

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: February 28, 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 54th public meeting.

Approval of Minutes:

See transcript pages 2-4.

Commissioner McHugh stated that he has distributed the February 21, 2013 minutes for review. Commissioner Stebbins recommended one addition to the minutes.

Motion made by Commissioner McHugh that the minutes of February 21, 2013 be approved as amended. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Licensing Process:

See transcript pages 4-35.

Master Schedule – Commissioner McHugh reviewed the schedule and discussed the process required for awarding the gaming establishment licenses. He stated that four categories of interested parties -- the Commission, the applicant, the host community, and the surrounding communities -- must work together throughout the licensing process for, without the cooperation of all parties, the Commission cannot achieve licensing time line it proposes. At present, the

Commission's schedule calls for issuance of a Category 2 slots license on December 2, 2013. Under that schedule, the Commission would complete Category 2 suitability investigations by the end of April, though it can only do so if the prospective applicants submit required information in timely fashion. The current schedule then calls for applicants and host communities to sign a host community agreement no later than August 5, 2013, with a referendum on that agreement following no later than October 5, 2013. The schedule also calls for applications, including signed surrounding community agreements, to be filed by approximately the same day. Thereafter, the Commission would hold the necessary public hearing, engage in other processing and issue the license by December 2, assuming that it did not have to resolve surrounding community issues the applicant and the community were unable to resolve by themselves.

Commissioner McHugh stated that the Commission cannot make a final determination on an application until all host and surround community agreements are signed. Therefore, the Commission must have a procedure for dealing with situations in which a prospective surrounding community and an applicant cannot reach an agreement on their own. He indicated that the legal team has recommended that if an applicant and a community disagree as to whether the community is a surrounding community, the Commission make the determination after receiving and reviewing the Phase 2 application. If the Commission determines that the community is a surrounding community, then the community and the applicant have 30 days to reach an agreement. If they cannot, they will proceed to binding arbitration. All of that, of course, will cause a delay in the license issuing process.

Commissioner McHugh then stated that the Commission is exploring scenarios under which it could issue the Category 2 license before December 2. The first scenario targets early September. To meet that target, the applicant and the host community would have to execute a host community agreement by mid-May and applicant would have to resolve all surrounding community issues voluntarily by mid-July.

Ombudsman Ziemba stated that he has contacted the four Category 2 applicants about a potential September target. Plainridge Racecourse and Raynham have indicated that such a target is completely within reason. The PPE Casino applicant believes that November is more realistic than September as a target but will work with the Commission to expedite the process as much as possible. Massachusetts Gaming and Entertainment thinks that the Commission should move the deadline to a later date but will meet any deadlines and requirements that the Commission sets. Mr. Ziemba stated that the latter two applicants cited concerns with completing host and surrounding community agreements as well as with site considerations. Commissioner Cameron stated that, in discussing this matter with Director Wells, a September target creates problems for background investigations because several applicants have not yet identified all of their qualifiers. Commissioner Zuniga stated that a September target will make it difficult to have host and surrounding community agreements in place and an October target would be more likely.

Commissioner McHugh then reviewed a second scenario in which the Commission extends the time for executing host community agreements by two weeks, from mid-May to the beginning of June, thus pushing the referendum into early August. That scenario would have the Commission

issuing a Category 2 license two weeks later than in the first scenario but an August referendum might be problematic for a number of reasons.

Commissioner McHugh outlined a third scenario in which the host community agreements are signed in mid-July. Under that scenario, the referendum would take place in early September, leading to issuance of a Category 2 license in mid-November. If the applicants and surrounding communities cannot sign the required agreements, then, even under this scenario, the Commission may need to extend the process into late December to finalize the surrounding community agreements. Commissioner Zuniga stated that the determination of suitability in this scenario is as early as late May and the host community could theoretically schedule its referendum for the next day.

Chairman Crosby asked that Ombudsman Ziemba and Director Wells talk to all of the Category 2 applicants and develop a recommendation for a date by which the Commission should require that applicants submit all additional qualifiers and bring that recommendation back to the Commission at its next meeting.

Commissioner Zuniga introduced Scott Libby and Angel Arvelo from PMA, the consultants who helped developed the scheduling timeline. He stated that they have developed a presentation outlining the scenarios just discussed, and the Commission will post this presentation on its website.

Personnel Update – Chairman Crosby stated that the Commission has started a process for hiring a CIO and a CFO, in addition to the ongoing hiring process of Director of Research and Problem Gambling, Director of Workforce Supplier and Diversity Development, and Director of Licensing.

Chairman Crosby introduced Representative Keiko Orrall, who represents the 12th Bristol District, which includes Taunton, Middleborough, Lakeville, and Berkley. She stated that she wanted to ensure that the Commission is aware that the surrounding communities are in a very different situation with the tribal casino than they are with commercial casinos and wanted to advocate on behalf of those communities. She stated that these communities have not had the safeguards or money available for communities potentially impacted by commercial applicants, and those communities will not know the extent of the assistance that they will receive until a compact is approved.

Regulation Update:

See transcript pages 35-59

Surrounding Community Agreement – Associate Commission Counsel Todd Grossman stated that the Commission circulated a draft of a surrounding community regulation for public comment and received many comments. The legal team has reviewed all the comments and incorporated many of them into new draft regulations. That draft contains three methods for determining which communities are surrounding communities. First, a community would be a surrounding community if an applicant designates that community as such in its RFA-2

application and the community assents to that designation within 10 days. Second, a community would be a surrounding community if it signs a surrounding community agreement with the applicant and the applicant submits that agreement as part of its RFA-2 application. Third, a community would be a surrounding community if it petitions the Commission for designation as a surrounding community and the Commission assents. He stated that the Commission's finding that a community is a surrounding community has legal significance because it triggers a 30 day period during which the community must negotiate a surrounding community agreement with the applicant and eventual binding arbitration if no agreement is reached.

Attorney Grossman stated that he has also submitted a draft regulation to the Commission to amend the community disbursement section of the regulations to allow for involuntary disbursements of the mitigation funds. He stated that the amended language requires that the community demonstrate to the Commission a reasonable likelihood that it is a surrounding community and needs funds to determine whether or not the proposed gaming establishment will impact the community.

Attorney Grossman stated the draft regulations will proceed to a public promulgation process during which communities will have an opportunity to comment.

Public Education and Information:

See transcript pages 59-72.

Report from the Ombudsman – Ombudsman Ziembra stated some communities have provisions in their local bylaws or charters that relate to the types of contracts that municipal officials can execute without approval by a town meeting. He stated that bylaws in some communities require a town meeting to approve contracts with a term longer than three years. He stated that he is working with outside counsel on this issue to determine whether the Commission should make further official advisories on what communities can do in these instances.

Mr. Ziembra stated that he is also considering what restrictions applicants face when they are involved in a ballot process. The Office of Campaign and Political Finance has supplied some parameters to guide applicants, and the Commission will post these parameters on its website.

Evaluation Criteria – Commissioner McHugh stated that Chairman Crosby suggested some additional evaluation criteria and restructuring of existing criteria. He, along with Commissioner Zuniga, used those suggestions to create a second version of the evaluation criteria matrix. He stated that the matrix still includes five categories with a number of criteria, both statutory and Commission originated, in each. As a result of the Commission's work on the matrix, the required evidence column now includes information that will flow directly into the RFA-2 application form the Commission will create. He stated that the Commission needs to agree on major topics and subtopics in order to inform applicants about how the Commission will evaluate applications and to move forward with the design of the actual application form. He stated that the Commission has scheduled a meeting for March 12, 2013 for an extensive discussion of this matrix.

Commissioner Zuniga stated that the Commission has just begun to populate some of the matrix areas relating to required evidence and will include more information at a later date. Commissioner Cameron stated that this matrix is very well done and easy to understand. She commended Commissioners McHugh and Zuniga for their hard work. Chairman Crosby recommended substituting the language “subtopic and second subtopic” for “sub criteria” in the matrix. He also recommended including environmental and other considerations as part of the mitigation evaluation criteria. Commissioner McHugh stated that he will take another look at the matrix because many of the environmental considerations are categorized as design criteria. He also asked the Commissioners to consider other mitigation that he should include in the matrix. He stated that the Commission may be able to start discussion on the weighting factors at the next meeting, but it may be too early to be specific as the matrix is not yet complete.

Preparation for Region C Discussion – Chairman Crosby reminded everyone that the Commission’s March 21 meeting will be held in Region C, although the Commission has not yet confirmed a location. The major topic for discussion will be how to proceed in Region C and comments are welcome. He stated that any representative of a public or private entity or group who would like to speak at the meeting should let the Commission know ahead of time. The Commission will not open the March 21 meeting for general public comment.

Regulation Update (Continued):

See transcript pages 72-127.

Review of Draft Regulations – Attorney Grossman stated that he has circulated a copy of the draft regulations grid, which he has updated to reflect the current status of the Phase 2 regulations. He stated that the legal team has drafted language that applies to the host community designation. Chapter 23K largely addresses host community designation, but several areas require clarification. If a proposed gaming establishment is situated in two or more cities or towns then each will be considered the host community. As soon as the applicant and the host community sign a host community agreement, the applicant must forward a copy of the agreement to the Commission so that everyone has notice that the process is proceeding.

Attorney Grossman stated that the General Laws contain provisions governing the host community elections, but there are a few areas that require further regulations. For example, a regulation establishing the length of time polls for the referendum must remain open is necessary to ensure that all interested citizens have an opportunity to vote. For another example, a regulation stating that no community can hold an election until the Commission issues a positive RFA-1 determination of suitability is also necessary to implement the Commission’s policy decision in that regard. Chairman Crosby stated that the Commission had previously determined that, although a community cannot hold an election prior to the positive determination of suitability, an applicant can request an election before the determination is made. Attorney Grossman stated that the legislation mandates holding an election within 60-90 days after it is requested, thus creating a potential problem if the IEB cannot complete its investigations or the Commission cannot make its suitability finding before the election date.

Commissioner Stebbins stated that that the Commission should further discuss whether a community with multiple applicants must hold the vote for all the projects on the same day. He also asked whether all host communities in a region, or both host communities if an applicant's proposed gaming establishment is situated in two communities, should hold host community votes on the same day. Commissioner McHugh stated that the Commission needs to consider this issue. Chairman Crosby stated that his predisposition would be to leave the decision to the local communities. Commissioner Zuniga stated that he believes that the Commission should enforce holding votes on a single day in order to create fairness and public trust. Ombudsman Ziemba recommended that the Commission reserve its judgment on this question because the Commission does not know whether two applicants will proceed in one community and there is time before the regulations are promulgated to consider the issue.

Attorney Grossman stated that another section of the draft regulations covers reopening a host or surrounding community agreement in the event of unforeseen circumstances. He stated that the Commission should give great thought to the type of event that would allow reopening because reopening would have major consequences. He stated that the current draft regulations require a significant and material adverse impact prior to reopening an agreement. That requirement is based upon a principle of contract law known as frustration of purpose. Commissioner McHugh stated that he discussed this at length with Attorney Grossman and the Commission does need to determine what the trigger for the reopener will be.

Attorney Grossman stated that another section of the draft regs deals with permitting requirements and the information the Commission will require applicants to submit as part of the RFA-2 application. This section does not address how this information will be evaluated, but simply lays out the documentation the Commission wants to review. The applicant should provide, among other information, a chart of required permits, MEPA process documents, and a certification from the municipality that the project as proposed would not run afoul of zoning ordinances.

Attorney Grossman stated that the process for determining impacted live entertainment venues in the absence of an agreement between a community and a venue would be similar to the surrounding community process. He stated that the draft regulations provide that the Commission will consider the elements set forth in the statute, including the distance of the venue from the gaming establishment, the capacity of the venue, the type of performances the venue offers, whether the venue meets the definition of nonprofit or municipally owned, and whether the applicant intends to include a geographic exclusivity clause.

Attorney Grossman stated that the Commission has discussed whether it would require applicants to commit simply to the minimum capital investment set forth in the statute or would require them to commit to a higher minimum. The statute sets a minimum for Category 1 and 2 investments at \$500 million and \$125 million respectively. He stated that draft regulations provide a means for calculating the amount of the capital investment. The Commission must determine whether an applicant can include infrastructure costs or the cost associated with the purchase, lease or optioning of the land on which the applicant proposes construction of the gaming establishment. He stated that Commission will also have to determine when to return the deposit or bond money to the licensee. The draft regulation states that the applicant will have to

request that the Commission return the money, and the Commission will do so if it determines that the project is in the final stage of construction. Commissioner Stebbins recommended that the Commission review the statutory definition of capital investment. Commissioner Zuniga stated that he understands that the term “capital investment” includes only assets that will be in existence for many years, including structures outside the boundaries of the gaming establishment site, such as a bridge. Commissioner Cameron stated that she envisioned that the term “capital investment” only includes structures within the site.

Chairman Crosby stated that he would like to discuss requiring applicants to disclose instances when they were requested to give or actually gave items of value to a public official. Commissioner McHugh stated that the existing regulations require that the application disclose any political or community contributions that an applicant made since the statute was passed on November 21, 2011. He recommended that the regulations also require that the applicant disclose solicitations in the same fashion.

Commissioner McHugh stated that the overall goal is to have the regulations promulgated and effective on June 7 or May 24, 2013. He recommended extending the date for sending a notice to the Local Government Advisory Committee from March 15, 2013 to March 29, 2013, and publishing the regulations by May 24, 2013, or at the latest June 7, 2013. The other Commissioners agreed with this recommendation.

A brief recess was taken.

Chairman Crosby reconvened the 54th meeting.

License Fee Discussion – Chairman Crosby stated that the Commission had previously discussed whether the Commission would refund license fees under certain circumstances, and after reviewing Commissioner Zuniga’s economic analysis and Commissioner Cameron’s research indicating that refunds are not consistent with industry norms, he agrees that the Commission should not refund license fees. Commissioner Zuniga stated that these fees are a huge incentive for project completion and the payoff for the applicant will come when the facilities are open.

IEB Report:

See transcript pages 127-142.

Investigations Status Report – Director Wells stated that the IEB is currently conducting all eleven investigations. The IEB has prioritized the four applicants for Category 2 licenses and is moving forward with those investigations at an accelerated rate in an effort to meet the target date the Commission has set.

Discussion of Processing Public Records Requests for Applications – Director Wells stated that Chapter 23K provides that, subject to three exceptions, applications for licenses are “public records,” a term defined in the General Laws, and the Commission has no discretion in that regard. She stated that the IEB is in the process of reviewing all the applications for the

redactions in accordance with the specimen form. She stated that a large percentage of the applicants' redacted RFA-1 forms applicants contain errors in complying with the specifications contained in the Commission's specimen form. She stated that 75-80% of the errors are over-redactions by the applicants. She emphasized that the IEB has meticulously reviewed 21,000 pages of documents at this point and needs to develop an efficient process to correct the errors it has found. Director Wells stated that, in addition to the redactions specified in the specimen form, applicants are requesting additional redactions. She stated that the IEB is taking these requests very seriously and is looking at each request one-by-one. In light of the time required to correct the redaction mistakes and respond to the confidentiality requests, this process is going to take some time and she cannot determine when the IEB will make the information public.

Commissioner McHugh expressed concern that the IEB is using investigatory resources to review the redacted applications due to repeated mistakes by the applicants. He stated that that the Commission's intention to post the redacted applications on the Web apparently is driving a great deal of the concern on the applicants' part. He stated that although the Commission is perfectly within its rights to respond to a public records request by posting the requested material on the Web, he recommended that the Commission make a decision not to post the applications on the Web and instead respond individually to requests when they come in, after developing a process that minimizes the labor required for each response. Commissioner Zuniga stated that he supports this recommendation as the IEB should focus on completing investigations. Commissioner Cameron recommended that Director Wells issue a letter stating to applicants that: this is the process, here are your errors, and compliance is necessary as it will reflect on suitability.

Chairman Crosby reiterated that public disclosure of these applications is not a concept the Commission invented to ensure transparency. Instead, the law requires that the Commission make the applications public. He stated that the Commission wants to protect the privacy of its bidders and but still must comply with the law. He stated that he is in agreement with the recommendation not to post this information on the Web and to concentrate on the accuracy of these documents. Commissioner Zuniga informed Director Wells that, as previously discussed, the IEB should pass on to the applicant any additional costs incurred in correcting inaccurate information.

Racing Division:

See transcript pages 142-158.

Administrative Update – Director Durenberger reported that the Racing Division is working with the successful respondents to two RFPs for laboratory testing services and auditing services. She stated that the Racing Division is 99% complete with the seasonal hiring process and is creating a training schedule.

Legislative Review Update – Director Durenberger stated that she will make available to the Commissioners tomorrow morning the report amended to address the stylistic suggestions provided by the Commission at its last meeting. She will also finalize the proposed statutory language by the end of day tomorrow.

Director Durenberger stated that the Commission has received comments from the Secretary of the Commonwealth and the public for the Phase 1 amendments to 205 CMR 3.00 and 4.00. The Racing Division is incorporating these comments and will provide the Commission with a final recommended version of the amendments well in advance of the public meeting scheduled for March 14, 2013. If approved at that meeting, the final version would go to the Massachusetts Register for publication with an effective date of March 29, 2013. This date is two weeks prior to the start of the live racing season.

Director Durenberger recommended that the Racing Division start the second phase of the 205 CMR 4.00 amendment process. She provided the Commission with a copy of the draft notification to the Local Government Advisory Committee and stated that the Commission has scheduled a public hearing for April 8, 2013, which will allow the rules to become effective prior to live racing at Suffolk Downs.

Motion made by Commissioner Stebbins to initiate Phase 2 of the Racing Division rulemaking. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Director Durenberger stated that she has been participating in a consortium dialogue regarding implementation of the next wave of industry reform. The consortium includes Mid-Atlantic States, some eastern states, and possibly Illinois. These proposed reforms will be primarily rooted in a uniform approach to medication, with a distinction between therapeutic medications and those medications that have no business in a race horse at all. She stated that Racing Commissioners International has given preliminary approval to the consortium approach and she read a resolution on the matter that she recommended the Commission adopt. Commissioner Cameron stated that she agrees with the consortium principles and recommended adoption of the resolution.

Motion made by Commissioner Cameron that the Commission adopt this resolution. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Chairman Crosby asked about a letter that the Commission received from the law firm Engel and Schwartz regarding racing aid payments. Director Durenberger indicated she had just received this letter and has not had time to do a substantive review.

Research Agenda:

See transcript pages 158-159.

Commissioner Zuniga stated that he has no update, but the Commission has scheduled a conversation for next week to address a cost clarification.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission February 28, 2013 Notice of Meeting and Agenda
2. February 21, 2013 Massachusetts Gaming Commission Meeting Minutes
3. Massachusetts Gaming Commission Master Schedule, Category 2 License Schedule
4. Massachusetts Gaming Commission Category 1 and Category 2 Draft Evaluation Criteria Matrix
5. February 27, 2013 Memorandum Regarding Précis of Draft Phase 2 Regulations – Part 1
6. Comments for Recommendations for Amendment of Surrounding Communities Definition
7. Resolution – Racing Division
8. March 1, 2013 Memorandum to the Local Advisory Government Council Regarding 205 CMR 4.00

/s/ James F. McHugh

James F. McHugh

Secretary