The Commonwealth of Massachusetts
Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA
December 11, 2012 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Tuesday, December 11, 2012
9:00 a.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

PUBLIC MEETING - #39

1. Call to order
2. Discussion of Policy Questions: 16
   19 (and 8)
   4
   5
   Additional questions if time permits.
3. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.mass.gov/gaming/meetings, and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

12/6/12
(date)

Stephen P. Crosby, Chairman

Date Posted to Website: December 7, 2012 at 9:00 a.m.

Massachusetts Gaming Commission

Framework for Addressing Policy Questions

Update Date: December 6, 2012

1 Immediate action
2 Needs attention
3 May be addressed later

Anticipated Date of Discussion	Q #	Questions and/or Policies	Priority Level *	Follow Up
Tuesday, Dec 11	16	Should the Commission confirm through a formal policy that no host community agreements should be executed or referendums held before the relevant applicant has qualified through RFA-1?	1	Crosby
Tuesday, Dec 11	19	How will the Commission consider the strategic implications of when, how and where to issue licenses, including the slots license, in the context of other license-issuing decision so as to maximize the benefits to the Commonwealth as a whole? Should the Slots license applicants be investigated first, and to what degree should resources be allocated (both investigations and drafting regulations) for the slots license, in anticipation or after the Jan 15 deadline?	1	Crosby
Tuesday, Dec 11	4	What, if any, information in addition to that specified in G.L. c. 23K, § 9 should the Commission require Phase 2 applicants to provide as part of the Phase 2 application.	1	Zuniga / Stebbins
Tuesday, Dec 11	5	What, if any, criteria in addition to those listed in G.L. c. 23K, §§ 15, 18 should the Commission use in the RFA-2 licensing determinations in order to ensure that the license awarded will provide the highest and best value to the Commonwealth in the region in which a gaming establishment is to be located and how should all of those criteria be weighted, ranked or scored?	1	McHugh / Ziemba
Tuesday, Dec 11	8	Should the Commission make casino licensing decisions region-by-region or simultaneously for all regions? Should the Commission make decisions and apply resources to slots license first? (see question 19 below)	2	Crosby
Tuesday /Wednesday	3	What criteria will we use to decide which "not-for-profit or municipally-owned performance venues" are "impacted live entertainment venues" within the statute's meaning.	2	Crosby

Key Policy Question #8: Should the Commission make casino licensing decisions region by region or simultaneously for all regions?

Key Policy Question #19: How will the Commission consider the strategic implications of when, how and where to issue licenses, including the slots license, in the context of other license-issuing decisions, so as to maximize the benefits to the Commonwealth as a whole? Should the slots license applicants be investigated first, and to what degree should resources (both investigations and drafting regulations) be allocated for the slots license, in anticipation of or after the January 15 deadline?

I've decided to answer these questions together, since they relate to one another, and many comment submissions combined responses. The specific question about whether slot licenses should be investigated and awarded first, if possible, was added after the Key Policy Questions were initially published.

We received 7 written submissions on these questions:

Respondent	A) Sequence Casinos? B) Consider Slots Location? C) Do Slots License First?	Comment
Sterling Suffolk Racecourse	A) No B) No C) No	No Legislative intent
Shevsky Froelich/City of Springfield	A) N/A B) N/A C) No	Priority is speed to spur benefits; but do consider locations in an effort to minimize cannibalization
BrownRudnick/MGM Springfield	A) No B) N/A C) N/A	Sequencing decisions would allow an "industry head start" and delay the flow of revenue to the Commonwealth
Martha Robinson	A) Yes B) N/A C) N/A	Sequencing gives the Commission time to focus its resources
Philip Cataldo	A) Yes B) Yes C) N/A	Sequence casinos since regions have different needs
Paul Vignoli	A) No B) Yes C) No	License slots last, permitting losing casino bidders to compete for slots
City of Boston	A) No B) N/A C) N/A	Intent of the law is to maximize benefits to the Commonwealth ASAP

N/A= Not Applicable

In addition to these comments, we had extensive conversations with our gaming consultants. The consultants believe that it is both implicit in the law and clearly a feature of today's environment, that there is a wish for speed in the award of licenses and generation of jobs and economic benefits. They suggest that sequencing casino licenses by region would considerably delay the process, with a completely unknown degree of increased competition.

The consultants are clear that the relative proximity of one facility to another has a negative impact on the performance of both: if they are relatively close to one another (certainly within 20 miles), there is a considerable likelihood that one will cannibalize the other. Thus, they suggest that siting the slots license after the siting of the other two (or possibly three) facilities could be advantageous if we had slots bidders that were not within the primary catchment area of those casino licenses. On the other hand, the consultants impute a clear legislative intent from the Legislature's direction that we issue the slots *application* first (M.G.L. c. 23K, § 8 (a)), that the slots *license* should be awarded quickly in order to hasten the flow of jobs and economic benefits.

Two other considerations:

- There is a considerable possibility that we will know the approximate locations of the casino licenses just from the location of the RFA-2 bidders.
- Various organizations point out that if we were truly planning to "maximize benefits", we would need to know the locations of all the license options at once, as well as know the location of prospective new facilities in New Hampshire and Maine—all of which is an illusory aspiration.

In the final analysis, my recommendation is that while the issue of locating two licensees sub-optimally close to one another is a legitimate concern, the legislative intent to move as quickly as possible to generate jobs and other economic benefits should control. Thus, I recommend the following:

A. We should make the license decision on Regions A and B at approximately the same time, mitigated only by delays beyond our control such as the receipt of RFA-2 applications.
B. We should consider to the extent possible the benefits of spreading the various licensees rationally around the Commonwealth, in order to maximize the economic return and service the most people conveniently. However, we should **not** hold the slots license artificially in order to consider its impact upon the casino licensees.
C. We should attempt to license the slots parlor first, and allocate resources accordingly, in order to facilitate the earliest possible opening of a facility generating economic benefits to the Commonwealth. This decision, however, will be mitigated by the extent to which we receive all the applications for the slots license, and should not materially compromise the speed with which we pursue the other decisions.

Key Policy Question #16: Should the Commission confirm through a formal policy that no host community agreements should be executed or referendums held before the relevant applicant has qualified through RFA-1?

The relevant sections of the gaming law are M.G.L. c 23K § 15 (8) and (13).

As a practical matter, the Commission has already considered this question in some detail, by virtue of having collaborated with Springfield to assure that they will not execute an HCA or hold the referendum until after the Springfield bidders have passed the RFA-1 suitability test. However, John Ziemba in particular picked up concerns about this issue, and we decided to postpone final deliberation until we had an opportunity to hear from interested parties.

We received 11 written submissions on this question:

Respondent	HCA, Referenda	Comment
Sterling Suffolk Racecourse	No, Silent	Concern about the delay between final execution of an HCA and the referendum (60-90 days); strong general support for local control
Town of Lakeville	No, No	
Mass Audubon	Yes, Yes	It is important to have baseline conditions for all HCAs
City of Boston	No, Silent	Strong support for the principles of local control
Paul Vignoli	Yes, Yes	
Philip Cataldo	Yes, Yes	
Martha Robinson	Yes, Yes	Communities must know the legal and financial histories of proposers before HCAs and referenda
MGM Springfield	Silent, Silent	Decision best left up to MGC and municipalities
Shevsky Froelich/City of Springfield	Yes, Yes	To standardize the rules across all regions
Metropolitan Area Planning Council	Yes, Yes	However MGC should encourage communities to hold extensive negotiations so that HCAs are ready to be consummated immediately upon bidder approval
City of Revere	No, No	Emphasize principle of local control.

After consideration of all of these comments, and discussions with Ombudsman Ziemba, I am persuaded that it is important to standardize this principle across all regions. It would be a considerable waste of time and money to hold a referendum without full knowledge of the background and operational history of the proposer, a proposer that might ultimately fail the RFA-1 suitability test. Similarly, to have a Host Community Agreement negotiated and closed to amendment before the suitability tests are concluded runs the risk of misusing municipal time and resources.

I therefore recommend that we answer this question in the affirmative.

Having said that, I do think that some constructive points emerged from the submissions:

- It is perfectly appropriate, if the community and developer so choose, to begin the process of identifying key issues for negotiation in the Host Community Agreement, and to conduct those negotiations, in order that the agreement can be formally finished and executed immediately upon passage by the developer of the suitability test.
- SSR and others raise a legitimate concern about the legislative mandate of a 60-90 day window between execution of the HCA and the local referendum. However, it would be absolutely pointless to use time and resources (particularly for opponents of an HCA, who are likely to have fewer resources than proponents) to begin to conduct a debate about a host community agreement and a gaming license without the certainty that the gaming developer will be deemed suitable.

Massachusetts Gaming Commission

MEMORANDUM

Date: December 10, 2012

To: Commissioners

From: Enrique Zuniga, Bruce Stebbins

Re: Position Paper Regarding Policy Question #4

Policy Question #4: What, if any, information in addition to the specified in G.L. c23K, SS 9 should the Commission require Phase 2 applicants to provide as part of the Phase 2 application?

- There are other policy questions in the framework for policy discussion (spreadsheet) that have inference here (i.e., depending on answer to those policy questions, additional info would be required of applicants)
- Information relative to other major goals of the Statute, to ascertain how the applicant proposes to further those goals (as in the general findings of ch. 23K Section 1) and the relevant subsections (unless Commission decides to prescribe the manner in which to further such goals):
    - Section 1 (4): Enhancing and supporting the performance of the State Lottery
    - Section 1 (5): Comprehensive Plan of Operation for a Gaming Establishment (including aspects of workforce development, job creation, and job preservation)
    - Section 1 (6): Promoting local small business and the tourism industry
    - Section 1 (7): Efforts to integrate the Commonwealth's unique cultural and social resources and integration into new development opportunities
    - Section 1 (8): Efforts to combat compulsive gambling
- Attached is a comparison of Section 9, Section 15 and Section 18 on a spreadsheet as to what may be an all-encompassing list of required information

The Commission received the following responses:

Respondent	Answers	Comment
Shefsky & Froelich / City of Springfield		In addition to section 9, information required for Section 15 and 18

William Fisher	A system (documents, processes) that allows community involvement, oversight and input
MAPC	Information (studies) to determine increased social needs and increase public service needs
Others	See two comments that are either specifically addressed by gaming act, and regulations or in other sections

Recommendation Question #4

The Commission should require information that informs in detail the general goals of the legislation (Section 1). We should also be clear to adopt those requirements in Section 15 and 18 not referenced under Section 9 in order to provide a thorough and complete application.

The Commission should also contemplate asking specific questions like:

1. What could be unique about a proposed casino in Massachusetts and make it a true resort destination?
2. What amenities are you planning that would fill a need in the Commonwealth and the region?
3. In what specific way does a particular project leverages the tourism, entertainment, historical and cultural assets of the Commonwealth, the region and the host and surrounding communities?

The caution here is that the Commission should strike a balance in framing the questions in a way that both foster and allow respondents maximum creativity. For example, the Commission may not want to define in advance what constitutes a cultural asset of the Commonwealth.

The Commission has in the past articulated that through the research agenda it intends to study and subsequently make policy or recommend policy that identifies and addresses socio-economic impacts (see relevant comment from MAPC). The relevant question here is what information may be necessary from an applicant that could inform/supplement that process.

In the spirit of better understanding the host & surrounding community concerns and how those were addressed in the host community agreements. Also, the Commission could ask applicants to provide information from host communities relative to (1) their selection process if one was created locally and (2) key concerns of the host and surrounding community.

Key Policy Question #5 (Part 2): How should any criteria in addition to those listed in G.L. c 23K §§ 15, 18 be weighted, ranked or scored?

As I stated in my memo regarding Question 5(1), I do not recommend that the Commission adopt any mandatory licensing criteria in addition to those listed in §15. The Commission could add to the factors listed in § 18, but many, if not most, of the likely additions will fit within one of the broad criteria §18 contains. The question then becomes how the Commission will assess the many components of the applications and the approaches applicants take to achieving the statutory and regulatory goals.

In response to the Commission's request for public commentary, the following respondents made the following comments regarding weighing and ranking:

Respondent	Scoring System	Comment
MAPC	yes	comprehensive, fair, transparent, based on best practices elsewhere and tuned to locality where facility is to be erected
MGM	yes	scoring system should take account of the applicant's other facilities that were built at the same cost and their past experience with a variety of factors
Springfield	no	commission should not use a scoring system but should consider the applications as a whole
Sterling Suffolk	no	decision should be made on the basis of the commission's informed exercise of judgment and discretion

In my view it is impossible for the Commission to make a licensing decision responsibly without having some agreed-upon method for weighing and assessing the various factors it takes into account. At the same time, a purely numerical approach to assessment of the factors simply creates the illusion of objectivity for what is, in the end, a discretionary process. Our consultants made the point well in the Section X of the Strategic Plan. The task, then, is to create an evaluation mechanism that confines our discretion and helps us, the applicants and the public understand the general framework within which we will exercise that discretion.

Two approaches to that task warrant consideration. Both begin with creation of a list of goals and criteria the Commission believes are important. As stated in my prior memorandum, the broad considerations outlined in §18, as clarified by regulations, may supply the entire catalog of considerations the Commission deems important. Then, in a region where there are competitive applications for licenses, the applicant's approach to those criteria could be ranked on some form of a verbal scale, e.g., good, better, best. In

awarding a single license for which there were three competitors, the State of Missouri adopted that approach and detailed the results in a report that is available at http://www.mgc.dps.mo.gov/economicanalysis.pdf. Alternatively, in regions that are competitive and those that are noncompetitive, the Commission could create a weighted average approach to the factors it deemed important. A model for that approach is contained in a report prepared by the Pittsburgh Department of City Planning available at http://www.city.pittsburgh.pa.us/cp/assets/06_Gaming_Assessment.pdf.[1]

I think that a blend of the approaches detailed in the two reports would provide the Commission with the right approach to awarding a license in all regions. The first part of that approach would be to identify the factors the Commission believes are important with the precision used by the Pittsburgh Planning Department. Instead of assigning them a numerical weight, however, I would recommend that in regions where there is competition for a license, the Commission use a relative approach based on the Missouri model. If there is a region without competition, I recommend that the Commission verbally assess the applicant's approach to each factor and, at the end, explain its licensing decision on the basis of that assessment. If carefully constructed and executed, both approaches will provide the Commission with a basis for making the findings §18 requires and will at all times help the Commission, the applicant and the public understand the basis on which the Commission is making its findings and the manner in which it is exercising its discretion.

---

[1] The initial Pittsburgh license was awarded to the applicant the Planning Department ranked lowest in virtually every respect. The results were, to say the least, unfortunate. See http://en.wikipedia.org/wiki/Rivers_Casino_(Pittsburgh). The aftermath of the award does not detract from utility of the Department's analytical approach and presentation, though the factors it considered are not necessarily the appropriate factors for us.

Key Policy Question #5 (Part 1): What, if any, criteria in addition to those listed in G.L. 23K, §§ 15, 18 should the Commission use in the RFA-2 licensing determinations in order to ensure that the license awarded will provide the highest and best value to the Commonwealth in the region in which a gaming establishment is to be located?

G.L. c. 23K, §15 states that no applicant will be eligible to receive a gaming license unless it meets 16 criteria the section contains and demonstrates in its application how it will meet those criteria. Among the listed criteria are execution of host and surrounding community agreements and successful completion of a referendum in the host community. Section 18 states that "[i]n determining whether an applicant shall receive a gaming license," the Commission must "evaluate and issue a statement of findings" regarding how each applicant will advance 19 listed objectives. The question here is whether the Commission should require applicants to meet additional criteria in order to be eligible to receive a license and whether the Commission should consider additional objectives as it considers and processes the applications it receives.

In response to its request for public commentary, the following respondents made the following comments:

Respondent	Additional Conditions 23K Sec. 15, 18	Comment
Mass Audubon	no comment, yes	Building "green" should net be merely optional
Bernstein	no comment, yes	Impact on the recreational and other values of site to the nearby communities
Fisher		community impact should be weighed more heavily than short term economic impact
Levin	no comment, yes	criteria for awarding a license should include the size of the city for which the facility is proposed and the entity that submitted an application first
MAPC	yes, yes	transportation impacts
MGM	no comment, yes	reliance should be placed on the applicant's track record elsewhere
Springfield	no, no	the sections are comprehensive and the commission has no power to create additional mandatory licensure requirements

Section 15 contains criteria that an applicant must meet if it is to receive a gaming license. In other words, if an applicant fails to meet any one of the 16 criteria the section contains, the Commission would have no power to issue a license. It is doubtful that the Commission has the power to add additional criteria to that list of mandatory requirements. That does not mean, however, that the Commission is prohibited from taking

into account criteria other than those listed in § 15 in making its ultimate licensing decision. The difference is that failure to meet one of the criteria § 15 contains automatically dooms an application. Failure to meet a criterion Commission imposes in addition to those listed in § 15 is simply a factor the Commission may take into account in deciding whether to issue a license. That being the case, I would recommend that the Commission not add to the minimum mandatory criteria in § 15 and that it deal with non-statutory factors on which it places a high importance as part of the analysis and evaluation described below and in the accompanying memo on Question 5(Part 2).

Section 18 does not contain mandatory minimums. Instead, the section requires the Commission to evaluate and make findings on 19 listed factors but does not state that those 19 are exclusive. Moreover, 23K, § 5(a)(3) broadly empowers the Commission to "prescribe the criteria for evaluation of the application for a gaming license." In fact, however, some of the factors listed in § 18 are so broad that the Commission will have to issue clarifying regulations and it may be that those clarifying regulations will encompass many, if not most, of the specific factors on which the Commission intends to place emphasis when analyzing applications. For example, § 18(13) requires the Commission to consider how the applicant proposes to "offer[] the highest and best value to create a secure and robust gaming market in the region and the Commonwealth." Section 18 (11) requires the applicant to demonstrate how it proposes to "maximize[] revenues received by the Commonwealth." And §18 (12) requires the applicant to demonstrate how it intends to "provid[e] a high number of quality jobs in the gaming establishment."

Those factors, like the others § 18 contains, are hugely value laden and regulations that identify the manner in which the Commission will implement those values surely would be helpful to the Commission, the applicant and the public. For example, an applicant's ability and readiness to proceed with construction is one aspect of the applicant's ability to provide maximum revenues to the Commonwealth and should be a factor the Commission considers in assessing applications. Compliance with local zoning requirements, which is statutory requirement, can be a complicated process but one on which the success of the applicant's proposal will inevitably depend. What the applicant has done to comply with local zoning requirements is, therefore, another factor that Commission should take into account in assessing the likelihood that the proposal will generate maximum revenues to the Commonwealth. The applicant's performance in other jurisdictions would provide a basis for assessing that its proposal would actually realize the value it promises.

There are many more but the point is that the Commission should identify the factors on which it desires the applicants to comment. At the same time, the Commission's list of factors should be non-exclusive so as not to preclude the innovation and creativity each applicant may bring to the process. After the applications are filed, the Commission should access the manner in which an applicant has dealt with each factor but, apart from those listed in § 15, none should be a gatekeeper, i.e., a factor with which compliance is required in order for an application to proceed. Indeed, by their very nature, some of the factors do not lend themselves to a gatekeeping role.

In the memo regarding Question 5(Part 2), I have set out an approach to creating and evaluating various factors.