  
18 although usually remote that you may find that  
19 the answers are not satisfactory. And you  
20 believe that you need to have an evidentiary  
21 hearing at which time you would then bifurcate  
22 the proceeding. That is a possibility. So, you  
23 need to be aware of that.

24 MS. WELLS: Some of the issues that

1 may that come up and leave to the Commission's  
2 discretion would be that the association of  
3 qualifiers with individuals of questionable  
4 character, less than impressive business  
5 practices, tax evasion, tax avoidance practices.

6 One of the other issues that I think  
7 may be important for the Commission to sort of  
8 hash out in discussion is the importance of  
9 business practices and associations in other  
10 jurisdictions, both domestic and international.

11 We have entities that are applying  
12 for licenses both the Category 1 and Category 2  
13 that do business in other places. And it would  
14 be helpful for the IEB just going forward to  
15 know what is the Commission's thinking on that?  
16 How important is what their business practices  
17 are in other jurisdictions in the United States  
18 or internationally in making that evaluation?

19 The other issue is misinformation in  
20 application forms. How important is it that the  
21 application form be accurate, be it  
22 intentionally or unintentionally providing  
23 misinformation on the application form?

24 Those are some of the issues that I

1 throw out for discussion if the Commission has  
2 interest in sort of hashing that out. These are  
3 some of the issues that in any kind of  
4 suitability investigation in any jurisdiction  
5 that are going to come out. I am not referring  
6 to anything in particular, a particular  
7 applicant at this point.

8 MR. INGIS: And I think it's  
9 important to remember that there is no  
10 particular rule of thumb. For example, in  
11 considering a particular business transaction,  
12 the Commission may have serious concerns about  
13 an applicant having entered into a business  
14 contract with a particular individual or entity.

15 Now the remedy to that might be that  
16 the termination of that particular business  
17 contract is deemed by the Commission to be  
18 sufficient to then proceed to a finding of  
19 suitability.

20 Conversely the Commission may decide  
21 that that business association is so unfavorable  
22 for a finding of suitability that even its  
23 termination cannot dissipate the taint of that  
24 association. So, those are some of the things



1 that you need to sit on a case-by-case basis.

2 COMMISSIONER CAMERON: Director  
3 Wells, I had a couple of comments on your  
4 discussion points. First is, I think it's very  
5 important the manner in which business is  
6 conducted anywhere in the world.

7 Along those lines, in reading the  
8 reports I was wondering, and it seemed like it  
9 may been somewhat difficult to ascertain  
10 information to the same degree. We don't have  
11 the same relationships obviously. We have  
12 MOU's. We have relationships with other police  
13 agencies in this country. How difficult was it  
14 in other jurisdictions around the world to  
15 obtain the information needed?

16 MS. WELLS: I would agree that  
17 international jurisdictions are more difficult  
18 than domestic. Some jurisdictions are easier  
19 than others. Generally, it runs the gamut. The  
20 consultants, both groups, have connections all  
21 over the world. That's been helpful to us.  
22 Those relationships in other jurisdictions  
23 helped us obtain information. I'll defer to  
24 them.

1 MR. MICHAEL: As Karen has rightly  
2 said, every jurisdiction is little bit  
3 different. Some are very open and very willing  
4 to cooperate. And as Karen said, we know people  
5 in some of those agencies and are able to make  
6 a personal contact they can open things up.

7 On the other hand, there are some  
8 agencies, some domestic but many foreign where  
9 there simply a privacy laws and other  
10 confidentiality restrictions that prevent them  
11 from providing us as much detail as we may have  
12 wanted. We do get release authorizations from  
13 the applicants so that they have given us their  
14 consent to release any information about them  
15 that we can find from any institution or agency.  
16 But despite that, there are some state laws and  
17 foreign laws that just prevent people from or  
18 the officials from providing everything with  
19 might like.

20 So, obviously, we do the best we  
21 can. And in that regard, as Steve's pointed  
22 out, it is a burden on the applicant to  
23 demonstrate their suitability by clear and  
24 convincing evidence. If you are uncomfortable

1 with some factor that is reported that we were  
2 unable to pin down, there is no burden of proof  
3 on your part.

4 You don't have to prove that there  
5 is something wrong going on. They have to prove  
6 that everything they've done is okay. If they  
7 are unable to do that because there is missing  
8 information that is something you can take into  
9 account in your evaluation.

10 COMMISSIONER CAMERON: The second  
11 point, Director, that you brought up was missing  
12 information from applications.

13 MS. WELLS: Misinformation.

14 COMMISSIONER CAMERON:  
15 Misinformation, to me that's all about the  
16 interview and the forthright or lack of  
17 information in the interview itself.

18 Do you find the personal interview  
19 to be very, very -- a really important piece of  
20 this determination or recommendation?

21 MS. WELLS: I absolutely do. You  
22 can tell a lot during the interview and how  
23 forthright they are. We've had interviews where  
24 people would come with all of their information.

1 They'd bring an accountant. And they'd lay it  
2 all on the table. And that helps us in making  
3 evaluation of their application, their qualifier  
4 status.

5 MR. INGIS: And then in some  
6 instances, because the issues are so  
7 significant, a sworn interview is taken at which  
8 time the Commission will be able to evaluate the  
9 transcript of it.

10 MR. MICHAEL: Very simply put, a  
11 critical factor in the evaluation of any  
12 applicant's suitability is their degree of  
13 cooperation and their degree of willingness to  
14 be as transparent as possible. So, applicants  
15 that are reluctant to provide information or  
16 provide false or misleading information have to  
17 be set on one side of the ledger. Whereas  
18 applicants who are helpful as they possibly can  
19 be, certainly on the other side.

20 MR. INGIS: And it's important to  
21 recognize the distinction between inadvertent  
22 omissions on an application and an intent to  
23 deceive the Commission by omitting material  
24 facts that exhibit dishonesty.

1 MS. WELLS: One thing we're finding  
2 is we really get sort of a look at when we're  
3 doing the investigation of what this applicant  
4 is going to be like to regulate. The  
5 Commission, you're going to have to regulate the  
6 license holder. So, we are getting a good idea  
7 of how responsive they are. How easy they are  
8 to work with. So, that's been helpful to us.

9 MR. INGIS: That's a point I want to  
10 elaborate on that. And Guy mentioned it, it's  
11 predictive judgment. You are evaluating these  
12 applicants to determine that they are the types  
13 of entities and individuals you want  
14 representing the gaming industry in  
15 Massachusetts.

16 Remembering that you are entrusted  
17 with the responsibility of ensuring the public  
18 confidence and trust in the regulatory process.  
19 And if there is a particular individual or  
20 entity that you feel undermines that public  
21 confidence and trust, then that person is not  
22 going to be able to demonstrate suitability.

23 CHAIRMAN CROSBY: How different are  
24 the standards across jurisdictions?

1 MR. CARROLL: I was just thinking  
2 the same thing, Chairman, providing some  
3 supplemental information for Gayle's question.

4 They can vary considerably. For the  
5 most part domestically there are standardization  
6 of a lot of regulatory systems and so forth.  
7 Internationally, it varies greatly.

8 One of the things that the  
9 Commission will be dealing with will be time and  
10 place considerations involving other  
11 jurisdictions and what laws maybe applicable.

12 Conduct that in the United States  
13 may not be acceptable is permitted and  
14 completely lawful in other jurisdictions. And  
15 depending on the jurisdiction and depending on  
16 the particular act or behavior, that will be  
17 evaluated. And whether again you still after  
18 hearing the details and evaluating the  
19 particular applicant's conduct, reasons,  
20 authority and all of those different sub  
21 criteria, you'll come up with that predictive  
22 judgment as to whether this person's done what  
23 he was supposed to do in these other  
24 jurisdictions, in fact, the overall suitability.

1 I guess the point I would make on  
2 this is the fact that something is not  
3 acceptable in this country doesn't necessarily  
4 disqualify and make the person unsuitable or not  
5 being here. There is an evaluation that has to  
6 be done of the circumstances surrounding that  
7 unacceptable behavior. It's not just time,  
8 years ago or whatever else. Currently, there  
9 are differences in jurisdictions that allow  
10 things that may not be allowed even state to  
11 state but certainly internationally and in the  
12 United States.

13 MR. INGIS: There are universal  
14 licensing standards in regards to the integrity  
15 of financial stability and responsibility.  
16 They're universal. Where there are differences  
17 is how they are applied and evaluated in  
18 different jurisdictions based on the same  
19 information may find different results.

20 And with experience that happens. I  
21 think back to an anecdote when New Jersey was a  
22 brand-new licensing jurisdiction. There was  
23 only in Nevada it had passed it. And individual  
24 had come before the commission in New Jersey and

1 said I'm here. I've been licensed in Nevada for  
2 X number of years. And the commissioner said,  
3 the last time I looked, you're not in Nevada any  
4 longer. He was applying for a license in New  
5 Jersey and was declined.

6 Same set of facts, different result  
7 based on the analysis given by that particular  
8 regulatory agency. There have been people that  
9 have been licensed in one jurisdiction that did  
10 not get licensed in another jurisdiction.

11 CHAIRMAN CROSBY: That was the  
12 question I was originally asking. I was  
13 thinking domestically. Foreign I want to ask  
14 about too, but domestically. Can you describe  
15 -- Words like, everybody uses the same words of  
16 integrity, honesty, good character and so forth.  
17 They are utterly and totally meaningless. They  
18 are not utterly and totally meaningless. The  
19 devil is in the details. And I just wonder can  
20 you describe how these standard vary  
21 domestically? How much difference is there from  
22 jurisdiction to jurisdiction?

23 MR. MICHAEL: Domestically, there's  
24 a difference. I don't think the difference is



1 as distinct as it might be internationally.

2 But the difference lies in a variety  
3 of sociological, political, economic factors.  
4 Those standards can be applied in one situation  
5 say -- I just read an article about this. --  
6 casino license decision in the early days of New  
7 Jersey when everybody wanted to have casinos and  
8 they were anxious to do it. And the standards  
9 that were applied under the same legislative  
10 scheme to that application where a license was  
11 allowed and the record showed some certain  
12 organized crime connections.

13 Whereas on the other hand, later in  
14 the history of New Jersey, a license was  
15 disallowed under circumstances that weren't even  
16 remotely like any kind of organized crime  
17 connections.

18 Both decisions could be justified  
19 but they are justified within the context of the  
20 circumstances of the jurisdiction. For example,  
21 a jurisdiction that relies heavily on gaming as  
22 its economic base may not apply standards as  
23 rigid as a jurisdiction that has an occasional  
24 casino where the economic reliance on those

1 casinos is not that great.

2 So, the application of, as I said,  
3 the same legislative language is something that  
4 we wish we could give you a litmus test for it,  
5 but it is something that you and this matter of  
6 first impression right now are going to have to  
7 decide in terms of what you want that standard  
8 to be for Massachusetts.

9 And it won't be identical to New  
10 Jersey. And it won't be identical Nevada. It  
11 won't be identical to Mississippi. It will be  
12 yours. And people will come to know that and  
13 expect it.

14 MR. INGIS: And I think it's  
15 important to remember that each state deals with  
16 the licensing on its statutory criteria and its  
17 unique perspective. And you do not rely  
18 entirely upon what another jurisdiction has  
19 done. It's just guidance. So, the fact that  
20 someone has been licensed elsewhere does not  
21 necessarily mean you need to license them here  
22 in Massachusetts.

23 The fact that a business transaction  
24 that a particular applicant has entered into has

1 passed muster with the one jurisdiction, does  
2 not necessarily mean that you have to find it.  
3 You may disagree with that other regulatory  
4 agency and find that that particular business  
5 transaction negatively impacts upon a finding of  
6 suitability where in another jurisdiction they  
7 have said it does not.

8 CHAIRMAN CROSBY: Do other  
9 jurisdictions use the clear and convincing  
10 evidence?

11 MR. INGIS: Yes, that is a universal  
12 standard.

13 CHAIRMAN CROSBY: That's standard,  
14 interesting.

15 MR. INGIS: And that standard has  
16 been approved by the courts here in the US in  
17 reviewing licenses.

18 CHAIRMAN CROSBY: I was talking to  
19 somebody, a vice chancellor of a local  
20 university who is Chinese about the issue of  
21 going through the background checks, and the  
22 issues of trying to evaluate what matters and  
23 what doesn't. And I talked about  
24 hypothetically, what would you do if somebody

1 practices good business practices here but the  
2 person goes to China and pays a bribe?

3 This person I was talking to,  
4 Chinese man, said it's not a bribe in China.  
5 When you say it, it implies a certain thing, but  
6 in China it's not that. And you were saying  
7 that you need to try to figure out just because  
8 you've done something in one ethos, which is  
9 illegal in our ethos doesn't necessarily mean it  
10 would be.

11 But how does the Foreign Practices  
12 Act? What's the essence of that? There must be  
13 -- I've heard the word many times, but I don't  
14 really know what it says. What are the  
15 standards that makes foreign practices corrupt  
16 in the United States?

17 MR. MICHAEL: There are a variety of  
18 stages in the Act. But what it essentially does  
19 is it permits businesses to be conducted up to a  
20 point in accordance with what would be  
21 acceptable practice in the jurisdiction in which  
22 you're doing business.

23 For example, what are called grease  
24 payments are legal. It's called that in the

1 statute. If the only way to get your goods off  
2 the dock is to pay off one of the longshoremen,  
3 then you're allowed to pay off the longshoremen  
4 otherwise you just can't do business. And it's  
5 recognized that that would not be a crime under  
6 US law. And bribing public officials and so on  
7 that's a different story.

8 In terms of small concessions, small  
9 might be an inadequate term for it, but in terms  
10 of the concessions that need to be made in order  
11 to conduct business in a jurisdiction, which as  
12 you said, might have a different ethos, if one  
13 practices that recognizes that that might be  
14 permissible.

15 CHAIRMAN CROSBY: Interesting.

16 COMMISSIONER MCHUGH: There's also,  
17 isn't there coming back to the Chairman's  
18 discussion with his colleague from China, I to  
19 have talked to a number of people in the court  
20 systems in China where there is a fair amount of  
21 payments. And those are regarded by many people  
22 as bribes, but are justified on the ground that  
23 because everybody does it, nobody has an edge.

24 That it seems to me is something

1 that we can view through our own prism here.  
2 And the fact that it is done there, because  
3 everybody does it, doesn't necessarily mean that  
4 we have to take into account and look at it as  
5 just one of the things you have to do to  
6 succeed. I'm not saying you don't, but it seems  
7 to me one has to look at the circumstances under  
8 which the transaction occurred.

9 This is putting illegality to one  
10 side, consistent with the foreign trade  
11 practice. And one cannot take a blanket view  
12 one way or the other on those kinds of  
13 transactions because they do in some cases  
14 indicate what people are going to do when nobody  
15 is looking. And that is after all what we're  
16 try to figure out.

17 COMMISSIONER CAMERON: This may be a  
18 good time to ask about relative suitability.  
19 Because I think these kinds of issues -- there  
20 may be certain issues that distinguish or  
21 suitability is not just suitability, would you  
22 agree?

23 MR. MICHAEL: Yes.

24 MS. WELLS: And it's mentioned

1 earlier that when the Gaming Act was enacted  
2 there was not this Phase 1, Phase 2. This was  
3 something that the Gaming Commission thought  
4 would be in the best interest of the  
5 Commonwealth.

6 So, in the original legislation, the  
7 suitability sort part of this licensing process  
8 evaluation. So, you don't use that because you  
9 have this Phase 1 and Phase 2. So, information  
10 that was going to be in these reports that you  
11 consider may not rise to the level of finding  
12 someone unsuitable.

13 You may be convinced by very  
14 convincing evidence that they're suitable and  
15 you're comfortable with having them going to do  
16 business in Massachusetts. But you could look  
17 at one applicant and their level of suitability  
18 is so much higher than another applicant and you  
19 can consider that. That's where the detail in  
20 the report becomes very important, both on the  
21 business practice side of it and the integrity  
22 side. And I think that should be something that  
23 would be very important in that Phase 2  
24 determination.

1 MR. INGIS: One area of that is  
2 imminently true is in the field of financial  
3 stability. Two applications competing for the  
4 same license both may be found that they're  
5 financially stable. But one may be at the attic  
6 of financial stability and the other one is at  
7 the very low basement level of financial  
8 stability, has satisfied financial stability but  
9 not to the levels that the other entity has.  
10 And that is something you will factor in in your  
11 evaluation of the Phase 2 license.

12 With respect to the integrity  
13 aspect, it may come up in terms of a recommended  
14 license condition. If the IEB recommends that  
15 there's certain conditions that need to be  
16 imposed before the Commission can find  
17 suitability, the one applicant and another  
18 applicant, no conditions are recommended that's  
19 another factor to evaluate in terms of Phase 2  
20 awarding of a license.

21 COMMISSIONER ZUNIGA: Can I touch a  
22 little bit more on that conditional or  
23 unconditional recommendation? If it's not an  
24 unconditional recommendation, it could go into



1 an adjudicatory hearing. The question I'm  
2 struggling with is whether those recommendations  
3 -- There's also varying degrees of conditions.

4 MS. WELLS: Correct.

5 COMMISSIONER ZUNIGA: There could be  
6 minimal or they could be significant. Any  
7 condition will trigger the --

8 MR. MICHAEL: We're talking about  
9 two different things. Any condition that Karen  
10 recommends for suitability would trigger an  
11 adjudicatory hearing.

12 I think Steve might have been  
13 talking about ultimately on the issuance of the  
14 license that conditions can be imposed on the  
15 issuance of a license. So, that if you're a  
16 little bit dissatisfied with the financial  
17 stability that you say that they're required to  
18 meet certain financial goals in order to  
19 maintain the license.

20 So, it's the suitability hearing  
21 that has to be unconditional for there not to be  
22 an adversary hearing. But the license  
23 determination can impose whatever condition you  
24 want.

1 MR. CARROLL: Which could include  
2 unsuitability, on certain issues of suitability  
3 ultimately.

4 CHAIRMAN CROSBY: Would you walk  
5 through that? When you first started out, you  
6 said a big thing, but it only took a couple of  
7 minutes or seconds. Would you walk through this  
8 process again? You're going to do what and how  
9 does this relate to adjudicatory hearings?

10 MS. WELLS: So, I would submit a  
11 report to the Commission with a recommendation.  
12 The IEB is required to submit a recommendation.  
13 If my recommendation is an unconditional  
14 positive determination, then the applicant has  
15 the opportunity to waive the adjudicatory  
16 hearing and just have a public hearing.

17 CHAIRMAN CROSBY: And by  
18 unconditional what does that mean in this  
19 context?

20 MS. WELLS: Basically, you're not  
21 putting any conditions on their suitability. I  
22 am trying to think of a hypothetical example  
23 that's note pertaining to one of our  
24 applicants.

1                   Potentially, you might say I find  
2 the applicant suitable, but you have to fire the  
3 CFO or there might be someone that can't work  
4 there. And that would be a condition that  
5 generally my opinion we would go forward with  
6 suitability but there has to be this condition.

7                   CHAIRMAN CROSBY: So, you're saying  
8 that if the Commission adopted the following  
9 conditions then I would say that person should  
10 be suitable.

11                   MS. WELLS: Correct. So, it's  
12 almost corrections, if you will. You're almost  
13 there if you did X, Y or Z then they would be  
14 found suitable.

15                   CHAIRMAN CROSBY: And does that --  
16 That's any conditions essentially?

17                   MS. WELLS: Yes.

18                   MR. MICHAEL: Correct me if I'm  
19 wrong, but the conditions I don't think need to  
20 be specific to a particular recommendation. A  
21 condition might be we recommend a finding of  
22 suitability only if the following issue is heard  
23 and resolved, for example. So, that that would  
24 be a condition. There would be less than a full

1 recommendation of suitability.

2 CHAIRMAN CROSBY: So, if your  
3 recommendation is that an unconditional status  
4 of suitability be assigned, then it's expected  
5 that the bidder will waive their adjudicatory  
6 right. They can do whatever they want, but they  
7 will probably waive their adjudicatory right.  
8 That goes right through the process.

9 But if you recommend that somebody  
10 gets suitable with conditions, then walk through  
11 what happens.

12 MR. MICHAEL: So, it must be heard  
13 in an adjudicatory fashion before suitability is  
14 determined.

15 CHAIRMAN CROSBY: The process for  
16 that is what?

17 MR. MICHAEL: It could be done in  
18 any number of ways. The simplest would be it  
19 could even be listed on an agenda item of a  
20 regular Commission meeting where you're going to  
21 call forward witnesses, maybe the qualifier who  
22 you have the issue with and ask him questions.

23 CHAIRMAN CROSBY: So, we're totally  
24 in control. They don't have to ask for it.

1 There's no timeframe there. So, we're in  
2 control of it. We say some kind of reasonable  
3 -- got to give them enough time to get ready.

4 MR. MICHAEL: Right.

5 CHAIRMAN CROSBY: So, then it goes  
6 on either a special meeting agenda or a regular  
7 meeting agenda. This is a regular meeting like  
8 all of our other meetings, regular formal notice  
9 requirements and so forth. And then the  
10 adjudicatory nature of it, when we get to the  
11 adjudicatory item on this regular agenda what  
12 happens?

13 MR. MICHAEL: Either you as Chairman  
14 or the Commission could call the witness. Or  
15 Karen could call the witness and ask questions  
16 of that witness to clarify the issues you have  
17 with that applicant's suitability.

18 MR. INGIS: I would just add one  
19 little caveat to that. In going through an  
20 adjudicatory hearing process, it's ordinarily  
21 contemplated that there are prehearing  
22 conferences that set forth specific issues. So,  
23 that when you actually get to the hearing, there  
24 aren't any surprises regarding procedure and

1 substantive issues. That would occur prior to  
2 the hearing.

3 Certain dates would be set as far as  
4 the prehearing conference and the actual  
5 hearing. There would be a determination as to  
6 what witnesses the Commission wanted to hear  
7 from. The applicant can put on as many  
8 witnesses as they want. But there are certain  
9 witnesses that the Commission will insist upon  
10 hearing.

11 CHAIRMAN CROSBY: Going back then,  
12 you determine there needs to be an adjudicatory  
13 hearing. Then there needs to be prehearing  
14 conferences and witness scheduling. Now we're  
15 at the regular meeting. We get to the  
16 adjudicatory, nothing else changes? It's just a  
17 regular item on the agenda?

18 MR. INGIS: The Commission can do  
19 this in one of two ways. You can handle it as  
20 just as an agenda item. It'll be like that last  
21 item on your agenda, because it's going to be a  
22 lot lengthier than the ordinary agenda item. Or  
23 you could set forth a particular hearing date  
24 and you'll only consider that matter.

1           CHAIRMAN CROSBY: I understand that.  
2 That meeting would be a special meeting, but it  
3 would be a normal procedure.

4           MR. INGIS: Yes, a normal public  
5 meeting with all the notice requirements. And  
6 then of course you would also have to determine  
7 if this hearing is going to take longer than one  
8 day. Is it on successive days? Is it once a  
9 week? Those are things that need to be taken  
10 take into account. Not today, but going  
11 forward.

12           CHAIRMAN CROSBY: Right. And  
13 adjudicatory says nothing about confidentiality  
14 or an executive session or anything like that?  
15 It's an open public --

16           MR. INGIS: It's an open public  
17 hearing. And it's expected that you will  
18 conduct the hearing as you would today's  
19 proceeding.

20           COMMISSIONER MCHUGH: You can't have  
21 executive sessions in an adjudicatory hearing,  
22 right? These are public hearings. That's a  
23 major difference between a hearing and an  
24 adjudicatory --

1 MR. INGIS: During a particular  
2 adjudicatory hearing, there may be a request by  
3 an applicant that certain information be  
4 designated as confidential. Then you'll have to  
5 deal with that on a case-by-case basis. That's  
6 come up in all jurisdictions. Sometimes, and I  
7 speak from personal experience, you have to run  
8 to court to resolve the issues.

9 COMMISSIONER CAMERON: Can you  
10 provide an example, Steve?

11 MR. INGIS: Yes. We were doing the  
12 Merv Griffin hearing, in other words, trying to  
13 purchase resorts in the late 1980s in New  
14 Jersey. And during the course of the hearing,  
15 there was an issue raised with one of Mr.  
16 Griffin's business associates.

17 The attorney for that business  
18 associate claimed that all of the information  
19 concerning him was confidential. We filed an  
20 appeal. It went to the appellate division and  
21 the Supreme Court. Supreme Court resolved the  
22 case in favor of the commission hearing it. And  
23 there was nothing deemed confidential. It's a  
24 published decision. That's been followed in all



1 jurisdictions regarding confidentiality during  
2 the course of an adjudicatory hearing.

3 CHAIRMAN CROSBY: Were you following  
4 that up, Commissioner McHugh?

5 COMMISSIONER MCHUGH: No. I was  
6 just going to go back to the difference between  
7 a public hearing and an adjudicatory hearing.  
8 There's rights of examination and cross-  
9 examination in the adjudicatory hearing, which  
10 are significantly different than in a public  
11 hearing. This is like a court proceeding, the  
12 adjudicatory hearing.

13 MR. INGIS: Yes, it is. You sit in  
14 a quasi-judicial stance for the taking of  
15 testimony, the introduction of exhibits, hearing  
16 motions, making objections, hearing objections,  
17 deciding on objections.

18 COMMISSIONER MCHUGH: And every  
19 aspect of your decision has to be based on the  
20 record that's compiled at that hearing, not  
21 other things that you can take into account in a  
22 public hearing which is like written letters and  
23 other things like that.

24 MR. INGIS: And at the end of the

1 proceeding when the record is closed, it is also  
2 contemplated that there would be a written  
3 decision as opposed to a public hearing where  
4 you simply vote on whether an applicant's then  
5 suitable.

6 COMMISSIONER MCHUGH: And let me  
7 come back, if I might to the situation in which  
8 the IEB says somebody is qualified but with  
9 conditions or somebody can't be found qualified  
10 unless the conditions are met. If the applicant  
11 agrees to that, we don't necessarily have to  
12 have a public -- an adjudicatory hearing.

13 MR. INGIS: I think what we are  
14 saying is that the unconditional finding of  
15 suitability signifies that you are required to  
16 have an evidentiary hearing because you can't  
17 determine suitability without it.

18 COMMISSIONER MCHUGH: That wasn't my  
19 question.

20 MR. MICHAEL: I think we can take it  
21 back to what we were saying before. There may  
22 be circumstances where you're going to impose a  
23 specific condition and say, okay, you're  
24 suitable if you handle your compliance committee

1 meetings differently. And you say, okay, we'll  
2 handle our compliance committee meetings  
3 differently.

4 And the regulation seems to indicate  
5 that you have to have an evidentiary hearing,  
6 but it wouldn't take very long. They'll come in  
7 and say we agree and that might be the extent of  
8 it.

9 I would anticipate that there will  
10 be other kinds of conditions where Karen will  
11 say we can't come to a finding of unconditional  
12 suitability unless we hear testimony from A, B  
13 or C to determine whether or not these issues  
14 can be adequately resolved.

15 COMMISSIONER MCHUGH: I was just  
16 trying to find the reg. here, because I thought  
17 that the applicant always had the option to --  
18 Why don't we move on and I'll come back to that.

19 MR. INGIS: Well, they have the  
20 option. As Guy has pointed out, there are  
21 different kinds of conditions. There are  
22 typical conditions that an applicant will  
23 readily agree to for a finding of suitability.  
24 For example, that they need to have a compliance

1 committee. They'll acknowledge okay, we've  
2 messed up in the past. We'll have a compliance  
3 committee in place within three months.

4           There will be other conditions that  
5 they cannot agree upon because the determination  
6 will be a finding of unsuitability, as Guy's  
7 pointed out. The condition will be that we  
8 cannot find suitability unless you resolve  
9 positively in your favor the following issues A,  
10 B and C through testimony and documentary  
11 evidence.

12           If they agree to that without  
13 proceeding to an adjudicatory hearing, then they  
14 can be found suitable. So, no applicant is  
15 going to agree to that.

16           MR. CARROLL: 115.04, Commissioner.

17           CHAIRMAN CROSBY: Catherine?

18           MS. BLUE: A couple of points on our  
19 regulations. Our regulations assume that the  
20 applicant can file a notice of claim and we've  
21 always taken that to mean that if there is a  
22 condition that the applicant could not agree on,  
23 they would file their notice of claim and they  
24 would go to an adjudicatory proceeding.

1           We are trying to encourage people,  
2 obviously, if they don't have a claim to go  
3 through the public hearing process because it  
4 will be quicker.

5           So, I am not 100 percent sure that  
6 an applicant couldn't look at their report, see  
7 a condition that they understood and agree to it  
8 and go through a public hearing. I am not  
9 convinced that we would have to do adjudicatory  
10 hearings in that situation under all conditions.

11           We have set this up under our  
12 regulations that the adjudicatory proceeding can  
13 be waived and we hope that people would.

14           Also, the Commission can order an  
15 adjudicatory proceeding at any time that they  
16 feel that that's necessary if the Commission  
17 felt that way. I think we have some flexibility  
18 in how we can approach this.

19           MR. MICHAEL: There's another  
20 practical aspect of this that if in fact a  
21 condition is some specific thing that we want  
22 the applicant to do that they would otherwise  
23 agree to do, it's likely that we would have made  
24 that the Commission or Karen - not the

1 Commission, but Karen would have made that clear  
2 to the applicant prior to issuance of the  
3 report. And the applicant would have agreed to  
4 it. And then the report will say the applicant  
5 has agreed to such and such and therefore we  
6 find the applicant suitable. It's not a  
7 condition.

8 COMMISSIONER CAMERON: So, a simple  
9 fix.

10 MR. MICHAEL: A fix, yes.

11 COMMISSIONER CAMERON: That makes  
12 sense.

13 MR. CARROLL: Remedial action.

14 CHAIRMAN CROSBY: Remediation.

15 COMMISSIONER CAMERON: That make  
16 sense. That could be done ahead of time. So,  
17 the report will read they already have this  
18 business practice in place.

19 MR. MICHAEL: Right.

20 COMMISSIONER MCHUGH: There's  
21 another scenario, is there not? And that is  
22 that in addition to having specific issues that  
23 have surfaced in the same that the Commission  
24 could conclude that it is simply not in a

1 position to find by clear and convincing  
2 evidence that a qualifier is qualified but it is  
3 not in a position to find the qualifier is not  
4 qualified. And since the burden is on the  
5 qualifier, it simply says we don't have enough  
6 here to find that you're qualified. Come in and  
7 prove that you are. That might not happen.  
8 That's an open-ended kind of thing.

9           And you decide what and then you  
10 have a pretrial conference or a pre-hearing  
11 conference and you see what witnesses are going  
12 to be produced and what the Bureau would want to  
13 produce if any witnesses on the other side. And  
14 that could proceed in that fashion, could it  
15 not?

16           MR. MICHAEL: Yes. And depending on  
17 who the qualifier was, it could also be handled  
18 in a way where the qualifier removes him or  
19 herself from the applicant, pending the  
20 determination of his or her qualifications. So,  
21 suitability could be found of the applicant  
22 while you're determining the secondary issue of  
23 that particular qualifier.

24           CHAIRMAN CROSBY: I know the reports

1 are still a work in process and they're not  
2 finished. But as I've looked at some drafts,  
3 there've been situations where the draft report  
4 recommended suitability with a condition.

5 And as I read it, I wasn't sure  
6 whether I agreed with the report's conclusion  
7 that that condition would do the job. That's a  
8 different situation, right?

9 The way the scenario is working now,  
10 the IEB recommends a condition. It goes to an  
11 adjudicatory hearing. A Commissioner might say  
12 I don't care whether they agree to this  
13 condition or not, it's not enough. It's not a  
14 fix. It's not a cure. You can't cure that  
15 problem with that condition and that would then  
16 happen at the adjudicatory hearing.

17 MS. WELLS: Correct.

18 COMMISSIONER ZUNIGA: The Commission  
19 could also impose additional conditions not just  
20 disagree with some, but impose additional.

21 MR. MICHAEL: That's right,  
22 absolutely.

23 CHAIRMAN CROSBY: Then at this  
24 adjudicatory hearing, we deliberate? No?



1 MS. WELLS: You could deliberate in  
2 private. Usually, you close the hearing. You  
3 would take all of the evidence. You would close  
4 the hearing. And then you would deliberate in  
5 private and issue a written decision.

6 CHAIRMAN CROSBY: So, in the case of  
7 an adjudicatory hearing, unlike anything else  
8 that we have, we may deliberate on how we come  
9 down on the issues raised in that adjudicatory  
10 hearing in private.

11 MS. BLUE: You can.

12 CHAIRMAN CROSBY: That'll be a  
13 freaky experience.

14 COMMISSIONER CAMERON: We've done  
15 this with racing all along, smaller kinds of  
16 issues, obviously, but that's the process.

17 CHAIRMAN CROSBY: And the written  
18 opinion is it just the opinion? You win, you  
19 lose?

20 MR. MICHAEL: It would be findings  
21 of fact.

22 MR. INGIS: It's generally on the  
23 findings of fact and conclusions of law.  
24 Massachusetts has a little quirk in its statute,

1 because you deny the right of appeal.

2 CHAIRMAN CROSBY: Right, try to deny  
3 the right of appeal.

4 MR. INGIS: They may try to  
5 challenge, but the ordinary rule of thumb for  
6 proceeding with a written opinion is to do it in  
7 a comprehensive and detailed fashion as you can  
8 possibly do.

9 CHAIRMAN CROSBY: Right. Okay.  
10 Others? It seems to me that the likelihood of  
11 adjudicatory hearings has gone up quite a bit  
12 since the last time we talked about this. And  
13 that the process of adjudicatory is nontrivial.  
14 It's got be the prehearing prep. There's got to  
15 be enough preparation to have cross-examination  
16 and so forth. There's deliberation. There's  
17 got to be a written report.

18 So, I assume you've thought through  
19 what this does to our timeline. And I gather  
20 we've concluded that doesn't do anything. It  
21 doesn't hurt. It doesn't get in the way of the  
22 timeline at all.

23 COMMISSIONER ZUNIGA: What we did in  
24 the schedule is we always allowed for a hearing

1 period. By its very nature, we allowed more  
2 days for the Category 1 because there's more and  
3 they're more complex.

4 Those days may or may not be -- are  
5 as a good a guess as we could. They may turn  
6 out to be short or enough, who knows.

7 CHAIRMAN CROSBY: Right. What we  
8 originally thought we were going to be doing on  
9 the 11th was maybe reviewing all of the  
10 applications for suitability. Now what's the  
11 process? So, you'll be sending out the draft --  
12 You'll be sending out your conclusions to the  
13 bidders.

14 MS. WELLS: I'll send the final  
15 reports to the Commissioners with my  
16 recommendation. Then the Commission then sends  
17 that report to the applicant.

18 CHAIRMAN CROSBY: Okay.

19 MS. WELLS: My expectation would be,  
20 depending on how this all comes out, but if  
21 hypothetically they were a number of applicants  
22 that made positive unconditional finding of  
23 suitability and the Commission was comfortable  
24 with that the 11th would be the day for those,

1 for you to have that public hearing. Then if in  
2 fact there were conditions that are recommended  
3 or if I find an applicant unsuitable, then we  
4 would go to that adjudicatory.

5 CHAIRMAN CROSBY: And it's roughly  
6 scheduled that within a week or so we were going  
7 to invite comments on this conversation over the  
8 course of the next week, I think. And then  
9 shortly thereafter you would send your reports  
10 to us and we will send them to the bidders.

11 So, that hopefully before the 11th  
12 we will have figured out who, if anybody, is  
13 going to come in on the 11th without conditions.  
14 And with the folks who have conditions, we will  
15 have figured out what schedule is going to occur  
16 if it isn't the 11th.

17 MS. WELLS: Yes.

18 CHAIRMAN CROSBY: Okay.  
19 Interesting. I had some other sort of just  
20 wondering how one takes things, which sort of go  
21 as to abstracts of character. Somebody, and  
22 this comes up in presidential debates, it comes  
23 up everywhere. If somebody abides by the letter  
24 of the law but uses every trick in the book to

1 avoid taxes, as allegedly for example candidate  
2 Romney was alleged to have done, some people  
3 think that's a problem. Some people say it's  
4 within the law, what's the issue? How do you  
5 take things like that and accumulate judgments  
6 about things like that?

7 MR. MICHAEL: It would be a personal  
8 evaluation on the part of you as fact finders  
9 and decision-makers. There is no right or wrong  
10 answer to that. If you feel that that kind of  
11 activity impugns the good character of a person,  
12 it would be inarguable that you could come to  
13 that conclusion.

14 If on the other hand you feel that  
15 as long as they are doing what's within the law,  
16 the fact that they're coming close to the line  
17 is something that is acceptable, then you could  
18 come to that conclusion as well. There's no  
19 hard and fast guidelines for that.

20 MR. INGIS: It's a truism that you  
21 bring your personal experiences into the hearing  
22 room in making your decision.

23 COMMISSIONER MCHUGH: I was going to  
24 say I think that's really an important point.

1 Because this is not about -- I suppose the  
2 baseline is no felonies, right? But there's a  
3 lot beyond that that goes into these words that  
4 I must disagree with you do have a lot of  
5 meaning.

6 CHAIRMAN CROSBY: I corrected that.

7 COMMISSIONER MCHUGH: I just wanted  
8 to re-emphasize it. And it seems to me that  
9 we've got to in our own way articulate to each  
10 other to the point where we reach consensus if  
11 we can what that intangible of character and  
12 integrity and ethical behavior is, recognizing  
13 that this is like any business, a business in  
14 which the operators have a fiduciary obligation  
15 to shareholders to maximize profit and a lot of  
16 other things.

17 It seemed to me that in the  
18 conversations we had yesterday that articulating  
19 a standard along the lines of am I convinced  
20 that this person -- am I thoroughly convinced  
21 that this person will do the right thing when  
22 nobody is watching is something that approaches  
23 the standard that we could think about.

24 But I think figuring out what that

1 standard is, and we may all differ through some  
2 nuance is going to be an important part of this  
3 process.

4 COMMISSIONER CAMERON: I think it  
5 leads to that relative suitability. I think if  
6 it's one of these things, well, okay, they're  
7 suitable but I'm not all that comfortable that  
8 would be taken into consideration in Phase 2,  
9 unless you really think at this point they're  
10 not suitable because of X, Y and Z. That's a  
11 different matter.

12 COMMISSIONER MCHUGH: I guess I put  
13 it the other way around that unless I was really  
14 convinced that they were because the burden is  
15 on them to show us by clear and convincing  
16 evidence. So, I think by the end for me, and I  
17 think the way the statute is set up, if there is  
18 doubt, there's always going to be relativity  
19 above a baseline. There's always going to be  
20 that. But if there is doubt about baseline  
21 suitability, the applicant loses in my view  
22 under this statutory scheme. It's got to be  
23 clear.

24 CHAIRMAN CROSBY: I don't think

1 you're disagreeing with that.

2 COMMISSIONER CAMERON: No, I'm not.

3 But it was said more eloquently.

4 CHAIRMAN CROSBY: It's above that  
5 though that's the issue. We certainly can't  
6 give anybody an assessment of suitability who we  
7 wouldn't be comfortable having a license.

8 COMMISSIONER CAMERON: Correct.

9 MR. MICHAEL: I sound like a total  
10 cynic about human behavior. One factor to  
11 consider is some kind of reasonable expectation  
12 of -- I'm not talking just about the gaming  
13 industry, but industry as a whole or people as a  
14 whole. That if we're looking only for  
15 unblemished completely lily white records of  
16 behavior over the course of decades that's  
17 certainly a standard that can be applied but it  
18 might not be a reasonable expectation in terms  
19 of the applicants that not only you look at, but  
20 that anybody gets for any kind of a business.

21 MR. INGIS: In reviewing tribunals  
22 and regulatory agencies differ based on the  
23 individual looking at it. One jurist in New  
24 Jersey actually uttered these words to doubt is



1 to deny. Other jurists were a lot less  
2 stringent in their application of what would  
3 count as the integrity (INAUDIBLE)

4 MR. CARROLL: I wanted to add to  
5 that that's one of the reasons why we spend a  
6 great deal of time providing for you in the  
7 reports the regulatory licensing history and how  
8 these particular elements have been dealt with  
9 by these applicants.

10 That comment that Commissioner  
11 McHugh said about what are these people doing  
12 when no one's looking is important to us. We  
13 judge it on their whole body of work. If  
14 they've been in the industry for a while,  
15 there's a tale there. There's a tale of how  
16 loose and fast have they played? Have they been  
17 cited before for the pushing the envelope? They  
18 may be successful, but they're always pushing  
19 the envelope.

20 This is an aggressive fast-moving  
21 industry. We expect those personalities the  
22 most aggressive to be in many cases the most  
23 successful, but there are lines. It's our  
24 feeling that by including that kind of detail

1 that you can get a handle, get a sense of  
2 they've been aggressive but they've stayed  
3 within the lines. They've been aggressive.  
4 They've crossed the lines a few times and they  
5 were in court at it. And they conducted  
6 remedial actions and now they're conducting  
7 themselves in a way that is acceptable.

8 In both circumstances, it gets down  
9 to that relative suitability. You may make an  
10 assessment that an operator is playing too fast  
11 and close historically, and it doesn't give you  
12 the same sense of comfort that another say less  
13 successful applicant hasn't been as aggressive.

14 So, these are the types of things  
15 that make your ultimate choice very challenging.  
16 But the criteria and the reasons these  
17 investigations take so long is to get that  
18 information in a usable pile that you can  
19 analyze and make those particular decisions.  
20 Frankly, we feel if you need a little more in  
21 some areas that's flexible and allowed.

22 COMMISSIONER CAMERON: Question  
23 about our applicants who have never been  
24 involved with gaming before. Did they find

1 these investigations -- Were they surprised by  
2 the level of detail?

3 MR. CARROLL: Without question.  
4 They've been through intrusive things in other  
5 regulatory agencies, but gaming is a different  
6 world.

7 MR. INGIS: We came across that with  
8 Granada who decided to pack up and leave.

9 CHAIRMAN CROSBY: I thought about  
10 this in the context of our ethics rules. We're  
11 sort of half asking you about this, but we can  
12 break ethics rules and be held accountable for  
13 breaking ethics rules not for doing anything  
14 wrong but for doing something that might appear  
15 to be wrong.

16 We have to look out for the way  
17 things appear to the public as well as what we  
18 actually do in our behavior. And it seems there  
19 is somewhat of a parallel here. There's a  
20 burden on us to have an industry which appears  
21 to be clean as a whistle as well as is clean as  
22 a whistle, which it brings in legal but  
23 aggressive tax avoidance, relatives and friends  
24 who are organized crime figures or who have been

1 convicted of various things know nothing about  
2 you, the person that's been identified. These  
3 kinds of soft, which to the public will surely  
4 raise questions.

5           And our job is to protect the public  
6 perception of integrity as well as the actual  
7 integrity of this industry, which isn't very  
8 fair. The potential implications of that aren't  
9 very fair in a way to the people in the mix, to  
10 the bidders. But I guess that's what they're  
11 buying into is that degree of independence and  
12 lack of constraint on our part to protect what  
13 the public thinks of this business as well as  
14 the reality of its operations. It's a pretty  
15 tough standard.

16           MR. INGIS: The licensing process is  
17 necessarily very stringent in the gaming  
18 industry. Historically, it's because gaming was  
19 looked upon as an unsavory enterprise. It's  
20 less on now with the proliferation of the gaming  
21 jurisdictions. But it still has a connotation  
22 of a vast majority of people in a certain way.  
23 Therefore, the criteria are very stringent and  
24 sensitive in terms of depth of the background

1 investigation and the licensing standards that  
2 someone must abide by far more than in any other  
3 industry.

4 MR. MICHAEL: That follows too not  
5 just in the licensing process, but for example  
6 the concept of the exclusion list. You're  
7 keeping notorious people out of the casino not  
8 just because you're afraid they might cheat but  
9 because if people walk into the casino and they  
10 see somebody they just saw in the newspaper or  
11 on the news being arrested, it conveys an  
12 impression that you don't want to do convey.

13 CHAIRMAN CROSBY: Were you going to  
14 respond to that?

15 COMMISSIONER CAMERON: No.

16 CHAIRMAN CROSBY: Are you sure?

17 COMMISSIONER MCHUGH: I am all done.

18 CHAIRMAN CROSBY: Anybody else,  
19 issues about suitability assessment process?

20 COMMISSIONER STEBBINS: I had just a  
21 general comment. I think this is helpful and I  
22 think going back to your point, Mr. Chairman, of  
23 drawing a fine line in what the public may draw  
24 out of it, but also separating what we need to

1 draw out of it as a Commission and what our  
2 responsibilities are.

3           And Karen, going back to your  
4 remarks, there was something that I thought was  
5 helpful to us and that is important for the  
6 public to know is that, and I apologize if I  
7 missed it in your comments, but we certainly  
8 allowed for individuals, anybody to send us  
9 information that they have information that was  
10 worthy of follow-up, letters, calls, comments.  
11 Anything that the general public had, we didn't  
12 necessarily dismiss.

13           MS. WELLS: I have received that and  
14 we have whole process for that intake and for  
15 that evaluation through the State Police and the  
16 contract investigators.

17           CHAIRMAN CROSBY: Two final notes  
18 that occurred to me. One and this is pretty  
19 self-evident. Somewhere along the line we'll  
20 need, I think a pretty careful layout of what  
21 the adjudicatory process consists of, among  
22 other things what the Chair will need to pay  
23 attention to when he or she is going through  
24 that.

1 MR. INGIS: You need a gavel.

2 CHAIRMAN CROSBY: Yes, good. I like  
3 that. The second thing is I think we did and  
4 Elaine, you can deal with this, but this has  
5 been a fairly interesting conversation about how  
6 we are going to implement the suitability  
7 judgments. And we wanted to have the public and  
8 participants have an opportunity to comment on  
9 this before we wrap up the final versions of the  
10 reports.

11 So, we are asking anybody who's  
12 interested to comment to us through our comments  
13 site on the website, comments position on the  
14 website. Any reactions you to have to this  
15 conversation, to these issues we are dealing  
16 with. How we're going about making these  
17 judgments and implementing these rules and regs.  
18 So, there's a weeklong window for that and we'd  
19 welcome any such feedback. Anybody else?  
20 Anyone a motion?

21 COMMISSIONER MCHUGH: I move that we  
22 adjourn.

23 CHAIRMAN CROSBY: Second?

24 COMMISSIONER ZUNIGA: Second.

1                   CHAIRMAN CROSBY:  Once again the  
2 ayes have it unanimously.  Thank you.

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4                   (Meeting adjourned at 2:31 p.m.)  
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ATTACHMENTS :

1. Massachusetts Gaming Commission June 27, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission June 13, 2013 Meeting Minutes
3. Curriculum vitae of Jill Griffin
4. June 27, 2013 Massachusetts Gaming Commission Cash Flow Projection with Draft FY'14 Budget
5. Massachusetts Gaming Commission 6-18-2013 Summary Schedule Update
6. Massachusetts Gaming Commission June 24, 2013 Memorandum Regarding Contract Extension with Gaming Consultants
7. Massachusetts Gaming Commission Racing Division Amended Small Business Impact Statement
8. Massachusetts Gaming Commission Racing Division June 27, 2013 Memorandum Regarding Changes In Withholding Requirements on Winning Pari-Mutuel Wagers

1 ATTACHMENTS (continued):

2 9. June 25, 2013 New England Horsemen's  
3 Benevolent and Protective Association,  
4 Inc. Letter Regarding Impact of  
5 Massachusetts' New Withholding Tax on  
6 Horse Racing Wagering

7 10. Department of Revenue Excerpt Regarding  
8 Withholding on Wagering Winnings Gaming  
9 Commission Evaluation

10 11. 26 U.S.C. Section 3402

11 12. 2013 W-2G Form

12 GUEST SPEAKERS:

13 Robert Carroll, Michael & Carroll

14 Guy Michael, Michael & Carroll

15 Steven Ingis, Spectrum Gaming Group

16

17 MASSACHUSETTS GAMING COMMISSION STAFF:

18 Catherine Blue, General Counsel

19 Richard Day, Executive Director

20 Jill Griffin, Director of Workforce Development  
21 and Supplier Initiatives

22 Karen Wells, Director of Investigations and  
23 Enforcement Bureau

24 John Ziembra, Ombudsman

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

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

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

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

WITNESS MY HAND this 1st day of July, 2013.



LAURIE J. JORDAN  
Notary Public

My Commission expires:  
May 11, 2018