

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: January 24, 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 49th public meeting.

Approval of Minutes:

See transcript page 2.

Chairman Crosby stated that the Commission will review the minutes for January 17, 2013 at the next Commission meeting.

Administration:

See transcript pages 2-29.

Finance Update – Commissioner Zuniga recommends that the Commission ratify the extension of the current lease at its present headquarters for an additional year and make a commitment for additional space of 5,561 rentable square feet.

Motion made by Commissioner Zuniga that the Commission ratify a commitment with the landlord at 84 State Street to extend the term of the current space for one year and add additional space for a term of fourteen months, so both leases would expire contemporaneously. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Background Check Finances – Commissioner Zuniga stated that he has prepared a memorandum for discussion on three key considerations relative to charges for the Phase 1 investigations. He stated that the Commission should publish on its website the hourly fees for investigations and he has included in this memorandum the fees that the Commission will be paying its investigation staff. Chairman Crosby asked that Commissioner Zuniga verify the fees noted in Item G, as they appear to be high. Commissioner Zuniga stated that investigators will provide a forecast to the Commission and the applicant if the initial application fee is insufficient to cover the investigations.

Commissioner Zuniga stated that the regulations allow the Commission to assess to the applicant a portion of the costs the Commission incurs that are attributable to investigations. He recommended that the Commission base this cost on the direct salaries of people assigned to the investigation efforts. In addition, the investigations would incur an indirect cost based on direct salaries. Chairman Crosby asked that Commissioner Zuniga reassess the overhead calculation contained in the memorandum.

Commissioner Zuniga asked that the Commission consider whether the Commission should assess its indirect costs equally among the eleven applicants or whether it should prorate the indirect costs based on direct costs. After discussion, the Commission determined that it was leaning toward assessing indirect costs proportionally based on direct costs but would seek further information from other jurisdictions.

Commissioner Zuniga stated that the Commission should consider what to do if forecasted fees exceed available funds and how to collect those additional funds from the applicant. He suggested that the Commission could ask the applicant to replenish the difference in advance or determine a minimum amount that the applicant should hold in an account. Under the second option, if the balance falls below a specific amount, the Commission will ask the applicant to replenish the account accordingly. He stated that the regulations reference \$100,000 as a minimum balance that the applicant must maintain.

Commissioner Cameron stated that the Commission's goal is to avoid any kind of stoppage in investigations due to financial constraints. She stated that the second option makes sense as it allows a more accurate forecast. Chairman Crosby recommended using a middle ground plan, with a minimum balance of \$200,000, so when each account goes down to \$200,000 the Commission requests additional funds necessary to meet the projection for total cost. Commissioner Cameron stated that the Commission will keep clear records of its costs and provide these records to applicants. She indicated that the Commission will return to the applicant any money requested but not used if the investigation costs less than anticipated.

Public Education and Information:

See transcript pages 29-50.

Report from the Ombudsman – Ombudsman Ziemba stated that he continues to have meetings and conversations with applicants and communities, including those relating to the more recent filings. He stated that he continues to receive general questions regarding process, funding, and

timing issues. He stated that he has received minor comments from the Department of Revenue Division of Local Services relative to the Community Disbursement form. He anticipates that the Commission will post the grant and process within a couple of days. He stated that he has been working with a number of different regional planning agencies to distribute the draft surrounding community definition.

Mr. Ziemba stated that he has received questions about the Commission's directive that no referendum occur until the end of the Phase 1 licensing process and he and Commissioner Cameron have met with the consultants to discuss this question. Commissioner Cameron stated that the IEB is focusing investigative resources on the Category 2 licenses, with the goal of completing investigations on those applicants by early May. In addition, the Commission has targeted July 25 as a date for completion of the Category 2 suitability determinations. Nevertheless, the Commission is attempting to advance those dates if at all possible and will do its best to provide cities and towns with likely date changes as quickly as possible so that they will be able to plan accordingly.

Commissioner McHugh stated that a community may schedule a referendum for any time after July 25, but it will be taking a risk because the Commission cannot guarantee that it will complete suitability determinations by the July 25 date. He stated that the Commission will update applicants when it can, but for the moment these dates are the best information available. Mr. Ziemba advised that the Commission should issue another host and surrounding community advisory in the near future that includes any new information and post the information on its website so that it is available to everyone.

Energy Efficiency Presentation:

See transcript pages 50-93.

Commissioner Stebbins stated that Chapter 23K of the General Laws has a number of provisions with respect to building the resort destination casinos in compliance with LEED guidelines for energy efficiency. He stated that resort casinos will be heavy utility users and the Commission has discussed ensuring that these facilities are energy efficient. He introduced Mark Sylvia from the Department of Energy Resources and Galen Nelson from the Massachusetts Clean Energy Center, who the Commission invited to make a presentation on energy efficiency.

Mr. Sylvia addressed the Commission and introduced Dwayne Breger and Ian Finlayson, two members of his team. They provided information on the Department of Energy Resources' role as well as the types of programs and incentives that may be available to casino applicants as they go through the application process. Mr. Sylvia stated that the Department of Energy Resources would be more than willing to sit with each one of the applicants, along with the Clean Energy Center and some of their colleagues, to provide further details.

Mr. Nelson addressed the Commission. He provided background information on the Clean Energy Center, including its mission and goals, and explained the programs that the CEC offers. He stated that in addition to providing benefits for building owners and patrons, high performance casinos also create an opportunity to drive Massachusetts economic activity in this

industry. The casinos, therefore, can be early adopters of emerging clean energy technology that is being developed right here in Massachusetts. He stated that the CEC looks forward to being a resource for the Commission and casino developers and is willing to work together to design and build casinos of which everyone can be proud.

Mr. Ziemba stated that the Commission will be working with Executive Office of Energy and Environmental Affairs for its guidance on technical questions that arise when reviewing the applications.

Regulation Update:

See transcript pages 93-105.

Attorney Grossman stated that he has provided the Commission with an outline prepared by the consultants, which provides a timeline and assignment of responsibilities for the Phase 2 regulation process. He stated that in house counsel will review the completed regulations and circulate them to the Commission for review. Commissioner McHugh stated that the plan is to circulate sections as they are completed rather than waiting until all sections are completed. Commissioner Zuniga stated that he would like to participate in sections five and eight. Commissioner Stebbins expressed interest in sections eight, as well as the sections on host community agreements, surrounding community agreements, and live entertainment venue agreements.

Mr. Grossman stated that his plan is to have draft language written on items 1-27 by the first week of March for submission to the full Commission. The Commission can then begin the promulgation process, notify the Local Government Advisory Council, notify the Secretary of State's Office, publish notification in the newspapers, and begin the public hearing process.

A brief recess was taken.

Chairman Crosby reconvened the 49th meeting.

Public Education and Information (Continued):

See transcript pages 105-113.

Protocol for Meetings with Applicants – Chairman Crosby stated that the Commission has not established a standard for Commissioners to meet with applicants or surrounding and host communities. Commissioner McHugh stated that the Commission should be careful about non-public meetings because applicants are undergoing a competitive process. He suggested that, at the very least, requests for meetings should be in writing and specify the subject matter of the meeting so that the Commission may determine whether a meeting with Commissioners is necessary. Most subject matters should be handled by Commission staff. Commissioner Cameron agreed and stated that she cannot anticipate a scenario in which the Commission staff would not be able to field questions. Chairman Crosby stated that there is a distinction between an official meeting with a governing body of the surrounding or host community versus

representatives of the community attending a public meeting. The Commission believes that the latter is a more favorable scenario.

Commissioner Zuniga stated that the Commission in Indiana has a strict policy of not meeting with licensees at all. Commissioner McHugh stated that the Commission should write a policy on this matter and agreed that he would prepare a draft in the coming weeks.

IEB Report:

See transcript pages 113-115.

Scope of Licensing/Investigations – Commissioner Cameron stated that the IEB is nearing the end of the qualifier determinations stage. There are outstanding issues with two applicants but the IEB is nearing resolution of those issues and anticipates full resolution in the near future. She stated that the IEB has completed initial review of six applications and has started investigations on those. The IEB is planning to complete review and start investigations for three more applicants this week.

Racing Division:

See transcript pages 115-133.

Pari-mutuel and Simulcast Statute Review and Discussion – David Murray, Racing Consultant, addressed the Commission in Dr. Durenberger's absence. He stated that in order for the Commission to continue to possess the current levels of regulatory authority over live racing and simulcast takeouts, the Commission must authorize some of the core provisions of Chapters 128A and 128C of the General Laws on or before July 21, 2014. He stated that the review team is working on a draft single proposed chapter that will incorporate all of the core provisions that currently enable the broad regulatory authority in 128A and 128C, as well as an accompanying draft report, with a goal of getting the proposed legislation to the Commission by the end of next week for filing by the end of February.

Mr. Murray stated that over the last several days the Racing Division has received approximately 212 emails regarding simulcasting of greyhound races. The vast majority of those emails demand that the Commission recommend in its report to the legislature that, in addition to banning dog racing within the Commonwealth, the Legislature also ban simulcast wagering on dog races that take place outside the Commonwealth. He stated that these emails came in the wake of an email exchange he had with the President of GREY2K USA, Christine Dorchak, as to the meaning of the current law that bans greyhound racing. He stated that they have a difference of opinion as to what this law means. Chairman Crosby stated that Ms. Dorchak's believes that the law also bans simulcasting of greyhound racing while the Commission believes that the law does not ban simulcasting of greyhound racing.

Chairman Crosby asked if there is a difference in the Commission's ability to permit simulcasting of horse racing and the ability to permit simulcasting of dog racing. Commissioner McHugh stated that under G.L. c. 23K, §7(b) the Commission has broad regulatory authority to

permit various types of simulcasting or not, but it would be important for the Commission to understand the legislative intent. Chairman Crosby stated that the Commission will have to make a decision on whether it wants to allow simulcasting of dog racing. He recommended that the Commission draft the recommendation to the legislature both ways, including simulcasting of dog racing and excluding it, and let the Legislature make the ultimate decision.

Doug O'Donnell from the Racing Division addressed the Commission. He stated that the Commission has before it a list of unpaid pari-mutuel tickets from 2011 for which the ticket-holders are seeking payment. He stated that those who make wagers on winning horses have until the following year to seek payment. The state auditors have reviewed this list and are in agreement that the Commission should authorize payment of each listed ticket. He stated that once the Commission approves payment, the tracks will have 90 days to pay to the Commonwealth the amount they are holding as a reserve for winning tickets on which no payment claim has been made. Upon receipt of those funds from the tracks, the commonwealth will deposit them into the purse accounts for Plainridge and Suffolk Downs and into the stabilization account for Wonderland and Raynham.

Motion made by Commissioner Cameron that the Commission approve the payment of the 2011 outs in the amounts specified on the list Mr. O'Donnell presented. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission January 24, 2013 Notice of Meeting and Agenda
2. January 23, 2013 Memorandum Regarding Recommendation to Ratify Extension of Current Space and Additional Space
3. January 23, 2013 Memorandum Regarding Investigations Costs Consideration
4. Massachusetts Gaming Commission Initial Drafting Assignments for Phase-2 Draft Regulations
5. January 15, 2013 Memorandum Regarding 2011 Suffolk Outs Individual Payments

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