MASSACHUSETTS GAMING COMMISSION MEETING

December 19, 2013
9:30 a.m.
Boston Convention and Exhibitions Center
415 Summer Street, Room 151 A&B
Boston, MA

★★★★★
Massachusetts Gaming Commission
84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

NOTICE OF MEETING and AGENDA

December 19, 2013

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:

Thursday, December 19, 2013
9:30 a.m.
Boston Convention and Exhibition Center
415 Summer Street, Room 151
Boston, MA

PUBLIC MEETING #100

1. Call to order

2. Approval of Minutes
   a. December 3, 2013
   b. December 10, 2013
   c. December 13, 2013

3. Racing Division – Jennifer Durenberger, Director
   a. Administrative Update
   b. 205 CMR 3.29 and 4.52 and Small Business Impact Statement (SBIS)-VOTE

4. Legal Division – Catherine Blue, General Counsel
   a. Mohegan Waiver Petition
   b. Arbitration / Arbitration Handbook
   c. Early Application Filings - VOTE
   d. Lottery Keno-Slots Definition

5. Ombudsman Report – John Ziemba
   a. Licensing Master Schedule
   b. Status of Category 2 Surrounding Community Negotiations

6. 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.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

12/17/13
(date)

Stephen P. Crosby / bws
Stephen P. Crosby, Chairman

Date Posted to Website: December 17, 2013 at 9:30 a.m.

Meeting Minutes

Date/Time: December 3, 2013 – 9:00 a.m.

Place: Boston Convention and Exhibition Center
415 Summer Street, Room 151B
Boston, Massachusetts

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

Absent: None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

Call to Order
See transcript page 2.

9:05 a.m. Commissioner McHugh opened the 92nd public meeting. Chairman Crosby was not present at the start of the meeting but entered during Professor Quelch's presentation.

Foreign Corrupt Practices Training
Presentation by Professor John Quelch, Harvard University. See transcript pages 2-40.

9:05 a.m. Professor Quelch discussed foreign corrupt practices by multinational companies and responded to questions of the Commission.

Approval of Minutes
See transcript pages 40-41.

10:00 a.m. Commissioner McHugh stated that the minutes for the November 21 public meeting are ready for approval.

Motion made by Commissioner McHugh that the minutes of November 21, 2013 be accepted subject to any mechanical or typographical corrections that may later be

found. Motion seconded by Commissioner Cameron. The motion passed unanimously.

Ombudsman Report
Report by Ombudsman John Ziemba. See transcript pages 41-88.

10:01 a.m. Ombudsman Ziemba described the host community public hearings that the Commission is conducting on the evenings of December 3, 4, and 5 for the three Category 2 applicants.

10:03 a.m. Ombudsman Ziemba and General Counsel Blue presented the issue of how the Commission should treat applicant agreements with neighboring communities when both the applicant and the community agree that the community should not be treated as a surrounding community. The Commission agreed to allow applicants and communities to enter into agreements without requiring that those agreements be treated as surrounding community agreements.

10:15 a.m. Ombudsman Ziemba presented to the Commission an issue with how the Town of Longmeadow and the applicant Blue Tarp Redevelopment are structuring the look-back provision in their surrounding community agreement. The Commission clarified that it supports look-back provisions but the community and applicant should also account for impacts that are known or knowable when executing the agreement.

10:18 a.m. Ombudsman Ziemba presented the status of surrounding communities and the Commission discussed what instructions it should give to arbitrators when applicants and surrounding communities cannot reach agreements on their own.

10:30 a.m. Ombudsman Ziemba raised the question of whether the Commission should extend the deadline for surrounding community and impacted live entertainment venue petitions relative to Category 1 applicants. The Commission agreed to not extend the deadline.

10:51 a.m. The Commission took a brief recess.

Research and Problem Gambling
Report by Director Mark Vander Linden. See transcript pages 88-96.

10:51 a.m. Director Vander Linden presented the Commission's report to the legislature on its research agenda. The Commission discussed the report.

11:01 a.m. *Motion made by Commissioner Zuniga that the Commission accept the Report on the Research Agenda of the Massachusetts Gaming Commission as presented and forward the report to the relevant subcommittees of the legislature as required by the Expanded Gaming Act. Motion seconded by Commissioner McHugh. The motion passed unanimously.*

11:02 a.m. The Commission took a brief recess.

Sterling Suffolk Discussion
See transcript pages 97-155.

11:10 a.m. Chairman Crosby introduced the discussion on the status of Sterling Suffolk as an applicant for a Category 1 license in Region A and formally recognized that the Commission is cognizant and highly sensitive of the needs of individuals involved in the Massachusetts thoroughbred industry.

11:12 a.m. Chip Tuttle, Tom Reilly, Charles Baker, Mitchell Etess, Kevin Conroy, and Mayor Dan Rizzo provided an update on Sterling Suffolk's partnership with Mohegan and the host community agreement with Revere. Mohegan Sun Massachusetts, LLC is interested in assuming the host community agreement that Sterling Suffolk Racecourse, LLC signed with the City of Revere and continuing to the RFA-2 process with a Category 1 facility in Revere. The Commission considered the issue of changing applicants and requested that the staff conduct further research prior to making a determination.

11:52 a.m. The Commission discussed the original questions of whether the Revere referendum, the host community agreement with Revere, or the definition of "gaming establishment" and "premises" would preclude a gaming establishment in Revere. In light of the new questions that the change of applicant raises, the Commission determined that it will postpone addressing these issues until the following week.

12:16 p.m. Meeting adjourned.

List of Documents and Other Items Used

1. Massachusetts Gaming Commission December 3, 2013 Notice of Meeting and Agenda
2. CV of Professor John Quelch, Harvard University
3. Massachusetts Gaming Commission November 21, 2013 Meeting Minutes
4. Report on the Research Agenda of the Massachusetts Gaming Commission - Mark Vander Linden
5. Massachusetts Gaming Commission Bolton Surrounding Community Petition Analysis
6. Massachusetts Gaming Commission Sterling Surrounding Community Petition Analysis
7. Massachusetts Gaming Commission Bridgewater Surrounding Community Petition Analysis

/s/ Catherine Blue
Catherine Blue
Assistant Secretary

Meeting Minutes

Date/Time: December 10, 2013 – 1:00 p.m.

Place: Boston Convention and Exhibition Center
415 Summer Street, Room 151A&B
Boston, Massachusetts

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

Absent: None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

Application for Category 1 License in Revere
See transcript pages 2-45.

1:00 p.m. Chairman Crosby opened the 93rd public meeting and introduced the issue of whether Mohegan Sun Massachusetts, LLC can continue in the place of Sterling Suffolk Racecourse, LLC to submit an RFA-2 application for a Category 1 gaming license in Region A.

1:03 p.m. General Counsel Blue provided an overview of the legal framework for discussing the issue. Commissioner McHugh proposed that Mohegan Sun Massachusetts, LLC may move forward in the application process without reliance on Sterling Suffolk Racecourse, LLC's host community agreement and referendum if it obtains a waiver, pursuant to 205 CMR 102.03(4), of the Commission's vote certification requirements in 205 CMR 119.01(7), enters into its own host community agreement with the City of Revere, and receives a positive referendum vote conforming to the requirements of G.L. c. 23K, § 15(13). The Commission discussed this proposal.

1:47 p.m. *Motion made by Commissioner McHugh that Commission allow the current applicant for the Category 1 casino license proposed for Revere, Massachusetts and the City of Revere to proceed with their application upon the condition that they request from the Commission a waiver of the vote certification requirements of*

205 CMR 119.01(7) of the Commission's regulations, and commit in their request for that waiver to hold a vote conforming to the requirements of G.L. c. 23K, § 15(13) in the City of Revere within 60 to 90 days after execution of a host community agreement between the applicant and the City, and provided further that they make the request for a waiver with an accompanying commitment within seven days of today's motion. Motion seconded by Commissioner Stebbins. The motion passed unanimously.

1:50 p.m. Meeting adjourned.

List of Documents and Other Items Used

1. Massachusetts Gaming Commission December 10, 2013 Notice of Meeting and Agenda

/s/ Catherine Blue
Catherine Blue
Assistant Secretary

Meeting Minutes

Date/Time: December 16, 2013 – 1:00 p.m.

Place: Boston Convention and Exhibition Center
415 Summer Street, Room 151A&B
Boston, Massachusetts

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

Absent: None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

Surrounding Community Arbitration

1:00 p.m. Chairman Crosby opened the 99th public meeting.

1:01 p.m. Ombudsman Ziemba discussed the status of surrounding community negotiations for Category 2 applicants and stated that the deadline for negotiations is December 26. The Commission staff has prepared a draft guidebook for arbitrators.

1:04 p.m. The Commission discussed how to interpret the "best and final offer" language of 205 CMR 125.01(c)(3) and how the arbitrator will determine what is a reasonable offer.

1:13 p.m. Meeting adjourned.

List of Documents and Other Items Used

1. Massachusetts Gaming Commission December 16, 2013 Notice of Meeting and Agenda

/s/ Catherine Blue
Catherine Blue
Assistant Secretary

Massachusetts Gaming Commission

MEMORANDUM

Date: December 16, 2013

To: Commissioners

From: Racing Division

Re: Regulations changes and Amended Small Business Impact Statement

Recommendation: That the Gaming Commission approve the Amended Small Business Impact Statement to be filed with the Secreatary of State and, contingent upon receiving no adverse comments from the Legislature, approve the filing of the Regulations on or after December 20th, 2013.

Background

The proposed regulation changes to 205 CMR 3.29 and 4.52 were filed, along with the initial Small Business Impact Statement and the Notice of Hearing in accordance with G.L. 30A, §2, with the Secretary of State on September 10, 2013. A public hearing was held on October 9, 2013. The regulations were then submitted to the Legislature, in accordance with G.L. 128A, §9B, on October 21. Section 9B of Chapter 128A requires that all changes to the racing regulations are submitted to the Legislature and become effective, unless disapproved by a majority vote, within sixty days after the filing. Sixty days will elapse on December 20, 2013.

Final Filing of the Regulations

The Amended Small Business Impact statement must be filed before the final draft of the regulation are filed with the Secretary of State. The Amended Small Business Impact Statement may be filed before the sixty days at the Legislature elapses. After the filing of the Amended Small Business Impact Statement and after the sixty days from §9B has passed the final regulatons may be filed with the Secretary of State.

Amended Small Business Impact Statement

The Massachusetts Gaming Commission ("Commission") hereby files this amended small business impact statement in accordance with G.L. c.30A, §5 relative to the proposed horse racing regulation changes (205 CMR 3.29 and 205 CMR 4.52: *Medications and Prohibited Substances*) for which a public hearing was conducted on October 9, 2013.

The proposed new rules reflect updates recently approved by the Association of Racing Commissioners International (ARCI) and do several important things for the industry including, but not limited to, finding any occupational licensee found to have administrated prohibited substances to a racehorse subject to penalty; preventing the transfer of horses in a suspended trainer's care to his or her spouse during the period of suspension; incorporating a schedule of controlled therapeutic medications and associated threshold and treatment restriction windows; and incorporating a "point" penalty scheme assigned to occupational licensees who incur multiple medication violations.

No additional reporting or recordkeeping costs are required for compliance with the proposed regulations by any small business. Based upon the principal subject matter of the regulations, there are no less stringent compliance or reporting requirements for small businesses, less stringent schedules or deadlines for compliance or reporting requirements for small businesses, consolidated or simplified compliance or reporting requirements for small businesses, performance standards for small businesses to replace design or operational standards required in the proposed regulations, or alternative regulatory methods to minimize adverse impacts on small businesses.

The regulation changes will increase uniformity with other jurisdictions and will encourage greater industry participation in Massachusetts racing. Additionally, the regulation changes will ensure a better racing product by increasing public confidence and participation within the industry.

Massachusetts Gaming Commission
By:

Jennifer Durenberger
Director of Racing

Dated: 12/13/13

3.29: Medications and Prohibited Substances

(1) Aggravating and Mitigating Factors

Upon a finding of a violation of 205 CMR 3.27-3.30, inclusive, the judges shall consider the classification level of the violation as listed at the time of the violation in the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International (ARCI) and impose penalties and disciplinary measures consistent with the recommendations contained therein. The judges shall also consult with the official veterinarian, laboratory director or other individuals to determine the seriousness of the laboratory finding or the medication violation. All medication and drug violations shall be investigated and reviewed on a case by case basis. Extenuating factors include, but are not limited to:

(a) The past record of the trainer, veterinarian and owner in drug cases;

(b) The potential of the drug(s) to influence a horse's racing performance;

(c) The legal availability of the drug;

(d) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

(e) The steps taken by the trainer to safeguard the horse;

(f) The probability of environmental contamination or inadvertent exposure due to human drug use;

(g) The purse of the race;

(h) Whether the drug found was one for which the horse was receiving a treatment as determined by the Medication Report Form;

(i) Whether there was any suspicious betting pattern in the race, and;

(j) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

As a result of the investigation, there may be mitigating circumstances for which a lesser or no penalty is appropriate for the licensee and aggravating factors, which may increase the penalty beyond the minimum.

(2) Penalties

(a) In issuing penalties against individuals found guilty of medication and drug violations a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

(b) If a licensed veterinarian is administering or prescribing a drug not listed in the ARCI *Uniform Classification Guide lines for Foreign Substances,* the identity of the drug shall be forwarded to the official veterinarian to be forwarded to the Racing Medication and Testing Consortium for classification.

(c) Any drug or metabolite thereof found to be presenting a pre- or post-race sample which is not classified in the version of the ARCI *Uniform Classification Guidelines for Foreign Substances*

in effect at the time of the violation shall be assumed to be a ARCI Class 1 Drug and the trainer and owner shall be subject to those penalties as set forth in schedule "A" therein unless satisfactorily demonstrated otherwise by the Racing Medication and Testing Consortium, with a penalty category assigned.

(d) Any licensee of the Commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.

(e) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(f) Multiple Medication Violations (MMV)

1. A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-D, as provided in the version of the *ARCI Uniform Classification for Foreign Substances* in effect at the time of the violation, shall be assigned points based upon the medication's ARCI Penalty Guideline as follows:

Class	Points If Controlled Therapeutic Substance	Points If Non-Controlled Substance
Class A[1]	N/A	6
Class B	2	4
Class C	1	2
Class D	½	1

2. The points assigned to a medication violation shall be included in the Judges' ruling. Such ruling shall determine, in the case of multiple positive tests as described in paragraph (4), whether they shall thereafter constitute a single violation. The Judges' ruling shall be posted on the official website of the Association of Racing Commissioners International. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

3. A trainer's cumulative points for violations in all racing jurisdictions shall be maintained and certified by the Association of Racing Commissioners International. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall then subject the trainer to the mandatory enhanced penalties by the Judges or Commission as provided in 205 CMR 3.29(2)(f).

[1] Except for Class 1 and 2 environmental contaminants, *e.g.*, cocaine which shall be determined by the Judges based upon the facts of the case.

4. Multiple positive tests for the same medication incurred by a licensed trainer prior to delivery of official notice by the Commission may be treated as a single violation.

5. The official ARCI record shall constitute prima facie evidence of a licensed trainer's past record of violations and cumulative points. Nothing in 205 CMR 3.29(2)(f) shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

6. The Judges or Commission shall include all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in 205 CMR 3.29(2)(f) shall be imposed.

7. In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in his/her official ARCI record:

Points	Suspension in days
3-5.5	30
6-8.5	60
9-10.5	180
11 or more	360

MMV's are not a substitute for the current penalty system outlined in 205 CMR 3.29(2)(a)-(d) and are intended to be an additional uniform penalty when the licensed trainer:

a. Has more than one violation for the relevant time period, and
b. Exceeds the permissible number of points.

8. The suspension periods as provided above, shall run consecutive to any suspension imposed for the underlying offense.

9. The Judges' ruling shall distinguish between the penalty for the underlying offense and the enhancement based upon the licensed trainer's cumulative points.

10. Any trainer who has received a medication violation may petition the ARCI to expunge the points received for the violation for the purpose of the MMV system only. The points shall be expunged as follows:

Penalty Classification	Time to Expungement
A	Permanent
B	3 years
C	2 years
D	1 year

(3) Medication Restrictions

(a) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

1. Drugs or medications for which no acceptable threshold concentration has been established;

2. Controlled therapeutic medications in excess of established threshold concentrations or administration within the restricted time period as set forth in the version of the ARCI Controlled Therapeutic Medication Schedule in effect at the time of the violation;

3. Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

4. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(b) Except as otherwise provided by 205 CMR 3.00, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to 205 CMR 3.00 during the 24-hour period before post time for the race in which the horse is entered.

(4) Medical Labeling

(a) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with 205 CMR 3.29(4).

(b) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

1. The name of the product;

2. The name, address and telephone number of the veterinarian prescribing or dispensing the product;

3. The name of each patient (horse) for whom the product is intended/prescribed;

4. The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

5. The name of the person (trainer) to whom the product was dispensed.

(5) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)

(a) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:
    a. Phenylbutazone – 2 micrograms per milliliter;
    b. Flunixin – 20 nanograms per milliliter;
    c. Ketoprofen – 10 nanograms per milliliter.
2. These or any other NSAID are prohibited to be administered within the 24 hours before post time for the race in which the horse is entered.
3. The presence of more than one of the three approved NSAIDs, in the post-race serum or plasma sample is not permitted.
    a. A finding of phenylbutazone below a concentration of one-half (.5) microgram per milliliter of blood serum or plasma shall not constitute a violation of 205 CMR 3.29(5).
    b. A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of 205 CMR 3.29(5).
4. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(b) The presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted.

(6) Furosemide

(a) In order for a horse to be placed on the Furosemide List the following process must be followed:

1. After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or his or her designee shall be notified, using the prescribed form, that the horse is to be put on the Furosemide List.
2. The form must be received by the official veterinarian or his or her designee by the time of entry.
3. A horse placed on the official Furosemide List must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or his or her designee, on the proper form, no later than the time of entry.
4. After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.
5. Furosemide shall only be administered on association grounds.
6. Furosemide shall be the only authorized bleeder medication.
7. The use of furosemide shall not be permitted in two year olds.

(b) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

1. Furosemide shall be administered by single intravenous injection no less than four hours prior to post time for the race for which the horse is entered.
2. The furosemide dosage administered shall not exceed 250 mg. nor be less than 150 mg.
3. After treatment, the horse shall be required by the Commission to remain in the proximity of its stall in the care, custody and control of its trainer or the trainer's designated representative under general association and/or Commission security surveillance until called to the saddling paddock.

(c) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

1. The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010;
2. Quantitation of furosemide in serum or plasma may be performed. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(d) A horse which has been placed on the Furosemide List in another jurisdiction pursuant to these rules shall be placed on the Furosemide List in this jurisdiction. A notation on the horse's electronic eligibility certificate of such shall suffice as evidence of being on a Furosemide List in another jurisdiction.

(7) Bleeder List

(a) The official veterinarian shall maintain a Bleeder List of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

(b) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the minimum following time periods:

1. First incident – 14 days;
2. Second incident – 30 days;
3. Third incident – 180 days;
4. Fourth incident – barred for racing lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

(e) A horse which has been placed on a Bleeder List in another jurisdiction under conditions similar to 205 CMR 3.29(7) shall be placed on a Bleeder List in this jurisdiction.

(8) Androgenic-Anabolic Steroids (AAS)

(a) No AAS shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less that the indicated thresholds.

(b) Concentrations of these AAS shall not exceed the following plasma or serum thresholds for unchanged (i.e. not conjugated) substance or urine threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates):

1. Stanozolol: 1 ng/ml of total 16β-hydroxystanozolol in urine of all horses regardless of sex, or 25 pg/ml of stanozolol in plasma or serum of all horses regardless of sex;

2. Boldenone: 15 ng/ml of total boldenone in urine of male horses other than geldings, or 25 pg/ml of boldenone in plasma or serum of all horses regardless of sex;

3. Nandrolone: 1 ng/ml of total nandrolone in urine, or 25 pg/ml of nandrolone in plasma or serum for geldings, fillies, and mares.

4. Testosterone:

a. In geldings – 20 ng/ml total testosterone in urine, or 25 pg/ml of testosterone in plasma or serum;

b. In fillies and mares – 55 ng/ml total testosterone in urine, or 25 pg/ml of testosterone in plasma or serum.

(c) Any other anabolic steroids are prohibited in racing horses.

(d) Post-race urine samples must have the sex of the horse identified to the laboratory.

(9) Alkalinizing Substances

The use of agents that elevate the horse's TCO2 or base excess level above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels apply to blood gas analysis:

(a) The regulatory threshold for TCO2 is 37.0 millimoles per liter of plasma/serum or a base excess level of 10.0 millimoles, and;

(b) The decision level to be used for the regulation of TCO2 is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample or a base excess level of 10.4 millimoles per liter of plasma/serum.

4.52: Medications and Prohibited Substances

(1) Aggravating and Mitigating Factors

Upon a finding of a violation of 205 CMR 4.50-4.53, inclusive, the stewards shall consider the classification level of the violation as listed at the time of the violation in the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International (ARCI) and impose penalties and disciplinary measures consistent with the recommendations contained therein. The stewards may consult with the official veterinarian, laboratory director or other individuals to determine the seriousness of the laboratory finding or the medication violation. All medication and drug violations shall be investigated and reviewed on a case by case basis. Extenuating factors include, but are not limited to:

(a) The past record of the trainer, veterinarian and owner in drug cases;

(b) The potential of the drug(s) to influence a horse's racing performance;

(c) The legal availability of the drug;

(d) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug ;

(e) The steps taken by the trainer to safeguard the horse;

(f) The probability of environmental contamination or inadvertent exposure due to human drug use;

(g) The purse of the race;

(h) Whether the drug found was one for which the horse was receiving a treatment as determined by the Medication Report Form;

(i) Whether there was any suspicious betting pattern in the race, and;

(j) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

As a result of the investigation, there may be mitigating circumstances for which a lesser or no penalty is appropriate for the licensee and aggravating factors, which may increase the penalty beyond the minimum.

(2) Penalties

(a) In issuing penalties against individuals found guilty of medication and drug violations a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

(b) If a licensed veterinarian is administering or prescribing a drug not listed in the ARCI *Uniform Classification Guide lines for Foreign Substances,* the identity of the drug shall be forwarded to the official veterinarian to be forwarded to the Racing Medication and Testing Consortium for classification.

(c) Any drug or metabolite thereof found to be presenting a pre- or post-race sample which is not classified in the version of the ARCI *Uniform Classification Guidelines for Foreign Substances* in effect at the time of the violation shall be assumed to be a ARCI Class 1 Drug and the trainer and owner shall be subject to those penalties as set forth in schedule "A" therein unless satisfactorily demonstrated otherwise by the Racing Medication and Testing Consortium, with a penalty category assigned.

(d) Any licensee of the Commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.

(e) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(f) Multiple Medication Violations (MMV)

1. A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-D, as provided in the version of the *ARCI Uniform Classification for Foreign Substances* in effect at the time of the violation, shall be assigned points based upon the medication's ARCI Penalty Guideline as follows:

Class	Points If Controlled Therapeutic Substance	Points If Non-Controlled Substance
Class A[1]	N/A	6
Class B	2	4
Class C	1	2
Class D	½	1

2. The points assigned to a medication violation shall be included in the Stewards' ruling. Such ruling shall determine, in the case of multiple positive tests as described in paragraph (4), whether they shall thereafter constitute a single violation. The Stewards' ruling shall be posted on the official website of the Association of Racing Commissioners International. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

3. A trainer's cumulative points for violations in all racing jurisdictions shall be maintained and certified by the Association of Racing Commissioners International. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall then subject the trainer to the mandatory enhanced penalties by the Stewards or Commission as provided in 205 CMR 4.52(2)(f).

[1] Except for Class 1 and 2 environmental contaminants, *e.g.*, cocaine which shall be determined by the Stewards based upon the facts of the case.

4. Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the Commission may be treated as a single violation.

5. The official ARCI record shall constitute prima facie evidence of a licensed trainer's past record of violations and cumulative points. Nothing in 205 CMR 4.52(2)(f) shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

6. The Stewards or Commission shall include all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in 205 CMR 4.52(2)(f) shall be imposed.

7. In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in his/her official ARCI record:

Points	Suspension in days
3-5.5	30
6-8.5	60
9-10.5	180
11 or more	360

MMV's are not a substitute for the current penalty system set forth in 205 CMR 4.52(2)(a)-(d) and are intended to be an additional uniform penalty when the licensed trainer:

a. Has more than one violation for the relevant time period, and
b. Exceeds the permissible number of points.

8. The suspension periods as provided above, shall run consecutive to any suspension imposed for the underlying offense.

9. The Stewards' ruling shall distinguish between the penalty for the underlying offense and the enhancement based upon the licensed trainer's cumulative points.

10. Any trainer who has received a medication violation may petition the ARCI to expunge the points received for the violation for the purpose of the MMV system only. The points shall be expunged as follows:

Penalty Classification	Time to Expungement
A	Permanent
B	3 years
C	2 years
D	1 year

(3) Medication Restrictions

(a) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

1. Drugs or medications for which no acceptable threshold concentration has been established;

2. Controlled therapeutic medications in excess of established threshold concentrations or administration within the restricted time period as set forth in the version of the ARCI Controlled Therapeutic Medication Schedule in effect at the time of the violation;

3. Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

4. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(b) Except as otherwise provided by 205 CMR 4.00, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to 205 CMR 4.00 during the 24-hour period before post time for the race in which the horse is entered.

(4) Medical Labeling

(a) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with 205 CMR 4.52(4).

(b) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

1. The name of the product;

2. The name, address and telephone number of the veterinarian prescribing or dispensing the product;

3. The name of each patient (horse) for whom the product is intended/prescribed;

4. The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

5. The name of the person (trainer) to whom the product was dispensed.

(5) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)

(a) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

a. Phenylbutazone – 2 micrograms per milliliter;
b. Flunixin – 20 nanograms per milliliter;
c. Ketoprofen – 10 nanograms per milliliter.

2. These or any other NSAID are prohibited to be administered within the 24 hours before post time for the race in which the horse is entered.

3. The presence of more than one of the three approved NSAIDs, in the post-race serum or plasma sample is not permitted.

a. A finding of phenylbutazone below a concentration of one-half (.5) microgram per milliliter of blood serum or plasma shall not constitute a violation of 205 CMR 4.52(5).
b. A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of 205 CMR 4.52(5).

4. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(b) The presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted.

(6) Furosemide

(a) In order for a horse to be placed on the Furosemide List the following process must be followed:

1. After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or his/her designee shall be notified using the prescribed form, that the horse is to be put on the Furosemide List.

2. The form must be received by the official veterinarian or his or her designee by the time of entry.

3. A horse placed on the official Furosemide List must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or his or her designee, on the proper form, no later than the time of entry.

4. After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

5. Furosemide shall only be administered on association grounds.

6. Furosemide shall be the only authorized bleeder medication

(b) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

1. Furosemide shall be administered by single intravenous injection no less than four hours prior to post time for the race for which the horse is entered.

2. The furosemide dosage administered shall not exceed 500 mg nor be less than 150 mg.

3. After treatment, the horse shall be required by the Commission to remain in the proximity of its stall in the care, custody and control of its trainer or the trainer's designated representative under general association and/or Commission security surveillance until called to the saddling paddock.

(c) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

1. The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010;

2. Quantitation of furosemide in serum or plasma may be performed. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(d) A horse which has been placed on a Furosemide List in another jurisdiction pursuant to rules similar to 205 CMR 4.52(6) shall be placed on a Furosemide List in this jurisdiction. A notation on the horse's foal papers of such shall suffice as evidence of being on a Furosemide List in another jurisdiction.

(7) Bleeder List

(a) The official veterinarian shall maintain a Bleeder List of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

(b) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following minimum time periods:

1. First incident – 14 days;
2. Second incident – 30 days;
3. Third incident – 180 days;
4. Fourth incident – barred for racing lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by 205 CMR 4.52(7).

(e) A horse which has been placed on a Bleeder List in another jurisdiction pursuant to rules similar to 205 CMR 4.52(7) shall be placed on a Bleeder List in this jurisdiction.

(8) Androgenic-Anabolic Steroids (AAS)

(a) No AAS shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less that the indicated thresholds.

(b) Concentrations of these AAS shall not exceed the following plasma or serum thresholds for unchanged (i.e. not conjugated) substance or urine threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates):

1. Stanozolol: 1 ng/ml of total 16β-hydroxystanozolol in urine of all horses regardless of sex, or 25 pg/ml of stanozolol in plasma or serum of all horses regardless of sex;

2. Boldenone: 15 ng/ml of total boldenone in urine of male horses other than geldings, or 25 pg/ml of boldenone in plasma or serum of all horses regardless of sex;

3. Nandrolone: 1 ng/ml of total nandrolone in urine, or 25 pg/ml of nandrolone in plasma or serum for geldings, fillies, and mares.

4. Testosterone:

a. In geldings – 20 ng/ml total testosterone in urine, or 25 pg/ml of testosterone in plasma or serum;

b. In fillies and mares – 55 ng/ml total testosterone in urine, or 25 pg/ml of testosterone in plasma or serum.

(c) Any other anabolic steroids are prohibited in racing horses.

(d) Post-race urine samples must have the sex of the horse identified to the laboratory.

(9) Alkalinizing Substances

The use of agents that elevate the horse's TCO2 or base excess level above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels apply to blood gas analysis:

(a) The regulatory threshold for TCO2 is 37.0 millimoles per liter of plasma/serum or a base excess level of 10.0 millimoles, and;

(b) The decision level to be used for the regulation of TCO2 is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample or a base excess level of 10.4 millimoles per liter of plasma/serum.

Before the

MASSACHUSETTS GAMING COMMISSION

In the Matter of

Request by Mohegan Sun Massachusetts, LLC & the City of Revere for a Waiver of 205 CMR 119.01(7)

Introduction

Mohegan Sun Massachusetts, LLC ("Mohegan Sun") and the City of Revere ("City") hereby petition the Massachusetts Gaming Commission (the "Commission" or "MGC"), for a waiver of the regulatory requirement of 205 CMR 119.01(7) ("Section 119.01(7)") in connection with Mohegan Sun's forthcoming RFA-2 gaming license application for a gaming establishment to be located in Revere. The petition is made pursuant to the Commission's broad authority to regulate gaming, M.G.L. c. 23K, § 1(10), the Commission's regulations regarding waivers of and variances from its regulations, 205 CMR 102.03(4), and its unanimous vote at its meeting on December 10, 2013. For the following reasons, the petition should be granted.

1. Factual Background

On November 5, 2013, following the request of Sterling Suffolk Racecourse, LLC ("Sterling Suffolk"), the City and the East Boston ward of the City of Boston held separate host community elections pursuant to M.G.L. c. 23K, § 15(13) and the Commission's regulations. Each city had previously entered into its own host community agreement with Sterling Suffolk that contemplated a gaming establishment partly in Revere and partly in Boston on the Suffolk

Downs property owned by Sterling Suffolk. The voters of Revere approved the ballot question before them, while the voters of East Boston disapproved of the question on their ballot.

Immediately after the election, Sterling Suffolk and Revere began exploring whether the project could be reconfigured so that the entire gaming establishment would be located on the Revere portion of the Suffolk Downs property after the City's favorable endorsement of a gaming establishment in Revere. Sterling Suffolk and Mohegan Sun thereafter entered into an agreement pursuant to which Mohegan Sun will submit a RFA-2 application for a gaming establishment on a portion of the Suffolk Downs property in Revere to be ground leased from Sterling Suffolk.

At its meetings on December 3 and December 10, 2013, the Commission discussed various questions about the plan contemplated by the Sterling Suffolk-Mohegan Sun agreement, including whether the affirmative November 5 Revere referendum result is sufficient for a gaming license application to be submitted by Mohegan Sun, rather than Suffolk Downs, for a gaming establishment to be located entirely in Revere.

At the Commission meeting on December 10, Commissioner McHugh proposed that the question of the sufficiency of the November 5 Revere election could be presently avoided if the Commission were to waive Section 119.01(7) and allow a second Revere referendum following the RFA-2 deadline. After discussion, the Commission voted 5-0 to allow Mohegan Sun and the City to proceed with an application upon the conditions that, within seven days of December 10, they request a waiver of the vote certification requirements of Section 119.01(7) and commit in the waiver request to hold a vote conforming to the requirements of General Laws chapter 23K, section 15(13) within 60 to 90 days of the request for a referendum by Mohegan Sun after execution of a host community agreement between the applicant and the City.

2. Waiver Request and Commitment to Hold Election

Sterling Suffolk, Mohegan Sun and the City agree to proceed in the manner approved by the Commission on December 10, notwithstanding their continuing belief that, with appropriate amendment, and assignment of the Revere HCA, the November 5 Revere election supports an application by Mohegan Sun for a Revere-only gaming establishment.[1] Accordingly, this petition constitutes the request of Mohegan Sun and the City for a waiver of Section 119.01(7) and their commitment to hold a vote conforming to the requirements of General Laws chapter 23K, section 15(13) within 60 to 90 days of Mohegan Sun's request for a referendum after entering into a host community agreement.

3. Section 119.01(7) -- The Provision as to Which a Waiver is Requested

Mohegan Sun and the City request that the Commission waive the requirement of Section 119.01(7), which provides as follows:

> 119.01: Contents of the Application
>
> . . . . [T]he RFA-2 application . . . shall require, at a minimum, provision of the following information on and in the form prescribed by the commission:
>
> . . . .
>
> (7) a certificate showing that the applicant has received a certified and binding vote on a ballot question at an election in the host community in favor of the license.

As the Commission noted during its December 10 discussion, Section 119.01(7)'s requirement that the certified election result be provided with the RFA-2 application goes beyond the specific requirements of the Expanded Gaming Act. The statute establishes the certified election result as a condition of eligibility to receive a gaming license, not as a prerequisite to applying for one. M.G.L. c. 23K, § 15(13). On this point, the statute requires

[1] The parties specifically reserve their rights on this issue.

only that an applicant "clearly state[] as part of an application that the applicant shall" receive a certified vote in favor of the license. Id.

4. The Requested Waiver Meets the Commission's Established Waiver Criteria

The Commission has broad authority to regulate gaming, and its powers "shall be construed as broadly as necessary for the implementation, administration and enforcement of this chapter." M.G.L. c. 23K, § 1(10). The Commission's statutorily authorized regulations permit the waiver of Section 119.01(7) requested by Mohegan Sun and the City. To grant the waiver, the Commission must find that:

1. Granting the waiver is consistent with the purposes of the Expanded Gaming Act;
2. Granting the waiver will not interfere with the ability of the Commission or its Investigations and Enforcement Bureau ("IEB" or "Bureau") to fulfill its duties;
3. Granting the waiver will not adversely affect the public interest; and
4. Not granting the waiver would cause a substantial hardship to the person requesting the waiver.

205 CMR 102.03(4). Each of those conditions is met.

First, granting the waiver is consistent with purposes of the Expanded Gaming Act, in particular the overall purpose of enhancing the Massachusetts economy through job creation at gaming establishments in communities where voters have decided in favor of hosting a resort casino. Granting the waiver furthers the goal of maximizing the economic benefits of expanded gaming by preserving competition in Region A. Simultaneously, it furthers the principle of local control by allowing the citizens of Revere to vote squarely on a Revere-only gaming establishment to be developed by Mohegan Sun.

Second, granting the waiver will not interfere with the ability of either the Commission or the IEB to fulfill its duties. The Bureau has already recommended to the Commission that Mohegan Sun be found suitable to hold a Massachusetts gaming license. The Commission has

accepted that recommendation and found Mohegan Sun suitable. Under the requested waiver the Commission can proceed to receive the Mohegan Sun RFA-2 application by December 31, 2013, review it for administrative completeness, and evaluate it, all in accordance with the Commission's existing schedule. That Mohegan Sun will satisfy the requirement of a providing a certified favorable election result by delivering the certification during the Commission's evaluation will not disrupt the evaluation process.

Third, granting the waiver will enhance, not adversely affect, the public interest. The public interest is served by furthering competition and respecting local control, as discussed above. Moreover, by allowing the election to take place after the application deadline, the voters of Revere will have before them not only the host community agreement between Mohegan Sun and the City but also, for at least a majority of the 60 to 90 day pre-election period, the Mohegan Sun RFA-2 application. The application will give the voters of Revere a more complete picture of the proposal than has been available to voters in any other host community.

Finally, not granting the waiver would cause substantial hardship to those requesting the waiver, Mohegan Sun and the City. Mohegan Sun seeks to demonstrate unquestionable support of the voters of its host community for award of a license to it. The City leadership, including the Mayor and the City Council, seeks to bring to Revere the substantial benefits of the Revere-only casino proposed by Mohegan Sun. Finally, the citizens of Revere have a strong interest in a casino in their community. Not granting the waiver would significantly frustrate those efforts.

Conclusion

For the reasons stated above, Mohegan Sun and the City request that the Commission waive Section 119.01(7) and allow Mohegan Sun to present after December 31, 2013 a certification of a binding vote on a ballot question at an election in Revere in favor of a license for Mohegan Sun. Mohegan Sun and the City hereby commit to holding a host community

election conforming to the requirements of General Laws chapter 23K, section 15(13) within 60 to 90 days of Mohegan Sun requesting the referendum.

Respectfully submitted,

MOHEGAN SUN MASSACHUSETTS, LLC,	THE CITY OF REVERE,
by its counsel,	by its counsel,
Kevin C. Conroy, Esq. Foley Hoag, LLP Seaport West 155 Seaport Boulevard Boston MA 02210-2600 617-832-1000 (ph) 617.832.7000 (fax) kconroy@foleyhoag.com	Nicholas Anastasopoulos, Esq. Brian R. Falk, Esq. Mirick, O'Connell, DeMallie & Lougee, LLP 100 Front Street Worcester, MA 01608-1477 508.791.8500 (ph) 508.791.8502 (fax) nanastasopoulos@mirickoconnell.com bfalk@mirickoconnell.com

CITY OF BOSTON
LAW DEPARTMENT

City Hall, Room 615
Boston, MA 02201

THOMAS M. MENINO
Mayor

WILLIAM F. SINNOTT
Corporation Counsel

December 18, 2013

Via Electronic Submission
Massachusetts Gaming Commissioners
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

RE: *City of Boston's Statement with Respect to the Proposed Suffolk Downs/Mohegan Sun Application for a Waiver*

Dear Massachusetts Gaming Commissioners:

The City of Boston, specifically the residents of East Boston, have voiced their position on a destination resort casino at Suffolk Downs. The residents of East Boston voted "no" to the Suffolk Downs casino question on the ballot on November 5, 2013. Although requested, the Commission has not provided the City with a copy of the waiver application. Therefore, in the absence of review of the waiver, and any meaningful information from the applicant, the City of Boston opposes the waiver of any requirements requested by Suffolk Downs/Mohegan Sun to the Massachusetts Gaming Commission's regulations. The integrity of the East Boston vote must be respected and maintained.

Very truly yours,

Elizabeth Dello Russo
Senior Assistant Corporation Counsel

TEL.: (617) 635-4034 FAX: (617) 635-3199

Ziemba, John S (MGC)

From: Jay Talerman <jay@bbmatlaw.com>
Sent: Wednesday, December 18, 2013 7:15 AM
To: Ziemba, John S (MGC)
Cc: Colton, David; Brian A. Joyce; Blue, Catherine (MGC)
Subject: Arbitration Questions Comments for Thursday

John: A few questions/comments for Thursday:

1. There appears to be some clarification needed re: Section 125.01(6)(c)(6). Particularly, in light of comments made at Monday's meeting, I am seeking confirmation regarding the last sentence of that Section, which reads: "The arbitrator(s) may make adjustments to the selected best and final offer only if necessary to ensure the report is consistent with M.G.L. c. 23K." This language unambiguously states that the arbitrators are not bound by either the facility's or the municipality's "best and final" and may make adjustments as necessary to accomplish the objectives of c. 23K. Of course, c. 23K is silent on arbitration, so I trust that this reference merely applies to the requirement under c. 23K that the resulting agreement be "fair and reasonable." Based upon this language, it appears that the arbitrators have *license* to make adjustments as necessary. Please confirm.

2. The Regulations do not have any provisions detailing the procedures of arbitration, excepting the timing of the commencement of proceedings and the selection of an arbitrator or arbitrators if a single arbitrator cannot be agreed upon by the parties. As such, the provisions of G.L. c. 251 (the Massachusetts Uniform Arbitration Act) applies, I presume. Please confirm.

3. In order to prepare for the arbitration and ensure the Town's rights thereunder, the Town has long intended to serve production requests upon Raynham Park, LLC if and when arbitration is deemed necessary (we are still mulling over cross-proposals). The right to seek production of documents is assured under G.L. c. 251, s. 7(e), upon which the Town has relied since the inception of this matter. However, there is a conflict between the Town's statutory rights under G.L. c. 251, s. 7(e) and your Regulations, with respect to timing. That is, the time periods under the Statute, which pre-empts any regulation to the contrary, conflict with the condensed time periods under the MGC's regulations. Stated differently, your regulations only provide 25 total days to complete (*not* begin) an arbitration but the statute allows production of records in accordance with the Mass.R.Civ.P. 34, under which the parties are provided with more time. The MGC needs to resolve this conflict of laws, presumably by extending the time periods for the arbitration to accommodate the Town's rights to conduct discovery if and when it is determined that arbitration is necessary.

4. Similarly, as a practical matter, it seems highly unlikely that 20 days will be sufficient to conduct a full and fair arbitration. In order to address the multitude of issues that are framed in the regulations (see 125.01(2)), there will undoubtedly be numerous expert and lay witnesses presented by both parties. As I have mentioned previously, the Town is at a significant disadvantage in this regard. In order to prepare for and present such witnesses, a significant amount of time will be necessary. If this were a full trial, I'd expect the trial itself would last well in excess of a week. Accordingly, I have sincere doubts that a full and fair arbitration can completed and a decision issued within the mere 20 days allotted under the Regulations. Based upon this, I again implore the MGC to apply some flexibility with respect to the time periods in the regulations.

I look forward to discussing these matters with the Commission tomorrow. The answers to these questions/comments will inform our continuing negotiations with Raynham Park as well as any arbitration that may be necessary if negotiations lapse without an agreement.

As always, thanks for all your efforts.

Jay

Jason R. Talerman, Esq.
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(508) 376-8400 (office)
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(508) 446-2002 (mobile)

Sharlow, Albert (MGC)

From: am22b@yahoo.com
Sent: Wednesday, December 11, 2013 4:59 PM
To: MGCcomments (MGC)
Subject: Applicant suitability

Categories: Purple Category

For 78 years Suffolk Downs has proven its reputation in the State of Massachusett. Mohegan Sun , a successful, nationally respected New England Company. They are the HOME TEAM. Their record of hiring our neighbors, supporting local business and charitable contributions speaks to everything positive an applicant can provide

These companies deserve every possible consideration during the applicant suitability process

Sent from my iPad

Sharlow, Albert (MGC)

From: MGC Website <website@massgaming.com>
Sent: Wednesday, December 11, 2013 6:25 AM
To: MGCcomments (MGC)
Subject: Contact the Commissioner Form Submission

Categories: Purple Category

Name

george kougeas

Email

georgekougeas@comcast.net

Phone

(617)569-9317

Subject

12-10-13 vote

Questions or Comments

I will never again try to convince anyone that voting matters. After 43 years of elections what little faith I had left in the system is officially dead. When there is enough money to spread around rules are fluid, laws are open to interpretation and votes don't count. No contortion is too painful when it comes to being fair to the money. East Boston isn't even an afterthought, is it? I guess we all go to court now. Thank you so much for bring " fair ".

Sharlow, Albert (MGC)

From: MGC Website <website@massgaming.com>
Sent: Tuesday, December 10, 2013 7:08 PM
To: MGCcomments (MGC)
Subject: Contact the Commissioner Form Submission

Categories: Purple Category

Name

Dennis Bowen

Email

dwb482@yahoo.com

Phone

(781)284-3895

Subject

Revere casino

Questions or Comments

Thank the commision for giving Revere voters another chance to express their hope for a casino. I am in total agreement for a casino in Revere. Once again than you.

Sharlow, Albert (MGC)

From: MGC Website <website@massgaming.com>
Sent: Tuesday, December 10, 2013 5:24 PM
To: MGCcomments (MGC)
Subject: Contact the Commissioner Form Submission

Categories: Purple Category

Name

Anne Bowen

Email

am22b@yahoo.com

Phone

(781)284-3895

Subject

Revere vote

Questions or Comments

Thank you for giving the voters of the City of Revere a chance to reaffirm our
Yes Vote for a Casino at Suffolk Downs (I'm sure the waiver will be requested)

The citizens of Revere have been waiting for a casino at Suffolk Downs for years. Our vote for a Mohegan Sun Casino at Suffolk Downs will finally be validated.

Thank you

Sharlow, Albert (MGC)

From: Anthony DeMarco <demarco380@gmail.com>
Sent: Tuesday, December 10, 2013 4:33 PM
To: MGCcomments (MGC)
Subject: Re: Casino in Revere

Categories: Purple Category

Thank you for listening to the people of Revere, if a new vote is in favor of the Newley proposed Casino, then no one can complain, if it isn't, then hopefully the Mayor can put it to rest!
Sincerely;
Anthony DeMarco
Resident of Revere for 55 years.

On Monday, December 9, 2013, MGCcomments (MGC) wrote:

Thank you for contacting the Massachusetts Gaming Commission. The Commission welcomes your feedback as the state continues to prepare for the arrival of expanded gaming.

HANDBOOK

FOR
BINDING ARBITRATION

BETWEEN
AN APPLICANT FOR A GAMING ESTABLISHMENT LICENSE
AND A SURROUNDING COMMUNITY

TO REACH A
SURROUNDING COMMUNITY AGREEMENT

Issued: December 16, 2013

Introduction

Under the Massachusetts Gaming Act, "surrounding communities" are municipalities in proximity to a host community which the Massachusetts Gaming Commission determines experience or are likely to experience impacts. A surrounding community and the applicant for a category 1 (casino) or category 2 (slots only) gaming establishment license must negotiate an agreement pursuant to the Gaming Act setting forth conditions for the gaming establishment to be located in proximity to the surrounding community. The agreement must include a community impact fee and stipulations of responsibilities between the surrounding community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.

The Gaming Commission has promulgated regulations governing the determination of which municipalities are surrounding communities and the process for the execution of surrounding community agreements. The Commission encourages the applicant and each surrounding community to engage in a constructive dialogue and to reach a timely, mutually acceptable surrounding community agreement that is in the best interests of both parties. To date, many applicants and municipalities have done so, and existing surrounding community agreements between applicants and communities are posted on the Commission's website at: http://massgaming.com/about/host-surrounding-communities/surrounding-community-agreements/.

Both the Gaming Act and the Commission's regulations anticipate that there may be instances in which the parties are unable to reach consensus on a surrounding community agreement in a timely manner. In such cases, the Gaming Act provides that the Commission shall establish protocols and procedures for ensuring the conclusion of a negotiation of a fair and reasonable agreement between an applicant and a surrounding community to allow the applicant to submit a timely and complete application. The Commission's regulations (205 CMR 125.01(6)(c)) establish a binding arbitration process to govern these situations. To ensure the Commission's ability to take timely action on each application for a gaming license, these regulations establish the timing and procedure for resolving a material impasse between an applicant and the municipality concerning the surrounding community agreement.

This Handbook provides helpful guidance to each participant in the binding arbitration process – including the applicant, the municipality and the arbitrator (or panel of arbitrators) – so that the process can proceed in a smooth and timely manner. Any questions concerning the binding arbitration process or this Handbook should be emailed to the Commission's Deputy General Counsel Todd Grossman at todd.grossman@state.ma.us.

For ease of reference, attached to this Handbook are excerpts from the Gaming Act and the Commission's regulations relative to surrounding communities. In the event of a conflict, the Gaming Act and the Commission's regulations supersede this Handbook. For more information on surrounding community agreements, please consult the Commission's website at http://massgaming.com/about/host-surrounding-communities/.

Timing of Binding Arbitration

Under the Commission's regulations (205 CMR 125.01(6)(c)), the applicant and the surrounding community must engage in the Commission's binding arbitration procedure if they do not file with the Commission their executed surrounding community agreement on or before **December 27, 2013** (thirty days from the date the Commission made the applicable surrounding community designation).

The required time line specified in the regulations and summarized in the table below begins between two national holidays (December 25 and January 1) and must be completed by early February of 2014. The Commission encourages the parties to anticipate the scheduling difficulties this time line may present and to plan accordingly. For instance, if the parties anticipate that they may not be able to conclude their surrounding community agreement on or before the December 27, 2013 deadline, the parties should begin as early as possible to (a) identify potential arbitrators that may be mutually acceptable, (b) explore the availability of the potential arbitrator(s) for an expedited assignment of this type, and (c) begin to prepare in advance their initial required submission to be filed with the arbitrator(s) once selected.

The required time line for binding arbitration is as follows:

DEADLINE	ACTION
12/27/13	Binding Arbitration Process Begins
Before selecting an arbitrator	The parties must file with the Commission a notice of intent to commence arbitration.
1/6/14	The parties select a neutral, independent arbitrator. If the parties cannot mutually select a single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected by 1/6/14, the Commission or its designee shall select the third neutral, independent arbitrator.
1/6/14	Each party submits its best and final offer for a surrounding community agreement to the arbitrator and to the other party.
1/6/14-1/27/14	The arbitrator(s) conduct any necessary proceedings.
1/27/14	The arbitrator(s) file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community
2/3/14	Either the parties sign a surrounding community agreement and file it with the commission, or the arbitrator's report shall be deemed to be the surrounding community agreement between the parties.

Qualifications of the Arbitrator(s)

Each arbitrator must be neutral and independent; free of bias and conflicts of interest; and capable of discharging his or her important responsibilities within the expedited schedule required by the Gaming Act and its implementing regulations. Arbitrators who reside in the surrounding community or who have any current financial or business interests in the applicant, the host or any of the applicant's surrounding communities are not eligible.

Arbitrators should disclose to the parties whether they have or have had any ongoing or past financial or business interests in (a) the applicant or its qualifiers, (b) the host community, (c) the applicant's surrounding communities, (d) any other applicant for a gaming license, (e) any host or surrounding community of any such applicant, or (f) any law firm or consultant representing any of them. Arbitrators should also disclose any relationship, experience or background information that may affect—or appear to affect—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision.

Taking into account disclosures (if any) by prospective arbitrators, the parties are free to select whomever they consider most appropriate to act as arbitrator. Candidates may include retired judges, professional arbitrators, practicing lawyers, university professors, or other individuals with pertinent expertise.

Selection of the Arbitrator(s)

The following rules govern the selection of the arbitrator(s):

1. The parties can select a single, neutral, independent arbitrator by mutual agreement.

2. If the parties cannot agree on a single arbitrator, then there will be a panel of three arbitrators selected as follows:

    a. Each party must select one neutral, independent arbitrator.

    b. Those two arbitrators then promptly choose a third neutral, independent arbitrator.

    c. If the two arbitrators fail to timely designate the third arbitrator, then the commission's general counsel will promptly select the third neutral, independent arbitrator.

Responsibilities of the Arbitrator(s)

The arbitrator (or the panel of three arbitrators acting by majority vote) shall:

1. Schedule an expedited hearing at a time and place convenient to the parties, unless the parties have agreed to waive the need for a hearing and to present their respective cases on the papers submitted to the arbitrator(s).

2. Preside over the binding arbitration process in a neutral and impartial manner, avoiding any actual or appearance of bias toward a party to the arbitration, or to an agent, attorney or witness;

3. Resolve all questions of fact and law pertinent to the binding arbitration process; and

4. Issue a final, binding decision concerning the surrounding community agreement consistent with the Gaming Act and the Commission's regulations.

Fees of the Arbitrator(s)

The applicant must pay the reasonable fees and expenses of the single arbitrator.

In the event that three arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the surrounding community.

Rules Governing the Arbitration

The Commission's simplified, expedited binding arbitration process is created by and subject solely to the Gaming Act, the Commission's regulations and prior Commission decisions regarding surrounding communities, the pertinent provisions of which are attached hereto. In conducting the required binding arbitration proceedings, the arbitrator(s) must at all times abide by the substantive and procedural requirements of the Gaming Act and the Commission's regulations.

Subject to the Gaming Act and the Commission's regulations, the arbitrator(s) may exercise his/her/their discretion to conduct the proceedings in the manner the arbitrator(s) deem appropriate. To the extent the arbitrator(s) find it helpful to consult expedited arbitration rules developed by another body, arbitration association or dispute resolution entity, those rules are advisory only and do not supersede the Gaming Act or the Commission's regulations.

Except to secure the services of an arbitrator, discuss conflicts of interest, make arrangements to commence a hearing and address other procedural matters, no party shall have *ex parte* communications with the selected arbitrator(s).

Notwithstanding that the parties are in arbitration, in the interests of finding a solution that best fits the applicant and the municipality, the parties may continue to negotiate independently to arrive at a mutually agreed surrounding community agreement.

Best and Final Offers

Leading up to binding arbitration, the applicant and the surrounding community will have had the opportunity to exchange offers and negotiate toward a surrounding community agreement. The binding arbitration process comes into play when the parties are unable to reach an agreement on their own.

At the outset of the binding arbitration process, each party must submit to the arbitrator and to the other side the party's best and final offer (BAFO) for a surrounding community agreement. The BAFO is a significant document:

1. Unlike a term sheet, the BAFO must be in the form of a proposed surrounding community agreement.

2. The BAFO must contain all terms and conditions constituting the offeror's best and final offer for the surrounding community agreement.

3. The BAFO must be duly authorized by the party submitting it.

In conjunction with filing its BAFO, the applicant shall submit a copy of any surrounding community agreements already executed with other surrounding communities of the applicant. Either party may submit relevant, executed surrounding community agreements with other proposed gaming establishments.

Final Decision of the Arbitrator(s)

The purpose of the binding arbitration is to arrive at a fair and reasonable agreement between the applicant and the surrounding community. Based on the respective BAFOs submitted by the parties, the arbitrator(s) must file with the Commission and issue to the parties a report specifying the terms of the surrounding community agreement between the applicant and the community.

In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report.

The arbitrator(s) may make adjustments to the selected best and final offer only if necessary to ensure that the report is consistent with the Gaming Act.

Considerations for the Parties in Making the Best and Final Offer

As either party's BAFO may (with certain adjustments) become the final surrounding community agreement between the applicant and the community, each party must carefully consider what terms and conditions to include in its BAFO. The parties may find it helpful to consider the following:

1. To the extent the parties can agree on some, but not all, terms and conditions of the surrounding community agreement, the parties should submit the agreed terms to the arbitrator(s) to narrow the scope of the issues in contention. Each party should include those agreed terms in its BAFO, identified as such.

2. The Commission's regulations require the applicant to submit to the arbitrator(s) and the other party copies of the surrounding community agreements the applicant has executed with other surrounding communities concerning the applicant's proposed gaming

establishment. In addition, either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant. The arbitrator(s) are not required to adopt any provisions from any such agreements; however, the arbitrator(s) may consider such provisions in determining the reasonableness of provisions in a BAFO.

3. The binding arbitration process focusses on the merits of each party's BAFO viewed in light of the Gaming Act and the Commission's regulations. The arbitrator(s) may limit or exclude from the arbitration process the history of the parties' negotiations leading to the BAFO, unless the arbitrator(s) consider that history to bear directly on the reasonableness (or lack of reasonableness) of the party's BAFO.

4. A party should not be overreaching in its demands in the BAFO. The arbitrator(s) is charged with the responsibility to reach a fair and reasonable surrounding community agreement. Overreaching by a party in a BAFO may lead the arbitrator(s) to conclude that the BAFO is not fair and reasonable.

Considerations for the Arbitrator(s) in Arriving at the Final Decision

Subject to the Gaming Act and the Commission's regulations, the arbitrator(s) must arrive at a fair and reasonable agreement between an applicant and a surrounding community. To do so, the arbitrator(s) may consider and evaluate factors permitted by the Gaming Act and the Commission's regulations which may include but are not limited to:

1. The plan of construction of the gaming establishment;
2. Population, infrastructure, distance of the surrounding community from the gaming establishment and political boundaries;
3. The reasonableness and equity of each party's stipulations of respective responsibilities between the applicant and the surrounding community;
4. Each party's proposed stipulations of known impacts from the development and operation of the gaming establishment;
5. The evidence presented by the parties to support or negate the existence and magnitude, including costs to the community and its residents and businesses, of adverse impacts of the proposed gaming establishment on the surrounding community, identified in each party's proposed stipulations of known impacts;
6. The degree to which the proposed mitigation fee adequately and reasonably compensates the surrounding community for the adverse impacts found by the arbitrator(s) to affect the surrounding community;
7. The reasonableness of other conditions included in each party's BAFO;
8. Adverse impacts, community impact fees and other provisions in other surrounding community agreements submitted to the arbitrator(s) by either or both of the parties.
9. Information from the public relevant to the arbitrator(s) findings concerning impacts and community mitigation fee and the final determination as to which party's BAFO shall be used as the basis for the surrounding community agreement;
10. Prior Commission decisions on matters relating to surrounding communities;

11. Any adjustments necessary to the selected BAFO to come into compliance with the Gaming Act.

Consequences of Recalcitrance

The Commission strongly encourages the parties to participate in the binding arbitration process expeditiously and in good faith. There are potentially serious consequences of failing or refusing to participate:

- If the applicant fails or refuses to participate in the arbitration process, the commission may deny the applicant's application for a Category 1 or Category 2 license or condition the issuance of the license on mitigation terms with respect to the proposed surrounding community that the commission determines are appropriate.

- If the surrounding community fails or refuses to participate in the arbitration process, the commission may deem that the community has waived its designation as a surrounding community. In such a case, the commission may (but is not required to) impose as a condition on any a Category 1 or 2 license a community impact fee and any requirements it deems appropriate requirements for mitigation of impacts from the development or operation of the licensed gaming establishment.

An applicant or surrounding community may petition the Commission for a finding that the other party has failed or refused to participate in the arbitration process set forth above and may request a remedy consistent with the foregoing. The Commission stresses that this petition is not to be used as a means to second-guess the results of the binding arbitration process, the decision resulting from which is final and not appealable.

Conclusion

The Commission believes that consensus between the parties is preferable to imposition of the terms of the surrounding community agreement by binding arbitration. However, if the parties are unable or unwilling to reach consensus, the procedure set forth in the Gaming Act, the Commission's regulations and this Handbook will determine the terms of the agreement between the applicant and the surrounding community.

Massachusetts Gaming Commission / 2013-12-17 Licensing Schedule Update

2014

Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov

Data Date 12/17/2013

CATEGORY 2 LICENSE

HC Hearing Leominster 12/3
HC Hearing Raynham 12/5
HC Hearing Plainville 12/4
Approval of Applicants C2 9/19
Deadline for C2 Applications 10/4
Commission Awards Category 2 License 3/7
Determination (C2) 9/19
MGC Evaluates All C2 Proposals 74 | 44 | 1/30
ications - C2 10/4
SC File App 27
App Response 10 | 11/10
Hearings HC 1/29 | 8 | 2/5
HCA Approved by Referendum / C2 61
Results 10/4 | 10/14
MGC Decides SC 10
Arbitration 39 | 2/3
Negotiation & Sign SC 11/21 | 27 | 12/26
MGC Review RFA-2 & Awards License C2 2/6 | 30 | 3/7
10/4

REGIONS A & B - CATEGORY 1 LICENSES

HC Hearing Springfield 4/28
HC Hearing Revere 4/30
Evaluation Reports (Rolling) 8/22
Approval C1 12/18
Deadline for C1 Applications 12/31
HC Hearing Everett 4/29
Commission Awards 1st License - Category 1 5/30
MGC Review and Suitability Determination (C1) 117 | 12/18
Commission Reviews Responses to RFA-2 (C1) 1/2 | 119 | 4/30
Prepare & Submit Phase 2 Applications - Category 1 License 192
SC File App 14 | 12/31 | 10 | 1/10
Negotiation & Sign SC 2/7 | 32 | 3/10
Arbitration 35 | 4/14
HCA Approved by Referendum / Category 1 9/8 | 72 | 11/19
Referendum Results 10 | 11/29
App Response 1/11 | 11 | 1/21
Hearings HCs 4 | 4/30
d 12/31
MGC Decides SC 1/22 | 16 | 2/6
MGC Review RFA-2 & Awards Licenses C1 5/1 | 30 | 5/30

REGION C - CATEGORY 1 LICENSE

MGC Receives Applications Phase I (Region C) 9/30
Approval C1 5/8
Deadline for Region C C1 Applications 7/23
Commission Awards Category 1 License Region C 10/16
Background Investigations / Suitability of Applicants - Phase 1 Region C 10/1 | 57 | 2/12
MGC Review 36 | 3/20
Hearings Period 35 | 4/24
Suitability 14 | 5/8
Commission Reviews Responses to RFA-2 (C1) 7/24 | 85 | 10/16
repare & Submit Applications 9/30
Prepare & Submit Phase 2 Applications - Category 1 License 2/13 | 161 | 7/23
SC File App 10 | 8/2
Negotiation & Sign SC 8/23 | 30 | 9/21
Arbitration 30 | 10/22
Scope of Licensing for Investigations 32 | 9/30
Host Community Agreement Executed
HCA Approved by Referendum / C1 Region C 3/25 | 60 | 5/24
Referendum Results 10 | 6/3
App Response 8/3 | 10 | 8/12
MGC Review RFA-2 & Awards License C1 30 | 11/20
. Surrounding Community Agreements Executed 78 | 218 | 7/23
MGC Decides SC 8/13 | 10 | 8/22

LEGEND
ACT DESCRIPTION
Start Date — End Date
SUMMARY ACTIVITY
Start Date — End Date

PMA Consultants