

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: October 16, 2012

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 31st public meeting.

Approval of Minutes:

See transcript page 4.

Chairman Crosby stated that the October 9, 2012, minutes have not been reviewed so a vote will be taken at the next meeting.

Project Work Plan:

See transcript pages 4-66.

Consultant Status Report – The Commission’s gaming consultants, represented by Guy Michael, Steve Ingis, and Bob Carroll, were present to provide an update of the progress made over the past week. Mr. Carroll stated that considerable time was spent supplementing and refining the strategic plan and that supplementation resulted in a second draft, which was delivered to the Commission yesterday. The primary changes contained in the second draft came in response to the Commission's questions regarding the first draft. Mr. Carroll stated that, among other things, the consultants researched and conferred about best practices regarding the scope of licensing and qualifier identification processes, which he anticipates will be moving forward soon. The consultants now are researching, identifying, and discussing various policy issues the Commission will need to address in order to move forward with the regulation drafting process for Phase 2.

Commissioner Zuniga stated that the Commission should consider issuing the RFA for the Category 2 slots parlor first to comply with the statute and then issue the RFA for the Category 1 licenses several days later. Commissioner McHugh stated that if the RFA-2 for the slots parlor were issued first, the Commission would be fully compliant with the statutory command. He recommended issuing the RFA-1 to everyone on Wednesday, October 17, as scheduled and then think about issuing the substantive RFA-2 for the slots parlor license before issuing the RFA-2 for casinos. Chairman Crosby stated that he did not believe the intention of the Legislature was to slow down the progress of casino licensing in order to expedite the slot parlor process. Commissioner Cameron stated that the interested parties will complete the forms quickly and it will be up to the Commission to decide where it wants to focus investigative resources. She stated that the slots license could be focused on first and she does not anticipate someone not being prepared for the background investigation phase.

Commissioner McHugh suggested issuing the RFA-1 for the slots parlor on October 17 as scheduled and issuing the RFA-1 for casinos a few days later. Mr. Michael stated that he agrees with Commissioner McHugh in terms of a sequential issuance. Chairman Crosby stated that issuing the Category 2 RFA-1 on October 17 and the Category 1 RFA-1 on October 19 would accomplish technical compliance with the statute and leave open the question of how resources are allocated thereafter.

Motion made by Commissioner McHugh that the Commission issue an RFA-1 for Category 2 slots parlor on Wednesday, October 17, 2012, and that the Commission thereafter issue an RFA-1 for the Class 1 casinos on Friday, October 19, 2012. Motion seconded by Commissioner Cameron. The motion passed by a 4-1-0 vote. (Commissioner Stebbins opposed).

Chairman Crosby stated that he would like to discuss convening a group meeting for everybody who is thinking about filing an RFA-1. This meeting would consist of a common presentation about the process and a question and answer session. After that meeting, the process of scheduling individual meeting with applicants can begin. Mr. Carroll stated that a specific date has not been set for the initial meeting but the consultants are prepared to conduct the general meeting on a date the Commission chooses. Mr. Ingis stated that October 29 had been discussed as a potential date for that meeting. Mr. Carroll stated that he recommends the subsequent individual meetings be preceded by submission of the potential applicant's table of organization and that of its affiliated entities so that a meaningful discussion can take place.

Chairman Crosby asked if the group meeting should be an open public meeting so more than one Commissioner can attend. Mr. Carroll stated that he sees no problem with that, as no specific applicant information will be discussed. The Commission decided to hold the group meeting on the morning of Monday, October 29, and that the meeting will be an open public meeting. Applicants should let Commission know if they would like to have an individual meeting with the consultants to discuss the qualifier process as it applies to their specific organization, and the Commission will schedule a meeting for that purpose.

Commissioner McHugh asked if it is contemplated that the individual meetings will be between the consultants and the applicant. Mr. Michael stated that that at least one Commissioner may

want to be present at these meetings. Commissioner McHugh recommended the Commission formally authorize the consultants to define the scope of licensing for the individual applicant at those meetings, with the understanding that any disagreements or differences will be brought before the full Commission for approval. Commissioner Zuniga stated that he agrees with empowering the consultants, but would like to see representation from the Commission at those meetings, perhaps in the form of one Commissioner. Mr. Ingis stated that in his past experience Commissioners have not been present in the one-on-one meetings. Commissioner Stebbins asked if it was appropriate to have legal staff participate and the consultants agreed it would be. Mr. Carroll advised that staff be present rather than Commissioners.

Motion made by Commissioner McHugh that the Commission delegate the firm of Michael and Carroll and the firm of Spectrum, acting together, to conduct a meeting on a date to be selected for all interested applicants to discuss the general scope of the licensing process, and that, thereafter, in the fashion they elect, the consultants conduct meetings with interested parties with respect to individual scope of licensing issues, subject to an appeal to the Commission, in accordance with the Commission's now existing regulations, of any areas, questions or issues, as to which there is a disagreement between the interested party and the consultants. Seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh stated that a notice can be posted to the public on Wednesday that the Commission is issuing the RFA-1 and accepting RFA-1 applications from those interested in a Category 2 license. On Friday, a notice can be posted stating the Commission is issuing an RFA-1 and accepting applications for Category 1 licenses.

PMA Timeline Update – Scott Libby and Angel Arvelo of PMA Consultants addressed the Commission. Mr. Arvelo stated that they are still working toward a February, 2014, date for issuing the Category 2 license. He stated that they have been working with Commissioner Zuniga and Director Glovsky, and with several of the gaming consultants, to review the critical path to licensing, especially Category 2 licensing, to see if they can reach a date earlier than February, 2014.

He stated that recent achievements include the hiring of a racing director and initiation of the process of the public procurement of investigation services. Some of the milestones scheduled for the next several weeks are delivery of the strategic plan, publication of the RFA process for the Phase 1 applications, and determination of the scope of licensing for investigations for Phase 1 applications. Other items include development of the RFA for the research agenda, hiring of the ombudsman, convening the gaming policy advisory committee, continuation of the procurement process for investigation services, interviews of applicants for the general counsel and executive director positions, and drafting necessary MOUs.

Commissioner McHugh recommended looking at the timeline to see what deadlines are coming and to think about critical areas where timelines can be collapsed. Chairman Crosby stated that PMA is building this timeline and training Commission staff on how to use it so that the Commission can manage it in the future. Chairman Crosby stated that it would be important to

include space needs in the timeline, as the Commission is outgrowing its current space. Commissioner Cameron recommended including the IEB hiring process on the timeline.

A brief recess was taken.

Chairman Crosby reconvened the 31st meeting.

Chairman Crosby stated that the Commission is required to submit an annual report to the Legislature, and Commissioner McHugh has prepared a draft report. Commissioner Zuniga stated that he can provide information relative to financial expenditures for this report. Commissioner Stebbins recommended including information on the three-site meeting that was held on the regulations and the fact that two Commission meetings have been held outside of the Boston area. He stated that he would make some revisions to the draft report and send them to Chairman Crosby.

Administration:

See transcript pages 66-67.

Personnel Searches – Commissioner Zuniga stated that a temporary generalist position has been posted. Chairman Crosby stated that searches are ongoing for the Executive Director, Director of Investigations and Enforcement, General Counsel, Staff Counsel, fellowship attorney, two racing employees, and executive assistants.

Finance/Budget:

See transcript pages 67-95.

Budget Update - Commissioner Zuniga stated that he has submitted a summary report of first quarter expenditures on a cash basis. He stated that some recent expenses are not included as they have been incurred but not paid. He submitted a summary report for line items, which are tracking as expected, with the exception of the salary line item, which is lower than expected due to the fact that some positions have not yet been filled. He stated that investigative services are not reflected in this budget, as the expense will be borne entirely by the applicants, nor are expenses regarding the research agenda.

Commissioner Zuniga stated that he has submitted a summary memo relative to extension of the contract with the gaming consultants. He stated that he has reached a tentative agreement with the consultants to extend their contracts. This extension would include a slight increase in the lump sum monthly fee they have been receiving. The increase recognizes that more effort on the consultants' part will be required for the RFA-2 process than was required for the RFA-1 process. The extension will be for the remainder of the fiscal year, which ends on June 30, 2013.

Motion made by Commissioner Zuniga to ratify the tentative agreement with the gaming consultants to extend the contract for the amount and terms outlined in the memoranda included

as part of the meeting packet. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Commissioner Zuniga stated that the Commission is going to have to interpret the language the legislation that allows the Commission to assess costs to its licensees in proportion to the number of gaming positions each utilizes. He stated that the assessment of costs in proportion to gaming positions is simple and straightforward after a license holder's gaming establishment is up and running. If the Commission must wait to make an assessment until that point, however, it may face a funding problem. If the Commission has the ability to base its assessment on projected positions, then there is not likely to be a funding problem. After a brief discussion, the Commission decided that the assessment provisions of the statute, and their possible interpretations, deserved careful analysis so that financial planning can proceed on a sound footing.

Commissioner Zuniga stated that, at a prior meeting, he was given the authority to negotiate a sole service contract with the consultants for the purpose of conducting the RFA-1 investigations. In reviewing the timetable, however, he determined there is sufficient time to conduct a competitive procurement and, therefore, an RFR for investigative services has been posted. Commissioner Crosby suggested that, because of the Commission's prior authorization of a sole-source contract, it would be worthwhile for the Commission as a whole to ratify the changed course. In the discussion that followed, Commissioner, Commissioners Cameron and McHugh and Chairman Crosby explained their reasons for believing that the changed course was appropriate.

Motion made by Commissioner Zuniga to ratify his issuance of an RFR for competitive procurement of RFA-1 investigative services. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Procurement Update – Commissioner Zuniga stated that the stenographic services RFR was issued and responses are due on October 26.

Commissioner Zuniga stated that three responses have been received for financial advisory services. Chairman Crosby stated that the Commission made a tentative decision at an earlier meeting that it was worthwhile to try to increase competition for gaming licenses by engaging a financial advisor who could help the Commission interest investors in financing applicants for a Massachusetts gaming license. He stated that in considering the issue further, the general consensus is that the best way for the Commission to encourage financing is to have a clear, understandable, predictable, reliable, and stable licensing and regulation process which is above reproach, and if that kind of an environment is created the investors will be there. As a consequence and after looking at the amount of money it would cost to engage financial advisor, he concluded that the likely yield were not exceed the likely costs. Commissioner Zuniga stated that he originally thought that there would be a great deal of value engaging and advisor and talking to venture capitalists and other investors but now was no longer convinced that doing so would add value to the Commission's efforts. Commissioners McHugh, Cameron and Stebbins were in agreement not to proceed with engaging a financial consultant for purposes of

approaching the financial markets, at least at this time. Chairman Crosby emphasized, however, that no one has a lock on any license in any category in any part of the Commonwealth and that the Commission remains anxious to support vigorous competition for all licenses in all areas.

Racing Operations Update – Commissioner Cameron stated that the kennel owners had brought an issue to her for consideration. The issue arose out of a difference of opinion between the owners and the Division of Public Licensure regarding interpretation of a provision of the expanded gaming legislation. She stated that because this was a legal matter, she requested Nina Pickering-Cook of Anderson and Kreiger assist in an informal meeting in which each of the parties laid out their concerns. The kennel owners main concern had to do with unclaimed winning tickets, which are commonly referred to as “outs” monies. The outs in question covered unclaimed winnings from 2008 and 2009. The issue arose because the expanded gaming legislation enacted in November, 2011, changed the manner in which the outs were to be handled. She stated that, after hearing the kennel owners’ arguments and discussing the issue with Attorney Pickering-Cook, she determined the 2008 monies were due to the kennel owners because the new legislation did not affect the unclaimed monies from that year. The new law did affect the 2009 monies, however, and they were properly placed into the racing stabilization fund. She recommended, therefore, that the Commission approve payment to kennel owners for the 2008 outs monies.

Commissioner Cameron stated that another issue raised by the kennel owners concerned simulcast monies that are paid into the racing stabilization fund. The kennel owners believe that both Suffolk and Plainridge should be paying into that fund because they simulcast greyhound racing at those facilities. In looking into this matter, she found the law does not speak to the monies going into that account so the representatives have been advised this issue would have to be taken up with the tracks themselves.

Commissioner Cameron concluded by stating that John O’Donnell, the spokesperson for the kennel owners, has been verbally advised of her findings and recommendation and has informed her that kennel owners are willing to accept her decision as a final resolution of the "outs" issue.

Motion made by Commissioner Cameron to pay the kennel owners the 2008 “outs” monies after the individual owners sign an agreement stating that they are prepared to accept the payment in a full resolution of their claim for 2008 and 2009 "outs" monies. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

A brief recess was taken.

Chairman Crosby reconvened the 31st meeting.

Commissioner Cameron stated that public hearings and would be conducted on the applications of Suffolk Downs and Plainridge for 2013 racing licenses. A hearing in Plainville will be held at 10:00 a.m. on Thursday, October 18, and at 2:00 p.m. on the same day in Boston for Suffolk Downs. The Racing Division monthly meeting will be held the same day at 3:00 p.m.

Commissioner Cameron stated that the simulcasting and pari-mutuel wagering regulations have to be reviewed, with regulations submitted to the Legislature by January 1, 2013. She stated that David Murray, former General Counsel at Consumer Affairs, who is now a consultant, has offered to assist the Commission with this project. A background check has been conducted and he will start this project on October 22.

Motion made by Commissioner Cameron that Mr. David Murray assist the Commission for a two-month consulting project in which all of the simulcasting and pari-mutuel wagering regulations laws will be examined, researched, and recommendations made to the full Commission as to the progress of the project. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Commissioner Cameron stated that the Commission had discussed hiring a paralegal primarily to assist with racing matters and she has chosen Danielle Holmes, who graduated from Albany Law School and has an extensive racing background. A background check has been conducted and she also is able to start employment with the Commission on October 22.

Public Education and Information:

See transcript pages 108-193.

Community and/or Developer Outreach/Responses to Requests for Information – Commissioner Stebbins stated that the Commission received a letter from the Charlton Board of Selectmen and he drafted a response for review. He stated that it is important for the Commission to remind communities, whether they are a host community or surrounding community, that, as they go through the process of assessing potential impacts of a gaming establishment, it helps to reach out as widely as possible to all segments of the community, town boards and commissions and to urge them all to think as broadly as possible about impacts a gaming facility might have so that all possible impacts can be discussed with potential developers at an appropriate time.

Ombudsman – Chairman Crosby introduced John Ziemba as his selection for the position of Commission Ombudsman. Mr. Ziemba addressed the Commission. He stated that he has worked in various state positions for sixteen years. He provided information on his background and his qualifications for this position and answered questions posed by the Commissioners. Discussion was held on the importance of this role and on the Commission's priorities for this position.

Motion made by Commissioner Zuniga that the Commission hire John Ziemba as its Ombudsman. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Host and Surrounding Community Reimbursement – Commissioner Zuniga stated that he reviewed the transcript and minutes from the Commission's discussion of reimbursement for host and surrounding communities. He prepared a memorandum describing the process for obtaining reimbursement and has revised that memorandum in response to concerns raised by Commissioners at the meeting where the original memorandum was first discussed. He asked for

feedback regarding the revision. Commissioner McHugh asked if the language in paragraph 1E could be tweaked to clarify the 50% reimbursement figure that paragraph referenced. Commissioner Zuniga stated that the process described in the paragraph was based on a retainage method used by the construction industry. Chairman Crosby stated that this provides cash-strapped town with a mechanism to keep ahead on the cash flow. Commissioner Zuniga stated that he would adjust the language to make the principle a little clearer and would present the revised memorandum for final approval in the near future.

Chairman Crosby stated that the Bureau of Indian Affairs disapproved the compact with the Mashpee Wampanoag tribe the Governor and the Legislature had negotiated and approved. The compact will now go back to the Governor and the Tribe for renegotiation, which will be done as soon as possible. It will then have to be approved by the Legislature again. At least for now, the Commission will continue to watch as the process proceeds.

A brief recess was taken.

Chairman Crosby reconvened the 31st meeting.

Massachusetts Performing Arts Center Coalition Presentation – Troy Siebels, the Executive Director of the Hanover Theater in Worcester and Chair of the Massachusetts Performing Arts Center Coalition addressed the Commission. Present with him were Tina D’Agostino from City Stage in Symphony Hall in Springfield and Vincent Longo, Chief Operating Officer for South Shore Playhouse Associations, Inc. d/b/a Cape Cod Melody Tent and South Shore Music Circus.

Mr. Siebels stated that the Legislature made some provisions in the expanded gaming legislation to help mitigate negative repercussions gaming establishments might have on non-profit performing arts venues in Massachusetts. He stated that as the licensing process moves forward there are some issues on which they seek the Commission's support. He stated that their primary concern centers on their ability to obtain performers for their venues. The concern arises from the frequent use of “radius clauses” in contracts between casinos and premier performers whom the casinos book to appear at their facilities. In return for a premium the casinos pay to the performer, the clauses prohibit him or her from performing at any other entertainment venue within a certain radius for certain time. He then highlighted sections of the legislation that were included to protect the existing non-profit venues.

Mr. Siebels stated that casinos are required to submit with their application a signed letter of agreement with impacted live entertainment venues. He asked that the Commission recognize as “impacted” all non-profit and municipal venues in Massachusetts that have a seating capacity of between 1,000 to 3,500 persons and that present touring entertainment. He also asked that the Commission prevent casinos from staging any performances in an existing venue unless they did so in a partnership that would help to protect the viability of the existing non-profit venues throughout the Commonwealth.

An extensive discussion was held and the Commission stated that its role would be to uphold the legislation. The role of the Coalition would be to work out a letter of agreement with the

developers that has teeth and bring it to the Commission for approval, typically in the context of the developer's license application. Chairman Crosby stated that the Coalition is before the Commission today expressing its side, but there will be two sides to the situation and both sides will be heard at the appropriate time.

Report from Director of Communications and Outreach – Director Driscoll stated that a decision has to be made regarding which logo the Commission would like to use. She stated that based on the four logos presented last week, two concepts were chosen which Jackrabbit modified based on the Commission's feedback. Ms. Driscoll stated that that Jackrabbit stressed it was important not to morph things to the point where the integrity of the original concept is compromised. She reviewed the proposed concepts with the Commission and feedback was provided. The majority of the Commissioners preferred the seal style logo, but were not completely in favor of the content. Ms. Driscoll stated that she would provide that information to Jackrabbit and ask them to keep working. Chairman Crosby stated that they could also present additional concepts.

Ms. Driscoll stated that substantial progress has been made on the design of the new website and she provided the Commission with a brief overview.

Research Agenda:

See transcript pages 193-198.

Status Report – Chairman Crosby stated that six responses were submitted for the Research RFI. Three responses were from Spectrum, NCRG, and Clyde Barrow, who took the position that you cannot do this kind of research well because there is no recognized methodology for doing it. He stated that Harvard and U. Mass Amherst were very excited and consider this is an incredible opportunity. He stated that the Commission is putting together an advisory group to assist in making a recommendation. Commissioner Zuniga asked if consideration should be given to hiring someone, such as a Ph.D. candidate, on a contract basis to manage this initial effort. Commissioner McHugh recommended distributing the submitted information to all the Commissioners so everyone can look at it and perhaps make recommendations.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission October 16, 2012 Notice of Meeting & Agenda

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