

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: January 17, 2013

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: None

Call to Order:

Chairman Crosby opened the 46th public meeting.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that the Commission has distributed the minutes for the January 10 meeting to all the Commissioners. He reviewed one change that Director Durenberger recommended.

*Motion made by Commissioner McHugh to accept the minutes of January 10, 2013 as amended.
Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

Administration:

See transcript pages 3-4.

Master Schedule – Chairman Crosby reviewed the Master Schedule. He stated that the Commission is working on condensing the timeframe for background checks and RFA-2 regulations in an effort to move this process along as quickly as possible. He stated that he and Commissioner Zuniga are working on a draft job description for a Director of Research and Compulsive Gambling.

Application Process:

See transcript pages 4-28.

Chairman Crosby stated that the Commission has been working for the past nine months to create a competitive environment for license applications in regions A and B and for slots licenses. He stated that now that the Commission has accomplished this goal, the Commission will turn its focus toward determining what criteria to use for making decisions. Commissioner McHugh is working on drafting these criteria and procedures for evaluating applicants.

Chairman Crosby provided the Commissioners with a document asking them to start thinking about criteria beyond those articulated in the legislation. He emphasized that the Commission wants to do everything possible to ensure that the casinos are truly destination resorts that are attractive to people from other states and other countries. He stated that the Commission needs to influence the developers to design features and strategies that will help to attract outsiders and create synergy with other major travel and tourism institutions in the area. Developers may also want to look for synergies with other key industries that can be combined with a destination resort casino to attract larger than expected numbers of gamblers and tourists from out of state and out of the country. He stated that the Commission is encouraging casino developers to add amenities that will enhance the broader tourism goals of the Commonwealth.

Commissioner McHugh stated that putting such a strong emphasis on tourism is critical and the gaming statute is clearly designed to create destination resorts, with the goal of bringing out of state dollars into Massachusetts. Commissioner Zuniga agreed and emphasized that we should foster creativity by developers in differentiating their product. Commissioner Stebbins stated that the Commission could encourage applicants to focus on building relationships with the local regional tourism boards and visitors bureaus. He recommended that the Commission provide recommendations on how to wisely spend the tourism funds to improve tourism and create a robust gaming industry.

Commissioner Cameron referenced the resorts in Singapore and New Jersey that utilize architecture and amenities to attract people from around the world. Commissioner McHugh asked if Singapore required architecturally stunning proposals or if they were a product of the application. Commissioner Cameron stated that the authorities made architecture a requirement on which they would judge the proposals. Commissioner McHugh stated that the Commission should work on the evaluation criteria, put together a team to help evaluate the responses, and conduct a public discussion session. Commissioner Zuniga stated that the Commission should come up with a relative weight for the evaluation criteria and a scoring mechanism. Commissioner Cameron cited the example of Las Vegas, where the developer built beautiful golf courses that encouraged golfers to visit, play golf, and do a little gambling during their trip. She stated that the Commission needs to consider what amenities will have a similar effect in attracting people from around the country or around the world.

Commissioner Stebbins recommended that the Commission have a conversation with MOTT and MassPort, who are working on drawing in international visitors by encouraging direct flights and other ideas. Chairman Crosby stated that the Commission is walking a fine line as it wants to push for economic development but not to the point that the business model is damaged. He stated that

the Commission wants the casino licensees to have a healthy return on investment so that they can have a healthy business, make money, and hire more people.

Chairman Crosby asked what the next step should be. Commissioner McHugh stated that the Commission should post Chairman Crosby's memorandum and invite public comment. The Commission should then incorporate the questions in the memorandum into the evaluation criteria. Once the Commission develops the evaluation criteria, the Commission should hold a public discussion. In the meantime, the Commission could extend an invitation to MassPort and MOTT to attend one of the Commission's weekly meetings.

Public Education and Information:

See transcript pages 28-61.

Report from the Ombudsman – Ombudsman Ziembra stated that he continues to have meetings with and answer questions from communities and applicants. This evening, he and Attorney Grossman are scheduled to attend a regional forum hosted by the Pioneer Valley Planning Commission. He stated that over the next couple of weeks he will be concentrating his efforts on reaching out to some of the new applicants. Chairman Crosby asked Mr. Ziembra to create a list of agencies and organizations to assist applicants in determining whom to contact to move their process forward.

Question 1, Surrounding Community Draft Regulation – Mr. Ziembra provided the Commission with a codification of the policy defining surrounding communities that was adopted during December's policy meetings. He recommended that the Commission issue this draft for further public comment and, after reviewing the comments, vote on the policy.

Mr. Ziembra reviewed the portion of the surrounding community draft regulation that pertains to community disbursement. He stated that he included this section to encourage applicants to provide technical assistance funding to communities before the application process. He stated that the Commission will make a final determination regarding whether a community is a "surrounding community" after receiving the RFA-2 application. , In the meantime the Commission must still determine who can receive technical assistance funding. He stated that the draft policy will create a method for disbursement of funds to a community that wants to evaluate the impacts of a casino, even though it is too early for the Commission to deem that community a surrounding community. He stated that a community that has not already signed a surrounding community agreement but wishes to be designated by the Commission as a surrounding community must send a letter to the Commission so requesting within 21 days after the Commission posts on its website the RFA-2 application involving that community. Communities that have signed the surrounding community agreement automatically become surrounding communities. Commissioner Stebbins recommended that Mr. Ziembra define the entity with whom the developer would have to negotiate a surrounding community agreement.

Community Disbursement – Mr. Ziembra stated that Attorney Grossman has prepared a community disbursement grant agreement form and is awaiting final word from the Division of Local Services on the adequacy of the form.

Attorney Grossman addressed the Commission. He stated that the Commission established in Section 114.03 of the regulations a process regarding the letter of authorization. He stated that the Commission can disburse funds to the communities via straight reimbursement or via a grant. He stated that the agreement form requires the Commission to approve the specific expenditures on which the applicant and the developer agreed if those expenditures are consistent with the intent of statute. The intent of the statute is that the disbursements be used for alleviating costs associated with negotiating agreements and mitigating the negative impacts of gaming in the area. The form also contains an audit provision and a callback provision so that the Commission can at any time ensure that funds are properly spent. It requires that the Commission keep good records on how communities spend the funds and allows the Commission to recapture any unspent funds at the conclusion of the review process. It also makes clear that by giving out this money, the Commission is not accepting responsibility for the work for which the grant monies are spent. He recommended that the Commission post this form on its website once approved by the Division of Local Services.

Attorney Grossman stated that several outstanding questions remain. One question relates to how the Commission will process the applications for reimbursement. Another is what would happen if an applicant does not agree to a cost for which a municipality wants reimbursement, and what role the Commission would play in that situation. He stated that under the present system the Commission is the gatekeeper, but the municipality and the applicant should try to reach an agreement themselves. He stated that there is no provision in the present regulations for a situation in which an applicant does not agree to enter into a letter of authorization with a municipality in its entirety, or does not agree to certain expenses.

Chairman Crosby asked whether the Commission should make a decision on these issues. Mr. Ziembra recommended moving forward with the current instrument and dealing with this type of issue if and when it arises. He stated that the Commission will have to resolve the application approval process. Chairman Crosby stated that he believes that the process should fall under the purview of the Ombudsman. Commissioner McHugh agreed that this responsibility could be delegated to the Ombudsman, who would only have to consult with the Commission if he has any doubt about the reimbursement being requested. The remaining Commissioners were in agreement.

Motion made by Commissioner McHugh that the Commission accept the procedure and process detailed in the memorandum of January 17, 2013 and delegate to the Ombudsman the responsibility for making disbursements upon receipt of applications that he approves. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Regulation Update:

See transcript pages 61-65.

Attorney Grossman stated that at the last meeting, the Commission discussed a memorandum which laid out a process by which the Commission would draft the Phase 2 regulations and complex gaming regulations. He stated that he has had a discussion with the legal and gaming consultants and the Commission now has an outline including assignments of who would be responsible for certain provisions. He stated that he will send the Commissioners a copy of the outline for review, with the goal of discussing this outline at the next Commission meeting. He stated that the Phase 2

process would be the most time consuming, and, if the Commission can move through this process as quickly as possible, the remaining regulations may move ahead more expeditiously. He stated that he has developed a draft schedule for the promulgation of the regulations, which is consistent with the schedule the Commission has already approved. The schedule attempts to shorten the timeline as much as possible. Commissioner Cameron commended Attorney Grossman on the work he has done on this subject.

IEB Report:

See transcript pages 65-74.

Scope of Licensing – Commissioner Cameron stated that the IEB had a very busy week. She thanked the applicants for responding to the IEB’s requests in a timely manner. She stated that the application review and investigations are proceeding.

Investigations – Commissioner Cameron stated that the IEB reviewed two applications and sent those to the contract investigators to start investigations in conjunction with the State Police. She stated that the IEB has completed application review for four additional applicants—MGM, Mohegan, Hard Rock, and Wynn—and the IEB will also deem these applications sufficient and send them to the investigators. She stated that all applications have some deficiencies and the applicants are being responsive to cure the deficiencies. She stated that Plainridge and Penn National’s background investigations have already begun.

Chairman Crosby asked when the Commission anticipates that the application information can be released to the public. Commissioner Cameron stated that the Commission gave applicants two weeks to provide a redacted copy of the application that will have information suitable for release to the public.

Commissioner Cameron stated that several investigations may require additional costs and when the IEB has substantial forecasts, it will provide an explanation as to the reasons for the increased costs. Commissioner McHugh asked if the Commission will post a schedule of fees on the website. Commissioner Zuniga stated that the Commission is working on posting this information.

Chairman Crosby asked about two applicants who did not declare which license they are looking for, and he expressed concern about moving ahead with background investigations for the slots license first because the Commission does not know what license is being requested. Commissioner Cameron stated that application review is an interactive process and applicants should be able to provide this information as the process unfolds.

Racing Division:

See transcript pages 74-98.

Transition Update - Director Durenberger addressed the Commission. She stated that the transition process is almost complete and the Racing Division will finish any remaining cleanup activities at the vacated facilities by the end of next week.

Pari-mutuel and Simulcast Statute Review and Discussion – Director Durenberger stated that the meeting packet contains a memorandum outlining the issues discussed at the last Commission meeting and the Racing Division will post a clear request for public comment on the Racing Page of the Commission website tomorrow. She stated that a request for comment that the Racing Division had previously posted was inconspicuous and the Racing Division received no comments.

Director Durenberger stated that the Commission previously discussed the simulcast license, which is issued to non-racing gaming licensees, and some of the regulatory challenges presented by the simulcast license. She stated that the Racing Division believes that the Commission has broad regulatory powers to regulate simulcasting by a gaming licensee. She stated that 128A and 128C are set to expire in 2014, as Sections 39 and 41 of the Gaming Act have repealed those chapters.

Commissioner McHugh stated that this discussion proceeds on the assumption that licensing authority under 128A and 128C will be redone in some form. Director Durenberger stated that there are two options to pursue: tweaking individual provisions of 128A and 128C, or creating a comprehensive racing chapter that ends the perpetual sunseting and includes other provisions. David Murray, Consultant, addressed the Commission. He stated that the underlying assumption is that the Commission has a mandate to look at 128A and 128C and to determine whether those sections are effective in the current context of the racing and simulcasting industry. He stated that the Commission will have to look at how 128C regulates simulcasting as well as its involvement in setting the level of takeout that would go into the racehorse development fund to fund the racing industry. He stated that the Gaming Act gives no statutory authority to do all of the things that are currently done on the basis of the authority in 128C. He stated that the Commission would be better off structuring 128C to accommodate the Gaming Act simulcasting license and to incorporate those changes into a revitalized and streamlined 128C.

Chairman Crosby stated that the big question is what will happen to 128A and 128C come July 2014. This Legislature is responsible for making this decision, and the Commission has to determine whether the Legislature wants an opinion on what should happen.

Proposed Regulation Changes to 205 CMR 3.00 and 4.00 – Director Durenberger introduced a draft letter to the Local Government Advisory Council pertaining to proposed changes to 205 CMR 3.00 and 4.00 relative to equine medication and veterinary practices at racetracks. She stated that the letter outlines the areas of the CMR the changes will affect and what the new proposed rules are designed to do. She highlighted some of the recommendations and stated that these proposed rules will give the guidelines that the practitioners and trainers have been seeking. The proposed rules implement industry best practices, and Massachusetts would be joining a number of states in rolling out these rules.

Motion made by Commissioner McHugh that the Commission authorize Director Durenberger to send this letter enclosing new proposed regulations dealing with subjects contained in the letter to the Local Government Advisory Committee and otherwise take steps necessary to see that the regulations are properly promulgated. Motion seconded by Commissioner Stebbins. Motion withdrawn.

Chairman Crosby asked if this letter intended to convey the whole regulatory change. Attorney Grossman stated that the intention was not to forward the draft regulations as they have not been

formally reviewed by the Commission. He stated that this letter highlighting the proposed changes satisfies the obligation of the executive order. Commissioner McHugh stated that he misunderstood what was happening and withdrew his motion. Director Durenberger stated that the intent was to come back before the Commission in approximately two weeks to review the full text of the amendment. Commissioner McHugh recommended that Director Durenberger send the letter and that the Commission review the draft regulations at the next Commission meeting.

Motion made by Commissioner McHugh that Director Durenberger be authorized to send the letter dated January 17, 2013 to the Local Government Advisory Committee promptly. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

A brief recess was taken.

Chairman Crosby reconvened the 46th meeting.

Other Business:

See transcript pages 98-127.

Chairman Crosby stated that this portion of the meeting is reserved for matters not reasonably anticipated by the Chairman at the time the agenda was posted, and the Commission will now be discussing four application deadline waiver requests which the Commission received on Tuesday, January 15, 2013.

Ombudsman Ziemba stated that he contacted representatives from all four entities that filed requests for extension to let them know that their requests would be discussed today. He stated that the City of Holyoke has submitted a letter regarding these applications.

Commissioner McHugh stated that three entities that did not file an application submitted requests for extensions, as did one entity that did not deposit a check by the deadline of 5:00 p.m. January 15, 2013. He stated that under the Commission's regulations are two applicable provisions to consider. The first, found in 205 CMR § 111.01(6), provides that the Commission may in its discretion extend the time for filing a complete application to enable an applicant to cure a deficiency in its application, provided that the application was submitted and the applicable fee paid before the established deadline. That section also allows the Commission to grant reasonable additional time for filing in cases in which extraordinary circumstances prevented a timely filing. He stated that § 102.03(4) provides the Commission may in its discretion waive or modify any component of its regulations, including deadlines, and the Commission, in exercising that power, has by regulation said it will consider four factors: whether the waiver is consistent with General Laws chapter 23K, whether granting a waiver will not interfere with the ability of the Commission or the Bureau to fulfill its duty, whether the waiver will adversely affect the public interest, and whether failure to grant the waiver would cause substantial hardship to the person requesting the waiver.

Commissioner McHugh stated that the first request is embodied in a letter from Mayor Michael D. Bissonnette from the City of Chicopee. He read the following from this letter, "the impetus for my outreach to you today is that within the last seven days I feel a very strong and legitimate expression

of interest about a potential site in our city, just taken under option, that warrants my serious consideration and that of our residents. I respectfully request that the Gaming Commission grant the city the additional time we need to work with the site owner by allowing a late application to be filed for a casino development in Chicopee.” Commissioner McHugh stated that this request is understandable from a Mayor who is trying to advance the interests of his city, but does not fit within the concept of extraordinary circumstances. He stated that, under the four part test, granting the waiver would adversely affect the public interest as the Commission is trying to move forward expeditiously to achieve the goals the statute requires. Giving someone an opportunity to file a license application sometime down the road without any deadline in site would endanger the process. He recommended, after considering all the factors, that the Commission deny this request for an extension. Commissioner Cameron stated that she agrees that this is not an extraordinary circumstance. She stated that other developers and cities trying to put deals together met with the Commission to discuss scope of licensing but were not able to make the deadline. Commissioner Zuniga stated that he agrees and pointed out that the deadline has been in place for months. He stated that an applicant did not have to secure a site to meet the deadline and he is disinclined to entertain any waivers. Commissioner Stebbins pointed out that the Mayor could speak to one of the applicants who has not chosen a site and work something out for Chicopee. He stated that he agrees with Commissioner Zuniga that the Commission deadline has been well known.

Motion made by Commissioner McHugh that the request for an extension of the deadline contained in the letter to the Commission sent by the Honorable Michael D. Bissonnette, Mayor of the City of Chicopee, dated January 15, 2013, be denied. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh stated that the second waiver request was written by Michael Freedberg on behalf of Good Sam’s Casino, Inc. He read the following from this letter, “Good Sam’s Casino is formally requesting that the Commission grant Good Sam’s an extension of time to come forward with its \$400,000 entry fee into the licensed application process.” He stated that the letter further states that Holyoke is the target destination for this casino, that the Holyoke Mayor has taken different positions insofar as casinos in Holyoke are concerned, and his current position is that he does not choose to engage in negotiations with a potential developer for a Holyoke casino. The Good Sam’s letter stated that ultimately the people ought to decide this issue, not the Mayor, and Holyoke may have a special election to fill a United States Senate seat which would offer an opportunity to create a petition to allow casino gaming in Holyoke. The request is for a six month extension of the time for paying the entry fee. Commissioner McHugh stated that this information is speculative, a six month postponement would raise havoc for the schedule for Region B, and the public interest would not be satisfied by granting this application for an extension. He recommended denying this request. Chairman Crosby acknowledged that there have been difficult circumstances at the local level but stated that the Legislature has made this a local process and the Commission has removed itself from local decisions.

Motion made by Commissioner McHugh that the petition of Good Sam’s Casino, Inc. for an extension of six months to file its application and application fee be denied. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh stated that the third waiver request is from the Nicolai Law Group on behalf of WM Development Company, aka Paper City Development. He stated that this request

also looks at circumstances that arose in Holyoke and the Mayor's positions. The letter states that the Holyoke City Council has decided to put a casino ballot question before the residents at some point in the future when a special election is held. Commissioner McHugh stated that granting this extension would have a negative effect on the public interest and ought to be denied. Commissioner Stebbins disclosed that he is familiar with the attorney for the law group representing WM Development and also two of the principles from WM Development, but it is his opinion that this familiarity does not exclude him from taking action on the matter. He pointed out that the ballot question may need mayoral approval to move forward. Commissioner Zuniga stated that the proposed ballot question is a nonbinding question so by its nature may not move the process forward.

Chairman Crosby stated that, although this information has no bearing on the Commission's decision, as a matter of public record he would like to disclose that Mayor Morse from Holyoke sent a letter to the Commission stating that he would never negotiate a host community agreement with any applicant and encouraged the Commission not to approve the waiver request.

Motion made by Commissioner McHugh that the petition for an extension filed by WM Development Company, LLC, aka Paper City Development, be denied. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh stated that the final waiver request is from Seafan Trust d/b/a Sun Moon Casino and Resort. He stated that they are seeking an extension of less than 30 days based on an assertion that they were unable to file their fee in the amount of \$400,000 because the funder died shortly before the application deadline and, consequently, they were unable to get the money needed to file their application. He stated that the application they filed was broadly nonconforming and shows no real ability to follow through on a gaming application in which the necessary information is present. Commissioner Cameron stated that the application was very limited and the Commission had no interactions with this company and has no understanding of the company structure. She stated that she is not comfortable that enough information has been provided for the Commission to determine if they would be serious in the process and agrees that the Commission should not grant an exception for extraordinary circumstances. Commissioner Zuniga stated that he agrees with all these comments and recommendations.

Motion made by Commissioner McHugh that the application of Seafan Trust d/b/a Sun Moon Casino and Resort be denied. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Commissioner Zuniga pointed out that the Commission has reached a very important milestone of meeting the January 15, 2013 application deadline. He recognized Chief of Staff Janice Reilly for all the work she has done to make this possible.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission January 17, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission January 10, 2013 Meeting Minutes

3. Massachusetts Gaming Commission Summary Schedule Update
4. Massachusetts Gaming Commission January 11, 2013 Memorandum Regarding Evaluation Criteria for Casino Proposals
5. Massachusetts Gaming Commission January 17, 2013 Memorandum Regarding Community Disbursement
6. January 16, 2013 Draft of Regulation Regarding Determination of Surrounding Communities
7. Massachusetts Gaming Commission Grant Agreement
8. Question 1 Analysis
9. January 14, 2013 Racing Division Briefing Memorandum
10. January 17, 2013 letter to Department of Housing & Community Development and Massachusetts Municipal Association from Dr. Durenberger Regarding Amendment of 205R
11. Supplemental Agenda
12. January 15, 2013 City of Chicopee Request for Extension of Time
13. Letter from Massmouth Consulting Regarding Good Sam's Casino, Inc. Request for Extension
14. January 15, 2013 Letter from Nicolai and Accompanying Petition Regarding WM Development Request for Extension
15. January 15, 2013 Seafan Trust d/b/a Sun Moon Casino and Resort Letter Regarding Request for Extension of Time in Which to Submit Phase I Application Fee
16. January 17, 2013 letter from Mayor Alex B. Morse requesting that the Commission deny all Phase 1 Application deadline extension requests related to casino development in the City of Holyoke

/s/ James F. McHugh
James F. McHugh
Secretary