

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: January 10, 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 45th public meeting.

Approval of Minutes:

See transcript page 2.

Commissioner McHugh stated that the Commission has distributed the minutes for the January 3 meeting to all the Commissioners.

Motion made by Commissioner McHugh to adopt the minutes of January 3, 2013 as distributed. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Public Education and Information:

See transcript pages 2-68.

Report from the Ombudsman – Ombudsman Ziembra stated that he continues to have meetings and conversations with applicants and communities. He is visiting the City of Springfield tomorrow and will be meeting with an applicant there. He has spent time over the last week discussing the draft permitting documents and has fielded numerous questions regarding the timing of the RFA-1 licensing reviews and the timetable for referendum scheduling. He recommended discussing this timing after the Commission receives the RFA-1 applications.

He stated that the AIA will issue a white paper as a follow-up to the design forum held last month and he recommended that the Commission discuss design criteria for gaming establishments after receiving the white paper.

Mr. Ziemba stated that he has been working with regional planning agencies to fine tune the process for helping host and surrounding communities. He has been working with other agencies to develop a system to help communities and applicants work through the state permitting process and finalize plans for infrastructure improvements. He recommended developing a process to expedite the permitting that will occur after the Commission grants conditional licenses, and he will work on developing this process over the coming months. He stated that he also plans to inform communities, prior to the time they sign the host community agreements, about what agencies involved in the permitting and infrastructure approval processes expect.

Dave Mohler, the Executive Director of the Office of Transportation and Planning for the Mass Department of Transportation, and Maeve Valley-Bartlett, Director of MEPA, joined Mr. Ziemba to discuss how other agencies will help with the review of applications. Ms. Valley-Bartlett provided an overview of the MEPA process and stated that the process will be perfectly suited for the type of coordination the Commission will require. She stated that MEPA coordinates with all state agencies granting environmental permits in order to expedite the permitting process.

Mr. Mohler provided an overview of the Mass Department of Transportation (DOT) involvement in the permitting process. He stated that DOT permitting relates to access to the state highway system. Commissioner Zuniga asked what would happen if a preferred alternative were included in a host community agreement, but along the way applicants conduct additional studies that result in another alternative being preferred. Mr. Ziemba stated that a host community agreement could contain a provision to allow reopening negotiations to mitigate any impacts identified in the MEPA process or RFA-2 application. In addition, the Commission could retain its ability to condition a license upon a revision of a host community agreement. Commissioner McHugh stated that it is his understanding that it is very unlikely that applicants will complete the MEPA process before the Commission considers the Phase 2 applications. Determining whether the applicant is capable of executing the plan may take a significant period after the license is awarded. Ms. Valley-Bartlett stated that this is a fair assessment of the process.

Commissioner Stebbins stated that, given the size of the anticipated gaming facilities, all applicants will likely go to the Environmental Impact Report (EIR) stage. He recommended that the Commission stress that applicants include as much information as possible in the Environmental Notification Form (ENF). Mr. Mohler agreed, but clarified that the quality of the information is more important than the quantity, because bad information will only result in delays when developers resubmit the information. Chairman Crosby stressed that, while the Commission appreciates the fact that a developer may not want to spend too much money upfront without knowing if it will get a license, developers that do not perform enough due diligence upfront may delay their own permitting process.

Mr. Ziemba reviewed the public comments that the Commission has received regarding Policy Question 12, which asks to what degree will an applicant be required to have progressed in federal, state, and local permitting, and other regulatory processes before submitting RFA-2 applications.

His recommendation is that the Commission not specifically mandate completion of local and state permitting, but still require that applicants file the ENF and proof of local zoning compliance.

Motion made by Commissioner Zuniga that the Commission accept the recommendations from Ombudsman Ziemba pursuant to Policy Question 12 as contained in his written memorandum. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

Community Disbursement – Ombudsman Ziemba stated that he has been working with Attorney Grossman on an agreement for disbursement of a portion of the application fee to cities and towns for planning and community mitigation. Ombudsman Ziemba and Attorney Grossman have also been working with the Department of Revenue Division of Local Services to address municipal finance concerns. He stated that there are two issues to be decided: the purpose for which the funds can be utilized and which communities can receive these funds. Attorney Grossman stated that there are two potential options for reimbursement. The first option is straight reimbursement wherein a municipality expends appropriated funds and the Commission then reimburses the community if the community met the requirements of the statute and regulations. The second option is providing the community with a gift grant that allows the municipality to receive unappropriated funds. Mr. Ziemba stated that the Commission will discuss these items at an upcoming meeting.

Administration:

See transcript pages 68-86.

Director Glovsky introduced two MIT externs who are working with the Commission, Jamila Smith-Dell and Anthony Yu.

Master Schedule – Chairman Crosby reviewed the Master Schedule. He stated that RFA-1 applications are due January 15 and the goal is to move the process along expeditiously.

Director Glovsky stated that applicants had questions regarding the procedures for submitting the application fee submittal procedures, and the Commission will post additional instructions on the website. She stated that the procurements for equine testing and the research agenda have had a good response. The procurements are proceeding through Phase 1 and the Commission will be distributing the responses to the procurement teams. She stated that the audit services procurement for the Racing Division will be posted Friday afternoon.

Employee Manual – Commissioner Zuniga stated that he has provided the Commission with a revised version of Chapter 6 of the Employee Manual. Commissioner Stebbins recommended amending Chapter 6 to include in the press relations section the Executive Director as a contact person in the absence of the Director of Communications.

Motion made by Commissioner McHugh that the Commission adopt the Employee Manual Chapter 6 as amended. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Commissioner Zuniga stated that Attorney Grossman has drafted an update to Section 2 of the Employee Manual that enhances the public records request policy. This update incorporates a more

detailed procedure and centralizes the response and handling of public records with the Legal Department.

Motion made by Commissioner Zuniga that the Commission adopt the public records request policy as presented and incorporate it as part of the procedures in the Employee Manual. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Ombudsman Ziemba stated that MEPA regulations require that entities file an ENF form within ten days of filing for a state permit. He recommended clarifying in the regulations that this filing will occur during the RFA-2 application phase.

Finance Update – Commissioner Zuniga provided the Commission with a budget to actual expenditure report through the second quarter, which ended December 31, 2012. He stated that the Commission is incurring approximately \$300,000 of non-salary expenditures each month and he anticipates being within the anticipated budget at the end of the fiscal year. He presented a proposal to enter a contract with Future Technologies Group to enhance the Commission’s voice and data technology.

Motion made by Commissioner Zuniga that the Commission execute a contract with Future Technologies Group for \$25,000 to enhance the voice and data services the Commission currently has. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

A brief recess was taken.

Chairman Crosby reconvened the 45th meeting.

IEB Report:

See transcript pages 86-119.

Scope of Licensing – Commissioner Cameron stated that all interested parties who have requested scope of licensing meetings have had those meetings and the IEB has sent all qualifier determination letters. She stated that additional people are asking questions about RFA-1 but the Commission does not know if they will choose to have a scope of licensing meeting or submit an application. She stated that she is attending two clarification meetings with potential applicants today. She reminded everyone that the application deadline is January 15. The Commission received three applications to date, two of which the IEB has deemed to be administratively complete, and the IEB is now conducting background investigation on individuals and entities in those applications.

IEB Director Search Update – Commissioner Cameron stated that the Commission has completed the search for an IEB Director. The IEB received applications for the position from 54 individuals and the IEB informally interviewed eight of those individuals. Four candidates moved on to a formal interview with an advisory panel comprised of law enforcement executives, and the panel unanimously decided to recommend one candidate to Commissioner Cameron for an interview before the full Commission.

Commissioner Cameron introduced candidate Karen Wells, who is presently the Undersecretary for Law Enforcement at the Massachusetts Executive Office of Public Safety, and provided information on her background and qualifications. Secretary Wells addressed the Commission and answered questions addressed to her background and the IEB Director position. The Commission agreed that Ms. Wells was a candidate highly qualified to take over this position as Director of Investigations and Enforcement.

Motion made by Commissioner Cameron to appoint Karen Wells as the first Director of Investigations and Enforcement. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

Commissioner Cameron excused herself from the remainder of the meeting in order to attend two previously scheduled applicant meetings.

Racing Division:

See transcript pages 119-151.

Report from Director of Racing Division – Director Durenberger addressed the Commission. She stated that Racing Division has completed the physical move of the racing documents from four different locations. She stated that with her were Danielle Holmes, Staff Attorney, and David Murray, Consultant, who were present to discuss pari-mutuel and simulcast statute review.

Mr. Murray stated that the Gaming Act recognizes the continuation of the vitality of the racing statute and authorizes the Commission to issue a simulcasting license to a gaming establishment and entities that were formerly licensed under the racing statute. However, the Gaming Act does not provide a regulatory framework for these new categories of simulcasting licenses. He stated that the Racing Division has concluded that Section 7B licensees should be subject to the same regulation as the racing licensees and the Commission should create a regulatory model to preserve the obligations to carry local signal and to make this system applicable to a non-racing licensee.

Mr. Murray stated that the Commission should revisit issues relating to the capital improvements and promotional activities trust fund. He stated that the Racing division sees no need for the Commission to provide supervision over the licensees' utilization of their own money for promotional activities and capital improvement funds. The current system is cumbersome and expensive. He stated that the Racing Division is close to recommending that the Commission scrap this system and set up a fund for capital improvements at racetracks that are designed to enhance the living and working conditions of occupational licensees as well as enhancing the safety and welfare of the horses. Director Durenberger stated that capital for the fund would be provided by take-outs of a small percentage of total amounts wagered at the track.

Commissioner McHugh stated that the expanded gaming legislation requires the Commission to analyze and report on the efficacy of Chapters 128A and 128C and recommend either replacing those laws or keeping them. He questioned whether the Commission has the regulatory power to create a sound regulatory environment for pari-mutuel and simulcast racing, and could do so by reinstating necessary portions of Chapters 128A and 128C as regulations. Mr. Murray stated that

the question then would become what statutory authority authorized a requirement that simulcast licensees carry local signals.

Commissioner McHugh recommended inviting comment on whether there is a need to replace Chapters 128A and 128C. Chairman Crosby asked Chief of Staff Reilly to post this request for comment on the Commission website. He stated that the Commission will seek further information from the legislature and continue this discussion at a future meeting.

Regulation Promulgation Process:

See transcript pages 151-161.

Attorney Grossman stated that he has submitted to the Commission a memorandum detailing a plan for writing and adopting the comprehensive RFA-2 regulations. He stated that it is important that the Commission put in place comprehensive regulations and develop a written process for drafting these regulations. He stated that his memorandum has been reviewed by the gaming and legal consultants, who will play a role in the process. He stated that the goal is to make any adjustments and approve this plan so that the drafting process can commence.

He recommended putting together a comprehensive outline of what the regulations will look like. This would include highlighting priority areas and determining who will write regulations in the different areas. The Commission will consider whether any individual Commissioner has an interest in either personally drafting regulations in a particular area or being involved in drafting of regulations in a particular area. The legal staff will then draft regulations in earnest, while serving as the point of contact to ensure that there is a uniform process in place and everyone knows where to go with inquiries. An outline of the policy decisions the Commission has made to date will be created and woven into the initial draft regulations. After the regulations have been drafted, the Commission will make all required notifications schedule a public comment period, and hold a public hearing. After the public hearings, the Commission will make any necessary changes and file the regulations with the Secretary of State. He stated that the legal staff is currently working on the timing for all these steps.

Key Policy Questions:

See transcript pages 161-162.

Meetings - Chief of Staff Reilly stated that the Commission has scheduled meetings to discuss key policy questions for Tuesday, January 22 and Wednesday, January 23 from 1:00 to 5:00 p.m. in the current meeting room. She stated that the Commission will post the questions to be covered for additional public comment; however, if anyone has already submitted comments, they do not have to resubmit those comments.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

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

2. Massachusetts Gaming Commission January 3, 2013 Meeting Minutes
3. MAPC Response to Policy Question 12 Analysis
4. MMA January 9, 2013 Response to Policy Question 12 Analysis
5. DLA Piper January 9, 2013 Response to Policy Question 12 Analysis
6. Massachusetts Gaming Commission Section 6 of Employee Manual
7. Massachusetts Gaming Commission Public Records Request Policy
8. January 10, 2013 Memorandum Regarding Recommendation to Execute a Contract with FTG for Expansion of Voice & Data Technology
9. Massachusetts Gaming Commission 2nd Quarter Budget to Actual Expenditure Report
10. Racing Division Staff Update on Legislative Report Review
11. January 10, 2013 Memorandum Regarding Regulation Promulgation Strategy

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