NOTICE OF HEARING/MEETING and AGENDA

May 3, 2013 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:

Friday, May 3, 2013
9:00 a.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Bristol Community College
777 Elsbree Street
Building G
Fall River, Massachusetts

Marlborough Courtyard by Marriott
75 Felton Street
Marlborough, Massachusetts

PUBLIC MEETING - #66

1. Call to order

2. Hearing – Proposed Phase Two Regulations (9:00-10:00)

3. Approval of Minutes
   a. April 11, 2013
   b. April 18, 2013
   c. April 25, 2013

4. Administration – Rick Day, Executive Director
   a. General Administrative Update
   b. Master schedule
   c. Evaluation Process
   d. Budget

5. Ombudsman Report – John Ziemba

6. Legal Report – Catherine Blue, General Counsel
   a. Referendum Spending Limits – Todd Grossman
   b. Appointment of Hearing Officer

7. Racing - Jennifer Durenberger, Director
    a. Administrative Update
    b. 2011 Annual Report of the Massachusetts Racing Commission
    c. Approval of Raynham Park "Special Event" races for 2013

8. Research Agenda

9. 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, brian.gosselin@state.ma.us.

4/30/13
(date)

Stephen P. Crosby, Chairman

Date Posted to Website: May 1, 2013 at 9:00 a.m.

2

SUFFOLK DOWNS

BY HAND

May 1, 2013

Stephen P. Crosby, Chair
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Mr. Chairman and Honorable Commissioners:

Suffolk Downs would like to commend the Commission for drafting an extensive set of RFA-2 regulations. Suffolk Downs looks forward to submitting a complete application to the Commission once these regulations have been promulgated. Attached hereto, are comments prepared by our counsel for the Commission's consideration.

Suffolk Downs and its gaming partner, Caesars Entertainment, are committed to developing a world class gaming, entertainment and racing complex at our 161-acre property.

As always, please feel free to contact us should you have any questions or comments on this or any other matter.

Respectfully submitted,

Chip Tuttle

Chip Tuttle
Chief Operating Officer

Telephone: 617-567-3900
525 McClellan Highway, East Boston, Massachusetts 02128

Massachusetts Gaming Commission: Proposed Amendments to 205 CMR 101.00 – 117.00 and Proposed Regulations 205 CMR 118.00-131.00

COMMENTS OF STERLING SUFFOLK RACECOURSE, LLC

These comments are submitted in response to the Notice of Public Hearing and Public Comment Period issued by the Massachusetts Gaming Commission ("Commission") and its request for public comments concerning the Commission's proposed promulgation of amendments to, 205 CMR 101.00 to 117.00, and proposed promulgation of regulations, 205 CMR 118.00 to 131.00, pursuant to General Laws Chapters 30A and 23K. Additionally, SSR is submitting comments in response to the Commission's request for comment regarding the proposal to advance the RFA-2 application deadline forward to December 1, 2013.

As the Commission is aware, Sterling Suffolk Racecourse, LLC ("SSR") owns and operates Suffolk Downs in East Boston and Revere and, as a racing meeting licensee, is currently regulated by the Commission. SSR is currently an applicant for a gaming license in Massachusetts and is undergoing suitability investigations by the Investigations and Enforcement Bureau of the Commission. As with SSR's prior comments to the Commission on the Phase 1 regulations, the Commission's policy questions, and the surrounding community definition, these comments reflect the knowledge that Caesars Entertainment Corporation ("Caesars") personnel as well as others in the SSR organization have gained from years of experience with gaming licensing processes across many jurisdictions.

SSR applauds the Commission for once again compiling a thoughtful and comprehensive set of regulations. The comments offered below principally address points where the regulations may be read as inadvertently being in tension with the Gaming Act or other provisions of the General Laws. They focus on the following four areas:

1. Application Deadline
2. Chapter 30A Adjudicatory Proceedings
3. Phase 2 Application
4. Transfer of Interests

I. Application Deadline

The Commission posed the following question: "Should the Commission move its Category 1 application deadline from its current projected December 31, 2013 date to a date in the beginning of December to be able to incorporate additional time needed to resolve issues such as disagreements between applicants and surrounding communities?"

SSR applauds the Commission's decision to move the RFA-2 application deadline forward and encourages the Commission to move the application deadline forward even further and require that all Category 1 license applicants in Regions A and B submit a complete application by October 5, 2013.

In order for the Commission to meet its timeline for awarding the Region A and B casino licenses in February 2014, the Commission should set the RFA #2 application due date in October 2013. This will give the Commission five months to evaluate the applications, resolve the surrounding community and impacted live entertainment venue process and award the licenses in February 2014. The RFA #2 regulations and application are to be released on June 6, 2013 and therefore SSR urges that the RFA #2 applications be due October 5, 2013 (120 calendar days after the application is released) for Regions A and B. Recent practice in other jurisdictions (such as Pennsylvania and Maryland) is that applications are due within three months after their release. Consistent with this practice, the Commission allowed 90 days for submission of the RFA #1 applications after their release. Adding an additional 30 days to the standard practice should give applicants more than enough time to prepare and submit their applications.

A. The Commission will inadvertently have Significant Difficulty Awarding the Region A and B Casino Licenses in February 2014 Pursuant to its Current Timeline.

(1) The Commission will have to Arbitrate Surrounding Community and Impacted Live Entertainment Venue Agreements in Both Regions, Which Means the Licenses will be Awarded in late April 2014 according to the Commission's Timeline.

The Commission's current timeline for awarding the casino licenses – The Summary Schedule Update 2013-03-27 (the "Summary Schedule") – provides that in the event *any casino applicant* in a region fails to enter into *any surrounding community agreement or any impacted live entertainment venue agreement* that the Commission will need to arbitrate that issue and the casino license in that region will not be awarded until April 28, 2014. Since there are three or four applicants in each region and since each applicant needs to enter into a number of surrounding community and potentially impacted live entertainment venue agreements, it is probable that the Commission will need to arbitrate agreements in both regions. In addition, it seems likely that certain potential surrounding communities will be opposed to a nearby casino and will be unlikely to enter into a surrounding community agreement until the Commission and its arbitrator become involved, if ever.

(2) Once the Commission Determines the Process for Reviewing the RFA #2 Applications and for Choosing Licensees, the Commission's Timeline will Likely be Extended Beyond April 2014.

At its meeting on March 25, 2013, the Commission for the first time discussed the process for reviewing the RFA #2 applications and for awarding the licenses. Although no conclusions were reached, Judge McHugh presented a very detailed four phase, 33 step process. See Untitled Microsoft Excel Two Page Document Presented at the March 25, 2013 Massachusetts Gaming Commission Meeting. The level of detail that Judge McHugh has proposed is consistent with the Massachusetts Gaming Act, which requires the Commission to ensure that applicants meet 16 minimum requirements described in section 15 and weigh 19 different criteria described in section 18. See G.L. c. 23K. Judge McHugh's draft process would require: (a) expert review of the applications and preparation of expert reports; (b) multiple public hearings in seven host communities; (c) initial determinations by the Commission to choose finalists in each Region; (d) numerous meetings with the applicants including negotiation sessions and applicants potentially preparing best and final offers; (e) drafting of licensing conditions by other state agencies; and (f) final decisions. Along with the detailed process, Judge McHugh noted that applicants will likely submit 25 volumes of materials that the Commission will need to review.

Because of the significant number of steps that the RFA #2 application review process will require, SSR is concerned that the Commission will be unable to accomplish all of the Act's and the Commission's requirements in the 147 calendar days it has allotted itself between the submission of the RFA #2 applications and the license awards (This assumes that the Category 1 applications are due December 2, 2013 and the proposed license award date is April 28, 2014). Merely considering the public hearing process in the host communities shows how lengthy the RFA #2 review process will be. With seven casino applicants (three in Region A and four in Region B), the Commission will need to hold at least eight public hearings in seven host communities (SSR notes that SSR has two host communities, Boston and Revere). Since the Commission discussed multiple hearings in a host community, this means that the public hearing process could take 24 weekdays or 32 calendar days if the Commission chooses to hold three public hearings in the host communities and the hearings are held on successive weekdays. It is much more likely, however, that the Commission will choose to hold a series of hearings in a specific host community each week. With seven Category 1 applicants in eight host communities, this means that the public hearings alone could require 56 calendar days and since the public hearings cannot take place until 30 days after receipt of the RFA #2 application and the licensing decision cannot be made until 30 days after the hearings have concluded, this means the process will require a minimum of 116 days between submission of the applications and award of the licenses. G.L. c. 23K, §17(c) & (e).

In addition, there are many other items included in Judge McHugh's draft process that will require significant time including the preparation of expert reports, allowing the applicants to revise their proposals to address the expert's concerns, the Commission's action to narrow the field in each region, drafting conditions for a potential license, negotiating with an applicant over

the Best and Final Offer and the final hearings with the applicants. The Commission's review of the RFA #2 applications should be detailed and thorough and SSR urges the Commission to give the process enough time to ensure this level of review. However, SSR also urges the Commission to build on Commissioner McHugh's work and determine this process as soon as possible. Once the Commission does so, SSR expects that the Commission will determine that it cannot accomplish the Region A and B RFA #2 application reviews in the 147 calendar days it has allotted itself. Rather, it will take much longer.

(3) If it Follows its Current Timeline, the Commission may be unable to Award the Region A and B Licenses in Time to Allow for the Commonwealth to Receive the Licensing Fees in FY 2014.

The licensees for Region A and B will be required to pay the $85 million licensing fee 30 days after award of the license. Id., §10(d). If the Commission is unable to award the Region A and B licenses by May 30, 2014, then the licensing fees may not be able to be collected in FY 2014. Without deciding upon a process for the RFA #2 application review, the Commission is proposing that it will award the licenses on April 28, 2014. SSR expects that when the Commission determines a process for RFA #2, the Commission will be forced to extend this timeline even further endangering the receipt of the licensing fees in FY 2014.

B. In Order to Ensure that the Region A and B Licenses are Awarded in February 2014, the Commission Should Require the RFA #2 Applications be due in October 2013.

In order to ensure that the licenses are awarded in February 2014, the Commission should move the RFA #2 application due date forward in time to October 2013. Because it takes a minimum of 109 calendar days to award the licenses after receipt of the RFA #2 applications (assuming the Commission wants to hold multiple public hearings in each host community) and likely more, there is no other option if the Commission intends to award the Region A and B licenses in February 2014. SSR urges the Commission to set October 5, 2013 as the RFA #2 application due date. In addition, SSR urges the Commission to determine the RFA #2 application due date as soon as possible so that applicants and communities will understand the Commission's timeline and be able to meet the Commission's deadlines.

As long as the Commission provides enough advance notice of the RFA #2 application due date, no applicant should have difficulty submitting a complete and thorough application on October 5, 2013. Now that the Commission is allowing the host community referenda to take place before suitability is determined, a due date of October 5, 2013 for the RFA #2 applications is achievable and realistic. The Commission has already finalized the criteria it is considering for licensure. Also, the Commission has released a draft of the RFA #2 regulations and while the draft regulations will not become final until early June, applicants will still have 120 days before submission of the applications to review the changes that the Commission makes to the draft regulations. Host community agreements will need to be finalized before August 2013 in order to ensure that referenda are conducted by October; however, all of the applicants have engaged in discussions with their host communities and finalizing these agreements in four months is

easily achievable. In addition, the Commission has reported that nearly every applicant and host community in Region A and B has indicated that they intend to conduct their referenda before or during September 2013.

Applicants will have six months to complete surrounding community and impacted live entertainment venue agreements, which should be enough time to complete negotiations and enter into agreements. The Commission has already issued guidance and draft regulations regarding surrounding communities and has set up a process to have regional planning authorities facilitate this process. In addition, the Act, by providing that the Commission set up protocols for ensuring completion of the agreements specifically contemplates that all surrounding community and live entertainment venue agreements would not be completed by the application due date. While the Commission may have to arbitrate more disputes between applicants and surrounding communities and impacted live entertainment venues because of an earlier due date for the RFA #2 applications, this potential increased arbitration will not lead to the need for an extension of time to award the licenses.

While the Commission expects to have completed the RFA #1 suitability review for all applicants prior to October 5, 2013, no reason exists that the RFA #2 applications cannot be due that day even if the suitability review for one or more applicants is not completed. As Judge McHugh acknowledged at a Commission meeting a few months ago, the Gaming Act allows for, but did not provide for a two phase application process.[1] The Act contemplated that an applicant would submit an application that addressed both suitability and licensure issues. Id, §9(a) (addressing contents of the application). Because the Act intended suitability and licensure to be addressed in one application, the Commission should not now require that suitability be found before an applicant is eligible to submit a RFA #2 application. (Although consistent with the statute, the Commission may decide not to review the RFA-2 submissions until the specific RFA- process has concluded.)

II. Chapter 30A Adjudicatory Proceedings

SSR shares the Commission's goals of having efficient administrative processes for the awarding of gaming licenses while making sure that the licenses, once awarded, are as protected as possible from legal challenges that could protract the process and delay bringing the benefits of expanded gaming to the Commonwealth.

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[1] Commissioner McHugh's statement from the February 22, 2013 meeting is below:
COMMISSIONER MCHUGH: You really have
6 to start, I think, with the explicit statutory
7 statement that except for three categories these
8 documents, the application is a public record. *As*
9 *the statute thought about it, the application Phase*
10 *1 and Phase 2 were going to be together. It didn't*
11 *prohibit us from doing them apart.*

Tr. p. 100 (emphasis supplied).

A. License Award Proceedings Deemed Outside the Scope of Chapter 30A

The proposed regulations assert in 205 CMR 118.07 that the proceedings are "legislative in nature, not adjudicatory," purporting to take proceedings outside the scope of the adjudicatory proceeding provisions of General Laws Chapter 30A and avoiding the panoply of procedures that are required for Chapter 30A adjudicatory proceedings.

On review of the Gaming Act and of Chapter 30A, it does not appear at all clear as 205 CMR 118.07 suggests that the Commission proceedings to award gaming licenses are not Chapter 30A administrative proceedings. The Commission is an agency within the meaning of Chapter 30A (as it is a ["commission . . .of the state government, authorized by law to make regulations"], *id.* § 1(2), and the Gaming Act specifically reinforces that Chapter 30A applies to the Commission in numerous places. See, e.g., G.L. c. 23K, § 4(28) (empowering the Commission to conduct adjudicatory proceedings and promulgate regulations in accordance with Chapter 30A); §§ 17(c); 35(g); 36(d); 45(e)(1).

Chapter 30A defines an adjudicatory proceeding to be "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." G.L. c. 30A, § 1(1). Gaming licenses confer privileges under Massachusetts law to the named licensees. The Gaming Act declares that "any license awarded by the commission shall be a revocable privilege." G.L. c. 23K, § 1(9). Further, it provides that, upon revocation of a gaming license, "all legal rights, privileges and restrictions pertaining to the license" shall be returned to the commission. Id. § 26(f); see also id. § 1(8) (referring to a gaming licensee's "privilege of licensure"). Under similar circumstances with respect to racing licenses awarded under General Laws Chapter 128A, the Supreme Judicial Court concluded without controversy that the State Racing Commission's processes for awarding the licenses constituted Chapter 30A adjudicatory proceedings. See Bay State Harness Horse Racing and Breeding Association, Inc. v. State Racing Commission, 342 Mass. 694, 701 (1961).

Presumably, the Commission bases its conclusion that the license-award proceedings are nevertheless not Chapter 30A adjudicatory proceedings on the provision of the Gaming Act that states: "The commission shall have full discretion as to whether to issue a license. Applicants shall have no legal right or privilege to a gaming license and shall not be entitled to any further review if denied by the commission." G.L. c. 23K, § 17(g). The key language, in view of Bay State Harness, is that applicants "shall have no . . . privilege to a gaming license," although it is not at all clear what it means to have or not have a "privilege to a license." A license constitutes a privilege – a permission to act in some fashion otherwise prohibited – and the Commission's license-award procedures will determine whether the various applicants shall be "permit[ted] . . . to operate a gaming establishment." G.L. c. 23K, § 2("gaming license").

SSR does not here take a position on whether Section 17(g) is effective in taking the award of licenses out of the scope of Chapter 30A. However, SSR notes that such a statutory formulation does not seem to appear elsewhere in the General Laws and legal research has not

revealed any Massachusetts case law addressing whether such language is sufficient to counteract the otherwise applicable provisions of Chapter 30A and the holding of Bay State Harness, supra. In light of the apparently untested effectiveness of Section 17(g), the Commission's license-award process as contemplated by proposed 205 CMR 118.00 and 119.00 likely increases the chances that some party opposed to the granting of license who would have rights under Chapter 30A bringing suit to challenge the license.

It is unclear from the proposed regulations how the Commission intends to respond in the event a person makes a claim to rights under Chapter 30A §§10, 10A or 11 during the consideration of a license. Some examples of potential claimants include:

- an applicant asserting rights to Chapter 30A procedures, such as the right to put on evidence in support of its application through witnesses at the public hearing or some other stage of the process or to cross-examine persons who speak in opposition to the license;

- a host community, surrounding community, impacted live entertainment venue, or other person identified by the commission as be substantially and specifically affected seeking intervention; and

- a group of ten citizens who claim under Chapter 30A, Section 10A that the project will have an adverse effect on the environment.

After the agency-level process is completed, Section 17(g) prohibits an applicant from obtaining judicial review of a denial of its application. This prohibition does not extend, however, to host or surrounding communities, entertainment venues, ten-citizen groups, or even necessarily to other applicants from the same region who seek to challenge the award of a license to a competitor.

While SSR appreciates the Commission's desire to streamline the license-award proceedings, the Commission may consider the extent to which it should incorporate Chapter 30A-like processes to put the award of licenses on the best footing to withstand a legal challenge and so that, at the very least, it can consider the issues and be prepared to respond to them in the event they arise as the process moves forward..

B. The Gaming Act Requires More Process Than is Contained in the Proposed Regulations.

Regardless whether the license-award proceedings are conducted in conformity with the rules for Chapter 30A adjudicatory proceedings, they must comply with the requirements of the Gaming Act. As drafted, the proposed regulations omit the statutory requirement that "the commission shall evaluate and issue a statement of findings of how each applicant proposes to advance" each of 19 objectives. G.L. c. 23K, § 18. In addition, as the regulations recognize, before it can issue a gaming license to an applicant, the Commission must be "convinced" that

the applicant has "provided convincing evidence that [it] will provide value to the region . . . and to the commonwealth." G.L. c. 23K, 19(a).

Unlike findings of suitability, id. § 13(a), and the finding regarding value to the region and commonwealth, id. § 19(a), the Gaming Act does not require that the findings made pursuant to Section 18 satisfy a clear and convincing evidence test. However, it is in the nature of findings that they must be based on evidence, and on at least a preponderance of that evidence, to be valid and to avoid being arbitrary and capricious.

The proposed regulations do not necessarily provide for the creation of an adequate record of evidence upon which the Commission can make the required findings. Under 205 CMR 118.00, the only true, or trustworthy, evidence the commission shall receive is the sworn-to information presented in the application. 205 CMR 118.07(2). The regulations contemplate that information from all other sources (host communities, surrounding communities, impacted venues, and other agencies of government or members of the public), and perhaps even information from the applicant presented at the public hearing, is to be in the form of unsworn statements. Id. If the Commission is not going to consider such unsworn information in its decision making process and will makes its findings and award on the basis of the sworn application only, then the lack of a record is sufficient. If, on the other hand, the information from other sources is to be considered, which it is assumed it will be as the Commission provides for its receipt in the manner described, then two basic procedural requirements necessarily follow: The presenters must be considered witnesses and sworn so as to give that minimum protection as to the veracity of their testimony and/or written submissions shall be sworn to. Second, applicants must be given the opportunity to challenge the information through cross-examination or, at the very least, time to review and respond to the information before the proceeding is closed.

III. Phase 2 Application

A. Internal Controls

As required by G.L. c.23k, §9(a)(7), the Commission requires applicants to submit " a full description of the proposed internal controls and security systems for the proposed gaming establishment" in 205 CMR 119.01(24). SSR supports the Commission's efforts to maintain the best practices for the operations of the Commonwealth's gaming establishments. During the Commission's policy question discussions, the Commission determined that it would "promulgate regulations governing the type of internal controls that casino operators must have in place."[2] Additionally, applicants would submit detailed internal control standards, subject to Commission approval, which would supplement the internal controls.[3]

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[2] "Summary of answers to Policy Questions," Massachusetts Gaming Commission (February 13, 2013)

[3] Id.

SSR suggests that the Commission develop the regulations governing the internal control systems of gaming establishments. Alternatively, the Commission could provide an outline or policy advocating a template for the internal control procedures. Such an outline or policy could be promulgated as regulations by the Commission during Phase III of the regulation promulgation process. In order to provide a timely and complete application, it is essential that applicants understand the types of controls that the Commission will require so that this portion of the application can be accurately completed.

B. Lottery

The RFA-2 application requires that an applicant agree not to "create, promote, or sell" games that compete with or are similar (in the discretion of the Commission) to games offered by the Massachusetts State Lottery. G.L. c.23K, §15(1); 205 CMR 119.01(50). SSR suggests that the Commission clarify whether or not Commission approval under this provision is necessary before adding a new game to the gaming floor.

C. Design Review

Proposed regulation 205 CMR 119.03 governs the review and evaluation of the RFA-2 applications submitted by applicants. The regulation allows for the Commission to utilize technical assistance to aid its review of the projects. Among the evaluations that the Commission must conduct are: "demonstration of creativity in design and overall concept excellence" and "Compatibility with surroundings." 205 CMR 119.03(2)(c)(2); 205 CMR 119.03(2)(c)(4). SSR would suggest that the Commission defer to and utilize the expertise of local design review authorities when conducting this evaluation. The aforementioned evaluations take into account local issues that a municipal or town design review agency may be able to provide guidance to the Commission on the concept behind the design. As a project based in the Cities of Boston and Revere, with the vast majority of our physical improvements in the City of Boston, SSR has the benefit of a world-class design and permitting agency (the BRA and process (Article 80). SSR believes the Commission can significantly defer to that agency as it relates to design review.

IV. Transfer of Interests

A. Transfer of Gaming License

(1) SSR applauds and approves of the Commissions draft regulations regulating the transfer of gaming licenses contained within 205 CMR 129.00. SSR understands that the Commission must be kept informed of all transactions involving the ownership of a gaming establishment in order to maintain an effective regulatory environment. SSR and the entities comprising its ownership structure are currently undergoing a rigorous background investigation for suitability by the Investigations and Enforcement Bureau. With that in mind, as well as the duty of applicants/licensees to supplement their applications, SSR encourages the Commission to remove a requirement for approval (but not prior

notice) of transfers to previously qualified parties or their affiliates, holding, or intermediary companies and to remove such internal transfers from the definition of transfer in 205 CMR 129.00. Qualified entities have undergone the rigorous suitability investigations and as licensed entities have a duty to keep the Commission informed of any developments within in their companies.

(2) SSR appreciates that Commission's commitment to maintaining the strictest suitability standards in order to ensure the integrity of gaming in the Commonwealth. The Commission's commitment is evident through its requirement in 205 CMR 129.01(c) that intended transferees file an RFA-1 application, as well as pay a $400,000 application fee. SSR encourages the Commission to clarify that the requirement for the $400,000 application fee not apply, should a proposed transfer be only of an interest in the license and not the gaming license or gaming establishment itself.

B. Disposition of Securities

(1) Proposed regulation 205 CMR 129.02(1) defines which types of transfers shall constitute transfers of a direct or indirect interests in a gaming license. The term "corporation" is utilized in two separate locations within the proposed regulation. SSR suggests that the Commission broaden the regulation to include other types of business entities (i.e. partnerships, limited liability companies, etc.), so as not to limit the regulations' efficacy and enforcement solely to corporations.

(2) Additionally, the term "security" is used throughout 205 CMR 129.02. "Security" is not defined within the regulations or the Gaming Act. SSR encourages the Commission to clarify the definition of security to mean ownership interests, but not debt interests or security interests granted pursuant to a debt instrument, so that the granting of a mortgage, for example, would not be construed a "transfer" within 205 CMR 129.01.

2

Thurlow, Mary (MGC)

From: Koczera, Robert (HOU) <robert.koczera@mahouse.gov>
Sent: Wednesday, May 01, 2013 4:53 PM
To: mgccomments (MGC)
Subject: Phase 2 Application and Application Evaluation comments
Attachments: MGC comments phase 2 applications.docx

Please find my comments on the Phase 2 application in the attachment to this email.

May 1, 2013

Members, Massachusetts Gaming Commission

I wish to express the need to act expeditiously in approving and awarding the three category 1 licenses and the category 2 license. I realize the important task of the Commission to ensure the integrity of the process and to thoroughly screen all applicants to protect the public interest.

Respecting the application deadline, the Commission should move the category 1 application deadline from December 31, 2013 to the beginning of December and should consider an earlier date if feasible.

118.05: RFA – 2 Public Hearing on Host Community
(3) – Page 6
If more than one public hearing is necessary or if the hearing must be continued then the next hearing or continuation should occur within seven business days of the first hearing. I propose this to ensure timely action and to avoid delay and dilatory actions by interested parties.

118.05: RFA -2 License Determinations
(1) – Page 6
The time period for the commission to take action on an application should be "no sooner than 30 days and no later than 60 days" rather than " no sooner than 30 days and no later than 90 days".

119.01 Contents of the Application
(31) – Page 11
Specific reference should be made to ensure that employees receive health benefits.

Sincerely,

Robert M. Koczera
State Representative
Eleventh Bristol District

2

Thurlow, Mary (MGC)

From: DelloRusso, Elizabeth <Elizabeth.DelloRusso@cityofboston.gov>
Sent: Wednesday, May 01, 2013 4:45 PM
To: mgccomments (MGC)
Subject: Draft Regulations Comments
Attachments: City of Boston Comments on MGC Phase 2 Regulations.pdf

Dear Massachusetts Gaming Commission,

Attached please find the City of Boston's comments on the Massachusetts Gaming Commissions Draft Phase 2 Regulations.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions you may have.
Very truly yours,

Elizabeth S. Dello Russo, Esquire
Executive Director, Host Community Advisory Committee
City Hall, Room 615
Boston, MA 02201
(617) 635-4037
Elizabeth.DelloRusso@CityofBoston.gov

HCAC

HOST COMMUNITY ADVISORY COMMITTEE
City Hall, Room 615 Boston MA 02201

Brian Leary, *Chairman*
Sarah Barnat
Lisa Calise
David Fubini
Ronald L. Walker II

May 1, 2013

VIA ELECTRONIC SUBMISSION
Chairman Stephen Crosby
Massachusetts Gaming Commissioners
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

RE: *Response of the City of Boston to Massachusetts Gaming Commission's Request for Comments on Draft Phase 2 Regulations*

Dear Chairman Crosby and the Massachusetts Gaming Commissioners:

On behalf of the City of Boston and Mayor Menino's Host Community Advisory Committee, thank you for this opportunity to submit comments on the draft Phase 2 Regulations (the "Draft Regulations") released by the Massachusetts Gaming Commission (the "Commission") on March 28, 2013.

The City's primary comment to the Draft Regulations continues to be with regard to local control. As noted in the City's November 27, 2012 comment letter to the Commission, the City urges the Commission to follow the path of the state legislature and recognize the importance of local control of the host community agreements. In addition, the City has significant concerns with regard to the reopener provisions in the Draft Regulations.

Local Control

G.L. c. 23K (the "Expanded Gaming Law") empowers cities and towns to undertake meaningful planning efforts, impose impact fees and to make a range of decisions regarding a locally proposed resort casino development in their communities. These powers, granted by the state legislature and signed into law by the Governor, should not be diluted, diminished or unduly burdened by policy or regulation, including the Draft Regulations.

The City's primary objective, both during the General Court's debates on this legislation and now during implementation of the Expanded Gaming Law, is to ensure that host

communities and their residents are able to make decisions based on their own judgments after weighing the specific needs of their unique communities. Accordingly, the City has been and continues to conduct analyses, assess impacts and make judgments based on highly local and empirical considerations. The City of Boston, like all municipalities within the Commonwealth, is unique - with distinctive geography, population and history. Given Boston's distinct character and composition, it alone is competent to analyze and mitigate the impacts of a proposed resort casino within its borders. The City does not support or agree with any provisions of the Draft Regulations that would impact the City's control of its own host community agreement or the City's role in issuing permits, licenses or other municipal approvals in connection with the casino project. This question of local control implicates Section 119.01, Section 119.03, Section 120.01 and Section 123.02 of the Draft Regulations, among others.

For example, Section 119.01(5), (6), (10), (11), (14) and (17) require an applicant to provide specific information to the Commission with regard to municipal benefits and municipal impacts. This requirement seems redundant and without meaningful effect as the Commission will be provided with a copy of the host community agreement as part of any application and the Expanded Gaming Law specifically empowers the host community with full authority to apply and enforce its own local codes and ordinances. If helpful, the Commission can ask for and receive from the applicant full copies of any and all permits and approvals which have been issued by the City of Boston. As noted in the City's previous comments, the formulation of a host community agreement should remain with the host community and its local voters. The host community, and not the Commission, is in the best position to determine the content of a host community agreement, the municipal impacts from a proposed development, the mitigation plans to address such impacts, and the benefits to be received by the host community. The City of Boston fully intends to tailor its host community agreement, and the impacts, mitigation and benefits to be contained therein, to the needs of our residents and businesses.

Similarly, Section 119.03 sets forth the criteria that will be used by the Commission to evaluate an application. Among the criteria cited are building and site design criteria (Section 119.03(c)), compliance with the State Building Code and local ordinances (Section 119.03(c)(1)), compatibility with surroundings (Section 119.03(c)(4)) and utilization of sustainable development principles (Section 119.03(c)(5)). As noted in the City's November 27, 2012 comments, the Expanded Gaming Law granted deference to local authorities with regard to questions of construction, permitting and design. Planning, land use permitting and zoning decisions must rest with host communities. The City of Boston is uniquely situated with a highly capable planning authority and a full range of dedicated City Departments who are used to complex developments within the City of Boston's environs. Under existing statutes and regulations, the Boston Redevelopment Authority ("BRA") will review the proposed development, as it would any other major private development proposal within the City. So too, as in other projects of similar complexity, other City Departments, including, but not limited to,

the Department of the Environment, Public Works Department, Boston Fire Department, Inspectional Services Department and Boston Transportation Department will oversee and enforce development. Therefore, the City opposes any provision of the Draft Regulations that impedes the BRA's and the City's ability to do what they are explicitly tasked to do: review development proposals in the City of Boston.

In addition, the City notes that it will not have completed all municipal permitting approvals by the time the applicant submits its RFA-2 application under the provisions of Section 120.01. The Regulations should expressly reflect the fact that this is not a condition for an application to be deemed final.

With regard to Section 123.02 of the Draft Regulations, in light of the fact that the host community agreement will be executed prior to all approvals having been obtained, the City questions how the Commission can fairly apply Section 123.02 of the Draft Regulations in the absence of the issuance of all permits and approvals, which will necessarily contain additional conditions.

In summary, we encourage the Commission to allow cities and towns the autonomy that the legislature envisioned in the Expanded Gaming Law: the flexibility to set forth the conditions to have a gaming establishment located within the host community, the ability to negotiate a community impact fee, and the independence to stipulate responsibilities and known impacts of the development in an agreement that can be as unique as the community from which it originates.[1] Therefore, the City of Boston objects to those provisions in Section 119.01(5), (6), (10), (11), (14) and (17), Section 119.03, Section 120.01 and Section 123.02 of the Draft Regulations that reduce the flexibility and independence intended to be given to host communities or infringe on the statutory rights granted to the City of Boston.

Reopening Mitigation Agreements

The City strongly objects to the provisions of Section 127 of the Draft Regulations. The host community agreement is a contract between the municipality and the gaming applicant. Section 127, in its attempt to establish standards and a process to reopen and amend a host community agreement, is an impermissible breach of the sovereign power of a municipality to enter into contracts. In addition, it is an impermissible infringement on the broad statutory provisions set forth in the Expanded Gaming Law giving municipalities' broad discretion in the negotiation of host community agreements.

A municipality cannot be required or obligated to petition a state agency or seek state agency approval to revisit, reopen or amend the provisions of the host community agreement. Nor can a municipality be limited in the instances which trigger the reopening of the host

community agreement. There are a myriad of reasons why the host community agreement could require amendments or adjustments, including, without limitation, changes to the development or changes to the structure of gaming in Massachusetts. In addition, the mitigation as agreed to in the host community agreement may need to adapt and change in response to specific circumstances which cannot be anticipated, and the host community agreement needs to change accordingly. If the legislature intended the Commission to have such broad powers, the legislature would have required the Commission be a party to the host community agreement.

In addition, a municipality cannot be required to submit to binding arbitration to resolve a dispute concerning amendments to a host community agreement, as is purportedly required by Section 127.05 of the Draft Regulations. While arbitration can sometimes be a useful tool to resolve disputes, the City, as well as all other host communities, must be permitted to pursue all remedies negotiated by the City in the host community agreement, including, without limitation, termination, litigation and judicial and equitable relief.

For the reasons stated above, among others, the City respectfully requests that Section 127 be deleted in its entirety from the Draft Regulations.

Miscellaneous Comments

In addition to the above overarching comment regarding local control and the reopener provisions, the City also has the following additional comments:

- Section 119.03(3) of the Draft Regulations takes into account the "physical distance between the location of Category 1 gaming establishments as they relate to each other..." The City encourages the Commission to take into account the Category 1 and Category 2 establishments in this evaluation.

- Section 124.02(4) of the Draft Regulations appears contradictory to the regulations previously adopted by the Commission at 205 CMR 115.05(6) (*See* http://massgaming.com/wp-content/uploads/Host-Community-Emergency-Reg.pdf). The City generally believes that elections in accordance with G.L. c. 23, §15(13) should be permissible prior to the Commission's issuance of a positive determination of suitability pursuant to 205 CMR 115.05(3). The City believes Section 124.02(4) of the Draft Regulations must be modified to either delete Section 124.02(4) in its entirety or modify the provision to reflect the provisions of 205 CMR 115.05(6).

- Section 124.04(1) addresses preparing for the election. The City objects to the requirement in this section that differs from the Expanded Gaming Law. The Expanded Gaming Law requires that the host community agreement be executed by

the host community and not by the governing body of the community. In addition, the Draft Regulations cannot abridge the requirements under Massachusetts statutory law, the Boston City Charter and other City of Boston governing documents which specify the appropriate municipal branch of government authorized to execute documents such as the host community agreement. To make Section 124.04(1) consistent with Massachusetts statutes, including the Expanded Gaming Law, and to alleviate inconsistencies between Section 124.04(1) and the provisions of Section 123.02 and 124.02, the first phrase of Section 124.04(1) of the Draft Regulations should be modified to state: "The host community agreement as fully executed shall be made public . . ."

- Section 125 addresses surrounding communities, including surrounding community agreements. Again, the Draft Regulations cannot abridge or intercede on any independent right of municipalities to contract with gaming applicant with respect to the negotiation and execution of a surrounding community agreement. In determining surrounding community status, Section 125.01(2)(b)(ii) takes into consideration adverse impacts to transportation and infrastructure in the surrounding community. The City of Boston thinks that designed, planned but not yet completed roadway and waterside transportation infrastructure should be included in that definition.

- Section 129 of the Draft Regulations, governing transfers of interests in gaming licenses, should recognize the interest a host community has in who holds a gaming license, and provide that the approval of the host community, in addition to the Commission, is required to effectuate the various transfers set forth in Section 129.

Responses to Specific Commission Questions

With respect to the three specific questions on the Draft Regulations raised by the Commission in its April 26, 2013 email, the City offers the following responses to Questions 2 and 3:

Question 2: Should the Commission move its Category 1 application deadline from its current projected December 31, 2013 date to a date in the beginning of December to be able to incorporate additional time needed to resolve issues such as disagreements between applicants and surrounding communities?

As noted in the City's November 27, 2012 comment letter, the City has consistently encouraged the Commission to make its decisions promptly, in order to maximize the economic benefits of the various casino development proposals, including the job creation potential of the

proposed developments. Therefore, the City encourages the Commission to move the Category 1 application deadline from its current projected December 31, 2013 date to a date in the beginning of December.

Question 3: Should the Commission require applicants for a gaming license to forward a copy of the studies and reports relative to impacts of a gaming establishment that it submits as part of its RFA-2 application (in accordance with 205 CMR 119.01(36)) to each of the prospective surrounding communities to the gaming establishment on the date it submits the application?

The City believes that the Commission should require all applicants for a gaming license to forward a copy of the studies and reports relative to impacts of a gaming establishment that it submits as part of its RFA-2 application to the "host communities" (as such term is defined in the Expanded Gaming Law) and designated surrounding communities.

Thank you for your consideration and we look forward to working with the Commission on these matters. Please do not hesitate to contact me with any questions you may have.

Very truly yours,

Elizabeth Dello Russo
Executive Director of the HCAC
Assistant Corporation Counsel

[1] See G.L. c. 23K, § 15(8).

2

Thurlow, Mary (MGC)

From:	J. Raymond Miyares <ray@miyares-harrington.com>
Sent:	Wednesday, May 01, 2013 4:45 PM
To:	mgccomments (MGC)
Cc:	Board of Of Selectmen; Norman Khumalo; Senator Karen Spilka; Dykema, Carolyn - Rep. (HOU)
Subject:	Draft Regulations Comment
Attachments:	L- MGC Phase 2 regulations-05012013.pdf; ATT00002.htm

J. Raymond Miyares
MIYARES AND HARRINGTON LLP
50 Leonard Street • Suite Three • Belmont, MA 02478
Tel 617-489-1600 • Fax 617-489-1630
www.miyares-harrington.com

Begin forwarded message:

Miyares and Harrington LLP

A private law firm in the public interest

J. Raymond Miyares
Thomas J. Harrington
Christopher H. Heep

Jennie M. Merrill
Marguerite D. Reynolds
Jonathan E. Simpson

May 1, 2013

Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Phase 2 Regulations

Dear Commission Members:

On behalf of the Town of Hopkinton, I am submitting comments on the Commission's draft Phase 2 regulations. Set forth below are responses pertaining to three issues that were raised by the Commission, specifically relating to Surrounding Communities. Thereafter are comments addressing particular regulations by number:

1. *Should the Commission incorporate a new rule into its draft phase 2 regulations that specifies that the start date for petitions by potential surrounding communities to the Commission to require applicants to provide technical assistance funding shall be no later than 90 days prior to the Category 1 (full casino) application deadline and no later than 60 days prior to the Category 2 (slots only) application deadline?*

The Town of Hopkinton believes that technical assistance petitions should be accepted by the Commission on a rolling basis. While it is an improvement to allow petitions 90 days prior to the Category 1 (full casino) application deadline, there does not appear to be any reason for setting any time limit at all for such petitions.

2. *Should the Commission move its Category 1 application deadline from its current projected December 31, 2013 date to a date in the beginning of December to be able to incorporate additional time needed to resolve issues such as disagreements between applicants and surrounding communities?*

Clearly the most intractable issues presented by RFA-2 applications are those involving Surrounding Communities. There can be little doubt that the impacts of gaming establishments do not respect municipal boundaries, even though such boundaries define the extent of authority to accept or to prohibit such facilities. Surrounding Communities are largely bereft of negotiating power in dealing with

gaming establishment proposals and are most in danger of being forced to accept the adverse impacts of such facilities—which are incapable of adequate mitigation—without much prospect of securing offsetting benefits. Any effort to extend the time for resolving issues is welcome, even though, in the end, additional time cannot remedy the inherently thorny problems created by *M.G.L.* c.23K.

3. *Should the Commission require applicants for a gaming license to forward a copy of the studies and reports relative to impacts of a gaming establishment that it submits as part of its RFA-2 application (in accordance with 205 CMR 119.01(36)) to each of the prospective surrounding communities to the gaming establishment on the date it submits the application?*

More information is certainly preferable to less. Therefore, requiring such studies and reports to be provided to prospective Surrounding Committees is certainly beneficial. The Commission should go a step further and guarantee prospective surrounding communities funding, provided by the applicant, for peer review of the submitted studies and reports. However, there should not be any illusion that studies and reports commissioned by applicants will be objective statements of the adverse impacts of their proposed gaming establishments. Of course, these studies and reports should be provided to Surrounding Communities, but they will not be a substitute for hard-nosed, objective investigation of the gaming establishment's actual impacts.

205 CMR 118.00: Administrative Proceedings

(1) Section 118.01(3) of the draft regulations states that the Gaming Commission is not obligated to accept an application submitted after the established deadline. This section should state that the Commission shall not accept applications submitted after the established deadline. The rules of the Commission should set the parameters for the competition among applicants, and strict adherence to those rules, including all deadlines, should be required.

(2) Section 118.01(4) proposes to give the Commission authority to extend the time for filing a complete RFA-2 application "in cases in which extraordinary circumstances prevent a timely filing." This section should make clear that "extraordinary circumstances" include only *force majeure* or equivalent events, and that the additional time granted shall be no more than the actual time lost due to the extraordinary circumstances.

(3) Section 118.03(1)(c) purports to give the Executive Director the ability to allow an applicant to cure a defect in its application "in a prescribed manner and timeframe." The regulations should allow a negative determination of completeness to be remedied only upon a finding that the applicant is without

fault in filing an incomplete application. The regulations should also specify that the amount of time consumed in remedying the deficiency should be added to every milestone that is measured from the application deadline so as not to prejudice the interests of other parties.

(4) Section 118.04(1)(b)(iv) allows the Commission to refer a completed RFA-2 application, or any parts thereof, to any potential Surrounding Community for advice and recommendations. Presumably this section will need to be amended if the Commission's suggested revision #3, described above, regarding the provision of studies and reports to Surrounding Communities, is implemented.

(5) Section 118.04(1)(f) of the draft regulations gives the Commission the ability to "require or permit the applicant to provide additional information and documents pursuant to 205 CMR 112.00." This section should require the applicant to respond to all comments received by the Commission regarding an RFA-2 application.

(6) Sections 118.04(1)(g) and (h) of the draft regulations suggest that the Commission may take actions to amend an RFA-2 applications in order to enhance the economic benefit of the gaming establishment on the region and to promote the best interests of, the Surrounding Communities. The Commission, however, is not in a position to evaluate the best interests of the Surrounding Communities, a judgment that should be left to the communities themselves. Any action by the Commission that purports to enhance regional benefits or promote local interests should be taken only with the agreement of Surrounding Communities.

(7) Section 118.05(2) requires that "the applicant and its agents and representatives shall attend" public hearings in the Host Community. This section should be far more specific about who must attend these hearings. At a minimum, all qualifiers should be required to attend.

(8) Section 118.05(2) also allows for representatives of various stakeholders to make presentations and respond to questions, but does not permit them to ask questions of the applicant. This is a poor substitute of a full hearing. Since the regulations do not provide any other opportunity for probing questions of applicants by affected stakeholders, section 118.05(2) should make that provision.

(9) Section 118.05(3) of the draft regulations gives the Commission discretion to "complete the public hearing in one meeting or continue the public hearing over two or more meetings." The regulations should be drafted to ensure that the Commission's discretion is not exercised to terminate the public hearing prematurely. At a minimum, the public hearing should not be closed until all

parties present have had an opportunity to make a presentation, ask questions and have those questions answered.

(10) Section 118.06(1) appears to assume that whichever applicant's public hearing is closed first will have an advantage in receiving a gaming establishment license, since there does not appear to be any provision for deferring action until competing applications have been thoroughly reviewed and evaluated.

(11) Section 118.06(4) requires a statement of reasons for the denial of an application. A statement of reasons is essential and should be required for the grant of an application, as well as for a denial. The statement of reasons should include findings of fact made by the Commission, based on substantial evidence in the record of its proceedings.

(12) The statement is section 118.07(1) that the RFA-2 administrative proceedings are "administrative and legislative in nature, not adjudicatory" is obviously false. *M.G.L.* c.30A, §1 clearly states that "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required...by any provision of the General Laws to be determined after opportunity for an agency hearing" is an adjudicatory proceeding.
At the Commission's March 25, 2013 meeting, Commissioner McHugh sought to justify the claim that Commission hearings are legislative, rather than adjudicatory, by noting that the decisions the Commission makes are "broad policy decisions, not the kind of adjudicatory facts that typically you find in an adversary hearing." See Transcript of Public Meeting #60 at page 81. Certainly other state and municipal agencies consider policy issues when making final determinations in adjudicatory proceedings. Judicial review of these decisions is provided for by *M.G.L.* c.30A §14(7)(g). The Commission is not exempt from the requirements of Chapter 30A, and cannot avoid its requirements by regulatory fiat. The efforts to do so, set forth in section 118.07(2), are legally invalid and should be deleted.

(13) Section 118.08(1) of the draft regulation requires that the costs and expenses of the RFA-2 administrative proceedings be borne by the applicant. The regulations should further state that the Commission may not issue a decision with respect to such applicant's proposed gaming establishment until such costs and expenses have actually been paid.

205 CMR 119.00: Phase 2 Application

(14) The preamble to section 119.01 requires that applicants "demonstrate that they have thought broadly and creatively about creating an innovative and unique gaming establishment...." The regulations should require demonstration of actions instead of only thoughts. This section should be revised to require that

applicants demonstrate that they have identified and committed to broad and creative methods of developing an innovative and unique gaming establishment.

(15) Because many applicants are limited liability companies, the Commission should expand section 119.01(2) to specify the information required to be provided in an application by that type of entity. At a minimum, each owner and manager of a limited liability company should be fully identified and qualified.

(16) Section 119.01(8) requires an applicant to provide a copy of all executed Surrounding Community Agreements and section 119.01(9) requires the applicant to provide a list of Surrounding Communities that have not executed a Surrounding Community Agreement. This is insufficient. For each Surrounding Community that has not executed a Surrounding Community Agreement, the applicant should be required to demonstrate that it has made a good faith effort to reach a Surrounding Community Agreement.

(17) Section 119.01(10) requires an applicant to demonstrate how it proposes to address community impact and mitigation issues as set forth in Surrounding Community Agreements. The applicant should be required to demonstrate how it proposes to address Surrounding Community impact and mitigation issues whether or not a Surrounding Community Agreement has been executed.

(18) The language of section 119.01(11) is identical to that of *M.G.L.* c.23K, §15(7); far greater specificity is required. At a minimum, the regulation should be revised to require both identification and payment for all infrastructure costs. A community mitigation plan that does not commit to payment for all identified impacts should be deemed unacceptable.

(19) Section 119.01(13) requires a description of and any documentation outlining public support for the application from Host and Surrounding Communities, as required by *M.G.L.* c. 23K, §18(19). However, this regulation should also require that applicants present documentation outlining public opposition to the application. Such information is essential for a full and fair understanding of the application's reception in Host and Surrounding Communities.

(20) Section 119.01(14) requires a description of how the applicant proposes to promote local businesses in Host and Surrounding Communities. The regulations should go much further: They should require applicants to submit agreements with local businesses so as to provide concrete evidence that the objective outlined in *M.G.L.* c.23K, §18(2) will be satisfied.

(21) Section 119.01(16) requires a statement as to whether it has been the applicant's "past practice" to incorporate geographic exclusivity clauses into

agreements with entertainers engaged to perform at its venues and, if so, the nature of such agreements. Such exclusivity clauses are incompatible with *M.G.L.* c.23K, §15(10), and should be prohibited.

(22) Sections 119.01(21)-(23) request information from the applicant that would have been more appropriate to require as part of the RFA-1 application. Indeed, it seems utterly impossible for the Commission to make a credible evaluation of RFA-1 applications without the information required by these sections. Ideally, the substance of these sections should be moved to 205 CMR 111.01, and entities that have submitted RFA-1 applications should be required to supplement their filings as soon as possible. Sections 119.01(21)-(23) should then be revised to clarify what information is being required that is different from what was required in the RFA-1 application.

(23) Section 119.01(25) merely restates the exact language of *M.G.L.* c.23K, §9(a)(8). The regulations should specify the public health consequences that must be addressed in RFA-2 applications, including (but not limited to) prostitution, sexually transmitted diseases, intoxication, drug addiction, gambling addiction, property crimes (both on- and off-site) and other consequences commonly associated with gaming establishments.

(24) In accordance with *M.G.L.* c.23K, §18(6), section 119.01(26) requires applications to include proposed measures to address problem gambling "including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling and prevention programs targeted toward vulnerable populations." However, it is an obvious conflict of interest for a gaming licensee to be in charge of providing such prevention programs. The regulations should therefore require applicants to commit to funding prevention programs organized by the Commission or its third-party designee.

(25) Section 119.01(27) should be revised to require that, when applicants submit a proposed "timeline of construction that includes detailed stages of construction for the gaming establishment, non-gaming structures and racecourses," the impacts associated with each facility component are identified and cross-referenced with the information presented pursuant to section 119.01(10).

(26) Section 119.01(30) should cross-reference sections 119.01(10) and 119.01(27) to identify impacts associated with ancillary facilities as well as when construction of those facilities is anticipated to occur.

(27) Section 119.01(29) should not merely restate the language contained in *M.G.L.* c.23K, §18(5). Instead, it should provide an actual standard for determining whether applicants are proposing ways for patrons to experience the "diversified regional tourism industry."

(28) Section 119.01(31), (32), and (33) do not provide any clarifications or requirements that are not already set forth in *M.G.L.* c.23K. Instead of merely requiring the applicant to describe its "proposals" with respect to employment and workforce development, the Commission should require that the applicant make guarantees regarding the number of employees to be employed, the number and quality of jobs, and details of a workforce development plan.

(29) Section 119.01(36) also restates the exact language of the corresponding provision of Chapter 23K. Instead, the Commission should require applications to include studies and reports identifying and quantifying adverse economic impacts in addition to economic benefits to the region and the commonwealth. In addition, applicants should make guarantees for further compensation to address impacts not featured or contemplated in its completed studies.

(30) Instead of requiring the applicant merely to propose contracting with local business owners for the provision of goods and services to the gaming establishment, section 119.01(38) should require applicants to submit executed contracts with local business owners to the Commission for its review and evaluation. This is the only concrete way for the Commission to make a determination as to whether the objective of *M.G.L.* c.23K, §18(10) is being met.

(31) Section 119.01(40) requires the applicant to submit the "location of the proposed gaming establishment." The location of ancillary buildings and infrastructure such as offices, housing and satellite parking facilities should also be submitted as part of the application. Such information is essential to determining compliance 205 CMR 123.00.

205 CMR 120.00: Permitting Requirements

(32) It is not appropriate to rely on a "statement from [the] host community's zoning officer, town counsel or city solicitor" as a demonstration of zoning compliance, as section 120.01(1)(g) purports to do, for at least three reasons: First, such parties are employed by the Host Community and represent the interests of the Host Community; they are not impartial arbiters of compliance. Second, it is not possible for such officials to identify all potential aspects of zoning noncompliance at the time the RFA-2 application is being submitted (long before construction is undertaken). Third, any wise Town official would be reluctant to issue such a statement, since it may prejudice or complicate any later zoning enforcement measures that prove necessary to undertake.

It would be far wiser to rely upon a zoning opinion prepared on behalf of the applicant by a member of the Massachusetts bar.

205 CMR 122.00: Capital Investment

(33) There is no bright line distinction between costs associated with "consulting and due-diligence necessary to fund...traffic studies, environmental studies, and other associated mitigation studies" (which are included in the calculation of capital investment costs pursuant to section 122.03(4)) and those associated with "mitigating impacts on host and surrounding communities" (which are excluded from that calculation pursuant to section 122.04(3)). All mitigation costs—including the costs of determining what mitigation is needed—should be excluded from the calculation. To do otherwise gives an unfair advantage to applicants with sites that require less or simpler mitigation, and risks the potential of involving the Commission in endless hairsplitting over the distinction between designing and implementing mitigation efforts.

(34) The Commission should be requiring issuance of certificates of occupancy for the establishment and all associated facilities by a date certain. Section 122.05(1)(b) is inadequate as drafted because it sets no deadline, applies only to the gaming establishment and not to ancillary facilities, and sets a forfeiture standard ("unable to complete") that is far too subjective and difficult to enforce.

(35) Similarly, section 122.05(1)(a) requires the return of the applicant's security deposit when "the project has reached the final stage of construction." Again, the standard is too subjective and difficult to administer, and it is made only marginally less so by the *proviso* that the Commission "shall consider whether the amount held in escrow exceeds the amount in capital required to complete the project." The Commission's formulation creates an incentive for the licensee to underestimate remaining costs, and fails to create a simple, objective standard for when the escrow funds can be released. Releasing the funds based on the issuance of a certificate of occupancy, in contrast, would make the decision based on an objective event and avoid all ambiguity in the determination.

205 CMR 123.00: Host Communities

(36) Section 123.01 of the draft regulations defines a Host Community as one "in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment." Resort casinos typically have auxiliary facilities, such as offices, housing and satellite parking facilities, located in communities other than the community hosting the gaming establishment itself. These ancillary facilities can have significant impacts on the communities in which they are located. The regulations should include these communities in the definition of "Host Community."

205 CMR 124.00: Host Community Election Process

(37) Both section 124.04(1) and *M.G.L.* c.23K, §15(13) seem to be drafted with the assumption that the Host Community Agreement will not be public until it is "made public" after execution by publishing it in a local periodical and posting it on the municipality's website. This is contrary to the requirements of *M.G.L.* c.30A, §22(f), which makes the Host Community Agreement a public record no later than the City Council or Selectmen's meeting at which a vote to execute the agreement is taken.

As a practical matter, drafts of the Host Community Agreement will become public records when they are under review by the public body that is overseeing their negotiation. Section 124.04 should make clear that it is not to be construed as abridging any rights of public access conferred by the *Open Meeting Law* or *Public Records Law*.

(38) The City Solicitor or Town Counsel should approve the "fair, concise summary" of the Host Community Agreement prior to its execution not after, as is currently provided in section 124.04(1).

(39) Because section 124.06(1) provides for reimbursement of municipal costs, the funds will go into the municipality's general fund, and will not be available to pay election-related expenses without an appropriation. A more workable funding mechanism should be required.

(40) Section 124.06(3) should specify clearly that, if an applicant fails to pay the cost of a referendum election, the application must be denied immediately. The current language does not specify a timeframe for Commission action.

(41) If the Commission wishes to make payment of election costs a contractual obligation enforceable by the Host Community, together with treble damages, the simple approach is to mandate that Host Community Agreements include such a requirement. Section 124.06(5) is a poor substitute for such a mandate, and perhaps will be ineffective.

205 CMR 125.00: Surrounding Communities

(42) Section 125.01(a) continues to provide that a city or town will qualify as a Surrounding Community if it is so identified in an RFA-2 application. Hopkinton previously commented that this section should be eliminated because it creates a perverse incentive: to limit the number of cities and towns that are discussed in the RFA-2 application. The Town is dismayed that the Commission kept this incentive in place.

The incentive is not ameliorated by the Commission's having added a new requirement that, if a city or town is identified as a Surrounding Community in the RFA-2 application, it will remain so designated only if it submits its assent within 10 days of its receipt of the notice. No city or town should lose the designation of Surrounding Community because it fails to assent to the designation within so short a time. Certainly, however, including such a penalty in section 125.01(a) will not address the Town's original concern.

(43) Rather than being forced to overcome a difficult threshold in order to qualify for designation as a Surrounding Community, cities and towns that are in close proximity to a proposed gaming establishment should be assured that they will be so designated, and eligible to exercise the rights associated with such status. Therefore, section 125.01(c) should be amended so that all cities and towns located in whole or in part within five miles of the gaming establishment are automatically designated as Surrounding Communities.

The fact that the Legislature considered but, in the end, did not require the Commission to establish a specific radius for Surrounding Community status does not mean that the Commission cannot or should not do so. Rather, the Legislature's action should be interpreting as merely leaving this issue for the Commission to decide. It should have the courage to do so on the merits of the issue, rather than seeking cover behind a supposedly contrary legislative intent.

(44) Section 125.01(1)(a) sets forth the procedure by which cities and towns may request to be designated as Surrounding Communities. With respect to the first draft of these regulations, Hopkinton commented that the procedure allowed cities and towns to short a period (only 21 days), from the time that the Commission posts a notice on its website that it has received an RFA-2 application, to submit a request for designation as a Surrounding Community. The Commission has now shortened that time period to 10 days.

(45) Sections 125.01(1)(b)(ii) through (v) make eligibility for designation as a Surrounding Community dependent, in large part, on a demonstration by the city or town that the impacts of the proposed gaming establishment will be both significant and adverse. As Hopkinton previously commented, this is not appropriate. A principal purpose of Surrounding Community designation is to focus the Commission's inquiry into gaming establishments' impacts on cities and towns other than the Host Community. Forcing a city or town to identify and demonstrate the nature, magnitude and significance of these impacts as a threshold for designation creates too great a burden and may render redundant the Commission's inquiry into essentially the same matters.

(46) Section 125.01(2)(c) continues to be troublesome because it allows the Commission to determine that a community's impacts are "significant and adverse" based on whether they are "different in kind or greater in degree than impacts on other communities that are geographically nearby the community, the host community and the gaming establishment." As Hopkinton previously noted, in the absence of an entirely unique impact from the gaming establishment, this provision means that a city or town with impacts that are similar to those of other municipalities will be less likely to be designated as a Surrounding Community, even if those impacts are substantial. This language should be deleted.

(47) Section 125.01(2)(d) should also be deleted. There is no policy justification for allowing the Commission to determine if any impact on a community is "positive" and that such impact may be used to "outweigh" any negative impacts. As a practical matter, only the community itself is in a position to determine if an impact is "positive."

(48) Section 125.01(6)(a)(1) states that the Commission "may," deny an applicant's RFA-2 application if it "fails or refuses to participate in the arbitration process...." Hopkinton suggests that "may" be changed to "shall." Arbitration is a cornerstone of the process envisioned by the Legislature. If any applicant fails or refuses to participate in this process, its application should be automatically denied.

(49) Section 125.01(6)(a)(2) states that "[i]n the event a community designated a surrounding community fails or refuses to participate in the arbitration process...the commission may deem the community to have waived its designation as a surrounding community." This provision severely disadvantages a Surrounding Community since the Commission is requiring its participation in an arbitration process without guaranteeing that the information and resources needed to enable that participation to be meaningful will be available.

(50) Pursuant to section 125.01(6)(c)(1), a Surrounding Community is required to sign an agreement with the applicant within 30 days of its being designated a Surrounding Community. This period of time is not adequate for the transparent processes that are the cornerstone of municipal government. If the Commission wants applicants to negotiate with Surrounding Communities in good faith, there should be no time limit on those negotiations, as long as progress is being made.

(51) If a Surrounding Community fails to conclude an agreement with an applicant in the impossibly short 30-day timeframe, section 125.01(6)(c)(2) and (3) forces the community into binding arbitration. Then, within 35 days of its designation,

a Surrounding Community must select an arbitrator with the applicant and submit its "best and final offer for a surrounding community agreement." It is clear that the regulations do not contemplate a serious arbitration of the long list of issues that are likely to separate a gaming establishment and the Surrounding Community. Rather, the Commission appears merely to be proposing a charade designed to give its licensing decision a veneer of credibility when it is merely forcing the community to accept the terms of its surrender.

(52) Sections 125.01(6)(c)(4) through (6) require the applicant to submit to the arbitrator all Surrounding Community Agreements it has executed. These documents, however, are almost never relevant, without a demonstration that they address circumstances substantially like those raised by the Surrounding Community. Requiring the applicant to submit these agreements serves no legitimate public policy purpose, and merely encourages arbitrators to accept the "lowest common denominator" that an unwitting community may have agreed to.

(53) Sections 125.01(6)(c)(4) through (6) also require the arbitrator to select and impose the best and final offer of one of the parties. The arbitrator may adjust the offer "only if necessary to ensure that the report is consistent with *M.G.L.* c.23K." There is no policy justification for limiting the arbitrator's authority in this manner. The arbitrator should be charged with determining the fairest possible agreement, providing sufficient mitigation and offsetting benefits to address any and all identified impacts.

205 CMR 127.00: Reopening Mitigation Agreements

(54) This series of regulations points up the inherent problem with relying on mitigation agreements to address the negative impacts of a gaming establishment. Fundamentally, these impacts cannot be completely known before the gaming establishment has been in operation for some time. Over time, these impacts will change somewhat depending on circumstances. Unless appropriate measures are taken, mitigation agreements will, over time, become less and less effective in addressing the real-world impacts of gaming establishments.

These agreements therefore should therefore be required to specify the anticipated scope and magnitude of impacts that are being mitigated, to provide for on-going monitoring, at the applicant's expense, of actual impacts, whether or not within the original anticipated scope and magnitude, and to provide contingencies (including reopener provisions, if appropriate) for impacts that are different in scope or magnitude from what is specified. Any mitigation agreement that fails to include such provisions necessarily shifts all of the risk

of unanticipated negative impacts away from the gaming establishment and onto the Host and Surrounding Communities.

As drafted, however, section 127.02 does exactly the opposite of what it should. It prohibits reopeners except on rare occasions when there is "an unforeseen event, act or circumstance occurring after the mitigation agreement is executed and which directly undermines a basic premise on which the mitigation was made, a principal purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party." Thus, rather than helping communities to manage their risk of negative impacts not explicitly addressed in their mitigation agreements, section 127.02 forces communities in perpetuity to suffer those impacts in silence.

205 CMR 129.00: Transfer of Interests

(55) As noted previously, many of the applicants and qualifiers before the Commission are limited liability companies and not corporations. Section 129.02, however, appears to address the transfer of ownership interests exceeding 5% only when the applicant or qualifier is a corporation. Corresponding restrictions should be made applicable to limited liability companies.

(56) Transfers of ownership of more than a 5% interest should always require prior approval of the Commission. Section 129.02(1) and (2) should not allow waivers from this requirement.

205 CMR 130.00: Conservators

(57) Section 130.05(6) should explicitly require a conservator to abide by all provisions of all mitigation agreements applicable to the gaming establishment.

205 CMR 131.00: Awarding of a New Gaming License

(58) There is no policy justification for requiring a new gaming licensee's gaming establishment to be located at the site of the preexisting gaming establishment. In some instances, some attribute of the site (including its location) may have been a substantial contributor to the failure of the preexisting gaming establishment. Section 131.02(2) should provide only that the new gaming establishment must be located in the same region, as defined in *M.G.L.* c.23K, §19(a), as the preexisting gaming establishment.

Thank you for your attention to these comments. If you have any questions or concerns about the matters discussed, please feel free to contact me.

Sincerely,

J. Raymond Miyares

cc: Hopkinton Board of Selectmen
N. Khumalo
Holliston Board of Selectmen
P. LeBeau
Medway Board of Selectmen
S. Kennedy
Ashland Board of Selectmen
A. Schiavi
Southborough Board of Selectmen
M. Purple
D. Patrick
K. Spilka
C. Dykema
T. Sannicandro
J. Eldridge

Thurlow, Mary (MGC) 2

From: Jessica Curtis Schnittjer <jesscurtis@gmail.com>
Sent: Wednesday, May 01, 2013 4:38 PM
To: mgccomments (MGC)
Subject: Draft Regulations Comment
Attachments: No Eastie Casino_Phase II Rules_Final Comments.docx

Thank you for the opportunity to comment on these proposed rules on behalf of No Eastie Casino. Should you have questions, please feel free to contact me at 617-874-2507.

Best,

Jessica Curtis

May 1, 2013

VIA ELECTRONIC MAIL

Stephen P. Crosby, Chair
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

RE: Phase 2 Casino Gambling, Proposed Updates to Existing Regulations and New Proposed Regulations (As Issued March 28, 2013)

Dear Mr. Crosby:

Thank you for the opportunity to submit these comments on requirements for casino developers seeking a license to operate in Massachusetts. No Eastie Casino is a grassroots, all-volunteer effort that works to educate East Bostonians about the full range of impacts that the proposed Caesars Entertainment casino complex at Suffolk Downs would have on our neighborhoods and small businesses.[1] Our comments today are in response to the draft regulations issued by the Massachusetts Gaming Commission (hereinafter "the Commission") on March 28, 2013, more commonly referred to as the "Phase 2" regulations. The Phase 2 proposed rules—and, by extension, our comments—reference both the Commission's update to the existing regulations[2] and its newly proposed rules.[3]

No Eastie Casino stands for positive economic growth that honors our community's history and diversity; enhances the quality of life for all residents; and promotes healthy, environmentally sustainable opportunities for growth that support our small business culture and family-friendly streets. We oppose a casino at Suffolk Downs because we believe it is inimical to these values. At the same time, we appreciate that so long as casinos are allowed to operate in Massachusetts, there will be a need for a robust regulatory structure that promotes and enhances transparency, engages and provides recourse for host and surrounding communities, and protects the public's interest. We offer these comments in that spirit.

Under state law and as outlined in these proposed rules, the Commission retains broad powers of discretion with regard awarding, monitoring, and enforcing the terms of casino licenses. Among other duties, the Commission is responsible for evaluating the merits of each application and ensuring that any potential development will provide value to the Commonwealth and the region. The Phase 2 proposed rules cover a broad swath of territory, including the following:

- What information will be available to the public about casino applicants, applications, and mitigation agreements, and when;

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[1] While our effort is focused on East Boston, we acknowledge that the impacts of the proposed casino complex are likely to extend to the neighboring communities of Chelsea and Winthrop, which have limited protections under the Massachusetts gaming law compared to East Boston and Revere.
[2] Available as of April 30, 2013 at http://massgaming.com/wp-content/uploads/Existing-regulations-update-3-29-13.pdf.
[3] Available as of April 30, 2013 at http://massgaming.com/wp-content/uploads/Master-draft-of-new-regulations3-29-13.pdf.

- Conversely, what information will be kept confidential;
- The criteria and process the Commission will use to evaluate proposals;
- The process for executing mitigation agreements with host and surrounding communities; and
- Rules for local elections whereby community residents can vote in favor of or in opposition to the mitigation agreement, as it is negotiated by elected officials within their host communities.

General Comments

Upon review of the proposed Phase 2 rules, we are concerned that the proposed rules do not go far enough to promote transparency and adequately protect the interests of host and surrounding community residents.[4] Specifically, we do not believe that the proposed rules, as written, adequately protect the long-term interests of host community residents. We respectfully recommend strengthening the proposed rules in the following three areas:

1) **Add rigor** to the evaluation metrics used for reviewing applications and host community agreements;
2) **Improve transparency** to strengthen the public's involvement; and
3) **Protect the interests of host community residents** by strengthening tools to hold casino applicants, operators, developers and investors accountable to the communities in which they are located.

Recommendation 1: Add Rigor to Evaluation Metrics and Procedures for Reviewing Applications and Mitigation Agreements

Sections 118.04, RFA-2 Review Procedures; 118.05, RFA-2 Public Hearing in Host Community; and 112.03, Obligation to Provide Truthful Information

We are concerned that the process and standards the Commission will use to review and evaluate casino applications, as outlined in the proposed rules, are overly vague, subjective and therefore susceptible to inappropriate outside influences by applicants and others with vested interests in the success of the casino industry in Massachusetts. To ensure that the best interests of the Commonwealth, host and surrounding communities are served, we strongly urge the Commission to adopt the following in final rules:

1) Mandate an independent, uniform evaluation of proposed developments and an independent cost-benefit analysis of mitigation agreements.

[4] We note that this concern is heightened in light of the Commission's recent unanimous decision to allow votes on mitigation packages *prior to* a determination of a casino applicant's financial suitability. See "A Message from the Massachusetts Gaming Commission to Potential Host & Surrounding Communities" (April 22, 2013); available as of April 29, 2013 at http://massgaming.com/wp-content/uploads/Host-Community-Emergency-Reg.pdf. See also 205 CMR 115,00: Phase I Suitability Determination, Standards and Procedures, as amended; available as of April 29, 2013 at http://massgaming.com/wp-content/uploads/Host-Community-Emergency-Reg.pdf. No Eastie Casino submitted comments on these proposed emergency regulations, incorporated here by reference.

The current draft states that Commission *may,* but is not required to, order an independent evaluation of the proposals. We recommend that an independent, expert analysis of economic, traffic, public health and crime impacts be required for each applicant.

Similarly, while Section 112.03 of the proposed rules does prohibit applicants from "knowingly providing materially false or misleading information," applicants have been advocating for their own business interests as they have negotiated with host and surrounding communities. We believe it is the Commission's ultimate responsibility to confirm the facts as they have been presented by applicants to the Commission, host and surrounding community officials, and community residents. Therefore, we recommend that the Commission require an independent review of the mitigation agreements negotiated by host communities and casino developers that assesses the merits of these agreements against likely negative impacts.

2) *Require uniform evaluation procedures for each applicant.*

The evaluation procedure outlined in Section 118.04 appears to allow the Commission to treat applicants differently. For example, the Commission could order independent evaluations of one casino developer's traffic plan, but not another's. We are concerned that this type of evaluation could unintentionally lead to an unfair and arbitrary result by permitting reviewers, unintentionally or intentionally, to overlook serious potential problems or gaps in an application. Therefore, we strongly recommend that proposed development be required to meet or exceed the same predetermined objective standards.

3) *Provide opportunities for public review and comment on the evaluation process.*

We believe the residents of host and surrounding communities, when presented with full information about the costs and benefits of a neighborhood casino, are best suited to understand and evaluate the merits of each developer's proposal and the value, if any, of the mitigation packages negotiated by elected officials.

However, the gaming statute is structured in such a way that many community residents will vote solely on the mitigation package, with no guarantee that they will have access prior to the vote to full information about the proposed development; the financial suitability of the applicants and their investors; or to publicly available, independent cost-benefit reports. This structure pays lip service to the idea of community input. In reality, it stacks the deck in favor of casino developers and could leave many community residents "holding the bag," should initial mitigation packages prove inadequate over time.

Therefore, we strongly urge the Commission to make evaluation procedures and analyses for each application, along with independent cost-benefit analyses on the value of the mitigation packages, publicly available for public comment and review prior to the public hearings described in Section 118.05. (Other recommendations for this section are outlined below.)

Sections 118.06, RFA-2 License Determinations; and 119.03, Evaluation of the Application by the Commission

We are concerned that the proposed regulations do not define or set any objective minimum standard for what will constitute "convincing evidence that the applicant will provide value to the region." While Section 119.03 does outline the criteria that will be used to evaluate the application, it does not establish or even suggest benchmarks that applicants will need to achieve to move forward.

This is particularly troublesome since the Commission, under the proposed rules, is not required to obtain independent, expert analysis of the applications or to verify the information provided by the applicants. To encourage transparency, we recommend amending the proposed rules so that the rationale for any Commission decision to approve or deny a license shall be made available to the public.

The proposed rule also falls short in terms of key evaluation criteria related to the overall cost and long-term sustainability of casinos. For example, the Commission should be required to evaluate whether the Commonwealth can support three resort-style casinos prior to awarding any licenses, given the saturation of the New England market that has occurred since the passage of the gaming legislation.

Improve Transparency and Strengthen Public Involvement

Section 118.05, RFA-2 Public Hearing in Host Community

The draft regulation states that the Commission *may* allow the public to provide oral testimony at a public hearing. We strongly recommend that the proposed rules be amended so that the Commission is required to receive public testimony; to accept oral testimony, as well as written comments; and to provide translated materials and translation services at all public hearings for Limited English Proficiency (LEP) residents.

We also note that the proposed rules follow the gaming statute in permitting the chief executive officer of a host community to request that the public hearing be held in another city or town.[5] Residents living near a proposed casino site have a lot on the line in terms of increased crime, traffic and air pollution, environmental impacts and decreased property values. We fail to see how the public interest is best served by moving the public hearing to another town or city, since this is likely to make it more difficult for residents of host communities—particularly the elderly and those reliant on public transportation—to attend the public hearing and to offer their support or opposition.

Therefore, we recommend requiring that any written request from a host community's chief executive officer or his/her delegate to move the meeting—along with the rationale for doing so—be provided to the public with sufficient notice.

Section 119.01, Contents of the Application

[5] See Mass. Gen. Law ch. 23K, § 17(c).

Although casino applicants in several communities have made a number of public statements and presentations, none have been made under the pains and penalties of perjury. In some instances, community residents have reported discrepancies between the information presented at community forums and what has appeared in later official documents, such as MEPA filings. Moreover, despite repeated requests of both the Boston Host Community Advisory Committee and Suffolk Downs, many East Boston residents have shared with us that they have yet to see the level of detail they need to evaluate whether a casino makes sense for East Boston, or whether the mitigation package that will be negotiated by the City of Boston will be sufficient to address the negative impacts the neighborhood will feel from a casino at Suffolk Downs. This means that most of the details regarding the proposed developments, including detailed information on job pay and quality, agreements with local businesses, and traffic patterns will be available for the first time in the RFA-2 application.

To clear up confusion and promote transparency, we strongly recommend that Section 119.01 be amended to require the Commission to make all parts of the RFA-2 application—not just the mitigation agreement—available to the public for comment and review. We support a requirement that the Commission post the full application, along with supporting materials and letters of support or opposition, on its website.

We offer the following recommendations as well:

- Amend Section 119.01(12) to require applicants to provide detailed information about their host communities, including demographic information; education and income levels; detailed information about small businesses and levels of home ownership; rates of homelessness; and baseline public health data such as current rates of problem gambling, substance use, mental health disorders, and asthma and other chronic illnesses exacerbated by traffic.
- Amend Section 119.01 (25), which requires agreement regarding mitigating potential negative public health consequences, to include mitigation and a detailed plan for preventing drunk driving. Also require applicants to provide a detailed description of how they will work with local health departments, hospitals, and community-based organizations to routinely monitor changes in public health data related to gambling and casino-induced traffic, and how they will collaborate to improve the health of host and surrounding communities.
- Add a requirement that applicants provide a detailed description of how they will target their marketing in the host and surrounding communities.

Strengthen Tools Available to Host Communities to Hold Casino Developers and Investors Accountable over the Long-Term

Section 127.01, Definitions

This section of the proposed rules defines the terms by which a fully executed mitigation agreement with a host community, surrounding community, or certain entertainment venues might be revisited. Under the proposed rules, a mitigation

agreement may only be reopened for "substantial and material adverse impacts," which is further defined as follows:

> "a substantial negative affect...from an unforeseen event, act, or circumstance occurring after a mitigation agreement is executed and which directly undermines a basic premise on which the mitigation agreement was made, a principle purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party."

We believe that the permissible reasons for re-opening a mitigation agreement in the proposed rules are much too narrow. We urge the Commission to amend this section to include a provision for re-opening the mitigation agreement if there is a large difference in the scope or severity of adverse impacts. We would amend the definition as follows:

> "a substantial negative affect...from an ~~unforeseen~~ event, act, or circumstance occurring after a mitigation agreement is executed and which directly or indirectly undermines a basic premise on which the mitigation agreement was made (including but not limited to a difference in the scope or severity of adverse impacts), a principle purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party."

Additionally, the Commission should outline a fair, transparent process for systematically reviewing the adequacy of mitigation agreements over time; evaluating compliance with the terms of the mitigation agreement; and make provision for public review of any renegotiated agreements.

Section 102.07, Legal Challenges

This new addition to the earlier proposed rules completely bars individuals and local governments from challenging or enjoining Commission action on the grounds that an applicant or the Commission has not complied with any section of these proposed rules. Given the impact a casino development will have on communities as well as the challenges presented by regulating a new industry (as the Commission itself notes in Section 102.06), we are concerned that this provision removes important protections available to community residents and local governments. We urge the Commission to strike this provision in its entirety.

***

Thank you for the opportunity to comment on these proposed rules on behalf of No Eastie Casino. Should you have questions, please feel free to contact Jessica Curtis at jesscurtis@gmail.com. We look forward to hearing from you.

Sincerely,

Jessica Curtis
On behalf of No Eastie Casino

2

Thurlow, Mary (MGC)

From: Cabral, Dianne <DFC@foleyhoag.com> on behalf of Conroy, Kevin (Counsel) <kconroy@foleyhoag.com>
Sent: Wednesday, May 01, 2013 4:49 PM
To: mgccomments (MGC)
Subject: Draft Regulations Comment
Attachments: Draft Regulations Comment0.PDF

Attached is a letter to Stephen Crosby with our draft regulations comment.

FOLEY HOAG LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2600

617 832 1000 *main*
617 832 7000 *fax*

Kevin C. Conroy
617 832 1145 direct
kconroy@foleyhoag.com

May 1, 2013

Sent by Email to mgccomments@state.ma.us

Stephen Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Comments on Phase 2 Regulations

Dear Chairman Crosby:

On behalf of my client, Mohegan Sun Massachusetts, LLC d/b/a Mohegan Sun Massachusetts and its affiliates, including the Mohegan Tribal Gaming Authority ("Mohegan Sun"), thank you for the opportunity to provide comments on the Massachusetts Gaming Commission's Phase 2 Regulations.

Mohegan Sun has closely followed the evolution of the Massachusetts Gaming Act (the "Act") and the Commission's implementation of the Act. Mohegan Sun selected its desired casino site five years ago, established a storefront office in Palmer more than three years ago, and has conducted outreach to thousands of area residents and small businesses through its "Community Conversations" series, appearances at other community meetings, a Mohegan Sun in Palmer newsletter and social media outreach. Mohegan Sun has strived to aid the Commission in its deliberations by commenting on the Commission's Phase 1 regulations, its Phase 1 confidentiality determinations, its Phase 2 Policy Questions, its State and Local Permitting Recommendations, its draft surrounding community regulations and once again welcomes the opportunity to share its thoughts on the critical issues of how RFA-2 applications will be presented, reviewed and evaluated. Mohegan Sun continues to appreciate the deliberate and transparent process being set forth by the Commission. Mohegan Sun's comments are not only based on its close monitoring of the evolution of the Act, but also its gaming experiences in other jurisdictions including Connecticut, New Jersey and Pennsylvania.

Mohegan Sun has chosen to comment on the following draft regulations:

I) Judicial Appeal/Further Review (Draft 205 CMR 102.07)

Draft 205 CMR 102.07 bars any person or local government entity from challenging or seeking to enjoin Commission action because of the failure of an applicant or of the Commission to comply with the provisions of 205 CMR 102.00, *et seq.* While the spirit of this section and all of 205 CMR 102 are laudable in giving the Commission needed discretion to enforce or waive regulations based on facts and circumstances and similarly there should be no third-party cause of action against an applicant for not complying with the Phase 2 regulations, this provision raises several concerns and warrants additional clarification.

First, it is anomalous, as virtually every other gaming jurisdiction in the United States allows for review of its respective gaming commission decisions in an appropriate forum. Governmental institutions are generally subject to independent review in their interpretation, implementation and enforcement of their own regulations, which is universally recognized as a fundamental component of due process of law.

Second, absent some limiting language, the provision effectively undermines the remainder of the regulations promulgated to date or in the future if "205 CMR 102.00 et seq." refers to sections through 205 CMR 131.00 and future implementing regulations. It would potentially eliminate judicial or administrative review of conduct which is inconsistent with those regulations. On the rare occasion when there is a legitimate allegation of non-compliance with the regulations, a mechanism should be in place to allow for oversight and review. This would safeguard the rights of applicants, patrons, and the citizens of the Commonwealth. The presence of such oversight and review would also protect the public perception of the Commission itself against unfair allegations that it was not accountable for its actions.

Third, draft 205 CMR 102.07 appears to run afoul of those provisions of the Act, which specifically require the Commission to hold adjudicatory hearings pursuant to G.L. c. 30A and which therefore specifically require judicial review pursuant to G.L. c. 30A, § 14. See G.L. c. 23K, § § 35(g), 36(d), 45(e)(1) (providing for Chapter 30A adjudicatory proceedings for persons subject to, respectively, cease-and-desist orders, proceedings for civil administrative penalties, and placement on the excluded persons list). Other future proceedings, such as a license renewal hearing, should similarly afford licensees due process.

Mohegan Sun would therefore recommend that section 102.07 be limited to just the Phase 2 regulations and not future operating regulations and be clarified not to abrogate any hearing, review or cause of action provided under the Act or other applicable law.

II) Confidentiality (Draft 205 CMR 103)

As the Commission has implemented the Act and promulgated regulations, the confidentiality of applicants' information and documents has been a consistent issue raised by applicants. The Commission has appropriately noted that the Act contains unique provisions that provide that only certain information provided by the applicants to the Commission will be treated as confidential. An example of the unique provisions of the Act is section 9(b), which deems the application a public record. The Act has led the Commission to prepare Specimen applications for the Phase 1 process, which provided applicants with notice of those portions of the RFA-1 application that the Commission deems confidential.

Mohegan Sun suggests this same process will be equally important for Phase 2. While the Phase 2 process should not require applicants to provide the Commission with significant personal information about individuals as Phase 1 did, Phase 2 will require applicants to provide detailed financial information and proprietary trade secrets about their operations and their security. We urge the Commission to prepare the Specimen applications shortly after the RFA-2 applications are finalized and provide an opportunity for the public and applicants to comment on the Specimen applications.

While Mohegan Sun does appreciate the Commission's efforts to provide certainty to applicants by issuing the Specimen applications, we remain concerned that the Commission has not provided this same certainty regarding documents that the Commission has requested that applicants provide during the Phase I investigation process. Individual qualifiers have been requested to provide personal information such as bank records with no definitive assurances that the Commission will keep this information confidential other than the applicants' reliance on their designations of the information as confidential when provided. This has led to potential needless anxiety among individual qualifiers. We urge the Commission to consider a regulation that would protect from disclosure any documents provided by any individual qualifier during the Phase I investigation.

In addition, we also urge the Commission to adopt a document retention and destruction policy so that applicants can be assured that their personal information is disposed of appropriately after the Commission has ceased the need for these materials.

III) Mandatory Disclosure of Donations, Items of Value (Draft 205 CMR 108.03, 114.03)

Draft 205 CMR 108.03 contains two typographical errors: "case" in line 5 of paragraph 1 should be "cash" and "persons or persons" in line 2 of paragraph 2 should read just "persons." Mohegan Sun also suggests that the exception from the duty to disclose in paragraph 4 for requests for disbursements by municipalities pursuant to 205 CMR 114.03 be expanded to include also requests for disbursements by municipalities pursuant to "any agreement with a municipality to pay or reimburse expenses incurred in connection with the negotiation of a host or surrounding community agreement." Mohegan Sun has an agreement with its host community for reimbursement of such expenses which predates the Commission's regulations in this area and has anticipated that the "no less than $50,000" of the application fee contemplated by the Act and 205 CMR 114.03 for community disbursements may be used in the future pursuant to letters of authorization with surrounding communities or a regional planning agency on behalf of surrounding communities. Since the Commission has not mandated that all community expense reimbursements be channeled through the Commission and the 205 CMR 114.03 process, this reference to appropriate direct funding should be added. Finally, Mohegan Sun suggests that the factors listed in draft 205 CMR 108.01(2) do not provide much guidance or certainty to those potentially affected. Accordingly, we encourage the Commission to provide certain safe harbors.

IV) Negotiation of Application/Best and Final Offer (Draft 205 CMR 118)

Draft 205 CMR 118.04(1)(g), (h), and (j) would allow the Commission to negotiate with or require an applicant to enhance or supplement its RFA-2 application and to allow applicants to submit best and final offers after applications have been submitted. These provisions are inconsistent with the Act and also raise questions about the Commission's ability to treat all applicants fairly throughout the process.

Section 17 of the Act discusses the importance of the application and the Commission's review of the application. The Commission must rely on the application to identify surrounding communities and impacted live entertainment venues. Section 17(a). "The Commission shall conduct a public hearing *on the application*" in the host community." Section 17(c). Thereafter, "the commission shall take action *on the application*", whereby it can grant or deny the application or "obtain any additional information necessary for a complete evaluation *of the application.*" Section 17(e). Through the process prescribed in the Act, it is clear that the Commission is to rely on the applications as submitted by the applicants to make its licensing decisions and not enhanced

or supplemented applications after negotiations between the Commission and the applicant or requests by the Commission.

The legislative intent of the Act – that the Commission make its licensing decision based on the applications -- is consistent with the principles of a level playing field for all applicants and a licensing process that assures integrity. Any efforts by the Commission or its staff to negotiate with applicants or urge applicants to amend their applications is bound to lead to criticism and questions about the Commission's integrity and showing favoritism to certain applicants. Similarly, these efforts may discourage creativity by applicants in their applications as they hold back their best ideas for the negotiation with the Commission. Finally, we also think efforts by the Commission to negotiate with applicants may ultimately delay the licensing decisions of the Commission.

V) Conditional Licensing (Draft 205 CMR 118.06, 120.02 and 128.01)

While draft 205 CMR 118.06, 120.02 and 128.01 appropriately provide for the Commission to impose certain conditions on licensure such as environmental permitting pursuant to section 120.02 and other conditions pursuant to Section 21(c) of the Act which provides "the commission may include any reasonable additional requirements to the license conditions....", such conditions should be established in advance whenever possible and pursuant to regulations, not imposed unilaterally by the Commission at the time of a license award. In the event the Commission does need to impose additional conditions at the time a Category 1 or 2 license is awarded, there should be a provision allowing the payment of the license fee under 205 CMR 121.01 to be paid into escrow or otherwise secured while new conditions being proposed for inclusion with a license may be reviewed and negotiated fairly between the Commission and the licensee, if necessary.

VI) Contents of Application (Draft 205 CMR 119)

Draft 205 CMR 119.01 describes the contents of the RFA-2 application and draft 205 CMR 119.03 describes the categories of information that the Commission will weigh in evaluating the application. In addition, although not included as part of the draft Phase 2 regulations, the Commission has prepared a 12 page spreadsheet entitled "Category 1 and Category 2 Evaluation Criteria" (the "Evaluation Criteria") and the Commission has indicated that it will release another document, the RFA-2 application, at the same time that it releases the Phase 2 regulations. In this context, Mohegan Sun has a number of concerns related to draft 205 CMR 119.

First, Mohegan Sun suggests that the RFA-2 application should match 205 CMR 119.01. To the extent that the Commission seeks information in the RFA-2 application that is not included in 205 CMR 119.01, this will raise questions whether the Commission can appropriately consider this information in its licensing decisions. In this context, we note that certain items are included within the Evaluation Criteria that are not included within draft 205 CMR 119.01. Similarly, Mohegan Sun understood that prior drafts of the Evaluation Criteria had included "Enhancements and overall uniqueness of the project" as a fifth category, but the Commission by consensus had eliminated this category. However, draft 205 CMR 119.03(2)(e) continues to list this fifth category. We also understood that this fifth category had been replaced with an Overview Category, however, we do not see this Overview Category contained in draft 205 CMR 119.03(2). Mohegan Sun urges the Commission to make these documents harmonious prior to the release of the Phase 2 regulations and the application.

Second, Mohegan Sun is concerned that the Commission appears to be blending Section 15 and Section 18 of the Act. Section 15 of the Act provides the minimum qualifications that each applicant must contain. Id. ("No applicant shall be eligible to receive a gaming license unless the applicant meets the following criteria and clearly states as part of an application…"). Section 18 of the Act provides the criteria that the Commission shall evaluate to determine whether an applicant shall receive a gaming license. Id. However, in draft 205 CMR 119.03(2), the Commission contrary to the Act indicates that it will treat certain requirements of section 15 as criteria rather than minimum qualifications. This includes 119(2)(c)(1), compliance with state building code, local ordinances and by-laws; 119(2)(d)(1), agreement to be a lottery agent and not run competing games; 119(2)(d)(4), signed host community agreement; 119(2)(d)(5), surrounding community agreements; and 119(2)(d)(6), impacted live entertainment venue agreements. We urge the Commission to treat these requirements as minimum qualifications and not evaluative criteria.

Third, Mohegan Sun objects to certain evaluation criteria contained in draft 205 CMR 119(2). For example, Mohegan urges the Commission to eliminate "Alternative uses for the buildings in the complex" as a criteria. We think that the Commission should be encouraging applicants to focus on designing the best casinos in the world and not also focused on what can be done with the facilities if they fail. We expect this criteria will actually harm the overall design of the casinos.

Finally, Mohegan Sun has comments on various provisions contained in 205 CMR 119.01. Draft 205 CMR 119.01(20) accurately restates the language in Section 9(4) of the Act in contemplating an independent audit report of financial activities and contributions. However, in this case, clarification in the regulations is warranted, as the Commission has done previously in defining terms such as "publicly-traded corporations." Since many applicants have formed new entities to apply for a casino license, those entities will have

limited financial history of their own, so the regulations should allow for consolidated independent audits of publicly traded corporations and accept independent audits conducted for SEC reporting purposes. If the reference to "contributions, donations, loans" in this context means Massachusetts political contributions, then that should be clarified and a process and timeline for review of such contributions specified. For entities with policies against political contributions or independent expenditures on behalf of candidates, an officer's certification with respect to company political activities may suffice instead of an independent audit.

Draft 205 CMR 119.01(21) appears to require an applicant to provide personal income and personal checking account information. Mohegan Sun questions why applicants will need to provide personal financial information as part of the Phase II process and notes that documentation of this sort has been submitted as part of the Phase I process. Mohegan Sun suggests that this information is better considered as part of the suitability process and urges the Commission to remove the requirement for financial information.

VII) Minimum Investment/Bonding (122)

Section 10(a) of the Act requires that a licensee deposit an amount equal to 10% of the total proposed capital investment or secure a deposit bond equal to the same 10%, with such security released at the final stage of construction. Such a deposit or bond represents a substantial cost to the licensee, particularly considering that the bond may be due before certain permitting is completed and before construction can begin. Draft 205 CMR 122.05 requires the deposit or bond be submitted within 30 days of being awarded a category 1 gaming license. The Commission should use its considerable latitude on this timeline to allow time for the initial building permitting to begin. Therefore, we respectfully request that the deposit or bond be due 30 days after the initial site building permit is issued, but not less than 180 days from the awarding to the licensee of a category 1 gaming license. The amount of the deposit or bond should also be subject to reduction as milestones are met prior to the final phase of construction.

The Commission should also give guidance on how it will interpret the "final stage of construction" as contemplated by the Act. G.L. c. 23K, §10(a). For example, it may be in the best interests of all parties, including host and surrounding communities, training facilities, licensees and the Commonwealth as a whole to allow a facility to open on a temporary basis before a hotel or other amenity. Reduction or release of the deposit or bond at certain stages would make sense in such instances.

VIII) Surrounding Community (Draft 205 CMR 125.00)

Surrounding communities are defined in the Act as:

> municipalities *in proximity to a host community* which the commission determines *experience or are likely to experience impacts* from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.

M.G.L. c. 23K, § 2 (emphasis supplied). This definition makes clear that communities need to be both "in proximity to a host community" and "experience or are likely to experience impacts" in order to be designated a surrounding community. This is consistent with other provisions of the Act. In Section 17(d), the Act makes a distinction on the one hand between host and surrounding communities, which are "impacted communities", and on the other hand, "a community in the vicinity of the proposed gaming establishment." This implies that communities may be near a host community, but need to experience impacts to be designated a surrounding community.

Draft 205 CMR 125.01, however, does not capture the two separate requirements that are contained in the surrounding community definition in the Act. Rather, it describes factors the Commission may consider to determine "proximity" (described in draft 205 CMR 125.01(2)(b)(i)) and factors the Commission may consider to determine 'impacts' (described in draft 205 CMR 125.01(2)(b)(ii), (iii), and (iv)) without noting that the Commission needs to find both proximity and impact before determining a community is a surrounding community. Mohegan urges the Commission to amend draft 205 CMR 125.01 to make clear that a community needs to be both "in proximity to the host community" and "experience impacts" in order to be designated a surrounding community.

IX) Post-Licensing Matters (Draft 205 CMR 127, 129 and 130)

As a general matter, draft 205 CMR 127 ("Reopening Mitigation Agreements"), 129 ("Transfer of Interests") and 131 ("Awarding of a New Gaming License") stand out from the other draft Phase 2 regulations in covering scenarios that cannot arise until after licenses are awarded. While foresight on these matters is commendable, some clarifications are in order and we wonder if these sections should be included in future rounds of regulation promulgation rather than in this round of promulgation.

Regarding 205 CMR 129, Mohegan Sun urges further clarification of the phrase, "commercial financial institution which becomes a substantial party of interest with a gaming licensee", as used in 205 CMR 129.01(1)(k). In this regard, a financial institution that has been identified as a "qualifier" of an applicant as part of the Phase 1 suitability determination process for a Category 1 license would meet this standard. Accordingly, Mohegan Sun proposes a suggested Regulation for consideration that could be inserted as 205 CMR 129.06(l):

205 CMR 129.06(l) Advanced Determination Investment Qualifier Exception – No person or entity that has been identified as a "qualifier" of an applicant under 205 CMR 116 as

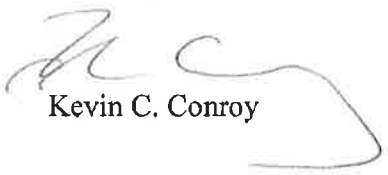
part of the Phase 1 suitability determination process for a Category 1 license shall be treated as a transferee upon the award of a license to the applicant in connection with 205 CMR 129.00.

In addition, Mohegan Sun notes that the reference in draft 205 CMR 129.01(1)(b) to "205 CMR 130.01(1)(a)" should be corrected to "205 CMR 129.01(1)(a)."

Finally, in draft 205 CMR 129.02 ("Disposition of Securities") and throughout 205 CMR 129, there should an exception for debt securities issued by a publicly traded corporation.

Once again, thank you for the opportunity to comment on the Commission's Phase 2 regulations. Please let us know if we can answer any questions.

Sincerely,



Kevin C. Conroy

KCC:dfc

2

Thurlow, Mary (MGC)

From: miltonc@gtlaw.com
Sent: Wednesday, May 01, 2013 4:55 PM
To: mgccomments (MGC)
Cc: Nelson_Parker@hardrock.com; Holly_Eicher@hardrock.com; mjones@foxrothschild.com; NCasiello@foxrothschild.com; HackneyHa@gtlaw.com
Subject: Comments on Draft Phase 2 Regulations
Attachments: Comments - Draft Phase 2 Regulations.pdf

Please see the enclosed comments on the draft Phase 2 Regulations.

Christopher H. Milton, Esq.
Shareholder
Greenberg Traurig, LLP | One International Place | Boston, MA 02110 Tel 617.310.6280 | Fax 617.897.0980 | Cell 617.909.8611 miltonc@gtlaw.com | www.gtlaw.com

-----Original Message-----
From: BosEcopy@gtlaw.com [mailto:BosEcopy@gtlaw.com]
Sent: Wednesday, May 01, 2013 12:55 PM
To: Milton, Christopher H. (Shld-Bos-LDZ-RE)
Subject: Message from "RICOH2"

This E-mail was sent from "RICOH2" (Aficio MP 9001).

Scan Date: 05.01.2013 12:55:26 (-0400)
Queries to: BosEcopy@gtlaw.com

GT GreenbergTraurig

Christopher H. Milton
Tel (617) 310-6280
Fax (617) 897-0980
miltonc@gtlaw.com

May 1, 2013

BY EMAIL TO mgccomments@state.ma.us

Massachusetts Gaming Commission
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: **Comments – Draft Phase 2 Regulations**

Ladies and Gentlemen:

We are writing on behalf of our client, HR of Massachusetts, LLC, with comments on the draft Phase 2 regulations released by your office on or about March 28, 2013. Our comments are as follows:

Section 114.03

With regard to subsection (2)(b), we believe that there should be some process for an applicant to contest the appropriateness of a finding that there is a reasonable likelihood that a community will be designated as a surrounding community, given that such a finding can have significant financial implications for an applicant.

Section 118.01

With regard to subsection (1), we would suggest that the language should be made more flexible, so that the MGC has the power to allow a given applicant to submit and RFA-2 application before the issuance of a positive determination of suitability by the application deadline, where the RFA-1 process has not been completed despite the reasonable efforts of all concerned.

Consistent with the foregoing, we also would submit that subsection (4) should be modified to delete the requirement that the circumstances be "extraordinary." Rather the MGC should simply reserve the power to extend the time for filing a complete RFA-2 application when it thinks the circumstances so merit.

Section 118.04

With regard to subsection (1)(c), we would submit that there should be some mechanism which would give an applicant an opportunity to approve in advance some level of

expenditure before becoming liable for the expense. An applicant may wish to withdraw its application should the expenditure levels be too extreme.

Given that subsection (1)(g) includes a power to negotiate with an applicant, we see no need for the inclusion of subsection (1)(i)((ii) relating to identification of finalists, or subsection (1)(i)(j) relating to final and best offers by finalists. The addition of such process seems likely to result in significant delays, without commensurate benefits over those which would be achieved through negotiation.

Section 118.06

With regard to subsection (1)(c), we recommend that the MGC reserve the power to extend the 30-day maximum for issuance of a decision pending the efforts to obtain additional information. There are forms of information that might be sought, but which might not be obtainable with such a period (e.g., information that requires environmental or other testing). The MGC should give itself flexibility to extend for such a period as is reasonable under all the circumstances that then pertain.

Section 118.07

With regard to subsection (1), we do not view the ultimate selection of an applicant for licensure to be administrative or legislative in nature. Rather, we believe such a function is by its nature adjudicatory, despite the highly discretionary nature of the power.

Section 119.01

With regard to subsection (7), we would recommend that the phrase "positive vote" be supplemented by the phrase "cast by a majority of those voting."

With regard to subsection (17), we would recommend that an applicant be allowed to meet other third party standards for sustainable design, rather than being tied specifically to the LEED standards referenced in clause (i) or the stretch energy code referenced in clause (ii).

With regard to subsection (26), we would recommend that the phrase "vulnerable populations" be clarified, perhaps with a formal definition in Section 102.02.

With regard to subsection (30), we would recommend that the term "area" be clarified with some geographic radius, perhaps with a formal definition in Section 102.02.

With regard to subsection (33), we would recommend that the phrase "to the extent feasible" be added at the end of clause (ii).

With regard to subsection (34), we would recommend that the language be revised to contemplate the possibility of multiple contracts with different trades, and the possibility that in some cases a specific contract will be agreed upon, whereas in other situations the contract generally in effect in a given geographic area will govern.

With regard to subsection (54) there is an "0" present in front of clause (iii) which should be deleted.

With regard to subsection (56) the word "reasonably" should be replaced with the word "reasonable."

Section 119.02

With regard to the last sentence hereof, there needs to be greater definition as to whose "past performance" is to be discussed in the application.

Section 119.03

With regard to subsection (2)(c)(1), the language should be clarified to make it clear that the minimum compliance with G.L. c. 30, Sections 61-62H and 301 CMR 11.00 required at the time of application is that level of compliance required to be consistent with Section 120.01(1)(b) and (c).

With regard to subsection (2)(c)(3), the word "a" should be deleted after the word "caliber.'

With regard to subsection (2)(d)(2), the language should be clarified to articulate with whom memoranda of understanding are to be signed.

With regard to subsection (2)(d)(4), we would recommend that the phrase "favorable community vote" be supplemented by the phrase "cast by a majority of those voting."

Section 120.01

With regard to subsection (1)(g)(1) and (2), we suggest that the language be clarified to state that a use shall be deemed to be "as of right" even where "site plan approval" remains as an approval to be obtained in the future from the host community.

With regard to subsection (2), we suggest that the applicant have a duty to provide only such documents and information filed by third parties as may come into the possession of the applicant.

Section 121.01

With regard to subsections (1) and (3), we suggest that the language be clarified to state that the "award" takes place only once a license has been reconsidered and affirmed, limited, restricted, conditioned or modified pursuant to Section 102.02.

Section 122.03

With regard to subsection (9), we suggest that the language be modified to include legal fees related to permitting, design, construction and other activities the cost of which is capitalized under this section.

Section 122.04

With regard to subsection (5), we suggest a change precluding capitalization of legal fees other than those expressly permitted in Section 122.03(9).

Section 122.05

With regard to subsection (1), we suggest that the language be clarified to state that the "award" takes place only once a license has been reconsidered and affirmed, limited, restricted, conditioned or modified pursuant to Section 102.02.

Section 124.01

With regard to this section, we would recommend that the phrase "binding vote" be supplemented by the phrase "cast by a majority of those voting."

Section 124.02.

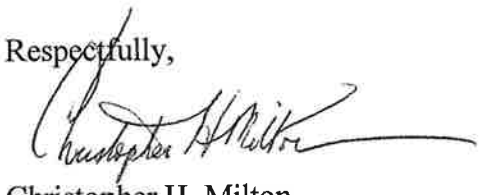
See comments above regarding Section 118.01.

Section 125.01

We would suggest that the language of subsection (1) be supplemented to address the situation where for some reason the chief executive officer of a surrounding community designated by an applicant refuses to sign an assent. Presumably that surrounding community should be deemed to have waived its designation.

We thank you for your consideration of the foregoing comments.

Respectfully,



Christopher H. Milton

cc: Mr. Nelson Parker
Ms. Holly Eicher
Marie Jones, Esquire
Nick Casiello, Esquire

MIA 183242879v2

2

Bresilla, Colette (MGC)

From: Conboy, Marianne (SEN) <marianne.conboy@masenate.gov>
Sent: Tuesday, April 30, 2013 11:59 AM
To: mgccomments (MGC)
Cc: Crosby, Steve (MGC); Ziemba, John S (MGC)
Subject: Comments on behalf of Senator Spilka, Representative Dykema, and Representative Roy
Attachments: Gaming Commission Letter Final 04292013.PDF

Good Morning,

Attached, you will find a PDF of a letter that has been mailed this morning from Senator Spilka, Representative Dykema, and Representative Roy for your consideration regarding the Massachusetts Gaming Commission's draft Phase 2 regulations.

Please let us know if we can be of any assistance, and thank you.

Kind Regards,
Marianne

Marianne Conboy
Legislative Aide
Office of Senator Karen E. Spilka
Majority Whip
State House, Room 320
Boston, MA 02133
(617) 722-1640

COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT
STATE HOUSE, BOSTON 02133-1053

April 29, 2013

Mr. Stephen Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Dear Chairman Crosby,

Thank you for your visit to Holliston Town Hall on April 10, 2013, where you and Ombudsman John Ziemba provided the Towns of Ashland, Holliston, Hopkinton, Medway, and Franklin with information about the Massachusetts Gaming Commission and its process of promulgating regulations governing the award of licenses and the operation of gaming facilities in Massachusetts. We appreciate your dedication to keeping communities informed and encouraging feedback.

At that meeting town officials collectively shared similar concerns regarding the Commission's draft Phase 2 regulations, and we wish to see those matters addressed in the final regulations. One important concern is that the draft regulations do not take into account the normal business practices and governance of a small city or town. We ask that the final regulations accommodate these requirements by addressing the timing of access to regional planning agencies for technical assistance, financial resources if a community is not permitted access a regional planning agency, and alterations to the timeline.

The use of regional planning agencies to assist surrounding communities is a promising idea. Many towns would benefit from the manpower, expertise, and resources these organizations would provide. We understand from the discussion at the meeting in Holliston, that a town can only seek assistance from a regional planning agency if they have been formally identified by a gaming applicant as a surrounding community. We are concerned that communities must wait for the applicant to make this determination before they can access this vital resource.

If an applicant does not designate a town as a surrounding community in its application, and the town considers themselves impacted by the potential development, this community would be considerably disadvantaged by the current draft Phase 2 regulations. We are concerned that such a community would not have access to the technical and advisory services of the planning agencies, nor would it have access to technical assistance funding from applicants. Where would such a community find the resources to analyze the impacts from the proposed facility and plan for mitigation?

Even when funding is available, municipalities are subject to procurement laws that make engaging vendors to provide technical assistance a lengthy process. We are concerned that the timeline suggested by the draft regulations and the Commission's intended schedule for awarding licenses will make it difficult for small municipalities to conduct a meaningful evaluation of the impacts a proposed facility will have on their community. Alignment between the town's procurement timelines and the Commission's regulations is necessary to provide for a fair process.

As you proceed to finalize the proposed regulations, we urge you to fully consider these issues and make the changes necessary to ensure efficient and meaningful participation by all municipalities impacted by gaming facilities. If you have any questions, please do not hesitate to reach out to our offices.

Sincerely,

Senator Karen E. Spilka
2nd Middlesex and Norfolk

Representative Carolyn C. Dykema
8th Middlesex

Representative Jeffrey N. Roy
10th Norfolk

cc: Mr. Joseph Marsden, Jr., Chair, Holliston Board of Selectmen
Mr. Paul LeBeau, Holliston Town Administrator
Mr. Benjamin Palleiko, Chair, Hopkinton Board of Selectmen
Mr. Norman Khumalo, Hopkinton Town Manager
Mr. Steven Mitchell, Chair, Ashland Board of Selectmen
Mr. Anthony Schiavi, Ashland Town Manager
Mr. Robert Vallee, Chair, Franklin Town Council
Mr. Jeffrey Nutting, Franklin Town Administrator
Mr. Andrew Espinosa, Chair, Medway Board of Selectmen
Ms. Suzanne Kennedy, Medway Town Administrator

2

Bresilla, Colette (MGC)

From: Schaller, Michael J. <mschaller@Shefskylaw.com>
Sent: Tuesday, April 30, 2013 4:02 PM
To: mgccomments (MGC)
Cc: Froelich, Cezar M.; Copp, Kimberly M.; Pikula, Edward (epikula@springfieldcityhall.com); Schaller, Michael J.
Subject: Comments to Phase 2 regulations
Attachments: letter to Crosby_20130430_1438.pdf

On behalf of the City of Springfield, please see our attached comments to the Phase 2 regulations. Thanks.

Michael J. Schaller
Shefsky & Froelich Ltd.
111 East Wacker Drive
Suite 2800
Chicago, IL 60601
312.836.4005
312.275.7599
http://www.shefskylaw.com

Shefsky
& Froelich
Attorneys at Law

111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601-3713
Tel 312.527.4000 Fax 312.527.4011
www.shefskylaw.com
MICHAEL J. SCHALLER
Direct: (312) 836-4005
Facsimile: (312) 275-7599
E-mail: mschaller@shefskylaw.com

April 30, 2013

VIA E-MAIL: mgccomments@state.ma.us

Mr. Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Massachusetts Gaming Commission Phase 2 Regulations

Dear Chairman Crosby:

The Massachusetts Gaming Commission (the "**MGC**") has published its Phase 2 draft regulations (the "**Phase 2 Regulations**") and has requested public comment and input on the Regulations. We appreciate the MGC's desire to open this process to the public and to allow our participation and input.

We have over 20 years' experience in the gaming industry and have advised several gaming commissions, state governments and local municipalities in connection with the implementation of gaming in various jurisdictions. We currently serve as a gaming consultant to the City of Springfield, MA (the "**City**"). On behalf of ourselves and the City, we are pleased to provide you with our comments to the Regulations.

Draft Regulation 119.03: Evaluation of the Application by the Commission

We concur that in awarding a Category 1 gaming license the Commission take into consideration the physical distance between the location of each Category 1 gaming establishment. This is a sensible evaluation criteria given the nature of the gaming industry and the potential for cannibalizing a gaming market in a region. Equally important however is the physical distance of a Category 2 gaming license to the location of each Category 1 gaming license. A Category 2 license should be evaluated by the likelihood that it will cannibalize the gaming market for the Category 1 gaming licenses. This is especially important given the significant differences in capital investment and operating costs for a Category 1 gaming license versus a Category 2 gaming license. Our consultants tell us that the Twin Rivers casino (similar to a Category 2 gaming license) had a significant negative impact on the Foxwoods and Mohegan Sun facilities after it opened. Locating a Category 2 gaming license within the market area of a Category 1 gaming license would likely do the same.

Draft Regulation 123.02: Host Community Agreement

The Act and regulations are quite clear that a host community agreement is an essential requirement for a gaming applicant. Less clear is what happens if for some reason a host community terminates its host community agreement with a holder of a Category 1 license. The State of Michigan gaming act requires that each of the three Detroit casinos have a development agreement with the City of Detroit and that such agreement must be maintained in order for the casino license to remain in effect. We would request that the Commission provide a comparable provision in its regulations requiring each Category 1 license holder to maintain its host community agreement such that any termination of that agreement would be grounds for revoking that license. To do otherwise would make the requirement of a host community agreement seem like an empty act in that, theoretically, the day after the Commission awards a Category 1 gaming license, the corresponding host community agreement could be terminated.

We thank you for the opportunity to provide our comments and input. To the extend, the MGC or its staff is inclined to proceed in a manner that is inconsistent with our responses provided above, we respectfully request an opportunity to further discuss these items with the MGC before the MGC finalizes the Regulations. Of course, we would be pleased to meet with you or other members of the MGC to further explain or discuss any of our comments. Should you have any questions on any matter or need additional information, please feel free to contact us.

Very truly yours,

SHEFSKY & FROELICH LTD.

Michael J. Schaller

MJS/dja/1242871_1

cc: Ed Pikula, Esq.
City Solicitor, Springfield, MA

2

Bresilla, Colette (MGC)

From: Allison Potter <apotter@townofmedway.org>
Sent: Wednesday, May 01, 2013 1:33 PM
To: mgccomments (MGC)
Cc: Suzanne Kennedy
Subject: Draft Regulation Comment (May 3 Hearing)
Attachments: Casino Ltr_5 1 13.pdf

Good afternoon,
Please find attached correspondence from the Medway Board of Selectmen containing comments about the Gaming Commission's draft regulations for the May 3 public hearing.
Thank you,
Allison

Allison Potter
Asst. to the Town Administrator
Town of Medway
508-533-3264
508-321-4988 (f)

Town of Medway

BOARD OF SELECTMEN
155 Village Street, Medway MA 02053
(508) 533-3264 • FAX: (508) 321-4988

Andrew Espinosa, Chairman
Glenn Trindade, Vice-Chairman
John Foresto, Clerk
Dennis Crowley, Member
Richard D'Innocenzo, Member

May 1, 2013

The Commonwealth of Massachusetts
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

VIA EMAIL: mgccomments@state.ma.us

RE: Draft Regulation Comment – Phase 2

Dear Chairman Crosby and Fellow Commissioners:

I am writing on behalf of the Board of Selectmen for the Town of Medway regarding the draft Phase 2 regulations being considered by the Commission at its public hearing on May 3. We are commenting specifically on the draft Surrounding Community regulations, 205 CMR 125.01 (1), (2), (4) and (5), and Community Disbursements, 205 CMR 114.03 (2).

As the Commission is aware, there are two ways in which the regulations provide for the designation of a "surrounding community". The applicant may so define the surrounding community [Section 125.01 (1)] or, if not thus designated, the community may petition the Gaming Commission for this status within ten days following the Gaming Commission's receipt of the RFA-2 application [Section 125.01 (2)].

The Town of Medway has reached out to the developer without any acknowledgement to date leading us to conclude, as time continues to pass, that the applicant designation avenue is more likely than not being foreclosed upon for us and other prospective surrounding communities in the region. The protocol change proposed in the draft Phase 2 regulations is an effort to compel the applicant to reach out to potential surrounding communities sooner, but this does not create additional time for prospective surrounding communities to make a reasonable assertion of impacts resulting from the proposed casino.

Further, the regulations do not adequately address the prospective surrounding community's ability to fund the necessary research and studies to make even a prima facie case of anticipated burdens to the community, particularly if they are to be qualified as "different in kind or greater in degree than impacts in other communities". If no money is made available by the developer ahead of its filing of the RFA-2 application, towns' best option is to fund their own studies rather than wait to petition the Gaming Commission post submission. Further, the funds available for disbursement through the Gaming Commission are inadequate to the needs of the prospective surrounding communities given the number that will be seeking them for impact studies. The proposed language that would give the Commission

latitude to exceed the $50,000 for potential disbursements in Community Disbursements, Section 114.03, is not helpful to towns that have made no progress in communication with the developer. And such funds that may be available to prospective surrounding communities thirty days following the execution of a host agreement is still too late for Medway to prepare an acceptable response to the Commission concerning impacts. Nor do these disbursements do not provide any guarantee that a town will ultimately be designated a surrounding community, Section 125.01 (5). Lastly, there is little to no certitude that the Community Mitigation Fund, Section 125.01 (4), would address Medway's concerns when we would be competing with a number of communities in the region for these monies, among them those that were granted surrounding community status.

We urge the Commission to consider the constraints the draft regulations place on prospective surrounding communities. We are diligently working to meet the requirements the Commission has set forth for surrounding community designation. It is of the utmost importance for towns to have sufficient time to determine the impacts of the proposed casinos on them as surrounding communities and to have the funds to investigate these matters.

Sincerely,

Andrew Espinosa

Andrew Espinosa
Medway Board of Selectmen Chairman

C: Therese Murray, Senate President
Robert DeLeo, House Speaker
Karen Spilka, Senator, 2nd Middlesex and Norfolk District
Joseph Fernandes, Representative, 10th Worcester District
Jeffrey Roy, Representative, 10th Norfolk District

Bresilla, Colette (MGC)

From: Julie Jacobson <jjacobson@town.auburn.ma.us>
Sent: Monday, April 29, 2013 6:08 PM
To: mgccomments (MGC)
Subject: Draft Regulations Comment

Thank you for the opportunity to provide written comment on the draft Phase 2 Regulations which were approved by the Massachusetts Gaming Commission on March 28, 2013 for review prior to the public hearing on the proposals scheduled for May 3, 2013.

While the draft regulations cover the comprehensive gaming topics including applications, permitting, licensing and host community agreements, the following comments are specific to Section 125.01: Determination of Surrounding Communities and execution of mitigation agreements. Given that there is a current proposal which has been filed with the Massachusetts Gaming Commission for a slot facility in Worcester, Massachusetts, a municipality which is an immediate abutter to the Town of Auburn, the Auburn town administration is particularly interested in the draft regulations related to the surrounding community language and designation process.

Section 125.01: Determination of Surrounding Communities and execution of mitigation agreements states:

> *(1) General. The following communities are determined to be surrounding communities concerning the development and operation of a specific gaming establishment for purposes of M.G.L. c. 23K and 205 CMR:*
>
> *a. Each community located in the commonwealth that **both** (i) has been designated as a surrounding community by an applicant for a category 1 or category 2 license in the RFA-2 application, written notice of which designation shall be provided by the applicant to the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, at the time the application is filed with the commission; and (ii) submits to the commission a written assent, signed by the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, to the designation within 10 days of its receipt of the notice. Such notice to the community of designation by the applicant shall also include written notice of the requirement that each community must, to obtain final surrounding community designation, assent to such designation in writing within 10 days of the date of the application. Upon receipt of the written assent, the commission shall issue a written notice designating the community as a surrounding community;*

My concern with this language is as follows:

1. Based on this language, if the applicant does not notify the community at the time it files its application with the commission, the community cannot be designated as a surrounding community. As written, a community needs to be both 1) designated by an applicant for a category 1 or category 2 license at the time the license is filed with the Commission through written notification to the community's chief executive officer and 2) the community's chief executive officer must submit to the commission a written assent to the designation within 10 days of its receipt of the notice from the applicant.
2. This language does not specify the form for ensuring receipt of that written notice. Similar to other regulations which have required notification, in order to ensure receipt of delivery of legal notices, I respectfully recommend that the language state that "delivery of such written notice to the chief executive officer of the surrounding community be delivered by registered mail with return receipt."
3. The regulations provide only ten (10) days for the chief executive officer of the surrounding community to submit a written assent to the designation to the Commission. This timeframe is much too short given that a chief executive officer of the community may need to obtain a vote of its elected body (such as Board of Selectmen) in order to be authorized to sign the written assent to the designation. In many communities, Select

Boards do not meet weekly but rather meet bi-monthly, so 10 days does not provide enough time to obtain Board approval. I respectfully recommend this language be extended to 30 days.

4. There is a discrepancy in the above section with regard to the timeline. While the regulation states that the chief executive officer of the surrounding community must submit a written assent to the designation to the Commission "within 10 days of its receipt of the notice" from the applicant, further in the section the language states that the applicant's notice of designation to the community shall also include written notice of the requirement that each community must, to obtain final surrounding community designation, assent to such designation in writing "within 10 days of the date of the application". Clarification must be made whether the community must assent to such designation in writing within 10 days of receipt of the notice from the applicant or within 10 days of the date of the application as the written notice may not be delivered to the surrounding community the same day that the application is filed. As above, I respectfully request that this language be extended to 30 days.

Under Section 125.01 (2) Surrounding Community Determination by Commission, the draft regulation states:

A community seeking to be designated a surrounding community in accordance with 205 CMR 125.01(1)(c) shall submit a written petition to the commission no later than 10 days after receipt by the commission of the RFA-2 application for a gaming establishment for which the community seeks to be designated a surrounding community; provided, the petition must include proof of service of the petition upon the applicant. If an applicant assents in writing to the petition, the commission shall designate the community a surrounding community without further review. The applicant may reply in favor or opposition to the petition in writing within 10 days after receipt by the commission of the petition. The commission will make a determination on the petition at an open meeting, at which it may allow presentations or information from the applicant and the proposed surrounding community, at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, §17(c).

I respectfully raise the following concerns to the language in Section 2:

1. It is not clear whether Section 2 defines an alternative mechanism for a community to seek surrounding community designation in lieu of the process for being designated under Section 1. If Section 2 defines an alternate mechanism for a community to seeking designation as a surrounding community, then there should be the words "or" before Section 2 or it should state "in lieu of the process in Section 1, a community may seek consideration as a designated surrounding community in Section 2").
2. The 10 day period within which a community must submit a written petition to the Commission is not practical. As indicated in the comments above regarding Section 1, this timeframe is much too short given that a chief executive officer of the community may need to obtain a vote of its elected body (such as Board of Selectmen) in order to be authorized to sign the written petition to the Commission. In many communities, Select Boards do not meet weekly but rather meet bi-monthly, so 10 days does not provide enough time to obtain Board approval. I respectfully recommend this language be extended to 30 days.
3. The language puts the onus of responsibility on the surrounding community to find out whether an RFA-2 application has been submitted to the Commission and to know what date that application was received by the Commission in order to trigger the start of the 10 day period following such receipt by the Commission. I respectfully recommend that the regulations include a requirement that the applicant is required to notify all communities which share a border with the host community that an application has been submitted to the Commission. Such notification should be made to the community by registered mail with return receipt. I also suggest that the language be changed to state that the community must submit a written petition to the Commission within 30 days of receipt of written notification from the applicant that an RFA-2 application has been filed with the Commission.

Additional comments on the draft regulations are below:

- It is respectfully suggested that language be inserted in the regulations under 205 CMR 106.02 that the Commission will notify any community designated as a Surrounding Community of any and all public hearings related to the gaming facility proposal
- Under 205 CMR 114.00 Fees it is respectfully recommended that the language clarify the reimbursement specific to a surrounding community for the determination of the impact of the proposed gaming facility and that the amount available for reimbursement to each surrounding community be defined. By combining the host community and the surrounding community in the language and amount available for reimbursement, the host community could potentially utilize the entire $50,000 initial funding available for determining the impact of the facility.
- I support the Commission incorporating a new rule into its draft phase 2 regulations that specifies that the start date for petitions by potential surrounding communities to the Commission to require applicants to provide technical assistance funding shall be no later than 90 days prior to the Category 1 (full casino) application deadline and no later than 60 days prior to the Category 2 (slots only) application deadline.
- I support the Commission moving its Category 1 application deadline from its current projected December 31, 2013 date to a date in the beginning of December to be able to incorporate additional time needed to resolve issues such as disagreements between applicants and surrounding communities.
- I support including a rule that the Commission require applicants for a gaming license to forward a copy of the studies and reports relative to impacts of a gaming establishment that it submits as part of its RFA-2 application (in accordance with 205 CMR 119.01(36)) to each of the prospective surrounding communities to the gaming establishment on the date it submits the application. Further, I recommend defining the "prospective surrounding communities' as those communities that share a geographic border with the host community.

Thank you for the opportunity to provide written testimony on these draft regulations.

Warm Regards,

Julie A. Jacobson

Julie A. Jacobson
Town Manager
102 Central Street
Auburn, MA 01510

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Bresilla, Colette (MGC)

From: DiGiacomo, Frank A. <FDiGiacomo@duanemorris.com>
Sent: Tuesday, April 30, 2013 5:31 PM
To: mgccomments (MGC)
Cc: Blue, Catherine (MGC); Grossman, Todd (MGC); Ziemba, John S (MGC)
Subject: draft regulations comment (1 of 2)
Attachments: Wynn MA - 4-30-13 draft regulations comment 1 of 2.pdf

On behalf of Wynn MA, LLC, attached please find the first of two e-mails with comments to the Commission's proposed draft regulations.

Thank you for your consideration.

Frank A. DiGiacomo
Duane Morris LLP
P: 856.874.4205
C: 215.873.3655

fdigiacomo@duanemorris.com
www.duanemorris.com

DuaneMorris®

FRANK A. DIGIACOMO
DIRECT DIAL: 856-874-4205
E-*MAIL: f*digiacomo@duanemorris.com

www.duanemorris.com

April 30, 2013

VIA EMAIL

Chairman Stephen Crosby
Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Wynn MA, LLC and Wynn Resorts, Limited – Draft Regulations Comments

Dear Chairman Crosby and Members of the Commission:

On behalf of Wynn MA, LLC and Wynn Resorts, Limited, we write to comment on certain draft regulations recently proposed by the Massachusetts Gaming Commission (the "Commission"). For your convenience, in addition to the comments contained in this letter, we have enclosed red-line version of the draft regulations in question. Following are our comments to the draft regulations:

205 CMR 102.07

Draft language: No person or local government entity may challenge or seek to enjoin commission action based on a claim that an applicant and/or the commission has not complied with any provision of 205 CMR 102.00 *et. seq.*

Comment: It is unclear from the express language of this regulation whether the prohibition on challenging a Commission action is limited to situations where an applicant or the Commission fails to comply with 205 CMR 102.00 through 205 CMR 102.06 or situations where an applicant or the Commission fails to comply with 205 CMR 102.00 through 205 CMR 131.02. We note that many of the regulations from 205 CMR 102.00 through 205 CMR 102.06 are somewhat procedural in nature (e.g., dealing with computation of time). Accordingly, we suggest that the limitation on a person or government entity's ability to challenge an action of an applicant or the

Commission be limited to situations where an applicant or the Commission fails to comply with 205 CMR 102.00 through 205 CMR 102.06, and not all regulations subsequent to 205 CMR 102.00. Otherwise stated, persons or government entities should be able to challenge a failure to comply with a more substantive regulation, such as those regulations from 205 CMR 103.00 through 205 CMR 131.02.

205 CMR 103.06

Draft language: Whenever the commission denies a request to deem records to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* or exempt from disclosure as described in 205 CMR 103.02(1) through (5), such denial shall take effect ten days after the date thereof so that any person aggrieved by said denial may appeal to ~~another State agency with jurisdiction over the subject matter thereof, or to~~ a court of competent jurisdiction. During this ten-day period, the records in question shall be treated as confidential ~~and may not be deemed public records~~ and accordingly exempt from public disclosure in accordance with M.G.L. c. 4, §7(26)(a). This ten-day period may be extended by the commission in extraordinary situations. Any extension shall be in writing and signed by the general counsel.

Comment: This provision provides that if the Commission denies a request to treat a record as confidential, the denial will not be effective for a period of 10 days from the decision. However, 205 CMR 103.11(4)(d) provides that if a determination is made that a record should not be deemed confidential, the record in question becomes a public record 14 days after the determination. In the interest of consistency and in the avoidance of confusion, we suggest amending the time period in 205 CMR 103.06 to make the Commission's determination effective 14 days after the denial of a confidentiality request. Otherwise stated, this would allow an aggrieved party 14 days to appeal the denial of their confidentiality request – the same amount of time provided for a record to become a public record pursuant to 205 CMR 103.11(4)(d). This proposed change would clear up an inconsistency between two regulations, which serve a common purpose; ensuring ample time and opportunity for persons to seek the protection of information they believe is entitled to confidential treatment.

205 CMR 103.10(2)(g)

Draft language: (2) The request for confidentiality shall be supported with the following information, which shall be treated as a public record . . . (g) ~~How making the record a public record would place the applicant at a competitive disadvantage pursuant to M.G.L. c. 23K, § 9(b), be detrimental to a gaming licensee if it were made public pursuant to M.G.L. c. 23K, § 21(a)(7), or otherwise cause irreparable harm or damage to the person requesting confidentiality.~~ A statement as to how the record, or portion thereof, meets the definition of *confidential information* as set forth in 205 CMR 102.02

Comment: The proposed draft of this regulation serves to further restrict the categories of information that are likely to be deemed confidential. Accordingly, the proposed draft should not be adopted as written and the original language (as previously promulgated) should be maintained. M.G.L. 23K, §21(a)(7) provides a mechanism to exempt from public disclosure "material that the gaming licensee considers a trade secret or detrimental to the gaming licensee if it were made public. . . ." The original language of this regulation preserves the significant confidentiality protections contemplated by M.G.L. 23K, §21(a)(7) and §9(b). The proposed additional language is more restrictive than the original language as it requires the records for which confidentiality is sought to fit squarely into a particular definition, i.e., the definition of confidential information. Otherwise stated, in making a determination on whether a particular record should be deemed a public record, the Commission should be provided information that allows it to consider if public disclosure of the record would have detrimental consequences on the party submitting the record. Of course, the Commission might ultimately decide – in the face of such evidence – that the public's interest in disclosure outweighs the detrimental effects on the person submitting the information. In sum, the original version of this regulation allows the Commission to make more reasoned and informed decisions prior to subjecting records to public disclosure, and thus, the original language should be preserved.

205 CMR 108.03(2)

Draft language: (2) An applicant shall disclose to the commission in the RFA-2 application all requests to an agent or employee of the applicant or any qualifier by persons or persons listed in 108.01(1) for any thing of substantial value from January 15, 2013 through the date the RFA-2 application is filed. This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure to make such disclosures shall constitute a violation of M.G.L. c. 23K, §13 and 205 CMR 112.00: *Required Information and Applicant Cooperation,* and may result in the denial of the application for a gaming license or to a revocation of a gaming license or any other remedial actions deemed reasonably by the commission.

Comment: This regulation places a significant and seemingly open-ended disclosure obligation on applicants, and failure to comply with this obligation poses dire consequences, e.g., the denial of an application. We suggest amending this regulation to include a reasonable efforts standard of compliance. Specifically, applicants would be required to utilize reasonable efforts to ensure compliance with the disclosure responsibilities stated in this regulation. While we do not question that all applicants should strive to identify and report all requests for things of value, the reality is that some requests for things of value to employees or agents of an applicant may inadvertently go unreported; this is particularly true when dealing with large multi-national corporations like those which hold interests in applicants. In order to show reasonable efforts, an

applicant will need to demonstrate that it provided adequate training on this disclosure obligation to its employees and agents, and that it provided proper means for its employees and agents to identify and disclose requests for things of value. This proposed reasonable efforts standard preserves the essence of the regulation without subjecting applicants to harsh punishment for unintentional oversights. Further, this proposed standard encourages applicants to self-report oversights to the Commission when they are discovered as they will not fear having their application denied over an inadvertent or honest mistake on the part of an employee or agent. Accordingly, the proposed amendment encourages and promotes open and honest disclosure which is crucial to the integrity of the licensure process.

205 CMR 114.03(2)(b)(iv)

Draft language: (iv) The Commission shall make the approved community disbursements from available amounts paid by the applicant to the Commission for community disbursements. If the total amount of payments authorized by the Commission exceeds the initial $50,000 amount, the applicant shall immediately pay to the Commission all such additional authorized amounts for community disbursements. If the applicant fails to pay any such additional amount to the Commission within 10 days after notification from the Commission of insufficient funds, the application shall be rejected.

Comment: Per this regulation, the Commission may require an applicant to pay a potential surrounding community a community disbursement in excess of the initial $50,000 set aside for such disbursements. If the applicant fails to comply within 10 days, their application shall be rejected. Applicants, however, are not given an opportunity to challenge the validity or reasonableness of the required payment or whether a payment is at all justified with respect to a particular community. We propose adding a means for applicants to challenge whether a payment is justified to a particular community and if so, to challenge the amount of the payment. Specifically, applicants will be permitted to present evidence to demonstrate that a particular community will not be negatively impacted by a proposed facility or that the amount requested to study the potential impact is not appropriate. The Commission would then review the arguments set forth by the applicant and determine if it should amend its prior request for additional funds. Accordingly, our proposed amendment does not deprive the Commission of its ultimate authority to regulate the process; instead, it simply gives an applicant the ability to challenge a request for additional funds by supplying additional information of which the Commission was not previously aware.

205 CMR 118.04(1)(b)(iv)

Draft language: (1) Upon a determination that an RFA-2 application is administratively complete, the commission will determine the surrounding communities pursuant to 205 CMR 125.00: *Surrounding Communities*, determine the impacted live entertainment venues pursuant to 205 CMR 126.00: *Impacted Live Entertainment Venues*, and review the merits of the application. In doing so, the commission may, at such times and in such order as the commission deems appropriate, take some or all of the following actions . . .

b. Refer the RFA-2 application, or any parts thereof, for advice and recommendations,

to any or all of the following . . .

iv. Any office, agency, board, council, commission, authority, department, instrumentality or division of the host community or any potential surrounding community . . . .

Comment: Under the Commonwealth's gaming laws, the Commission is given the responsibility of evaluating license applications and ultimately selecting which applicants should be licensed. *See* M.G.L. 23K, §§18 and 19. While the gaming laws contemplate that host and surrounding communities will play a role in the process, namely through the negotiation and execution of host and surrounding community agreements, these communities were not charged with evaluating license applications. Further, involving such communities in the evaluation process will serve to unnecessarily delay the process by adding a superfluous level of review. Therefore, we propose eliminating the Commission's ability to refer RFA-2 applications to host or surrounding communities. This suggested revision would focus the responsibility for evaluating license applications squarely on the Commission as contemplated by the statute. However, under our proposed scenario, host and surrounding communities still would have the opportunity to protect their interests through the host and surrounding community agreement negotiation process.

We note that permitting potential surrounding communities to participate in the evaluation process poses a potential threat to the integrity of the process. Specifically, it is possible that a particular community might seek to be considered a surrounding community for a particular applicant and the applicant might believe that the community in question should not be considered a surrounding community; thus, placing the community and the applicant in a quasi-adversarial situation. Under such a scenario, permitting the potential surrounding community to have a say in the evaluation of the application compromises the integrity of the evaluation process by giving potential surrounding communities, which may be at odds with the applicant, the opportunity to provide "advice and recommendations" regarding the application. The process would be better served by focusing the application evaluation responsibilities on the Commission and limiting the other parties involved in the process.

205 CMR 118.04(1)(d)

Draft language: (1) Upon a determination that an RFA-2 application is administratively complete, the commission will determine the surrounding communities pursuant to 205 CMR 125.00: *Surrounding Communities*, determine the impacted live entertainment venues pursuant to 205 CMR 126.00: *Impacted Live Entertainment Venues*, and review the merits of the application. In doing so, the commission may, at such times and in such order as the commission deems appropriate, take some or all of the following actions…(d) Receive independent evaluations of the application…

Comment: This section permits the Commission to receive independent evaluations of the applications, but does not specify the nature of such evaluations or from whom such evaluations may be sought. Given the fact that 205 CMR 118.04(1)(c) permits the Commission to retain professional consultants to review applications and make recommendations, the section in question is duplicative and not necessary to permit the Commission to adequately review the applications in a thorough and efficient manner.

205 CMR 118.05(2)

Draft language: (2) The chair or his or her designee shall preside over the public hearing. The applicant and its agents and representatives shall attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Representatives of the host community, representatives of the surrounding communities and representatives of the impacted live entertainment venues may attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Others may attend the public hearing and may make a presentation in the discretion of the commission. Prior to the hearing the commission will prescribe the manner in which it will receive comments from members of the public, and may take the opportunity during the hearing to read into the record any letters of support, opposition or concern from members of a community in the vicinity of the proposed gaming establishment.

Comment: This draft regulation permits representatives of host communities, surrounding communities and impacted live entertainment venues to attend and participate in public hearings on license applications. Similar to our concerns with the 205 CMR 118.04(1)(b)(iv) as noted herein, participation by host communities, surrounding communities and impacted live entertainment venues would be duplicative because the host communities, surrounding communities and impacted live entertainment venues have the ability to address concerns during the negotiations of agreements with the applicants. Instead, we suggest separating the public hearing into two parts, a public input portion and a licensing portion. During the public input

portion,[1] which would be held prior to the licensing portion, members of surrounding communities, host communities or other members of the public (as deemed appropriate by the Commission) would be permitted to voice their opinions and/or submit written comments. By allowing applicants to hear commentary from the public prior to the licensing portion, during which applicants make their final presentations to the Commission, applicants will have the opportunity to reevaluate their projects and alter their plans as necessary to incorporate the views of these important constituencies – namely members of the host and surrounding communities. Ultimately, this creates a more responsive process that will allow projects to be precisely tailored to the needs of the people of the Commonwealth.

205 CMR 118.07

Draft language: (1) The commission's RFA-2 administrative proceedings pursuant to 205 CMR 118.01 through 118.06 are administrative and legislative in nature, not adjudicatory. (2) Each applicant must present all information required by the commission in the RFA-2 application truthfully, fully and under oath; however, unless otherwise required by the commission, RFA-2 administrative proceedings pursuant to 205 CMR 118.01 through 118.06 shall: (a) involve public hearings that are not adversarial in nature; (b) involve no specific charges, legal right or privilege; (c) provide no opportunity for cross-examination of witnesses under oath in a hearing; (d) afford the opportunity for public comments including unsworn statements and letters of support, opposition or concern by persons advocating for or against the application; and (e) involve a final decision to grant or deny a gaming license that rests at all times within the discretion of the commission.

Comment: The regulations contemplate that third parties will be afforded an opportunity to be heard at the public hearings on the applications. Accordingly, applicants should have the opportunity to present evidence in response to third party opinions. This will allow applicants the ability to rebut false or otherwise baseless claims. It is recommended that this regulation be revised to the permit cross-examination and/or to expressly allow applicants to present evidence to disprove claims made during a licensing hearing by third parties that would reflect negatively upon the applicant.

205 CMR 119.01(16)

Draft language: The RFA-2 application form shall be designed to require applicants to demonstrate that they have thought broadly and creatively about creating an innovative and unique gaming establishment that will create a synergy with, and provide a significant and lasting benefit to, the residents of the host community, the surrounding communities, the region, and the Commonwealth of Massachusetts, and will deliver an overall experience that draws both

[1] Please refer to our attached red-line version of the regulations for precise details of each portion of the public hearing process.

residents and tourists to the gaming establishment and the Commonwealth of Massachusetts. Further, the RFA-2 application shall require attestation of the applicant under the pains and penalties of perjury as to the truthfulness of the contents of the submission, and shall require, at a minimum, provision of the following information on and in the form prescribed by the Commission…

(16) a statement as to whether it has been its past practice to incorporate geographic exclusivity clauses into agreements with its entertainers engaged to perform at its venues and, if so, the nature of such agreements…

Comment: This proposed regulation would require applicants to disclose if they utilize geographic exclusivity clauses in agreements with entertainers under any circumstances, including those circumstances outside of Massachusetts, and if so, applicants must provide details of such agreements. An applicant's use of geographic exclusivity clauses at properties outside of the Commonwealth is not relevant to their proposed plans in the Commonwealth. For example, an applicant might utilize geographic exclusivity clauses in one market where they conduct business because in that market such clauses are customary and necessary, but the same applicant might not believe these clauses are needed in Massachusetts. Therefore, we propose only requiring disclosure of exclusivity clauses that the applicant intends to use in Massachusetts.

205 CMR 120.01

Draft language: Because of the length of the regulation, please refer to the attached red-line version of the regulation.

Comment: This draft regulation requires applicants to provide extensive details of the federal, state and local permits and approvals required for the completion of the project. First, we suggest amending this regulation to require information regarding permits and approvals that the applicant *anticipates* that it will need. This change recognizes that the projects will be evolving even after the RFA-2 applications are filed, and thus, our proposal recognizes the flexibility of the process.

Additionally, we suggest removing the requirement that all comments submitted by host communities, surrounding communities and impacted live entertainment venues with respect to the applicant's permits and approvals be provided to the Commission. These groups already have adequate opportunities to participate in the process by way of their respective host community, surrounding community and impacted live entertainment venue agreements. Requiring the provision of all comments by these groups would do little to further the evaluation process and instead would only serve to delay the process by forcing the Commission to review redundant information.

205 CMR 121.01(3)

Draft language: Within 30 days after the award of a category 1 or category 2 license by the commission, the licensee shall remit…

a. a license fee, as provided by M.G.L. c.23K, §56(a), of $600 for each slot machine approved by the commission for use by a gaming licensee at a gaming establishment; and

(b) a license fee, as provided by M.G.L. c.23K, §56(c), to be determined by the commission upon issuance of the license, to cover costs of the commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year . . . .

Comment: This proposed regulation requires applicants to pay a license fee to cover the cost of the Commission's oversight of gaming establishments in addition to the $85 million fee outlined in 205 CMR 121.01(1). There is no cap on this fee or set formula for the calculation thereof. In the interest of transparency, we suggest requiring the Commission to provide the costs that it has incurred since its inception as well as its estimated costs for the first five years subsequent to the opening of the first casino in the Commonwealth. This will provide applicants with at least a means to estimate the potential costs associated with this regulation.

Further, we suggest removing the requirement that the license fee related to each slot machine approved by the Commission be due within 30 days of the award of the license. In practicality, the slot machines will not be approved until sometime after the licenses are granted; most likely, the slot machines will not be approved until shortly before the casinos are ready to open. Therefore, the due date for the payment of this fee should not be tied to the award date of the license.

205 CMR 125.01(6)(c)(4)

Draft language: In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)(3), the applicant shall submit a copy of the surrounding community agreements it has executed with other surrounding communities concerning the applicant's proposed gaming establishment. Either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant.

Comment: The regulations provide that an arbitration will be mandated if an applicant and surrounding community cannot come to terms on a surrounding community agreement. Under

this proposed regulation, if an arbitration occurs, applicants are required to submit to the arbitrator copies of all other executed surrounding community agreements. Impacts on surrounding communities are unique to each individual surrounding community, thus executed surrounding community agreements should not be a mandatory submission. This provision should be removed in its entirety or made to be an optional submission at the arbitrator's discretion, if an arbitrator determines a review of other executed surrounding community agreements is warranted.

205 CMR 126.01(4)(c)(4)

Draft language: In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 126.01(4)(c)(3), the applicant shall submit a copy of the impacted live entertainment venue agreements, if any, it has executed with other venues concerning the applicant's proposed gaming establishment. Either party may submit executed impacted live entertainment venue agreements from other proposed gaming establishments in the Commonwealth which the party considers relevant.

Comment: The regulations provide that an arbitration will be mandated if an applicant and impacted live entertainment venue cannot come to terms on an impacted live entertainment venue agreement. Under this proposed regulation, if an arbitration occurs, applicants are required to submit to the arbitrator copies of all other executed impacted live entertainment venue agreements. Impacts on live entertainment venues are unique to each individual entertainment venue, thus executed impacted live entertainment venue agreements should not be a mandatory submission. This provision should be removed in its entirety or made to be an optional submission at the arbitrator's discretion, if an arbitrator determines a review of other executed impacted live entertainment venue agreements is warranted.

205 CMR 129

Because of the length of this regulation, please refer to the attached red-line version of the regulation.

205 CMR 129.00

General Comments: The proposed regulation contains duplicative and contradicting regulatory requirements, as well as regulatory requirements that are virtually impossible for publicly-traded companies to meet given the nature of how publicly-traded securities are traded. For this reason, we recommend a separation of requirements related to the transfer of a direct interest of a gaming licensee (129.01) and the transfer of interest of a holding or intermediary company of a corporation or other business entity which holds a gaming license (129.02).

205 CMR 129.01

Comments: The revisions proposed in 129.01(1)(a) follow the general comments above to distinguish between the transfer of interest in a gaming licensee and the transfer of interest of a holding or intermediary company of a corporation or other business entity which holds a gaming license.

The revision proposed in 129.01(1)(h) would serve to allow the Commission to be made whole with regard to any outstanding fees or fines owed at the time the Commission makes a determination regarding the transfer of interest. The proposed revision also removes the language requiring an independent Commission evaluation of market value of the property in order to pay to the Commission some amount related thereto. The Commonwealth's interest in the license is protected through the required licensing fees and is not tied to the market value of the property.

The revision proposed in 129.01(1)(i) is to correct a typographical error. As written, the proposed regulation refers to a section, 129.01(1)(a)(iv), that does not exist.

205 CMR 129.02

Comments: The revisions proposed in 129.02(1) follow the general comments above to distinguish between the transfer of interest in a gaming licensee and the transfer of interest of a holding or intermediary company of a corporation or other business entity which holds a gaming license.

The revisions proposed in 129.02(3) clarify that a publicly-traded company must notify the Commission of an acquisition of 5% or more of publicly-traded securities of a holding or intermediary company once the proper forms have been filed with the Securities and Exchange Commission or foreign equivalent. It is not feasible for a publicly-traded company to notify the Commission of such an acquisition prior to its occurrence as the company's first notice of the acquisition generally comes by way of the Securities and Exchange Commission filing.

205 CMR 129.03

Comments: This proposed regulation was duplicative to 129.01 and 129.02.

204 CMR 129.04

Comments: The revision clarifies that this provision shall only apply to privately-held entities. This provision would be impractical if applied to publicly-traded entities as detailed in our analysis of 129.02.

205 CMR 129.05

Comments: The revision creates a distinction between securities of publicly-traded entities as compared to those of privately-held entities. Specifically, as originally proposed, an individual could not acquire even a single share of a publicly-traded holding company of a casino licensee if that person already held any interest (regardless of how small) of a publicly-traded holding company of a different casino licensee. Such a drastic restriction would serve to severely limit investments in such holding companies, a result that could not have reasonably been intended.

Please feel free to contact us should you have any questions regarding our comments to the draft regulations. Thank you for your consideration.

Respectfully submitted,

DUANE MORRIS LLP

Frank A. DiGiacomo

FAD:dk
Enclosures

cc: Kim Sinatra, Wynn Resorts, Limited
Catherine Blue, Massachusetts Gaming Commission
Todd Grossman, Massachusetts Gaming Commission
John Ziemba, Massachusetts Gaming Commission

Wynn MA, LLC and Wynn Resorts, Limited

Comments Regarding Draft Massachusetts Gaming Commission Regulations

205 CMR 102 - 117

Note:
Original Proposed Revisions of MGC in red
Wynn proposed revisions in blue

102.07: Legal challenges

No person or local government entity may challenge or seek to enjoin commission action based on a claim that an applicant and/or the commission has not complied with any provision of 205 CMR 102.01 to 205 CMR 102.06.0 ~~*et. seq.*~~

103.06: Postponing Denial of Confidentiality Pending Appeal

Whenever the commission denies a request to deem records to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* or exempt from disclosure as described in 205 CMR 103.02(1) through (5), such denial shall take effect ~~ten~~ fourteen days after the date thereof so that any person aggrieved by said denial may appeal to ~~another State agency with jurisdiction over the subject matter thereof, or to~~ a court of competent jurisdiction. During this fourteen~~ten~~-day period, the records in question shall be treated as confidential ~~and may not be deemed public records~~ and accordingly exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a). This ~~ten~~fourteen-day period may be extended by the commission in extraordinary situations. Any extension shall be in writing and signed by the general counsel.

103.10: Requests for Protecting Confidential Information

Except as set forth in 205 CMR 103.09, no record shall be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* unless a person submits a written requests to the commission ~~in writing to protect~~ to deem the information as confidential information and accordingly exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a). The request shall be made and substantiated as follows:

(1) Each record containing information that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL". To assist the commission in complying with 205 CMR 103.02, persons shall separately submit confidential portions of otherwise non-confidential records. If submitted separately, the record that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL" and the record from which confidential information has been redacted shall be clearly marked "REDACTED".

(2) The request for confidentiality shall be supported with the following information, which shall be treated as a public record:

(a) The time period for which confidential treatment is desired.

(b) The reason the record was provided to the commission or the bureau, and the date of submittal.

(c) The basis for the claim that the record contains confidential information and, if applicable, the basis for believing that the criteria in 205 CMR 103.11 are satisfied.

(d) The extent to which the person requesting that the record be kept confidential has disclosed the contents of that record to other persons without a restriction as to confidentiality imposed by agreement or by law.

(e) A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental entity that does not treat the information as confidential or that has denied a request for confidential treatment.

(f) A statement that the information is not required to be disclosed or otherwise made available to the public under any other Federal or state law.

(g) How making the record a public record would place the applicant at a competitive disadvantage pursuant to M.G.L. c. 23K, § 9(b), be detrimental to a gaming licensee if it were made public pursuant to M.G.L. c. 23K, § 21(a)(7), or otherwise cause irreparable harm

or damage to the person requesting confidentiality. ~~A statement as to how the record, or portion thereof, meets the definition of *confidential information* as set forth in 205 CMR 102.02~~

(h) If the record was submitted voluntarily for use in developing governmental policy and upon a promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), and not in compliance with a regulation or order of the commission or a court, whether and if so why making the record a public record would tend to lessen the availability to the commission or the bureau of similar records in the future.

108.03 Mandatory Disclosure of Requests Any Thing of Value

(1) For purposes of 205 CMR 108.03, a request for any thing of substantial value means a request for compensation, contribution(s), services, gifts, request(s) to do or take or refrain from doing or taking any action related to the proposed development of a gaming establishment in the Commonwealth with a face value or fair market value of $1000 or more at the time it was requested. Examples of any thing of value include, but are not limited to, case, food or drink, contributions to a charity or non-profit or tickets to entertainment, cultural or sporting events. To determine the value of attendance at an event, the calculation shall include, if such information is available, the admission fee or ticket price or per person cost to the sponsor or the actual cost of the event may be divided by the number of attendees.

(2) An applicant shall use reasonable efforts to disclose to the commission in the RFA-2 application all requests to an agent or employee of the applicant or any qualifier that is a natural person by persons or persons listed in 108.01(1) for any thing of substantial value from January 15, 2013 through the date the RFA-2 application is filed. This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure on the part of the applicant to utilize reasonable efforts to make such disclosures shall constitute a violation of M.G.L. c. 23K, §13 and 205 CMR 112.00: *Required Information and Applicant Cooperation*, and may result in the denial of the application for a gaming license or to a revocation of a gaming license or any other remedial actions deemed reasonably by the commission.

(3) The disclosure shall include, to the extent know by the Applicant, the name of the person making the request, the date the request was made and the nature of the request.

(4) The duty to disclose set forth in 205 CMR 108.03(1) and (2) shall not include requests for disbursements by municipalities pursuant to 205 CMR 114.03: *Community Disbursements*.

114.03: Community Disbursements

(1) Pursuant to M.G.L. c. 23K, § 15(11), not less than $50,000 of the initial application fee for a gaming license shall be used to reimburse the host and surrounding municipalities in accordance with 205 CMR 114.03 for the cost of determining the impact of a proposed gaming establishment and for negotiating community impact mitigation agreements.

(2) (a) Based on a letter of authorization to the commission signed by authorized representatives of an applicant and a host or surrounding municipality, the commission may, at any time and from time to time, make community disbursements to that host or surrounding municipality from available amounts paid by that applicant to the commission for community disbursements. If the total amount of payments authorized by an applicant exceeds the initial $50,000 amount, the applicant shall immediately pay to the commission all such additional amounts authorized by such letters of authorization for community disbursements. If the applicant fails to pay any such additional amount to the commission within 30 days after notification from the commission of insufficient funds, the application shall be rejected.

(b)(i) In addition to the process provided in 205 CMR 114.03(2)(a), 30 days after the Commission has posted a host community agreement to its website in accordance with 205 CMR 127.02(3), any community that believes it may be a surrounding community to the gaming establishment that is the subject of the host community agreement may apply to the Commission for community disbursements without a letter of authorization signed by the applicant. To do so, the community must submit an application on a form provided by the Commission and shall, identify all legal, financial and other professional services deemed necessary by the community for the cost of determining the impact of the proposed gaming establishment and for the negotiation and execution of a surrounding community agreement and the attendant costs.

(ii) The Commission may approve the application upon a finding that there is a reasonable likelihood that the community will be designated a surrounding community pursuant to 205 CMR 109.01(2) and that the risk that the community will not be able to properly determine the impacts of a proposed gaming establishment without the requested funds outweighs the burden of the actual financial cost that will be borne by the applicant.

(iii) If the application is approved, the community shall be designated a surrounding community for the limited purpose of receiving funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community

agreement. Such determination, however, shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 109.01(2).

(iv) The Commission shall make the approved community disbursements from available amounts paid by the applicant to the Commission for community disbursements. If the total amount of payments authorized by the Commission exceeds the initial $50,000 amount, the applicant shall immediately pay to the Commission all such additional authorized amounts for community disbursements. If the applicant fails to pay any such additional amount to the Commission within 10 days after notification from the Commission of insufficient funds, the application shall be rejected. However, an applicant may, within this 10-day period, submit to the Commission one request in writing to reconsider such request for additional funds, which request to reconsider shall set forth any and all information supporting the applicant's position. The Commission shall act on the request to reconsider following the standard in 205 CMR 114.03(2)(b)(ii). If the Commission determines that additional funds are still required followings its review of the applicant's request for reconsideration, the applicant shall pay to the Commission all such additional authorized amounts within 10-days after notification of the Commission's determination of the applicant's request for reconsideration.

(3) If 30 days have elapsed after the final issuance, denial or withdrawal of an application for a gaming license and there remains a balance of funds previously paid by the applicant for community disbursements and not previously encumbered or disbursed pursuant to 205 CMR 114.03(2), the ~~commission in its discretion may disburse the remaining balance of such funds to the applicant's host or surrounding municipalities as the commission in its discretion may determine and in accordance with such policies and procedures as the commission may determine~~ the funds shall be distributed as follows:

a) If the funds represent a remaining balance of the initial $50,000 portion of the $400,000 application fee filed in accordance with M.G.L. c.23K, §15(11), the funds shall be deposited in the Community Mitigation Fund established in accordance with M.G.L. c.23K, §61; or

b) If the funds represent monies paid to the Commission by the applicant in accordance with 205 CMR 114.03(2)(a) or (b)(iv), the monies shall be refunded to the applicant.

(4) The provisions of 205 CMR 114.03 do not prohibit community contributions permitted and reported in accordance with M.G.L. c. 23K, § 47, and 205 CMR 108.02: *Mandatory Disclosure of Political Contributions and Community Contributions.*

2

Bresilla, Colette (MGC)

From: peretsky@verizon.net
Sent: Wednesday, May 01, 2013 1:51 PM
To: mgccomments (MGC)
Subject: Comment on MGC draft Phase 2 Regulations

To the Commission:

I would strongly suggest additional language for the Phase 2 regulations along the lines of the following:

> Applicants must provide the Commission with a detailed description of what they have done in outreach to the public and specifically to traditionally underserved and under-represented "special populations" including but not limited to ethnic, racial and linguistic minorities, the elderly, veterans' and women's groups, the deaf and hard of hearing, the vision-impaired, home-bound and institutionalized residents, and the physically disabled. At the very least, the applicants must provide ample evidence of a widespread proactive outreach effort on their part to community groups in those categories and to other interested stakeholders.

I firmly believe this is a necessity for all applicants, in line with the Massachusetts enabling statute that seeks inclusion and diversity among license applicants. In the interest of full disclosure, I have suggested a special populations outreach effort to license applicant Suffolk Downs/Caesars Entertainment. In my own work as a strategy communication consultant, I have helped conduct such campaigns for other organizations, including NASA's Environmental Management Division.

Should you require additional information or have questions, please contact me.

Sincerely,

Burt Peretsky <peretsky@verizon.net>
42 Waterfall Drive, Suite L, Canton, MA 02021
T: 781-828-4714. C: 781-696-5579.

Peretsky Strategy Communications: *www.peretsky.com*

2

Bresilla, Colette (MGC)

From: Charles Jacobs <cjacobs@cordish.com>
Sent: Wednesday, May 01, 2013 10:18 AM
To: mgccomments (MGC)
Cc: JNosal@brownrudnick.com; Joe Weinberg; Hershfield, Edward (EHershfield@brownrudnick.com)
Subject: Comments on Draft Regulations.
Attachments: PPE Casino Resorts MA, LLC Electornic Filing 05.01.2013.pdf

Please see the attached.

Charles F. Jacobs
Vice President and General Counsel
The Cordish Company
601 East Pratt Street, Sixth Floor
Baltimore, Maryland 21202
410-347-2759 (Direct Line)
410-659-9491 (FAX)
cjacobs@cordish.com

PPE Casino Resorts MA, LLC

The Power Plant
601 E. Pratt Street
Baltimore, Maryland 21202
410.752.5444
www.cordish.com

May 1, 2013

Via Electronic Filing (mgccomments@state.ma.us)

Massachusetts Gaming Commission
84 State Street, 7th floor
Boston, MA 02109

Re: Comments on Draft Regulations 205 CMR 102 et seq.

Dear Sir/Madam:

Pursuant to the Massachusetts Gaming Commission (Commission) Notice of Public Hearing published by the Secretary of State's Office pursuant to G.L. c. 30A, § 2 regarding proposed amendments and addition of new sections to 205 CMR, PPE Casino Resorts MA, LLC ("PPE"), submits the following comments on the draft regulations for the Commission's consideration.

The members of PPE own The Cordish Companies, a leading real estate development company and one of the most successful developers and operators of entertainment districts and casinos in the world. In the gaming sector, members of PPE have a long history of developing some of the most profitable, best-in-class casino resorts and entertainment districts in the country including Hard Rock-themed hotels and casinos in Hollywood, Florida and Tampa, Florida as well as Maryland Live! which has quickly become one of the largest and most profitable casinos since its debut in 2012. As the Commission is aware, PPE is an applicant for a category 2 license and is currently in the process of evaluating several dynamic sites within the Commonwealth as possible locations for a world-class gaming, dining, and entertainment destination. Based on its members' extensive expertise and success in gaming and entertainment development, PPE offers limited comments on the Commission's draft regulations pertaining to community disbursements and on costs excluded from the calculation of capital investment for category 2 licenses.

205 CMR 114.03 Community Disbursements

Section 114.03 establishes a process by which the host and surrounding communities may seek the disbursement of funds for the purposes of determining the impact of the proposed development on their communities and for negotiating community impact mitigation agreements. The Commission's regulations earmark $50,000.00 from the initial application fee for these

purposes but place no cap on the total that may be request from a host community and/or surrounding community for these purposes. Failure of an applicant to pay for such expenditures can result in the rejection of the application. The regulations provide the Commission with authority to approve funding for the host or a surrounding community with or without the consent of the applicant.

PPE recognizes the need for funding to allow host communities and surrounding communities to evaluate the impact of a proposed development on their respective communities. PPE is committed to working with its host and surrounding communities to address genuine impacts with little or no Commission intervention where possible. The Commission's current regulations pertaining to the ability of a surrounding community to apply for funding with or without a letter signed by the applicant, however, are extremely broad as to what the funding may be used for and at the same time provide no limits on the amount of funding available for such purposes. The lack of defined uses for community disbursements and the absence of any objective limits on the allotted amount per community create both an uncertain liability for applicants and provide little direction to host or surrounding communities as to what they may seek funding for.

By further defining what community disbursements can be used for such as "peer-review of studies provided by the applicant to the Host Community of impacts on municipal infrastructure or services that may reasonably result from the proposed development", the Commission can assure that applicants will be responsible for genuine costs of review of the applicant's studies, without unnecessary costs incurred in "recreating the wheel" on all issues/studies. Additional objective criteria will also allow the Commission to better assess a request for such funding to balance the community's need with the actual financial costs to the applicant as currently contemplated by the draft rules. Further, additional objective criteria will provide the surrounding community with a clear understanding about what purposes funding will be available for. Finally, as a condition of receiving community disbursements, the Commission should also require that all expenditures including reports and studies by surrounding communities are commercially reasonable or, in the alterative, impose a cap in the amount of $25,000 per surrounding community for these expenditures. Likewise, these expenditures should be restricted to use for peer review of applicant's studies, rather than duplication of primary studies.

As the Commission recently recognized at its April 25, 2013 public meeting, the process for surrounding communities to study impacts and negotiate mitigation agreements will be truncated specifically within the planned time frame for approval of a category 2 license. At the same time the Commission has made both applicants and surrounding communities aware that it does not intend to be used as leverage in the negotiations between surrounding communities and the applicants. Greater certainty regarding eligible costs for the study and negotiation of impacts to surrounding communities will encourage more cooperation between applicants and municipalities and ensure overall, a more efficient process.

205 CMR 122.04 Cost Excluded from the Calculation of Capital Investment

Pursuant to G.L. c. 23K, §§ 10 and 11, the Commission has discretion to determine what costs are included or excluded in the minimum capital investment required by applicants for category 1 and category 2 licenses. In excluding costs in section 122.04, the Commission has sent a clear

signal to developers that it expects a majority of the minimum capital investment to be invested in the facility itself, consistent with the statute, mitigating the potential for a disproportional amount of capital to go toward off-site improvements or other costs. PPE shares the Commission's desire to develop second to none, world class gaming and entertainment venues and has a track record of such developments. A $125,000,000 minimum capital investment for a category 2 gaming facility assures that Massachusetts will have an extraordinary complex with entertainment, dining and other features. Nevertheless, for such an extensive investment in a limited gaming establishment, the Commission should make changes to its excluded capital costs as applied to category 2 licenses to ensure not only a world class development but one with the financial foundation to produce long-term returns for the Commonwealth.

Specifically, the Commission should amend its draft regulations (§ 122.04(1)) to allow a category 2 applicant to include a portion of the costs in the calculation of capital investment associated with the purchase or lease or of optioning of land where the gaming establishment will be located in an amount not to exceed 10% of the total project cost. Land acquisition costs are non-discretionary capital costs associated with any development. These costs are directly related to the development of the facility and are treated as capital costs for both accounting and tax purposes by developers. As such, these costs are appropriate to include toward minimum capital investments required by the Commission. Further, capping land acquisition costs to a percentage of the total project cost strikes a balance between including these costs as legitimate capital expenditures and the Commission's desire for the maximum amount of investment in the development of the gaming facility. Inclusion of a portion of land acquisition costs toward the minimum capital investment requirement will not be to the determinate of developing a world class category 2 gaming and entertainment destination in Massachusetts.

Overall, the Commission should provide reasonable flexibility on how applicants apply and count their capital investment to meeting the statutory and Commission requirements for opening a facility in Massachusetts. In many respects, the competitive process for licensing will ensure that the best and most sound project moves forward. At the same time, an amendment to include a portion of land acquisition costs will allow applicants for a category 2 license to count certain additional, directly related costs of the facility, the land it will sit on, toward the minimum required capital investment while furthering the long-term financial strength and stability of the project.

Thank you for the opportunity to comment on the Commission's draft regulations. Please feel free to call me with any additional questions.

Sincerely,

Charles Jacobs
PPE Casino Resorts MA, LLC

Bresilla, Colette (MGC)

From: Szegda, Kathleen <Kathleen.Szegda@baystatehealth.org>
Sent: Thursday, May 02, 2013 10:30 AM
To: mgccomments (MGC)
Subject: Draft Regulations Comment

Dear Members of the Massachusetts Gaming Commission,

On behalf of the Western Massachusetts Casino Health Impact Assessment Project, we recommend that the MA Gaming Commission consider modifying the draft regulations as follows:

* In section 119.01(25) regarding contents of the application, the applicant agreement to mitigate public health consequences should be expanded to include negative public health consequences from both construction/development of a casino and operation of a casino. As stated, the regulation only currently focuses on the operation of a casino. It is likely that there will be potential health impacts from both the construction and development as well.

* In section 119.03(2)(d) regarding Evaluation of the Application by the Commission, mitigation criteria should include those related to potential negative public health impacts resulting as a consequence of construction/development or operation of a casino.

* In section 123.02(1), the regulation states that a host community agreement must be developed. We recommend that language be added requiring that the host agreement include strategies to mitigate identified negative health impacts and/or promote public health.

Thank you for taking the time to consider our comments.

Sincerely,

Kathleen Szegda, MPH, MS
Director of Community-Based Research and Evaluation Partners for a Healthier Community, Inc.
280 Chestnut St.
Springfield, MA 01101
(413)794-7600

Bresilla, Colette (MGC)

From: Ticotsky, Charles <CTicotsky@mapc.org>
Sent: Thursday, May 02, 2013 2:24 PM
To: mgccomments (MGC)
Cc: Ziemba, John S (MGC)
Subject: Draft Regulations Comments
Attachments: MGC regulations comment letter April 2013.pdf

Please see MAPC's comments on the phase 2 draft regulations attached.

Thanks,
Charlie

Charlie Ticotsky
Government Affairs Specialist
Metropolitan Area Planning Council
60 Temple Place, 6th floor
Boston, MA 02111
phone: (617) 933-0710 *please note new telephone number*
fax: (617) 482-7185
cticotsky@mapc.org
www.mapc.org

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Smart Growth & Regional Collaboration

May 1, 2013

Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Dear Mr. Crosby:

Thank you for this opportunity to provide comments on the Phase 2 draft regulations. As you know, MAPC and many of our fellow Regional Planning Agencies (RPAs) stand ready to assist you in the complex task of siting gaming facilities in the Commonwealth. We applaud you for the thoughtfulness, accessibility, and comprehensiveness of these draft regulations. The following are our comments regarding the draft Phase 2 regulations, also incorporating our thoughts on the additional questions distributed by email on April 26.

In reviewing the proposed regulations, we find the criteria for evaluation of applications and determination of surrounding community status (205 CMR 125.01 (2) (b)) to be excellent. In particular, we recognize the MGC's inclusion of housing, local economic development, and environmental impacts in these sections. With these strong regulations in place, we are hopeful that licenses will be awarded to facilities that will produce the most benefits and least adverse impacts, and are as consistent as possible with the goals of *MetroFuture*, MAPC's 30-year plan for our region.

We feel that the MGC should consider moving the currently proposed timeline for filing an application and licensing a casino approximately one month further into the future. We recognize and respect the desire to move quickly, but we also want to make sure that communities have the time to determine fully the anticipated impacts from these facilities. Many of the communities in the MAPC region feel that the time frame for communities to negotiate surrounding community agreements is too short. We recognize the value in creating more time for the evaluation process, but we do not think the proposed move from December 31 to December 1 for the application deadline is the best way to make more time. Rather, the MGC should consider moving both the application deadline and the licensing schedule one month further ahead to accommodate a longer period of time for surrounding communities to negotiate agreements with a casino proponent..

In regard to the "involuntary disbursement process" (205 CMR 114.01), MAPC feels a municipality should be able to request an involuntary disbursement 15 days, rather than 30 days, after the signing of a host community agreement. The 30 day waiting period as currently written could be a crucial time period, and we feel that because the signing of a host community agreement signals the seriousness of a project, surrounding communities should be allowed to request disbursements as soon as possible after that signing. MAPC additionally supports the proposed regulation that would allow municipalities to request involuntary disbursement immediately if a host community

agreement is signed within 90 days prior to the application deadline. This regulation would be particularly useful in case host community agreements are signed late in the process.

Additionally, MAPC feels that MGC should consider allowing involuntary disbursements to be requested retroactively for expenses incurred prior to the signing of a host community agreement, particularly but not exclusively for expenses incurred while preparing requests for proposals (RFPs) for consulting services needed to undertake evaluation of impacts of the gaming facilities. Finally, we feel it would be important to affirm that even if a potential surrounding community is involved in the RPA process as outlined by the MGC, they would be eligible to request an involuntary disbursement from the MGC if they feel that the scope of the RPA process is not sufficiently broad to address all of the issues related to potential impacts.

MAPC applauds the commission for providing a mechanism for the MGC to reopen host or surrounding community agreements in limited circumstances (205 CMR 127.01). In addition to the circumstances included, there should also be the potential to re-open agreements if there is a change to laws or regulations requiring a host or surrounding community to take some kind of action that, without changing the agreement, would likely cause a significant and material adverse impact to them.

In 205 CMR 119.01 (16), the applicant, in addition to outlining past instances of incorporating geographic exclusivity clauses into entertainment agreements, should indicate whether it is their *intention* to incorporate geographic exclusivity clauses into agreements with entertainers at the proposed facility.

MAPC believes that the studies and reports relative to the impacts of a gaming establishment that an applicant must submit as part of its RFA-2 application should, to the extent they are available, be made public in advance of the host community referendum to give voters the most information possible, and provided to surrounding communities to assist them in their analysis of impacts and negotiation of agreements (205 CMR 119.01 (36)). At the very least, these studies and reports should be sent to prospective surrounding communities and the RPA or RPAs that cover the host and prospective surrounding communities when the application is submitted.

Finally, communities should be able to utilize, for purposes of undertaking analyses of gaming facilities' impacts, consulting services off of a state list that was developed several years ago for municipal planning purposes (DHCD2009-02). If this practice were embraced, communities could access consultants approved by this procurement to provide facilitation services, housing planning services, data collection/GIS services, economic development services, financial analysis or forecasting services, and/or legal services without having to go through a full 30B procurement process. The MGC should undertake the necessary agreements with DHCD and incorporate any necessary references to this list in the MGC regulations, to enable the use of these pre-approved consultants. (Please note that municipalities could also use the service of any RPA without going through a full 30B procurement process.)

Again, thank you for the opportunity to comment on these regulations. We look forward to continuing to work with you as this process develops. If you have any questions or concerns related to these comments, please feel free to contact me (mdraisen@mapc.org, 617-933-0701) or Joel Barrera (jbarrera@mapc.org, 617-933-0703).

Sincerely,

Marc Draisen
Executive Director

Bresilla, Colette (MGC)

From: Catherine Rollins <crollins@mma.org>
Sent: Thursday, May 02, 2013 3:39 PM
To: mgccomments (MGC)
Subject: Draft Regulations Comment
Attachments: MMAGamingCommissionTestimony05032013v1.pdf

--
J. Catherine Rollins
Massachusetts Municipal Association
One Winthrop Square * Boston, Massachusetts 02110
Phone: (617) 426-7272 x124 * Fax: (617) 695-1314 * crollins@mma.org

Follow us on Twitter: @massmunicipal

MASSACHUSETTS MUNICIPAL ASSOCIATION

ONE WINTHROP SQUARE, BOSTON, MA 02110
617-426-7272 • 800-882-1498 • fax 617-695-1314 • www.mma.org

May 3, 2013

Chairman Stephen Crosby
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, Massachusetts 02109

Dear Chairman Crosby and Members of the Commission,

On behalf of cities and towns across the Commonwealth, the Massachusetts Municipal Association appreciates the opportunity to offer comments regarding the Massachusetts Gaming Commission's draft regulations 205 CMR 118.00 through 131.00, which pertain to the Phase 2 casino licensing process. These draft regulations, developed to implement the 2011 expanded gaming legislation, set forth parameters for prospective host and surrounding communities relative to casino development and operations. The MMA is offering several comments and recommendations to ensure the strongest possible policy framework for municipalities within the final regulations.

The licensing of three resort-casinos (Category 1) and one slots-parlor (Category 2) in Massachusetts will have unprecedented and long-lasting impacts on our communities, and we appreciate the thorough and methodical approach that the Commission has undertaken to draft regulations to create a clear set of requirements around the development process. We respectfully and urgently request that you give significant consideration and weight to all requests and recommendations submitted by the prospective host and surrounding communities relative to their specific concerns and suggestions to improve the draft regulations.

RFA-2 Administrative Proceedings
In Section 118.05: *RFA-2 Public Hearing in Host Community,* a requirement that a public hearing be held by the Commission in a prospective host community is outlined, including the opportunity for representatives of the prospective host and surrounding communities to make presentations. This is an important part of the application process and offers a valuable and transparent opportunity for discussion of local impacts that may result from the casino development, and of the role of the casino in the region. We applaud the Commission for making the hearing in the host community an essential part of the application process.

Phase 2 Application
In Section 119.01: *Contents of the Application,* the draft regulation lays out numerous application requirements relative to the role of the casino within the community and region, ranging from the inclusion of an executed host community mitigation agreement and any surrounding community mitigation agreements, to requisite studies on the local impacts of the proposed development, to proposals for cross-marketing with local businesses and an examination of the role of the casino as part of a local or regional economic plan. The MMA

appreciates the consideration given to each of these important municipal concerns as major components of the casino application. Section 119.03: *Evaluation of the Application by the Commission* lists several similar factors relating to host and surrounding communities and local impact, and the MMA similarly appreciates their inclusion as key criteria for evaluation.

Host Communities
Prospective host communities have an extremely high stake in ensuring that the casino application and development process is designed in a way that is both timely and appropriate. The process requires a very substantial investment of municipal resources and expertise, and the final regulations adopted by the Commission must be consistent with the expressed needs of the communities.

We strongly urge the Commission to incorporate input from prospective host communities into the final regulations on issues including timetables, consistency with established municipal processes, ordinances and bylaws, and local control of the host community agreement process. Host communities will experience novel and long-lasting impacts from casino developments, and they are best positioned to anticipate how regulations around the application and development process may best support their particular needs. It is essential that the process unfold in a way that is responsive to the needs of these municipalities, and we thank you in advance for your careful consideration of their comments and inclusion of their recommendations.

Host Community Election Process
On April 18, the Commission adopted an emergency regulation creating a pathway to allow a host community to hold an election on whether the community shall permit the operation of a licensed gaming establishment at a specified site within the community, prior to the completion of the Commission's investigation into the applicant's suitability. The MMA commends the Commission for working with local officials on this issue in response to their request for the ability to proceed on a timeline practical for local government. We understand that the language of Section 124.02: *Request for an Election* will be updated to reflect the adoption of the emergency regulation in the final regulation to allow an election to be held prior to a final determination of suitability by the Commission, at a prospective host community's discretion.

In Section 124.04: *Preparing for the Election*, the draft regulation indicates that the host community will publish an executed host community agreement, as well as a summary of the agreement to be approved by the city solicitor or town counsel, in a periodical of general circulation and on the official website of the municipality within seven days of the signing of the host community agreement by both parties. The MMA urges the Commission to allow a longer period of time, such as fourteen days at minimum, for the municipality to publish the host community agreement and summary. The period must ensure sufficient time for the drafting and legal approval of the summary by the municipality, and for the process of getting the agreement and summary published in a newspaper.

In Section 124.06: *Reimbursing the Expenses of the Host Community Election,* the draft regulation creates a process whereby a host community may seek reimbursement for costs incurred to hold the election, giving the community seven days post-election to submit an invoice of costs to the applicant, unless another period of time is agreed upon by both parties. The MMA recommends amending the number of days to submit an invoice to a minimum of

fourteen, unless another period of time is agreed upon by both parties, to allow for adequate time for the municipality to compile the requisite documentation of costs.

Additionally, the draft language gives the applicant 30 days after the date of the election to reimburse the municipality; the MMA requests that the final language include 30 days *or prior to the end of the municipal fiscal year*, whichever is sooner, so as to disallow the possibility that a municipality may have to carry the costs into a new fiscal year.

Surrounding Communities

The draft regulation creates two pathways for surrounding community designation – through an executed agreement between the community and the applicant, or through a determination by the Commission subsequent to the petition of a community that does not have an executed agreement with the applicant.

In Section 125.01: *Determination of Surrounding Communities and execution of mitigation agreements, (2) Surrounding Community Determination by Commission (b),* the draft regulation enumerates several factors for the Commission's consideration as it determines whether a petitioning community will be granted surrounding community designation. These factors include: impacts on transportation infrastructure; volume of trips on local, state, and federal roadways; impacts on transit ridership and parking; noise and environmental impacts during construction; increased traffic; impacts on public safety; increased demand on water and sewer systems; impacts from increased storm water run-off; stresses on a community's housing stock; negative impacts on local, retail, entertainment, and service establishments; increased social service needs; demonstrated impacts on public education; and any other factors that the Commission deems appropriate in reviewing the application. We commend the Commission for the enumerated impacts for consideration and for allowing non-enumerated impacts, if any, to be evaluated in the surrounding community determination process. This will allow for the unique context of a prospective surrounding community's petition to be fully examined.

In Section 125.01: *Determination of Surrounding Communities and execution of mitigation agreements, (2) Surrounding Community Determination by Commission (c),* the draft regulation states that in determining whether a potential impact on a prospective surrounding community is a significant and adverse impact, the Commission may consider whether the impact will be different or greater than impacts on other communities geographically nearby. However, the MMA strongly urges the Commission to remove this language from the final regulation and exclude any similar comparisons of impacts as criteria in the surrounding community determination process. An impact that is both significant and adverse may be experienced in two or more prospective surrounding communities, to similar or varying degrees. Any subsequent mitigation measure for a significant and adverse impact should be proportional to the degree of the impact within the surrounding community. However, the fact that a significant and adverse impact may be experienced in several communities should in no way decrease the likelihood that any of the impacted communities will be designated as a surrounding community by the Commission.

In Section 125.01: *Determination of Surrounding Communities and execution of mitigation agreements, (2) Surrounding Community Determination by Commission (d),* the draft regulation states that the Commission may evaluate whether the positive impacts that result from the development and operation of a casino outweigh the negative impacts. We ask that this language be removed from the final regulation, as the balance of positive and negative impacts within a

community should *not* factor into the Commission's determination of status as a surrounding community. Furthermore, any potential positive impacts in a prospective surrounding community, such as number of residents finding employment at the casino or increased patronage of local businesses, would be difficult to quantify in a process that would be highly speculative at best and unwise at worst. The Commission should instead limit its deliberations to the adverse and significant impacts likely to be experienced by the community in making its determination.

Reopening of Mitigation Agreements

Section 127.00: *Reopening Mitigation Agreements* creates a process through which a signed host or surrounding community mitigation agreement may be reopened if a significant and material adverse impact on a community is triggered because (a) the applicant is granted a conditional license based on the EOEEA's certificate on the applicant's environmental impact report, or (b) the applicant is granted a conditional license subject to a permit approval that would likely cause a significant and material adverse impact on a host or surrounding community.

The MMA commends the Commission for its inclusion of triggering events as reasons for the reopening an agreement, and requests the addition of a third category of triggering events to consist of unforeseen events or circumstances resulting from casino construction or operation that cause a significant and material adverse impact on a host or surrounding community which is not included in the signed mitigation agreement. As with the procedure following the two triggering events included in the draft regulation, the two parties could voluntarily agree to reopen the agreement through a supplement or amendment, or the host or surrounding community could petition the Commission to mandate the reopening of the agreement if an impasse between the two parties is reached. Because casino gaming is a completely new industry in the Commonwealth, it is reasonable and responsible to create a pathway through which unforeseen impacts may be mitigated.

Thank you very much for the opportunity to comment on these significant issues. We appreciate the important work that the Commission has undertaken and the consideration that you and the members of the Commission are giving to the issues that impact municipalities. Once again, we strongly urge you to incorporate the recommendations of prospective host and surrounding communities into the final regulations, as they are best able to inform the creation of a regulatory framework that will not impose adverse impacts on their communities during the application and development process. If you have any questions or wish to receive further comment from us on any issue, please do not hesitate to contact Catherine Rollins of the MMA at (617) 426-7272 at any time.

Sincerely,

Geoffrey C. Beckwith
Executive Director

3.a

Meeting Minutes

Date: April 11, 2013

Time: 1:00 p.m.

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

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

Absent: None

Call to Order:

Chairman Crosby opened the 63rd public meeting.

Approval of Minutes:
See transcript pages 2-3.

Motion made by Commissioner McHugh that the minutes of March 21, 2013 be approved as submitted. Motion seconded by Commissioner Cameron. The motion passed unanimously.

Motion made by Commissioner McHugh that the minutes of March 25, 2013 be approved as submitted. Motion seconded by Commissioner Cameron. The motion passed unanimously.

Administration:
Report by Commissioner Zuniga. See transcript pages 3-18.

The timelines for investigations, gaming regulations, and racing regulations remain unchanged. The Commission will hold a public hearing on the Phase 2 gaming regulations on May 3, 2013. The Commission is making progress in implementing an electronic document management system. The hiring processes for the Director of Workforce Development, Director of Research and Problem Gambling, Director of Licensing, CFO, and CIO are underway.

The Commission discussed Commissioner Zuniga's summary report of third quarter operations. The IEB forecasts that investigations for most applicants will cost more than the $400,000 assessed on each applicant. A total of $550,000 of the $4,400,000 that the Commission collected in application fees is designated for cities and towns but has not yet been distributed. The Racing Division budget was not included as part of the summary report.

IEB Report:
Report by Director Wells. See transcript pages 18-26.

Investigations are well underway, and Director Wells anticipates that some of the Category 1 investigations will be complete by the June target date, while others may continue into August. Upon completion of investigations, the IEB will prepare a report to the Commission and the Commission will hold a public hearing and receive public comments. Following the public hearing, the Commission will make a suitability determination.

The IEB is in the process of preparing the redacted RFA-1 applications for public disclosure. The IEB sent the BED forms to applicants for their review, and anticipates releasing those forms soon. The PHD forms are almost fully redacted, and will be released after the applicants have a chance to review them.

Director Wells relayed the Commission's concerns to the single applicant that has not indicated a location, PPE Casino Resorts MA LLC, but that applicant is still considering its options and has not chosen a location.

Public Education and Information:
Report by Ombudsman Ziemba. See transcript pages 26-83.

Many surrounding communities are expressing concern about the short time period for reviewing impacts. The involuntary disbursement process only occurs after the applicant signs the host community agreement, and a surrounding community has no method of receiving money earlier unless the applicant voluntarily provides the money. Prior to the host community agreement being signed, surrounding communities can work with regional planning agencies, review the environmental notification forms that applicants submit, and prequalify advisors. The Commission will further discuss this issue in the following weeks.

The legal staff prepared a draft regulation relative to the issue of whether the host community can hold its referendum prior to suitability determinations. This regulation allows communities to hold the referendum prior to the Commission's determination of suitability so long as the community provides notice to the voters that the referendum is being held prior to a suitability determination, the Commission makes a positive finding of suitability before the applicant can file an RFA-2 application, and the community files a copy of the notice with the Commission. The Commission would like to ask for public comments prior to making a final decision on this draft regulation.

The Commission discussed whether the referendum would be on the same ballot as another election if the referendum occurred on the same day as a state election or a local election. Counsel Grossman stated that the referendum may be located on the same ballot as the local

election, but not the state election. The legal staff will further research the issue and advise local communities accordingly.

The Commission has already sent the draft RFA-2 regulations to the Local Government Advisory Council, and will soon file the regulations with the Secretary of State. Counsel Grossman provided the Commission with a small business impact statement, stating that these regulations do not impact small businesses beyond the impacts caused by the Gaming Act. The Commission was in agreement, but recommended amending the language to include the positive impacts in addition to the negative impacts.

Racing Division:
Report by Director Durenberger. See transcript pages 83-101.

The proposed changes to 205 CMR 4.00 are posted on the Commission's website for public comment, with a hearing scheduled for Monday, April 22 at 11:00 am. Director Durenberger anticipates that the new auditing system will be ready by April 18. Some of the transition costs related to the Commission taking over racing in the Commonwealth may have to be spread out over the next several years to maintain the revenue neutral balance of racing.

The 2012 annual report is close to being ready. The Racing Division is determining how to handle the 2011 annual report due to the fact that the Commission was not seated during the time period for that report. Live horseracing at Plainridge begins Monday, April 15 at 1:00 p.m.

The Racing Division has found four laboratories qualified to handle split sample equine drug testing services for 2013 and recommended that the Commission approve these laboratories. The Commission approved this recommendation.

Director Durenberger discussed the issue of unclaimed wagers. The list of unclaimed wagers, colloquially known as "outs," is first compiled by the track auditors then certified by the Commission. The tracks pay the amounts to the Commission prior to the Commission returning those amounts to the tracks for deposit into the purse accounts for horse racing or the Racing Stabilization Fund for greyhound licenses. The Commission questioned whether such a roundabout process is necessary. The process has always been performed in this fashion and provides an element of oversight. The legal staff will look into the history of this practice.

Chairman Crosby announced that the Commission's April 18, 2013 meeting will be held in Palmer, Massachusetts and he anticipates a lengthy agenda.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission April 11, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission March 21, 2013 Meeting Minutes
3. Massachusetts Gaming Commission March 25, 2013 Meeting Minutes
4. Massachusetts Gaming Commission 205 CMR 115.00: Phase I Suitability Determination, Standards and Procedures

5. Massachusetts Gaming Commission Small Impact Business Statement
6. Proposed Referendum Emergency Regulation
7. April 8, 2013 Letter from City of Everett Regarding Scheduling of Referendum Elections
8. Massachusetts Gaming Approved Budget FY 2013 3rd quarter Budget to Actual Expenditures Report
9. April 11, 2013 Division of Racing Memorandum Regarding Recommendation Regarding Split Sample Laboratories for 2013
10. April 11, 2013 Division of Racing Memorandum Regarding Payment of 2011 Unclaimed Winning Wagers to Purse Accounts
11. April 11, 2013 Division of Racing Memorandum Regarding Payment of 2011 Unclaimed Winning Wagers to Racing Stabilization Fund

/s/ Catherine Blue
Catherine Blue

Assistant Secretary

Meeting Minutes

Date: April 18, 2013

Time: 1:25 p.m.

Place: Pathfinder Regional Vocational Technical High School
240 Sykes Street
Palmer, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Gayle Cameron (present via telephone)
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: None

Call to Order:

Chairman Crosby opened the 64th public meeting.

The Chairman asked for a moment of silence for the people killed and injured at the Boston Marathon last Monday.

Approval of Minutes:
See transcript pages 5-7.

Motion made by Commissioner McHugh that the minutes of March 28, 2013 be approved as submitted. Motion seconded by Commissioner Stebbins. The motion passed unanimously.

Administration:
See transcript pages 7-16.

There have been no changes to the master schedule. The Commission is still concerned about giving enough time to surrounding communities to analyze the impacts caused by gaming, and will discuss this issue in more detail at the next Commission meeting.

The Commission discussed condensing the minutes because the prior versions were very time consuming to prepare and were overly duplicative of the transcript. The legal staff will take over

drafting the minutes and revising the format. The new format for the minutes will begin with the April 11 minutes.

Nomination made by Commissioner McHugh to nominate Commissioner Zuniga to continue serving as Treasurer. Nomination seconded by Commissioner Stebbins. Nomination passed unanimously.

Nomination made by Commissioner Zuniga to nominate Commissioner McHugh to continue serving as Secretary and nominate General Counsel Blue to start as Assistant Secretary. Nomination seconded by Commissioner Stebbins. Nomination passed unanimously.

Workforce Development:
See transcript pages 16-38.

William Messner, President of Holyoke Community College, Jeffrey Hayden, of the Holyoke Community College, and Robert LePage, of the Springfield Technical Community College, presented to the Commission relative to the status of the workforce development efforts aimed at training the local workforce in preparation for the opening of gaming facilities.

The Commission expressed that Mr. Messner, Mr. Hayden, and Mr. LePage have been doing an excellent job so far. The Commission anticipates hiring a Director of Workforce Development within the next several weeks, and this individual will represent the Commission on these matters. The Commission would like to create a document that lays out the current status and the role that the Commission will play in the workforce development to assist the incoming Director of Workforce Development.

Public Education and Information:
Report by Ombudsman Ziemba. See transcript pages 38-62.

Ombudsman Ziemba is continuing to work on the timeline for surrounding communities. Mohegan Sun and Palmer are both on board with the RPA process. Nine of the eleven applicants have already agreed to use or consider using the RPA process.

The Commission reviewed the comments received regarding whether a host community can hold a referendum prior to suitability determinations. The Commission is considering issuing an emergency regulation to allow a referendum prior to suitability. The Commission's current policy does not allow a referendum before a suitability determination but since it is only a policy, without being in regulation form, it has no force of law.

The emergency regulation provides that a community cannot hold a referendum prior to a determination of suitability, provided, however that a referendum can be held prior to a suitability determination if the community decides that moving forward is in the best interest of its citizens, provides notice of to the voters that the referendum is being held prior to a determination of suitability, and files a copy of that notice with the Commission. Commissioner McHugh recommended making one technical adjustment to the language of the emergency regulation.

Motion made by Commissioner McHugh that the Commission promulgate the emergency regulation in the form presented to the Commission, but with the insertion of the words "prior to the election" at the beginning of subparagraph (B). Motion seconded by Commissioner Zuniga. Motion passed unanimously.

Region C:
See transcript pages 63-106.

Cedric Cromwell, Chair of the Mashpee Wampanoag Indian Tribe, presented to the Commission his opinion on the status of Region C. Chairman Cromwell was joined by Tribal representatives Secretary Stone, Treasurer Hendricks, Councilman Foster, and Councilwoman Trish Keliinui.

The Commission reviewed public comment and discussed in great detail the question of whether to open Region C to commercial applicants. The Commission discussed the process by which it might address a situation where there were one or more commercial applicants and a proposed tribal casino.

If the Commission decides to begin the RFA process in Region C, the Region C process would mirror the process taking place in Regions A and B but contain different deadlines. The Tribal process would be unaffected by the commercial process. The Commission will make a final determination on which applicant in Region C, if any, should receive a license using the same criteria as for Regions A and B. The Commission will also consider the status of the Tribal State and Federal land in trust process, the status of regional and statewide gaming, other economic conditions then existing and then forecast, and other relevant considerations. The Region C licensing decision would most likely occur at the end of 2014.

If the Commission decides against opening Region C to commercial applications, then the Commission would close Region C to commercial applications until the Tribal State and Federal process is completed with a favorable or unfavorable decision, or until the Commission concludes that all necessary favorable decisions will not be forthcoming.

Motion made by Commissioner McHugh that the Commission open Region C to commercial RFAs with the Commission deciding whether to issue a commercial license to an applicant after taking into account economic and other circumstances as they exist at the time of the licensing decision in light of the statutory objectives that govern expanded gaming in the Commonwealth and the discretion with which the expanded gaming statute clothes the Commission. Motion seconded by Commissioner Zuniga. Motion passed unanimously.

Meeting adjourned.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission April 18, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission March 28, 2013 Meeting Minutes
3. Written Responses Regarding Host Community Referendum Emergency Regulation
4. Massachusetts Gaming Commission State and Tribal Licensing Processes in Region C: Safeguarding Rights and Options

5. Written Responses Regarding Region C Options

/s/ Catherine Blue
Catherine Blue

Assistant Secretary

3.c

Meeting Minutes

Date: April 25, 2013

Time: 1:00 p.m.

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

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: Commissioner Gayle Cameron
Commissioner James F. McHugh

Call to Order:

Chairman Crosby opened the 65th public meeting.

Approval of Minutes:
See transcript pages 2-3.

Motion made by Commissioner Zuniga that the minutes of April 4, 2013 be approved as submitted. Motion seconded by Commissioner Stebbins. The motion passed unanimously.

Administration:
Report by Executive Director Day. See transcript pages 3-11.

The Commissioners will be shifting away from the day-to-day operations of the staff and toward a greater policymaking role with the staff providing the majority of updates of daily operations. The Commission plans to conduct regular meetings on a biweekly basis starting in May and these meetings will generally occur on Thursdays beginning at 9:30am. The next Commission meeting is scheduled for Friday, May 3 at 9am. As part of that meeting the Commission will hold a public hearing on the proposed Phase 2 regulations and after the public hearing will address other general matters originally planned for the May 2 meeting. The May 2 meeting has been cancelled. The Commissioners would like to postpone discussion on a standard procedure of public comment until all Commissioners are present.

Qualifier List:
See transcript pages 11-22.

The Commission discussed the issue of regular updates to the list of qualifiers and determined that staff will update the list once every 30 days. The Commission also agreed to post the list on its website so that there is a single authoritative source for the qualifier list. The published list will be dated and include a statement indicating that the list is complete as of the date noted and that the list is periodically updated.

Master Schedule:
See transcript pages 22-76.

Executive Director Day stated that he would like to move the submission of the IEB suitability reports to the Commission for Category 2 applicants to May 14 and the submission of the IEB suitability reports to the Commission for Category 1 applicants to the period of August 5-30 on a rolling basis as the investigations are completed. He would also like to see the deadline for Category 1 RFA-2 applications moved from December 31 to December 2. The Commission agreed but stated that it will not compromise the suitability review or the evaluation of the RFA 2 applications in order to award licenses prior to the end of fiscal year 2014. The Commission is aiming to release the RFA-2 application forms at approximately the same time as promulgation of the Phase 2 regulations, which is scheduled for June 7.

The Commission discussed whether it would be beneficial to amend the proposed Phase 2 regulation to provide involuntary disbursements to surrounding communities 60 days prior to submission of the RFA-2 application. After discussion, the Commission agreed that involuntary disbursements should occur at least 90 days prior to RFA-2 application submission for the Category 1 applicants and at least 60 days prior to RFA-2 application submission for Category 2 applicants.

The Commission discussed amending the proposed Phase 2 regulations to require applicants to notify surrounding communities when they file their RFA-2 applications and provide surrounding communities with copies of any impact or mitigation statements filed with the RFA-2 application with that notice. The Commission also noted that it will need the assistance of advisors to review the RFA-2 applications, and that in order to have the advisors in place, it must begin the RFP process no later than May 17.

Racing Division:
See transcript pages 76-79.

The Racing Division is seeking approval from the Commission to send to the Legislature the proposed racing regulations in 205 CMR 4.00 and 6.00 and to extend the emergency regulations for an additional 30 days. The proposed regulations are identical to the emergency regulations that the Commission had previously approved.

Motion made by Commissioner Zuniga to approve the recommendation of the racing staff and counsel to forward the proposed racing regulations in 205 CMR 4.00 and 205 CMR 6.00 to the legislature and to extend the emergency regulations on the same by 30 days. Motion seconded by Commissioner Stebbins. The motion passed unanimously.

Research Meeting:
See transcript pages 79-86.

The Commission discussed the current status of the research project. Commissioner Crosby asked that the legal team incorporate into a future round of regulations the requirements of sections 91 and 97 of Chapter 194 of the Acts of 2011 regarding the proprietary information that licensees must provide in anonymized form for research purposes. The regulations should also include a requirement that licensees cooperate with the research team in conducting surveys and providing information prior to the operation of the casino and continuing during the operation of the casino. Commissioner Zuniga stated that the budget for the first fifteen months of the research agenda will be about three million dollars and he will discuss how this expenditure fits into the Commission's cash flow budget at the next meeting. The research team is subject to the Commission's enhanced code of ethics and the Commission will provide the necessary information to ensure that members of the research team know their obligations for compliance. The research team will coordinate with the DPH to prevent any duplication of efforts.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission April 25, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission April 4, 2013 Meeting Minutes

/s/ Catherine Blue
Catherine Blue
General Counsel

3.c

Meeting Minutes

Date: April 25, 2013

Time: 1:00 p.m.

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

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: Commissioner Gayle Cameron
Commissioner James F. McHugh

Call to Order:

Chairman Crosby opened the 65th public meeting.

Approval of Minutes:
See transcript pages 2-3.

Motion made by Commissioner Zuniga that the minutes of April 4, 2013 be approved as submitted. Motion seconded by Commissioner Stebbins. The motion passed unanimously.

Administration:
Report by Executive Director Day. See transcript pages 3-11.

The Commissioners will be shifting away from the day-to-day operations of the staff and toward a greater policymaking role with the staff providing the majority of updates of daily operations. The Commission plans to conduct regular meetings on a biweekly basis starting in May and these meetings will generally occur on Thursdays beginning at 9:30am. The next Commission meeting is scheduled for Friday, May 3 at 9am. As part of that meeting the Commission will hold a public hearing on the proposed Phase 2 regulations and after the public hearing will address other general matters originally planned for the May 2 meeting. The May 2 meeting has been cancelled. The Commissioners would like to postpone discussion on a standard procedure of public comment until all Commissioners are present.

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Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission April 25, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission April 4, 2013 Meeting Minutes

/s/ Catherine Blue
Catherine Blue
General Counsel

Division of Racing

To: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
James McHugh, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

cc: Rick Day, Executive Director

From: Jennifer Durenberger, Director of Racing

Date: 3 May, 2013

Annual Report – State Racing Commission 2011

The Racing Division recently received the final version of the Massachusetts State Racing Commission 2011 Annual Report from the Division of Professional Licensure. This Commission was not seated during any period covered by this report (calendar year 2011), but the report will need to be filed in accordance with then-applicable M.G.L. chapter 6, section 48.

Recognizing that the Commission is not in a position to approve the content of the report, we ask only that the Commission approve the appropriate filing of said report.

Respectfully submitted,

Jennifer Durenberger
Director of Racing

Effective May 20, 2012, all Massachusetts State Racing Commission functions were transferred to the Massachusetts Gaming Commission, pursuant to Section 89 of Chapter 194 of the Acts of 2011. The Massachusetts State Racing Commission ceased to exist from that point forward. This report, covering the period of calendar year 2011, is submitted by the Massachusetts Gaming Commission on behalf of the Massachusetts State Racing Commission.

★ ★ ★ ★ ★

Massachusetts Gaming Commission

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

THE COMMONWEALTH OF MASSACHUSETTS

Deval L. Patrick, Governor
Timothy P. Murray, Lieutenant Governor

EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

Gregory Bialecki, Secretary

OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

Barbara Anthony, Undersecretary

DIVISION OF PROFESSIONAL LICENSURE

Mark R. Kmetz, Director

MASSACHUSETTS STATE RACING COMMISSION

Joseph Van Deventer, Chairman[1]
Terry P. Segal, Associate Commissioner
Robert J. Furlong, Associate Commissioner

SEVENTY-SEVENTH ANNUAL REPORT

YEAR ENDING DECEMBER 31, 2011

[1] Joseph Van Deventer retired on October 18, 2011

TABLE OF CONTENTS

INTRODUCTION

The mission of the Massachusetts State Racing Commission is to ensure the integrity of Racing. The Commission maintains fair and honest pari-mutuel racing by enforcing rules and regulations, proposing legislation and developing policies. Furthermore, it ensures the legitimate performance of all racing animals and the accountability of pari-mutuel wagering.

COMMISSION OVERVIEW

The Massachusetts State Racing Commission is a state regulatory agency created by an act of the General Court in 1934.

The State Racing Commission, pursuant to Chapter 4 of the Acts of 2009, was transferred to the Division of Professional Licensure, being established as a division within the Division of Professional Licensure. Said change took effect on January 1, 2010. As a result of the transfer, section 48 of chapter 6 of the Massachusetts General Laws states:

> The commission shall consist of three commissioners, a chairman and two associate commissioners, all to be appointed by the governor and serve coterminous with him. Not more than two of such commissioners shall be of the same political party. The day-to-day operations and general administration of the commission, including all administrative functions of the commission and all actions not expressly required by statute or regulation to be carried out by the commission itself, shall, at the direction and under the control of the director of the division of professional licensure, be under the supervision of an executive director, who shall be appointed by the director of the division of professional licensure with the approval of the director of consumer affairs and business regulation. The executive director shall devote his full time during business hours to his duties hereunder. The director of the division of professional licensure may employ, as employees of the division of professional licensure, such other persons, in addition to the aforementioned executive director, as the director of the division of professional licensure may determine to be necessary to carry out such day-to-day operations and general administration of the commission.

Pursuant to Section 89 of Chapter 194 of the Acts of 2011, effective May 20, 2012, all SRC functions transfer to the new Massachusetts Gaming Commission (MGC). The SRC will cease to exist from that point forward.

SRC OPERATIONS

In 2011, the Racing Commission regulated one thoroughbred track at Suffolk Downs, one harness track at Plainridge and two simulcasting facilities. One of the simulcasting facilities is located at the former greyhound track in Raynham/Taunton[2] and the other is located at Suffolk Downs (formerly Wonderland). The 2011 total handle (total dollars bet) was $291,492,333 a decrease from the calendar year 2010 ($348,283,061) total handle of $56,790,728. As a result of Chapter 388 of the Acts of 2008, live racing of greyhounds ceased at the conclusion of 2009. Simulcasting and betting on greyhound races outside of the Commonwealth is still being conducted.

The day-to-day operations and general administration of the Commission, including all administrative functions of the Commission and all actions not expressly required by statute or regulation to be carried out by the Commission itself, shall, at the direction and under the control of the Director of the Division of Professional Licensure, be under the supervision of an executive director, who shall be appointed by the Director of the Division of Professional Licensure with the approval of the Director of Consumer Affairs and Business Regulation. This includes, but is not limited to, all budget and personnel activities for the agency. These efforts are supported by the following operating sections of the Commission: Administrative Office, Racing Commission Inspectors, Accountants, Laboratory Personnel, Veterinarians, Judges/Stewards and State Police Investigators. This report reviews each of these areas and the business they conduct.

To ensure fair and honest pari-mutuel racing, the Commission promulgates and enforces rules and regulations, proposes legislation and develops policies to better regulate the Racing Industry. Further, it is responsible for ensuring the legitimate performance of all racing animals, the well-being and safety of the participants and the integrity of pari-mutuel wagering. It is estimated that the industry directly and indirectly employs over 5,000 people within the Commonwealth.

DPL OVERVIEW

The Division of Professional Licensure is one of five regulatory agencies under the jurisdiction of the Office of Consumer Affairs and Business Regulation. It is responsible for ensuring the integrity of the licensure process of some 50 trades and professions regulated by 31 Boards of Registration, as well as the operation of the State Racing Commission.

[2] Raynham/Taunton is also referred to as Massasoit Greyhound Association.

ADMINISTRATIVE OFFICE

Executive Director

Vacant

Acting Executive Director

Richard J. Mudarri[3]

Director of Racing

Alexandra Lightbown

Auditor/Chief Financial Officer

Richard J. Mudarri

Chief State Veterinarian

Alexandra Lightbown, D.V.M.

Auditor III

Marta M. Ferreira

Program Coordinator II

John E. Hill, Jr.

[3] Richard J. Mudarri retired April 28, 2011.

LICENSING

One of the Commission's foremost responsibilities is the issuance of licenses to Associations who operate racetracks as well as the issuance of occupational licenses to every person who participates in racing.

2,999 APPLICATIONS FOR LICENSURE PROCESSED IN 2011

The licensing process requires that every person who participates in racing complete an application, and that all questions must be answered truthfully. The application is reviewed for completeness by Commission Inspectors who then forward the application to the Massachusetts State Police Racing Commission Unit, who conduct a background check of the applicant. Once the background check is completed, the application is sent to the Board of Stewards/Judges at each track. The Board reviews the application and may interview the applicant. The Stewards/Judges determine if the applicant has the required integrity, ability, and the eligibility for the license for which the applicant has applied. The Commission also has direct computer access to the Association of Racing Commissioners' International (ARCI) files in Lexington, Kentucky. These files maintain a record of every racing related offense attributed to an applicant anywhere in the country. The Commission provides reciprocity to other jurisdictions and their licensing decisions.

If the Stewards/Judges recommend licensing an applicant, the Inspectors collect the required fee and enter the appropriate information in the Commission's computer network. The applicant is issued a license card that entitles him to a photo identification badge. No person may enter any restricted area of a racetrack without a photo identification badge. During 2011, the Racing Commission issued 2,999 occupational licenses to persons participating in horse racing in the State. Occupations licensed include jockeys, drivers, trainers, assistant trainers, owners of racing animals, blacksmiths, racing officials, vendors, stable employees and pari-mutuel clerks.

2 ASSOCIATION LICENSES ISSUED

Consistent with the Massachusetts General Laws, the Commission held public hearings in the fall of 2010 on applications for two licenses to conduct running horse and harness racing meetings during 2011. Public hearings were held in Boston and Plainville Massachusetts.

The Racing Commission issued a running horse racing license to Sterling Suffolk Racecourse, LLC located in East Boston, to conduct thoroughbred racing in calendar year 2011 at a facility known as Suffolk Downs. The Commission also

issued a harness horseracing license to Ourway Realty, LLC, located in Plainville, to conduct standardbred racing in calendar year 2011 at a facility known as Plainridge Racecourse.

In the fall of 2011, the Commission held public hearings on two applications to conduct racing in 2012. Public hearings were held in Boston and Plainville, Massachusetts resulting in the issuance of a thoroughbred racing license for 2012 to Sterling Suffolk Racecourse and a harness horse racing license for 2012 to Ourway Realty, LLC to be conducted at their respective facilities.

INSPECTORS

Director of Racing

Alexandra Lightbown, D.V.M.

Supervisor of Inspectors

Vacant

Racing Inspectors

George E. Carifio, Racing Inspector II
Jeffrey Bothwell, Racing Inspector II
Richard J. Ford, Racing Inspector II

Racing Inspectors supervise the operation of the Commission's field offices located at Suffolk Downs, Raynham Park, and Plainridge Racecourse. These individuals must possess a thorough knowledge of the rules and regulations of the racing industry, and the ability to interpret them. Additionally, Racing Inspectors maintain a close liaison with the Stewards, Judges, Racing Officials, Track Security, State Police, and the Racing Commission to ensure that operations at each track are efficient and effective.

PROCESS OCCUPATIONAL LICENSES

Inspectors review and process all license applications. In 2011, the Inspectors processed 2,999 applications and collected $70,605 in license fees and $7,850 in badge fees. They also collected $4,350 in fines. Occupational licenses expire annually on December 31.

RESOLVE COMPLAINTS

The Commission Inspector is the most accessible and visible Commission representative at the track. Complaints and disputes are usually initiated with the Inspectors. Complaints and disputes that cannot be resolved at the field level are then reported to the Commission Office for further action.

SUPERVISE TESTING AREA

A State Inspector supervises the testing areas at each track in order to ensure proper collection and continuity of evidence for blood and urine samples obtained from racing animals. Testing Assistants who are employed for each program are trained, scheduled and supervised in their activities by the Inspectors in compliance with established procedures. In 2011, Commission Veterinarians collected 670 blood samples and Commission Testing Assistants, under supervision of the Racing Inspectors, collected 2,148 urine samples from horses that participated at Massachusetts racetracks. The samples were tested at the Racing Commission Laboratory for prohibited drugs and medications that could affect the performance of a racing animal. Out of 2,818 samples collected, 5 samples tested positive for prohibitive substances. These findings are reported to the Stewards/Judges for appropriate disciplinary action.

AUDITORS

Auditor/Chief Financial Officer

Richard J. Mudarri[4]

Auditors

Marta M. Ferreira, Auditor III
Frank Sclafani, Auditor III

Paul M. Buttner, Auditor II
Robert Hickman, Auditor II
Maryanne M. Regnetta, Auditor II

PARI-MUTUEL OPERATIONS -- COMPLIANCE ENSURED

Pari-mutuel responsibilities include overseeing the proper distribution of the handle. The handle is the total amount of money wagered at each performance and the percentage or take-out of the handle is determined by statute. Proceeds from the handle are distributed to specific categories from purse accounts to Capital and Promotional Trust Funds.

SAFEGUARDS

All money wagered at each racetrack is logged into a cash/sell totalizator (tote) system. At the start of each live race, the Commission Steward/Judge locks the wagers into the computer. For simulcast races, standard industry protocol is used to stop betting. Printouts from the tote system are audited by the Racing Commission Auditors for accuracy and compliance with current statutes.

DAILY AUDIT

A summary sheet, detailing the breakdown of the statutory take-out is prepared by Commission Auditors for each individual racing performance. For live racing, the information is provided by the on-site tote system. For signal received simulcast races, a report from the host track is faxed to the guest track. This report is used in conjunction with on-track reports to complete the summary

[4] Richard J. Mudarri retired on April 28, 2011

sheet. This activity ensures that the public, the Commonwealth, purse accounts, and all designated trust funds are properly funded. The Commission Auditors prepare a handle reconciliation report on a daily basis. This report shows the handle broken down as to live, signal sent and signal received. Further, the balance of all current unclaimed winning tickets and the liquidity of the mutuel department are audited on a daily basis by the Commission Auditors.

ANNUAL AUDIT

Racing Commission Auditors conduct annual audits with the racetracks. An annual audit of the purse accounts is conducted to ensure that appropriate funds are deposited in the appropriate accounts as required by statute and that the funds are used appropriately when withdrawn from the accounts.

MASSACHUSETTS STATE POLICE INVESTIGATIVE UNIT

Sergeant

Michael Scanlan

Troopers

Robert Miller
Winifred Rennie
Joseph Sinkevich

The Commission's goals of protecting racing participants and the wagering public as well as maintaining the public's confidence in pari-mutuel wagering are achieved through the Commission's licensing, revenue collection and investigative activities. The State Police Investigative Unit plays a vital role in achieving the goals of the Commission.

M.G.L. CHAPTER 128A, SECTION 8

The Racing Commission applies to the Department of Public Safety for an assignment of a complement of police officers. The Commission assigns State Police officers to guard the property and protect the lives and safety of the public and animals at the racing meets at the two race tracks. In the performance of their duties, the State Police Investigative Unit investigates violations of the rules of racing and the Massachusetts General Laws. The Investigative Unit's extensive responsibilities and activities have resulted in a major improvement in the Commission's regulatory/policing functions.

STABLE INSPECTIONS

Stable inspections focus on the detection of safety violations, the presence of unlicensed persons in restricted areas and the possession of illegal medications, drugs and syringes. These inspections are conducted by officers assigned to the State Police Unit and aid in preserving the integrity of racing. These inspections are conducted both at the racetracks and at private sites off the racetracks. The inspections are both announced and unannounced.

5 POSITIVE DRUG TESTS – 2 CONTROLLED MEDICATION VIOLATIONS

Protecting the integrity of racing involves animals racing free of prohibited drugs and medications. The State Police Investigative Unit is responsible for ensuring that the testing areas where samples are collected are secure and that the continuity of evidence is maintained with all samples. The State Police Unit investigates each positive drug test reported by the Racing Commission Laboratory, and interviews the trainers, veterinarians and other persons responsible. In 2011 there were 5 positive drug tests and 2 controlled medication violations.

18 EJECTIONS - 66 INVESTIGATIONS - 8 ARRESTS

In 2011, the State Police Investigative Unit conducted 66 investigations including hidden ownership of racehorses, larceny, and counterfeit money that resulted in 8 arrests and 18 ejections from Massachusetts racetracks of persons determined to be detrimental to racing.

UNIFORMED STATE POLICE DETAILS

The State Police Investigative Unit oversees and assists the uniformed State Police detail in the test area of the horse tracks. These details are responsible for witnessing the collection of samples, ensuring the continuity of evidence for samples, and transporting samples collected in the testing area to the Racing Commission Laboratory. State Police training ensures the integrity of samples and provides expert testimony at administrative and court proceedings.

SPECIAL INVESTIGATIONS

The State Police Investigative Unit conducted investigations into the background of each individual who was a party to the application for a racetrack license in Massachusetts. The State Police Unit also conducted several special investigations with other agencies and units within the State Police concerning ten per center activity, identity investigations and drug activity.

1,932 BACKGROUND INVESTIGATIONS

The State Police Investigative Unit conducted 1,932 background investigations on Racing Commission employees, racing officials and trainers who participate at Massachusetts racetracks. They also conducted background investigations on all of the other persons licensed at Massachusetts racetracks.

THOROUGHBRED-STANDARDBRED RACING

Suffolk Downs and Plainridge Racecourse were required to schedule a minimum of 80 calendar days of live racing in 2011. Previously 100 calendar days of racing were required; the amendment was made in Chapter 77 of the Acts of 2011.

The State Police Unit committed itself to maintain a constant presence at each racetrack, especially during live racing, working closely with the Stewards/Judges and other Commission and racing officials to help ensure that each track operated honestly and credibly.

LABORATORY

Chief State Veterinarian

Alexandra Lightbown, D.V.M.

Chief of Laboratory

Tracy Payne – B.S., Biology / Medical Laboratory Science

Senior Chemist

Vacant

Assistant Chemists

Lucille Saccardo – B.S., Animal Science. Chemist II
Melchor S. Layon - A.S., Chemist II

The State Racing Commission Laboratory is an important link in the Racing Commission's effort to ensure that quality racing exists within the Commonwealth. The primary function of the Commission Laboratory is to analyze samples of urine and blood for the presence of any drug that is of such character as could affect the racing condition of the animal. Samples are taken from every winning horse and any other horse(s) designated by Commission officials. A specially trained staff performs testing at facilities located within the State Laboratory Institute in Jamaica Plain.

INTEGRITY OF SAMPLES ENSURED

Special precautions are taken at all Massachusetts racetracks when post-race blood and urine samples are collected to ensure that no tampering can take place. In order to assure the continuity of evidence, every winning horse and all designated horses are under the surveillance of a uniformed State Police officer and/or Racing Commission employee from the finish of the race until the specimens are obtained. Samples are properly identified and transported immediately after the close of each racing day by a uniformed State Police officer to the Commission Laboratory in Jamaica Plain and placed in a locked laboratory locker for analysis the following day.

Racing Commission Laboratory personnel assume responsibility for custody of the samples once the samples are placed in the laboratory locker. To avoid any bias, the chemist identifies the sample by number only. Any positive results are reported directly to the Racing Commission.

QUALITY ASSURANCE AND PROFICIENCY PROGRAMS

The Racing Commission Laboratory is a member of the Association of Official Racing Chemists (AORC) and participates in their annual Proficiency Testing Program. The Commission Laboratory also participates fully in the Association of Racing Commissioners' International (ARCI) Equine and Greyhound Quality Assurance Programs (QAP).

2,148 URINE SAMPLES – 670 BLOOD SAMPLES ANALYZED

Despite a heavy workload, the Racing Commission's Laboratory provides high quality results. The Commission Laboratory screened approximately 2,818 biological samples for the presence of illegal drugs and prohibited medications. Many other items confiscated in the course of investigations are also submitted for analysis. These items may include feed preparations, vitamins, liniments, antibiotics, other pharmaceuticals and medical devices such as needles and syringes.

UNIFORM TESTING / SOPHISTICATED INSTRUMENTS

Each blood and urine sample received by the Commission Laboratory is screened by specialized tests to comply with ARCI-QAP guidelines for drug detection. These tests include specific extraction procedures, Thin Layer Chromatography (TLC), and Enzyme-Linked Immunosorbent Assays (ELISA).

Massachusetts allows the use of Phenylbutazone (Bute) and Furosemide (Lasix), with conditions, in horses under the direction of the Controlled Medication Program and the Bleeder Medication Program. The Commission Laboratory monitors these two drugs in all equine samples received.

If screening tests indicate the presence of a drug or unknown foreign substance in a sample, additional specialized testing is performed on that individual sample to prove or disprove the initial findings. All findings are unequivocally confirmed by use of such techniques as tandem Gas Chromatography/Mass Spectrometry.

5 DRUG FINDINGS - 2 MEDICATION PROGRAM VIOLATIONS

Upon positive confirmation of a drug finding, the Commission Laboratory contacts the Racing Commission office in Boston, and reports the name of the drug found, track name, date of the race, and the sample identification number. Only at this time does the Racing Commission supply the Commission Laboratory with the race number, animal's name and trainer's name for inclusion in an official report. The report is directed to the State Racing Commission, with a copy to the Racing Commission State Police Investigative Unit and a copy to the respective track Judge or Steward for additional investigation and subsequent prosecution and/or other action.

During 2011, the Racing Commission Laboratory confirmed 5 drug findings and 2 medication program violations. A comprehensive report of the Laboratory's activities can be found in the "Laboratory Annual Report for 2011" at the end of this Racing Commission Annual Report.

VETERINARIANS

Chief State Veterinarian

Alexandra Lightbown, D.V.M.

Contract Veterinarians

Kristin Esterbrook, D.V.M.
Kevin Lightbown, D.V.M.
Lorraine O'Connor, D.V.M.

The Commission Veterinarians play an indispensable function in ensuring that the quality and integrity of racing within the Commonwealth remains strong by protecting the health and welfare of the equine athletes in Massachusetts.

SUPERVISE THE STATE RACING COMMISSION LABORATORY

The Chief Veterinarian works with the Commission Laboratory to ensure drug testing remains current and of high quality. One method used to test the laboratory is through the use of double blind drug testing.

SUPERVISE EQUINE DRUG TESTING AREA

A Commission Veterinarian supervises the testing areas in order to ensure proper collection and continuity of evidence for blood and urine samples collected from the racing animals. In 2011, Commission Veterinarians collected 670 blood samples and Commission Testing Assistants under the supervision of the Veterinarians collected 2,148 urine samples.

STABLE INSPECTIONS

These inspections focus on the health, safety and welfare of the equine athletes, and may encompass both on-track and off-track stabling facilities.

TESTIFY AT COMMISSION HEARINGS/MEETINGS

Commission Veterinarians testify at hearings on medication use, drug violations, animal care, new policies and procedures, etc.

MONITOR THE HEALTH OF EACH RACING ANIMAL

This is done in conjunction with the Association Veterinarian at each track. Racers are given a pre-race exam before they race and watched for signs of injury after they race. Veterinarians are on duty during live racing to handle any emergencies that may arise. Commission Veterinarians also work closely with other State agencies, Veterinary schools, National Associations, etc.

STEWARDS/JUDGES

Enforcement of the rules and regulations of racing begins with the prosecution of violators by the Board of Stewards/Judges at the racetrack. One Steward/Judge is appointed by the racetrack and must be approved by the Racing Commission and licensed as a racing official. Two Stewards/Judges are appointed by the Racing Commission.

RESPONSIBILITIES

The Judges and Stewards are responsible for reviewing all occupational license applications and for recommending or not recommending the applicant for a license. The Judges and Stewards are present at the racetrack each day on which there is live racing and they oversee everything from drawing of post positions to making official the results of every race. In addition, the Stewards/Judges preside over all hearings conducted at the track and report their rulings and findings to the Racing Commission.

Before post time of the first race, the Stewards/Judges review the daily program of races to note any changes or errors. Changes are reported to each department that might be affected by the change (i.e., mutuels, paddock judges, patrol judges, starters, clerk of the course, clerk of scales, program director and announcer). All changes are also reported promptly to the wagering public.

After observing every live race, both live and on television monitors, the Stewards/Judges mark the order of finish as the horses cross the finish line. They give the first four unofficial finishers to the Mutuel Department, post an inquiry, review an objection and request a photo finish when necessary. If there is an apparent violation of the rules, the Stewards/Judges review the videotape and then make a decision before making the results of the race official.

If a violation of the rules occurs, the judges notify all the parties involved of a scheduled hearing. After conducting the hearing the Stewards/Judges determine if any penalty of a fine or suspension, purse redistribution or other sanction should be imposed. Violators are advised of their right of appeal to the Racing Commission.

ENFORCEMENT OF RULES AND REGULATIONS

The most significant responsibility of the Commission is the enforcement of the rules and regulations of racing. It is only as a result of conscientious, consistent

and aggressive enforcement of the rules and regulations that enable us to ensure honest racing.

85 RULINGS - BOARDS OF STEWARDS/JUDGES

The regulatory process begins with the promulgation of rules and regulations and concludes with the enforcement of those rules. On July 7, 1992, Chapter 101 was signed into law. Chapter 101 changed the number of State's Stewards/Judges at the racetracks from one to two. The Board of Stewards/Judges at each racetrack now consists of two persons appointed by the Racing Commission, and one person appointed by the Association, and approved by the Racing Commission. The Board of Stewards/Judges is the most significant link in the regulatory chain. The Stewards/Judges are responsible for recommending persons for licenses and ensuring that each licensed racing association and all participants are in compliance with the rules and regulations of racing. The Stewards/Judges carefully examine every license application to determine if the applicant is eligible for a license.

APPEALS

The Racing Commission reviews the Stewards/Judges' decisions. If any licensee disagrees with a decision of the Stewards/Judges, they may appeal to the Commission. The Commission affords appellants adjudicatory hearings on the merits of their appeals. If appellants are dissatisfied with the decision of the Racing Commission, they may appeal to the Superior Court of the Commonwealth in accordance with Chapter 30A of the General Laws.

The Racing Commission's regulatory activities have resulted in improved compliance by licensees.

Hearings	**2008**	**2009**	**2010**	**2011**
Board of Judges/Stewards	163	134	135	85
Racing Commission	35	31	23	12
Sanctions				
Fines	121	84	78	60
Suspensions	26	25	44	15

SRC FINANCIALS

FISCAL YEAR 2011 -- JULY 1, 2010 TO JUNE 30, 2011

RECEIPTS

0131	Commission	$1,457,462.59
2700	Fines and Penalties	9,225.00
3003	Association License Fees	323,700.00
3004	Licenses and Registrations	68,515.00
4800	Assessments	725,804.05
5009	Unpaid Tickets	525,674.01
6900	Miscellaneous	9,984.29
TOTAL RECEIPTS:		$3,120,364.94

EXPENDITURES

FISCAL YEAR 2011 APPROPRIATION (7006-0110)

Total Available	$1,600,253.00

EXPENDITURES

AA	Regular Employee Compensation	929,742.87
BB	Regular Employee Related Expenses	7,202.61
CC	Contractor Payroll	196,973.50
DD	Pension/Insurance, Related Expenses	19,667.79
EE	Administration Expenses	47,264.78
FF	Laboratory Supplies	40,797.74
GG	Rent on Laboratory	77,126.00
JJ	Operational Services	55,503.36
LL	Equipment Lease/Maintenance	6,795.00
UU	Information Technology	50,056.81
TOTAL EXPENDITURES		$1,431,130.46

REVENUES

$3,672,461.31 IN REVENUES COLLECTED

In addition to licensing racetracks and participants, the Racing Commission has a primary responsibility to collect revenue in accordance with Chapters 128A and 128C of the General Laws. Each licensed racetrack pays daily to the Racing Commission, a commission as determined by law in addition to license fees and assessments. Commission Inspectors collect occupational license fees, badge fees and fines. The State Racing Commission collected $3,672,461.31 from Massachusetts racetracks in 2011 (including miscellaneous of $8,372). This figure is $367,576.08 less than what was collected in 2010. All Commission activities are revenue driven as Commission expenditures come from Commission revenue and are made in a priority order in accordance with Section 5(h) of Chapter 128A. The following chart details the Commission's revenues and expenditures for 2010 and 2011.

MASSACHUSETTS STATE RACING COMMISSION
Racing Development and Oversight Fund
Statement of Program Revenue and Expenses
Calendar years 2011 & 2010

	2011	2010
Program Revenue:		
Commissions	$ 1,494,644	$ 1,735,855
Occupational licenses	70,605	79,155
Assessments	750,579	749,175
Association licenses	378,600	386,700
Fines	4,350	11,125
Unclaimed tickets (OUTs) - **Note 1**	965,312	1,067,044
Total revenue by source - **Note 1**	3,664,090	4,029,054
Program Expenses:		
Unclaimed tickets distributed to racetrack purse accounts - **Note 1**	525,674	567,304*
Unclaimed tickets transferred to Racing Stabilization Fund - **Note 1**	439,638	501,324
Local aid (transfer to state) - **Note 2**	852,448	1,194,036
Sub total	1,817,760	2,262,664
Available for Racing Commission operations	1,846,330	1,766,390

Racing commission operations (transfer to state) - **Note 4**	1,261,232	1,421.648
Racing commission adjustment to expenditures	1,063	
Racing commission operations (direct charges) - **Note 3**	94,153	186,582
Total Racing commissions operations	1,356,448	1,608,230
Available for other program costs	489,882	158,160
Other programs costs -		
Health & welfare - stable & backstretch workers, The Eighth Pole	80,000	80,000
Economic assistance program	20,000	20,000
Compulsive gamblers - Dept. of Public Health	110,000	58,160
Total other program costs	210,000	158,160
Available for distributions to racetracks' purse accounts	279,882	
Distributions to racetrack purse accounts	279,882	
Fund balance, end of year	$ 0-	$ 0-

* An overpayment in the amount of $1,583.99 was made to Sterling Suffolk racecourse on 5/21/10 for unclaimed winning tickets (2008 OUTs). The overpayment was identified in a subsequent routine internal review, and was reimbursed by agreement on 4/30/12.

MASSACHUSETTS STATE RACING COMMISSION
2011 RACING DEVELOPMENT AND OVERSIGHT FUND
FOOTNOTES AND COMMENTS

	Live and On Track	Revenue Collected	
Note 1 - Handle and Revenue by track:	Handle	Comm. & Fees	OUTs *
Sterling Suffolk Downs	$ 136,052,189	$ 1,112,814	$ 354,595
Plainridge Racetrack	47,542,566	626,556	171,078
Taunton & Massasoit Dog Tracks	37,154,037	812,518	304,578
Wonderland Greyhound Park **	2,523,747	146,943	135,059
Total revenue by track	$ 223,272,539	$ 2,698,776	$ 965,312

* Unclaimed wagers (OUTs) collected from the horse tracks are distributed to the purse accounts of the licensees that generated the unclaimed wagers. At dog tracks unclaimed wagers are transferred to the Racing Stabilization Fund.

** Wonderland ceased operations August 18, 2010 and reopened on June 2, 2011 at Suffolk Downs. Wonderland OUTs reflect both 2009 ($94,314) and 2010 ($40,745) payments.

Note 2 - Local Aid - Transfers to State:

Local aid to host communities is the first priority expenditure of this calendar year program. It is paid quarterly at .35 percent times amounts wagered during the quarter ended six months prior to the payment. Included here as calendar year 2011 program expense are local aid distributions paid for the quarters ended March, June, September and December 2011.

Note 3 - Operations of the state racing commission (direct charges):

The following expenses for the operations of the racing commission were charged directly to the Racing Oversight Fund, account 70060001 during calendar year 2011.

	Direct Charges
Contract salaries stewards, judges, testing assist and vets.	$ 67,830
Indirect cost assessment, fringe benefits and insurance	12,615
Subscriptions and memberships	0
State police	12,956
Laboratory supplies	0
Equipment maintenance	602
Consultant for transition to DPL	150
Moving and related expenses	0
Total direct charges for operations of the racing commission	$ 94,153

Note 4 - Racing Commission Operations - Transfers to State:

Racing revenues deposited to this fund must reimburse the Commonwealth general fund for the operating costs of the Racing Commission. This is the second priority of spending from racing revenue. Included as calendar year 2011 program expense are reimbursements to the general fund for actual operating costs of the commission incurred from January 1 to December 31, 2011 - *see attached schedule (additional expenditures incurred).*

STATE RACING COMMISSION

Budgetary / Appropriation Account REG 70060110

Operating Expenditures

CY2011- January 1, 2011 to December 31, 2011

Sub./ Object	Component	FY11 Expenditures 1/1/11 to 6/30/11	FY12 Expenditures 7/1/11 to 12/31/11	Total CY 2011 Expenditures 1/1/11 to 12/31/11
AA	**Regular employee compensation**	$ 432,044.35	$ 393,508.74	$ 825,553.09
A01	Regular payroll	411,779.16	393,159.96	804,939.12
A07	Shift differential	476.88	348.78	825.66
A08	Overtime Pay	-	-	-
A12	Sick leave buy back	2,363.59	-	2,363.59
A13	In lieu of vacation	17,424.72	-	17,424.72
BB	**Regular employee related expenses**	3,889.75	2,252.22	6,141.97
B01	Out of state travel	-	-	-
B02	In state travel	3,889.75	2,252.22	6,141.97
B05	Conferences, training & registrations	-	-	-
B06	Memberships, dues & license fees	-	-	-
B10	Exigent job related expenses	-	-	-
CC	**Contractor payroll**	37,383.50	124,599.00	161,982.50
CC	Contact payroll: stewards,& judges, testing and vets	37,383.50	124,599.00	161,982.50
DD	**Pension & insurance**	10,809.11	10,512.93	21,322.04
D09	Fringe benefit reimbursement (charge back)	10,809.11	9,507.93	20,317.04
D10	Fidelity bond		1,005.00	1,005.00
EE	**Administrative expenses**	35,802.85	19,084.57	50,244.07
E01	Office and administrative supplies	3,255.06	1,887.36	5,142.42
E02	Print expenses	-	-	-
E04	Central reprographic (charge back)	1,252.15	-	1,252.15
E05	Postage (charge back)	2,031.81	555.00	2,586.81
E12	Subscriptions and memberships	8,566.81	8,500.00	17,066.81
E13	Advertising expenses		235.24	235.24
E15	Bottled water	52.71	64.74	117.45
E27	Prior Year Deficiency	1,510.80	-	1,510.80
E32	Liability management reduction fund	4,643.35		
E53	Liability management reduction fund		236.50	236.50
E56	IT Consolidation (chargeback)	13,630.71	6,895.64	20,526.35
E98	Reimbursement for Board Travel	859.45	710.09	1,569.54
FF	**Laboratory supplies**	1,072.68	28,963.78	30,036.46
F05	Laboratory and testing supplies	1,072.68	28,963.78	30,036.46
GG	**Rent on laboratory**	-	48,635.00	48,635.00
G01	Rent on laboratory UMMS		48,635.00	48,635.00
JJ	**Operational services**	19,112.16	54,653.33	73,765.49
JJ2	Stenographic and courier services	9.82	-	9.82
J25	Medical procedures (autopsies on animals)		2,975.30	2,975.30
J28	Law enforcement - State Police overtime	19,102.34	51,678.03	70,780.37

LL	**Equipment lease & maintenance**	4,530.00	6,238.45	10,768.45
L45	Office equipment maintenance & repair	-	-	-
L46	Photocopy equipment maintenance & repair		1,570.45	1,570.45
L49	Medical equipment maintenance & repair	4,530.00	4,668.00	9,198.00
UU	**Information technology**	21,372.95	10,536.88	31,909.83
U02	Telecommunication services - voice (formerly E08)	7,888.96	3,908.07	11,797.03
U03	Software and info tech licenses	2,983.34	-	2,983.34
U04	Information & technology chargeback	321.79	371.64	693.43
U05	Information technology professionals	4,896.24	2,594.11	7,490.35
U06	IT Cabling	83.82	106.14	189.96
U07	IT Equipment Purchase	464.74	258.00	722.74
U08	Information technology equipment lease and rentals	3,222.18	3,222.18	6,444.36
U09	IT equipment maintenance & repair	238.30	-	238.30
U10	IT Equipment maintenance & Repair	1,273.58	76.74	1,350.32
	Total Spending for SRC Operations	**$ 566,017.35**	**$ 698,984.90**	**$ 1,260,358.90**

Total CY 2011 Expenditures	1,260,358.90
Account payable	
******* D09 - Posted in Feb for payroll ending 12/31/11	1,936.01
Total	**1,262,294.91**

RACING COMMISSION BUSINESS

MEETINGS AND HEARINGS

During 2011, the Racing Commission held 12 business meetings at the main Commission Office in Boston or at other designated locations. Each meeting was called in compliance with the provisions of Chapter 372 of the Acts of 1978.

In addition, as required by Chapter 128A of the Massachusetts General Laws, in the fall of 2011, the Commission held public hearings on applications for two licenses to conduct running horse or harness racing meetings for calendar year 2012. The hearings were held in Boston and Plainville. The Commission approved the associational licenses for Sterling Suffolk Racecourse, LLC to conduct thoroughbred racing in 2012 and for Ourway Realty, LLC. to conduct harness horse racing in 2012 at their respective facilities.

The Racing Commission in 2011 presided over 30 adjudicatory hearings as a result of appeals from rulings of the Stewards and Judges at the various racetracks in the Commonwealth.

DECISIONS APPEALED TO THE RACING COMMISSION

The Racing Commission, sitting as a quasi-judicial body pursuant to the Massachusetts Administrative Procedures Act, adjudicated 30 appeals. The Commission has taken extensive precautions to ensure licensees due process throughout the appeal process. The Commission initiated a Stay-of-Suspension process. This permits licensees suspended by the Stewards/Judges for a minor violation of the rules that does not compromise the integrity of racing to continue to participate in racing until the licensee has been provided a hearing by the Commission and a decision made. Procedural safeguards were adopted to prevent licensees from abusing the Stay privilege. Hearings are conducted as soon as practicable from the time of the granting of a Stay, thereby preventing a licensee from participating while on a Stay status for an extended period of time.

DUE PROCESS AFFORDED ALL LICENSEES

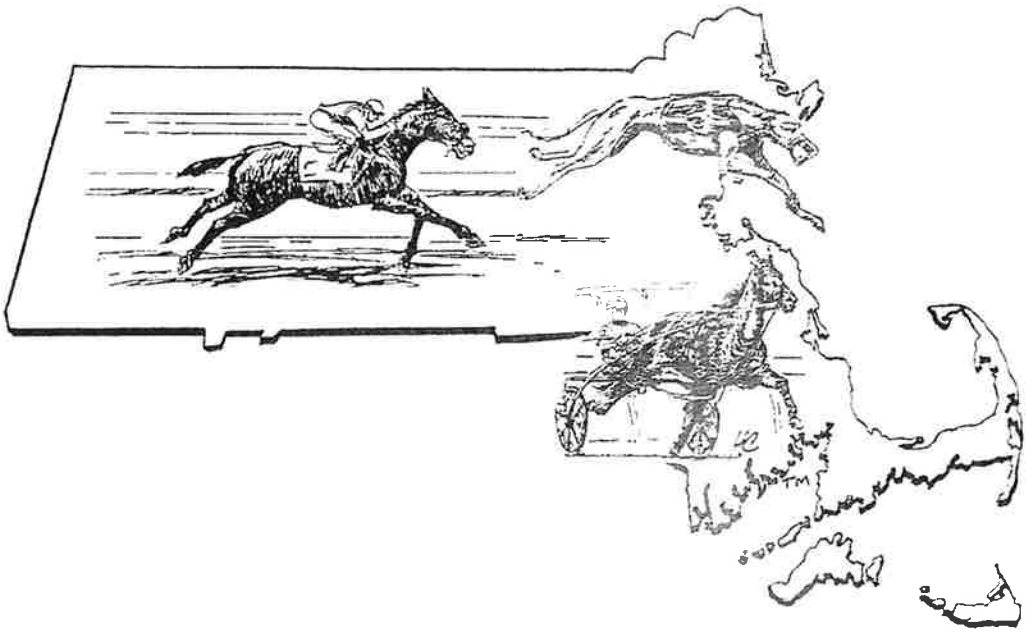
Licensees charged with a violation of the rules that may result in the loss of a license are entitled to a hearing pursuant to the Administrative

Procedures Act (APA). Formal disciplinary hearings held by the Racing Commission follow the requirements established in the Massachusetts APA. These requirements include issuing timely notice of hearings, providing the opportunity for an appellant to confront witnesses and to be represented by counsel.

COMMISSION DECISIONS APPEALED TO SUPERIOR COURT

In addition to hearing appeals, the Racing Commission must prepare a complete record and legal decision for each case that is appealed to the Superior Court. When the record is completed and certified, it is forwarded to the Government Bureau of the Attorney General's Office and is assigned to an Assistant Attorney General who defends the case in court. The Commission and the Attorney General work closely together to present the best possible case in Superior Court. In calendar year 2011, there was only one case pending appellate review.

The Racing Commission takes this opportunity to thank the Attorney General's Office for the diligent, professional and expert defense of Commission cases.



RACETRACKS

NOTES ON CHARTS AND GRAPHS

In this 2011 Annual Report, the following terminology is used in reporting simulcast events.

"Signal Received" is categorized as "On Track Simulcast," as this is the signal sent from a remote track being received locally.

"Signal Sent" is categorized as "Off-Track Simulcast," as this is the local signal being sent to a remote track.

Handle Calendar Years 2009, 2010, 2011

	2009	2010	% Variance	2010	2011	% Variance
Live						
Raynham	13,317,426	0	-100.00%	0	0	0.00%
Wonderland	1,093,260	0	-100.00%	0	0	0.00%
Plainridge	1,738,748	1,584,498	-8.87%	1,584,498	1,476,452	-6.82%
Suffolk	10,061,323	8,878,836	-11.75%	8,878,836	7,725,019	-13.00%
Total Live	26,210,757	10,463,334	-60.08%	10,463,334	9,201,471	-12.06%
On-Track Simulcast						
Raynham	40,682,649	42,827,404	5.27%	42,827,404	37,154,037	-13.25%
Wonderland	20,651,182	11,194,266	-45.79%	11,194,266	2,523,747	-77.46%
Plainridge	50,228,514	48,064,038	-4.31%	48,064,038	46,066,114	-4.16%
Suffolk	130,672,147	131,637,340	0.74%	131,637,340	128,327,170	-2.51%
Total On-Track	242,234,492	233,723,048	-3.51%	233,723,048	214,071,068	-8.41%
Off-Track Simulcast						
Raynham	14,172,036	0	-100.00%	0	0	0.00%
Wonderland	1,902,692	0	-100.00%	0	0	0.00%
Plainridge	10,053,777	9,911,390	-1.42%	9,911,390	5,811,080	-41.37%
Suffolk	96,368,019	94,185,289	-2.26%	94,185,289	62,408,714	-33.74%
Total Off-Track	122,496,524	104,096,679	-15.02%	104,096,679	68,219,794	-34.46%
Total Handle	390,941,773	348,283,061	-10.91%	348,283,061	291,492,333	-16.31%

HANDLES 2010 vs. 2011 FINANCIAL VARIANCE REPORT

Category	2010	2011	Variance	% Variance
Live Performances	201	160	-41	-20.40%
Live Handle	10,463,334	9,201,471	-1,261,863	-12.06%
Simulcast On-Track	233,723,048	214,071,068	-19,651,980	-8.41%
Simulcast Off- Track	104,096,679	68,219,794	-35,876,885	-34.46%
Total Simulcast	337,819,727	282,290,862	-55,528,865	-16.44%
Total Handle	348,283,061	291,492,333	-56,790,728	-16.31%
Commissions	$1,735,854.51	$1,494,643.53	-$241,210.98	-13.90%
Assessments	$749,175.04	$750,578.90	$1,403.86	0.19%
Association License Fee	$386,700.00	$378,600.00	-$8,100.00	-2.09%
Occupational License Fee	$79,155.00	$70,605.00	-$8,550.00	-10.80%
Outstanding Tickets	$1,067,043.84	$965,312.06	-$101,731.78	-9.53%
Fines & Penalties	$11,125.00	$4,350.00	-$6,775.00	-60.90%
Miscellaneous	$10,985.04	$8,371.82	-$2,613.22	-23.79%
TOTAL REVENUES	$4,040,038.43	$3,672,461.31	-$367,577.12	-9.10%

MASSACHUSETTS STATE RACING COMMISSION

Analysis of Purses Paid Compared to Statutory Requirements - 2010

	All Tracks	Suffolk	Plainridge
Purses paid:			
Number of live performances 2009	199	101	98
Purses paid 2009	$ 11,807,443	$ 9,407,483	$ 2,399,960
2009 Average purses per performance	$ 59,334	$ 93,143	$ 24,489
Number of live performances 2010	201	101	100
Purses paid 2010	$ 1,200,711	$ 8,728,896	$ 2,471,815
2010 Average purses per performance	$ 55,725	$ 86,425	$ 24,718
Increase (decrease) in 2010 compared to 2009	$ (606,732)	$ (678,587)	$ 71,855
Average change per performance	$ (3,609)	$ (6,719)	$ 229
% change per performance	- 6.1%	- 7.2%	0.9%
Racing commission purse distributions made in 2010			
Purse 2009 distribution rec'd 5/24/2010	$ 131,026	65,513	65,513
April 2010 (2008 OUTs returned)	567,304	404,734	162,570
Total Chapter 139 distributions to track purse accounts	$ 698,330	$ 470,247	$ 228,083
Statutory purses			
Racing commission purse distributions applied to			
2010 purse account - See notes	$ 698,330	$ 470,247	$ 228,083
Purses as a percentage of handle	8,083,487	6,048,876	2,034,611
Premiums received	1,308,349	1,093,064	215,285
Minimum purses required for 2010	10,090,166	7,612,187	2,477,979
Actual purses paid by track for 2010	10,822,911	8,351,096	2,471,815

Variance - over / (under) statutory amounts	$ 732,745	$ 738,909	$ (6,164)

* Does not include Suffolk MA. Breeders Purse

Purse Accounts

205 CMR 11.00: All pari-mutuel revenues, with the exception of unclaimed tickets paid to the Commission, are expended in the order of priority specified by law. A percentage of these revenues are credited to the licensee's "purse" accounts. The amount credited to each licensee's purse account shall be based on a formula established by the commission. This formula is based on a point system which will be allocated in proportion to the values determined by the listed criteria. These rules and regulations are intended to establish the formula and regulations regarding the distribution of these funds. In no way shall the amount paid to the purse account of each licensee be less than $400,000 unless the commission collects insufficient funds to make such minimum payment to all licensees. Should the commission deem that sufficient funds are available; the commission may distribute $100,000 as a quarterly minimum payment to the purse account of each licensee. Purse accounts are reviewed and audited at the end of each calendar year, after all revenues have been collected and all expenditures have been set aside, an account of the fund shall be submitted to the commissioners. They will then obligate the total amount of money to be distributed as the final purse account distribution for the calendar year ended.

Notes on Determining Amount of Purse Distributions Applied to 2010 Purses:

Suffolk - Prior to the beginning of the racing meet (calendar year 2010), Suffolk negotiates with the horsemen to determine how much will be paid in purses over the term of the meet. The process includes negotiations with the horsemen and takes into consideration the amounts projected as statutory purses, including as a percentage of handle, the premiums received via Chapter 128 purse distributions. All Chapter 128 distributions received during 2010 were applied to the 2010 purse account-purse distributions for unclaimed tickets distributed in 2010 of $404,734 are applied to 2010 purse account. In addition, distributions to the purse accounts from the SRC surplus were $65,513. Total Chapter 139 distributions to the 2010 purse accounts were $470,247.

Plainridge - Similar to Suffolk - Prior to the beginning of the racing meet (calendar year 2010), Plainridge makes a determination as to how much will be paid in purses over the term of the meet. This is done with negotiations with the horsemen. It is intended to approximate statutory purses, including as a percentage of handle, premiums received and all 2010 Chapter 128 purse distributions received during 2010 - purse distributions for unclaimed tickets distributed in 2010 of $162,570 are

applied to 2010 purse account. In addition, distributions to the purse accounts from the SRC surplus were $65,513. Total Chapter 139 distributions were $228,083. It is also agreed upon with the horsemen that any over/under payment balances (attached spreadsheet) will be carried over to the next season.

STERLING SUFFOLK RACECOURSE LLC

SUFFOLK DOWNS BOARD OF STEWARDS

Commission Stewards

John H. Morrissey
Susan K. Walsh

Association Stewards

Russel G. Derderian

ADMINISTRATIVE HEARINGS

The primary responsibility of the Stewards is to interpret and enforce the rules of racing as promulgated by the Commonwealth of Massachusetts.

In carrying out this duty, the Stewards presided as judges issuing 57 rulings in 2011 resulting in 37 fines and 13 suspensions.

Suffolk 2010 vs. 2011 FINANCIAL VARIANCE REPORT

Category	2010	2011	Variance	% Variance
Live Performances	101	80	-21	-20.79%
Live Handle	8,878,836	7,725,019	-1,153,817	-13.00%
Simulcast On-Track	131,637,340	128,327,170	-3,310,170	-2.51%
Simulcast Off- Track	94,185,289	62,408,714	-31,776,575	-33.74%
Total Simulcast	225,822,629	190,735,884	-35,086,745	-15.54%
Total Handle	234,701,465	198,460,903	-36,240,562	-15.44%
Commissions	$558,363.69	$539,175.22	-$19,188	-3.44%
Assessments	$378,251.90	$422,939.27	$44,687	11.81%
Association License Fee	$100,500.00	$100,200.00	-$300	-0.30%
Occupational License Fee	$50,650.00	$47,745.00	-$2,905	-5.74%
Outstanding Tickets	$403,149.76	$354,595.47	-$48,554	-12.04%
Fines & Penalties	$5,850.00	$2,700.00	-$3,150	-53.85%
Miscellaneous	$5,858.80	$5,599.90	-$259	-4.42%
TOTAL REVENUES	$1,502,624.15	$1,472,954.86	-$29,669	-1.97%

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at Suffolk
January 01, 2011 to December 31, 2011

Type: All Track Groups **Number of Events: 497**

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$26,325,784	4,467,824.78
Exotic	45,029,492	10,112,221.87
Total	$71,355,276	14,580,046.65

Distribution of Breaks

Association Breaks	$0.00
Breaks to Stabilization Fund	0.00
Breaks to CIF	372,622.02
Minus Breaks	50,013.85
Net Breakage	$322,608.17

Premiums

Suffolk	$0.00
Plainridge	116,751.39
Raynham	0.00
Wonderland	0.00
Total Premiums	$116,751.39

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$109,564.29	0.00000	$183,254.26	$292,818.55
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	0.00	0.00000	8,198.27	8,198.27
Promotional Fund	0.00000	35,851.70	0.00000	67,233.46	103,085.15
Purses	0.00000	1,183,012.37	0.00000	2,011,874.33	3,194,886.70
Breeders	0.00000	144,746.25	0.00000	248,438.15	393,184.40
In-State Host Fee	0.00000	2,864.18	0.00000	9,074.01	11,938.19
Premiums	0.00000	28,485.27	0.00000	86,406.27	114,891.54
Tufts Veterinary	0.00000	0.00	0.00000	19,191.56	19,191.56
Division of Fairs	0.00000	0.00	0.00000	0.00	0.00
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	5,894,958.73	0.00000	8,510,865.06	14,405,823.78
Total Fees	0.00000	7,399,482.78	0.00000	11,144,535.36	18,544,018.14
Retained by Track	0.00000	-2,931,658.00	0.00000	-1,032,313.49	-3,963,971.49
Total Commission	0.00000	$4,467,824.78	0.00000	10,112,221.87	14,580,046.65

State Commission	$292,818.55	Promo Fund	$103,085.15
Daily License Fee	98,400.00	Cap Fund	$380,820.29
Assessment	427,626.70	Grey Adopt	$0.00
Sub Total	$818,845.25	Stabilization	$0.00

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at Express Bets
January 01, 2011 to December 31, 2011

Type: All Track Groups **Number of Events: 753**

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$2,107,380	$353,685.92
Exotic	3,893,949	853,400.71
Total	$6,001,329	$1,207,086.63

Distribution of Breaks

Association Breaks	$71.03
Breaks to Stabilization Fund	0.00
Breaks to CIF	28,940.62
Minus Breaks	155.18
Net Breakage	$28,856.47

Premiums

Suffolk	$0.00
Plainridge	0.00
Raynham	9,303.38
Wonderland	368.52
Total Premiums	$9,671.90

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$8,132.76	0.00000	$15,005.03	$23,137.78
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	10.19	0.00000	1,312.58	1,322.77
Promotional Fund	0.00000	2,461.22	0.00000	5,922.84	8,384.06
Purses	0.00000	85,996.43	0.00000	159,065.27	245,061.70
Breeders	0.00000	10,255.96	0.00000	20,379.13	30,635.09
In-State Host Fee	0.00000	0.00	0.00000	0.00	0.00
Premiums	0.00000	122.28	0.00000	246.24	368.52
Tufts Veterinary	0.00000	0.00	0.00000	304.40	304.40
Division of Fairs	0.00000	0.00	0.00000	0.00	0.00
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	190,046.70	0.00000	360,275.10	550,321.80
Total Fees	0.00000	297,025.53	0.00000	562,510.58	859,536.10
Retained by Track	0.00000	56,660.39	0.00000	290,890.13	347,550.53
Total Commission	0.00000	$353,685.92	0.00000	$853,400.71	$1,207,086.63

State Commission	$23,137.78	Promo Fund	$8,384.06
Daily License Fee	0.00	Cap Fund	$30,263.39
Assessment	0.00	Grey Adopt	$0.00
Sub Total	$23,137.78	Stabilization	$0.00

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at TVG
January 01, 2011 to December 31, 2011

Type: All Track Groups
Number of Events: 722

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$14,195,780	$2,372,688.53
Exotic	20,564,921	4,526,971.57
Total	$34,760,701	$6,899,660.10

Distribution of Breaks

Association Breaks	$0.00
Breaks to Stabilization Fund	0.00
Breaks to CIF	168,949.14
Minus Breaks	2,778.22
Net Breakage	$166,170.92

Premiums

Suffolk	$0.00
Plainridge	59,083.56
Raynham	0.00
Wonderland	0.00
Total Premiums	$59,083.56

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$54,249.63	0.00000	$78,340.13	$132,589.76
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	0.00	0.00000	8,820.21	8,820.21
Promotional Fund	0.00000	16,742.72	0.00000	32,728.53	49,471.26
Purses	0.00000	580,016.66	0.00000	840,514.69	1,420,531.35
Breeders	0.00000	69,651.87	0.00000	108,863.61	178,515.47
In-State Host Fee	0.00000	0.00	0.00000	0.00	0.00
Premiums	0.00000	21,410.68	0.00000	35,214.64	56,625.32
Tufts Veterinary	0.00000	0.00	0.00000	1,628.90	1,628.90
Division of Fairs	0.00000	0.00	0.00000	0.00	0.00
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	571,369.41	0.00000	867,492.20	1,438,861.61
Total Fees	0.00000	1,313,440.96	0.00000	1,973,602.90	3,287,043.86
Retained by Track	0.00000	1,059,247.57	0.00000	2,553,368.67	3,612,616.24
Total Commission	0.00000	$2,372,688.53	0.00000	$4,526,971.57	$6,899,660.10

State Commission	$132,589.76	Promo Fund	$49,471.26
Daily License Fee	0.00	Cap Fund	$177,769.35
Assessment	0.00	Grey Adopt	$0.00
Sub Total	$132,589.76	Stabilization	$0.00

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at Twin Spires
January 01, 2011 to December 31, 2011

Type: All Track Groups **Number of Events: 159**

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$9,574,155	$0.00
Exotic	14,360,728	4,797,271.84
Total	$23,934,883	$4,797,271.84

Distribution of Breaks

Association Breaks	$71.17
Breaks to Stabilization Fund	0.00
Breaks to CIF	106,035.83
Minus Breaks	6,015.13
Net Breakage	$100,091.87

Premiums

Suffolk	$0.00
Plainridge	52,391.56
Raynham	0.00
Wonderland	567.42
Total Premiums	$52,958.98

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$36,487.65	0.00000	$54,141.44	$90,629.09
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	15.30	0.00000	7,187.06	7,202.36
Promotional Fund	0.00000	10,648.02	0.00000	23,338.83	33,986.85
Purses	0.00000	388,288.43	0.00000	576,990.55	965,278.97
Breeders	0.00000	45,488.52	0.00000	75,339.69	120,828.21
In-State Host Fee	0.00000	2,224.75	0.00000	5,083.65	7,308.40
Premiums	0.00000	23,192.42	0.00000	27,615.10	50,807.52
Tufts Veterinary	0.00000	0.00	0.00000	892.23	892.23
Division of Fairs	0.00000	0.00	0.00000	0.00	0.00
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	450,939.62	0.00000	587,209.08	1,038,148.69
Total Fees	0.00000	957,284.71	0.00000	1,357,797.61	2,315,082.32
Retained by Track	0.00000	-957,284.71	0.00000	3,439,474.23	2,482,189.52
Total Commission	0.00000	$0.00	0.00000	$4,797,271.84	$4,797,271.84

State Commission	$90,629.09	Promo Fund	$33,986.85
Daily License Fee	0.00	Cap Fund	$113,238.19
Assessment	0.00	Grey Adopt	$0.00
Sub Total	$90,629.09	Stabilization	$0.00

MASSACHUSETTS STATE RACING COMMISSION
Sterling Suffolk Racecourse, LLP (6000177133)
Capital Improvement Trust Fund (7006 0022)
Statement of Activities
FY 2011 - July 2010 through June 2011

	Fiscal year to date
Fund balance, Beginning of period	$ 952,716.71
Program revenue & interest	651,514.93
Funds available	1,604,231.64
Less expenditures	443,010.60
Fund balance, end of period	1,161,221.04
Funds required for approved projects	30,000.00
Excess or (deficit) of funds available for approved projects	$ 1,131,221.04

Status of Individual Projects

Work Item	Number	Balance @ 7/1/10, Approved Reim. or RFR Amount	RFR Rec'd	FY2011 Expenditures	Status/ Funds Required
Architect & engineering fees	none	n/a	n/a	13,682.00	n/a
Tractors (2)	SCI 00-2	83,509.26	RFR	83,509.26	-
Racetrack	SCI 09-1	78,504.15	RFR	78,504.15	-
Emergency sanitary pipe replace	SCI 09-7	25,000.00	RFR	25,000.00	-
Escalator handrail - south end	SCI 09-8	8,723.12	RFR	8,723.12	-
Gas & diesel fuel pumps	SCI 09-9	5,900.00	RFR	5,900.00	-
Replace dining room ceiling	SCI 10-1	30,000.00	N	-	30,000.00
Fire sprinkler repair	SCI 10-2	106,468.09	RFR	106,468.09	-
Repair equipment yard	SCI 10-3	25,009.00	RFR	25,009.00	-
Flags and banners	SCI 10-4	14,988.37	RFR	14,988.37	-
Rebuild water truck engine	SCI 10-5	13,746.98	RFR	13,746.98	-
Handicap stalls striping $ signage	SCI 10-6	9,311.63	RFR	9,311.63	-
Racetrack 2010	SCI 10-7	37,196.44	RFR	37,196.44	-
ADA Door Operator	SCI 10-10	3,341.56	RFR	3,341.56	-
Utility Pole Replacement	SCI 10-11	17,630.00	RFR	17,630.00	-
		$ 459,328.60		$ 443,010.60	$ 30,000.00

MASSACHUSETTS STATE RACING COMMISSION

Sterling Suffolk Racecourse, LLP (6000177133)

Promotional Trust Fund (7006 0021)

Statement of Activities

FY 2011 - July 2010 through June 2011

	Fiscal year to date
Fund balance, beginning of period	$ 112,813.24
Program revenue & interest	194,310.73
Funds available	307,123.97
Less expenditures	245,000.00
Fund balance, end of period	62,123.97
Funds required for approved projects	614,121.75
Excess (deficit) of funds available for approved projects	$ (551,997.78)

Status of Individual Projects

Work Item	Project Number	Balance @ 7/1/10, Approved Reim. or RFR Amount	RFR Rec'd	FY2011 Expenditures	Status/ Funds Required
2007 Spring Fall Campaign	SPT 07-1	416,000.00	RFR	245,000.00	171,000.00
2008 Direct mail advertising	SPT 08-1	443,121.75	RFR	-	443,121.75
		$ 859,121.75		$ 245,000.00	$ 614,121.75

PLAINRIDGE RACECOURSE

PLAINRIDGE BOARD OF JUDGES

Commission Judges

Joseph Michienzie
Salvatore Panzera
Lawrence Rooney

Association Judge

Peter Tomilla

ADMINISTRATIVE HEARINGS

The primary responsibility of the Board of Judges is to interpret and enforce the rules of racing as promulgated by the Commonwealth of Massachusetts.

In carrying out this duty, the Judges issued 28 rulings in 2011. These rulings included 2 suspensions, 23 fines and other rulings for miscellaneous infractions and/or purse redistributions.

Plainridge 2010 vs. 2011 FINANCIAL VARIANCE REPORT

Category	2010	2011	Variance	% Variance
Live Performances	100	80	-20	-20.00%
Live Handle	1,584,498	1,476,452	-108,046	-6.82%
Simulcast On-Track	48,064,038	46,066,114	-1,997,924	-4.16%
Simulcast Off- Track	9,911,390	5,811,080	-4,100,310	-41.37%
Total Simulcast	57,975,428	51,877,194	-6,098,234	-10.52%
Total Handle	59,559,926	53,353,646	-6,206,280	-10.42%
Commissions	$332,350.80	$335,745.57	$3,395	1.02%
Assessments	$150,260.25	$155,960.74	$5,700	3.79%
Association License Fee	$110,700.00	$110,400.00	-$300	-0.27%
Occupational License Fee	$27,645.00	$22,800.00	-$4,845	-17.53%
Outstanding Tickets	$162,570.35	$171,078.54	$8,508	5.23%
Fines & Penalties	$5,275.00	$1,650.00	-$3,625	-68.72%
Miscellaneous	$2,845.00	$2,305.00	-$540	-18.98%
TOTAL REVENUES	$791,646.40	$799,939.85	$8,293	1.05%

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at Plainridge
January 01, 2011 to December 31, 2011

Type: All Track Groups **Number of Events: 134**

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$14,477,854	$2,455,261.33
Exotic	33,064,712	7,490,717.49
Total	$47,542,566	$9,945,978.82

Distribution of Breaks

Association Breaks	$14,408.99
Breaks to Stabilization Fund	0.00
Breaks to CIF	202,099.00
Minus Breaks	42,345.51
Net Breakage	$174,162.48

Premiums

Suffolk	$610,668.82
Plainridge	0.00
Raynham	209,612.94
Wonderland	0.00
Total Premiums	$820,281.76

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$67,622.07	0.00000	$268,123.47	$335,745.54
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	1,409.94	0.00000	50,427.78	51,837.72
Promotional Fund	0.00000	16,093.82	0.00000	76,432.88	92,526.70
Purses	0.00000	589,157.85	0.00000	1,354,158.88	1,943,316.73
Breeders	0.00000	65,049.51	0.00000	154,966.83	220,016.34
In-State Host Fee	0.00000	32,770.10	0.00000	56,321.10	89,091.20
Premiums	0.00000	218,173.48	0.00000	390,247.24	608,420.72
Tufts Veterinary	0.00000	0.00	0.00000	0.00	0.00
Division of Fairs	0.00000	0.00	0.00000	1,280.03	1,280.03
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	626,127.94	0.00000	1,315,516.70	1,941,644.64
Total Fees	0.00000	1,616,404.70	0.00000	3,667,474.90	5,283,879.61
Retained by Track	0.00000	838,856.63	0.00000	3,823,242.59	4,662,099.22
Total Commission	0.00000	$2,455,261.33	0.00000	$7,490,717.49	$9,945,978.82

State Commission	$335,745.54	Promo Fund	$92,526.70
Daily License Fee	108,900.00	Cap Fund	$253,936.72
Assessment	153,905.90	Grey Adopt	$0.00
Sub Total	$598,551.44	Stabilization	$0.00

MASSACHUSETTS STATE RACING COMMISSION

Ourway - Plainridge Race Course

Capital Improvement Trust Fund (7006 0013)

Statement of Activities

FY 2011 - July 2010 through June 2011

Fund balance, Beginning of period	$ 292,350.54
Program revenue & interest	268,335.63
Funds available	560,686.17
Less expenditures	541,637.77
Fund balance, end of period	19,048.40
Funds required for approved projects	1,041,040.59
Excess or (deficit) of funds available for approved projects	$ (1,021,992.19)

Status of Individual Projects

Work Item	Project Number	Balance @ 7/1/10, Approved Reim. or RFR Amount	RFR Rec'd	FY2011 Expenditures	Status/ Funds Required
Architect & engineering fees	none	n/a	n/a	$ 4,005.00	n/a
Various capital expenditures	PCI 10-01	99,198.43	RFR	99,198.43	-
Various capital items	PCI 10-02	52,878.93	RFR	52,878.93	-
Parking/Facility Renovation	PCI 10-03	1,426,596.00	RFR	385,555.41	1,041,040.59
				-	
		$ 1,578,673.36		$ 541,637.77	$ 1,041,040.59

MASSACHUSETTS STATE RACING COMMISSION

Ourway - Plainridge Race Course

Promotional Trust Fund (7006 0012)

Statement of Activities

FY 2011 - July 2010 through June 2011

	Fiscal year to date
Fund balance, beginning of period	$ 104,849.28
Program revenue & interest	93,992.31
Funds available	198,841.59
Less expenditures	189,375.00
Fund balance, end of period	9,466.59
Funds required for approved projects	-
Excess (deficit) of funds available for approved projects	$ 9,466.59

Status of Individual Projects

Work Item	Project Number	Balance @ 7/1/10, Approved Reim. or RFR Amount	RFR Rec'd	FY2011 Expenditures	Status/ Funds Required
Uplink - June - Nov 2009	PPT 10-1	67,575.00	RFR	67,575.00	-
Uplink - Apr - Nov 2010	PPT 10-02	121,800.00	RFR	121,800.00	-
					-
				-	-
		$ 189,375.00		$ 189,375.00	$ -

STATUS OF GREYHOUND RACETRACKS IN 2011

As a result of Chapter 388 of the Acts of 2008, the two greyhound racetracks located in the Commonwealth were precluded from conducting greyhound races effective January 1, 2010. Therefore, no live greyhound races were conducted during 2011.

Chapter 167 of the Acts of 2009, and subsequently, Chapter 203 of the Acts of 2010 allowed these facilities to continue operations as simulcasting venues without conducting the minimum of 100 live racing performances mandated by Chapter 128C of the General Laws. These facilities offered pari-mutuel wagering on greyhound races conducted outside the Commonwealth as well as both in-state and out of state thoroughbred and harness races, with conditions.

Massasoit Greyhound Association and Taunton Greyhound, Inc. continued simulcasting operations throughout 2011 at Raynham/Taunton Greyhound Park.

Wonderland Greyhound Park continued simulcasting operations, at their facility, until August 18, 2010, when it closed down its racing activities. On June 2, 2011 Wonderland reopened its simulcast operations under Suffolk Downs.

Chapter 194 of the Acts of 2011 (section 70) has extended simulcast racing through July 31, 2014.

Raynham 2010 vs. 2011 FINANCIAL VARIANCE REPORT

Category	2010	2011	Variance	% Variance
Live Performances	0	0	0	0.00%
Live Handle	0	0	0	0.00%
Simulcast On-Track	42,827,404	37,154,037	-5,673,367	-13.25%
Simulcast Off- Track	0	0	0	0.00%
Total Simulcast	42,827,404	37,154,037	-5,673,367	-13.25%
Total Handle	42,827,404	37,154,037	-5,673,367	-13.25%
Commissions	$601,973.23	$556,628.99	-$45,344.24	-7.53%
Assessments	$175,671.97	$149,059.45	-$26,612.52	-15.15%
Association License Fee	$107,700.00	$106,800.00	-$900.00	-0.84%
Occupational License Fee	$680.00	$30.00	-$650.00	-95.59%
Outstanding Tickets	$384,266.40	$304,578.84	-$79,687.56	-20.74%
Fines & Penalties	$0.00	$0.00	$0.00	0.00%
Miscellaneous	$430.91	$309.99	-$120.92	-28.06%
TOTAL REVENUES	$1,270,722.51	$1,117,407.27	-$153,315.24	-12.07%

- Chapter 9 of the Acts of 2011 (section 30) states that only breaks generated by simulcast greyhound racing from 4/1/11 -12/31/11 shall be dedicated to the racing stabilization fund established in section 20. In addition, this same session law directed all funds generated by Raynham and Wonderland that were dedicated to the capital improvement and promotional trust funds to be placed into the racing stabilization fund.

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at Raynham
January 01, 2011 to December 31, 2011

Type: All Track Groups **Number of Events: 108**

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$6,575,524	$1,126,232.35
Exotic	30,578,513	6,994,780.05
Total	$37,154,037	$8,121,012.40

Distribution of Breaks

Association Breaks	$0.00
Breaks to Stabilization Fund	110,598.41
Breaks to CIF	0.00
Minus Breaks	2,586.36
Net Breakage	$108,012.05

Premiums

Suffolk	$457,188.33
Plainridge	99,939.00
Raynham	0.00
Wonderland	0.00
Total Premiums	$557,127.33

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$61,247.95	0.00000	$495,391.38	$556,639.34
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	4,304.68	0.00000	52,208.31	56,512.99
Promotional Fund	0.00000	10,044.95	0.00000	66,182.73	76,227.68
Purses	0.00000	0.00	0.00000	10.35	10.35
Breeders	0.00000	0.00	0.00000	0.00	0.00
In-State Host Fee	0.00000	18,020.20	0.00000	49,362.22	67,382.42
Premiums	0.00000	148,147.53	0.00000	408,830.13	556,977.66
Tufts Veterinary	0.00000	0.00	0.00000	0.00	0.00
Division of Fairs	0.00000	0.00	0.00000	946.35	946.35
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	225,798.03	0.00000	937,101.38	1,162,899.41
Total Fees	0.00000	467,563.33	0.00000	2,010,032.85	2,477,596.19
Retained by Track	0.00000	658,669.02	0.00000	4,984,747.20	5,643,416.21
Total Commission	0.00000	$1,126,232.35	0.00000	$6,994,780.05	$8,121,012.40

State Commission	$556,639.34	Promo Fund	$76,227.68
Daily License Fee	107,100.00	Cap Fund	$56,512.99
Assessment	133,407.50	Grey Adopt	$0.00
Sub Total	$797,146.84	Stabilization	$110,598.41

Wonderland 2010 vs. 2011 FINANCIAL VARIANCE REPORT

Category	2010	2011	Variance	% Variance
Live Performances	0	0	0	0.00%
Live Handle	0	0	0	0.00%
Simulcast On-Track	11,194,266	2,523,747	-8,670,519	-77.46%
Simulcast Off- Track	0	0	0	0.00%
Total Simulcast	11,194,266	2,523,747	-8,670,519	-77.46%
Total Handle	11,194,266	2,523,747	-8,670,519	-77.46%
Commissions	$243,166.79	$63,093.75	-$180,073.04	-74.05%
Assessments	$44,990.92	$22,619.44	-$22,371.48	-49.72%
Association License Fee	$67,800.00	$61,200.00	-$6,600.00	-9.73%
Occupational License Fee	$180.00	$30.00	-$150.00	-83.33%
Outstanding Tickets	$117,057.33	$135,059.21	$18,001.88	15.38%
Fines & Penalties	$0.00	$0.00	$0.00	0.00%
Miscellaneous	$1,850.33	$156.93	-$1,693.40	-91.52%
TOTAL REVENUES	$475,045.37	$282,159.33	-$192,886.04	-40.60%

MASSACHUSETTS STATE RACING COMMISSION
Summary of Pari-mutuel Activities at Wonderland
June 02, 2011 to December 31, 2011

Type: All Track Groups
Number of Events: 468

Pools and Commissions

Menu	Pools	Commissions
Win/Place/Show	$364,224	$68,598.24
Exotic	2,159,523	511,197.70
Total	$2,523,747	$579,795.94

Distribution of Breaks

Association Breaks	$0.00
Breaks to Stabilization Fund	7,640.40
Breaks to CIF	0.00
Minus Breaks	47.33
Net Breakage	$7,593.07

Premiums

Suffolk	$0.00
Plainridge	0.00
Raynham	0.00
Wonderland	0.00
Total Premiums	$0.00

Distribution of Commissions	WPS Take-Out	WPS Comm	Exotic Take-Out	Exotic Comm	Total
State Commission	0.00000	$9,105.60	0.00000	$53,988.08	$63,093.68
Racing Stabilization Fund	0.00000	0.00	0.00000	0.00	0.00
Capital Improvement Fund	0.00000	910.56	0.00000	5,398.81	6,309.37
Promotional Fund	0.00000	910.56	0.00000	5,398.81	6,309.37
Purses	0.00000	0.00	0.00000	0.00	0.00
Breeders	0.00000	0.00	0.00000	0.00	0.00
In-State Host Fee	0.00000	0.00	0.00000	0.00	0.00
Premiums	0.00000	0.00	0.00000	0.00	0.00
Tufts Veterinary	0.00000	0.00	0.00000	0.00	0.00
Division of Fairs	0.00000	0.00	0.00000	0.00	0.00
Greyhound Adoption Fund	0.00000	0.00	0.00000	0.00	0.00
Out of State Host Fee	0.00000	11,545.67	0.00000	68,022.65	79,568.32
Total Fees	0.00000	22,472.39	0.00000	132,808.34	155,280.73
Retained by Track	0.00000	46,125.85	0.00000	378,389.37	424,515.22
Total Commission	0.00000	$68,598.24	0.00000	$511,197.70	$579,795.94

State Commission	$63,093.68	Promo Fund	$6,309.37
Daily License Fee	61,200.00	Cap Fund	$6,309.37
Assessment	20,458.65	Grey Adopt	$0.00
Sub Total	$144,752.33	Stabilization	$7,640.40

LABORATORY ANNUAL REPORT

The Commonwealth of Massachusetts
State Racing Commission Laboratory
305 South Street
Jamaica Plain, MA 02130

Telephone 617-522-9807 **Telefax 617-727-3179**

February 28, 2012

TO: **Massachusetts State Racing Commission**

FROM: **Tracy Payne, Chief of Laboratory**

RE: **Laboratory Annual Report for 2011**

QUALITY RACING

The State Racing Commission Laboratory is an important link in the Racing Commission's effort to ensure the integrity of pari-mutuel racing, to guard the health of the race animals and to safeguard the interest of the wagering public and racing participants within the Commonwealth. The primary function of the State Racing Commission Laboratory is to analyze samples of urine and blood for the presence of any drug which is of such character as could affect the racing condition of the animal. Samples are taken from every winning horse and any other horse designated by Racing Commission officials in cooperation with track officials. In the calendar year 2011 samples were tested from Plainridge Racecourse and Suffolk Downs. Testing is performed by a specially trained staff at modern facilities located within the State Laboratory Institute, University of Massachusetts Medical School, Jamaica Plain Campus.

LABORATORY STAFF

Chief of Laboratory
Tracy Payne, B.S., Biology, B.S., Med. Lab. Sci.

Assistant Chemists
Lucille Saccardo, B.S., Animal Science
Melchor S. Layon, A.S.

INTEGRITY OF SAMPLES ENSURED

Special precautions are taken at all Massachusetts race tracks when post race urine and blood samples are collected to ensure that no tampering can take place. In order to assure the continuity-of-evidence, every winning horse and all designated horses are under the surveillance of a uniformed Massachusetts State Police officer and a Racing Commission Testing Assistant from the finish of the race until specimens are obtained. All equine samples are properly identified and transported immediately after the close of each racing performance by a uniformed Massachusetts State Police officer to the Racing Commission Laboratory in Jamaica Plain and placed in a locked and refrigerated laboratory locker for analysis the following day.

Responsibility for the custody of samples is assumed by the State Racing Commission Laboratory personnel once the samples have been placed in the laboratory locker or upon receipt of locked boxes. To eliminate bias, the chemist identifies the sample by number only. After analyses are completed, any positive results are reported directly to the State Racing Commission.

DRUG FINDINGS

In the calendar year 2011, the State Racing Commission Laboratory analyzed the following numbers of samples for the presence of drugs:

SOURCE	URINE	BLOOD	POSITIVES*
Thoroughbred	1,094	357	2
Harness	1,054	313	3
TOTALS	**2,148**	**670**	**5**

* Not including Controlled/Bleeder Medication Program violations.

CONTROLLED MEDICATION PROGRAM

All equine urine samples submitted were subjected to screening for phenylbutazone and/or its metabolites as per the Massachusetts State Racing Commission Controlled Medication Program Rules with the following results:

Source	Drug Found Not On Program	No Drug Found On Program
Thoroughbred	-0-	-0-
Harness	-2-	-0-

BLEEDER MEDICATION PROGRAM

All equine urine samples submitted were subjected to screening for the presence of SALIX (Furosemide) as per the Massachusetts State Racing Commission Bleeder Medication Program Rules with the following results:

Source	Lasix Found Not On Program	No Lasix Found On Program
Thoroughbred	-0-	-0-
Harness	-0-	-0-

DRUG FOUND IN SAMPLES

The drug reported as Equine positive was as follows:

SOURCE	DRUG FOUND	#SAMPLES
Suffolk Downs		
"	Clenbuterol	1
"	Naproxen	1
Plainridge	Flunixin	3

SPECIAL ANALYSIS

In 2011, in cooperation with the Department of Agricultural Resources, this laboratory analyzed blood samples taken from 12 draft animals involved in 'pulling contests' at the Marshfield Agricultural Fair and the Eastern States Exposition (BigE).

No Drugs were found in these samples.

QUALITY ASSURANCE PROGRAM

As a member laboratory in the **Association of Racing Commissioners International Quality Assurance Program (ARCI-QAP)**, this laboratory participated with the **Interstate Drug Testing Alliance (IDTA)** at Iowa State University during 2011, and received and analyzed controlled administration sets of equine urine samples containing the following drugs:

Levamisole	Zomepirac	Zilpaterol	Etodolac
Tilemanine	Zolazepam		

SUMMARY

Attached, please find a breakdown of the numbers of samples submitted to this laboratory in 2011, by month and track.

Respectfully submitted,

Tracy Payne
Chief of Laboratory
State Racing Commission

Official Urine & Blood Samples Analyzed for 2011

	Suffolk		Plainridge		Monthly Totals	
Month	Urine	Blood	Urine	Blood	Urine	Blood
January					-	-
February					-	-
March					-	-
April					-	-
May	53	12	114	32	167	44
June	195	30	154	39	349	69
July	157	72	123	55	280	127
August	227	80	138	37	365	117
September	224	66	139	49	363	115
October	198	87	156	36	354	123
November	40	10	140	40	180	50
December			90	25	90	25
Totals	1094	357	1054	313	2148	670

CONTACT INFORMATION

STATE RACING COMMISSION
DIVISION OF PROFESSIONAL LICENSURE
1000 Washington Street, Suite 710
Boston, MA 02118

BOSTON OFFICE	(617) 727-2581
FAX	(617) 727-6095
WEB SITE	www.mass.gov/src
PLAINRIDGE	(508) 643-2500 Ext. 109
RAYNHAM/TAUNTON	(508) 824-4071 Ext. 105
SUFFOLK DOWNS	(617) 568-3336

7c

Division of Racing

To: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
James McHugh, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

cc: Rick Day, Executive Director

From: Jennifer Durenberger, Director of Racing

Date: 3 May, 2013

Approval of 2013 "Special Events" to be simulcast at Raynham Park

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Raynham Park recently submitted its request to offer 15 "Special Events" to its simulcast wagering patrons. Ordinarily, Raynham Park must pay a 3% premium to the running horse racing licensee (Sterling Suffolk Racecourse, LLC) on all interstate running horse races Raynham offers to its customers. [M.G.L. c.128C §2(2)]

M.G.L. c.128C §2(3) permits the offering of simulcast wagering on 15 "running horse special events... without paying the premiums" otherwise required.

The submitted list of "Special Events" is as follows:
The Kentucky Derby (May 4th), the Preakness Stakes (May 18th), the Belmont Stakes (June 8th), and 12 Breeder's Cup races offered over the course of two days in November.

It is my recommendation that these Special Events be approved.

Respectfully submitted,

Jennifer Durenberger
Director of Racing

RAYNHAM TAUNTON greyhound park

1958 Broadway
P. O. Box 172, Raynham, MA 02767
Office Telephone: (508) 824-4071
Fax: (508) 821-3239 (Office 1)
Fax: (508) 822-4396 (Office 2)

Jennifer Durenberger
Director of Racing
Massachusetts Gaming Commission
84 State Street Suite 720
Boston, Ma 02109

April 24, 2013

Dear Ms. Durenberger,

Raynham Park respectfully informs racing division of Massachusetts Gaming Commission that we will be taking our "15" special events under chapter 128c of general laws.

Raynham Park will simulcast the Kentucky Derby May 4th, The Preakness May 18th and the Belmont Stakes on June 8th.

We also simulcast 12 races of the "Breeder'sCup" taking place on November 1 and 2.

Thank you in advance for your cooperation relative to this matter

Warm Personal Wishes,

Gary Temple

Simulcast Director