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## Meeting Minutes

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**Date:** May 16, 2013

**Time:** 9:30 a.m.

**Place:** Division of Insurance  
1000 Washington Street  
1<sup>st</sup> 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.

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

### **Call to Order**

See transcript page 2.

9:34 a.m. Chairman Crosby opened the 67th public meeting.

### **Applicant Appeal**

See transcript page 2.

9:35 a.m. The appeal originally scheduled has been canceled.

### **Approval of Minutes**

See transcript pages 2-8.

9:35 a.m. Commissioner McHugh stated that the minutes for the May 3 meeting are ready for approval. The minutes now have the time posted in the margin, with the electronic version of the minutes linking directly to the video recording. Commissioner Zuniga recommended making several changes to the minutes.

*Motion made by Commissioner McHugh that the minutes of May 3, 2013 be approved with the corrections discussed. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### **Administration**

Report by Executive Director Day. See transcript pages 10-87.

9:42 a.m. Director Day stated that the Commission is beginning interviews for the Director of Licensing position, waiting for background on finalists for the Director of Workforce and Supplier Development and the Director for Research and Problem Gambling, and identifying candidates for the Chief Information Officer interviews next week. The executive search firm is still working to find suitable CFAO candidates.

9:46 a.m. The Commission discussed whether to set aside 30 minutes during each meeting to receive public comment from individuals who sign prior to the meeting. The Commission was in agreement that the existing process of receiving written and oral public comment on specific issues is sufficient and setting aside time each meeting would add little value.

9:56 a.m. Director Day outlined the Commission's evaluation plan for Category 2 applications. After the Commission receives the applications, the licensing team will review the applications for completeness and distribute the appropriate materials to the five evaluation teams. The applicant will then have the opportunity to make a short introductory presentation to the Commission. Each of the five evaluation teams will review its assigned evaluation criteria category for all applicants. There will be an opportunity for public input meetings, questions to the applicants, and a hearing in the host community. The evaluation teams will then report their recommendations to the full Commission and the Commission will consider the reports at a public meeting. From receipt of the applications to the final decision, Director Day expects that the process will take approximately 70 days.

The Commission discussed the scope of the work of each of the five evaluation teams and whether to have a single project coordinator overseeing all the teams. The Commission was in agreement that having a Commissioner participate in each of the evaluation teams would be beneficial. Applicants will be allowed to cure material deficiencies in the application, such as deficiencies of statutorily required information, within seven days after receipt of the application. The applicants will have 14 days after the receipt of the application to correct minor deficiencies.

10:41 a.m. The Commission agreed that each applicant would receive 90 minutes at the beginning of the process to make an introductory presentation regarding their application. All applicants for a region or license category will be held on the same day, and Commissioner Zuniga recommended that the order of presentations be randomly assigned. The Commission will not be asking questions during the

introductory presentation, but will have sufficient opportunity to question the applicants during the public hearing on the application.

- 10:46 a.m. The Commission discussed how it will be choosing the winner for each license. The Commission agreed that it should not count the number of categories each applicant did best in, but instead should look at the bigger picture and evaluate the overall quality of each applicant. Under the Commission's regulations, a vote by the Commission constitutes the award of the license.
- 10:56 a.m. The Commission's regulations specify that the Commission will use the evaluation criteria in the regulations, among others. The Commission may use additional criteria it had not previously anticipated, but Commissioner McHugh pointed out that it may not be fair to treat a new criteria as dispositive without first allowing all applicants to submit additional information regarding that criteria.
- 11:05 a.m. The RFP for the financial advisor is ready to go and Commissioner Stebbins anticipates that the RFP for the other two advisors will be ready within the next week and a half.

*Motion made by Commissioner McHugh that the Commission adopt as its evaluation matrix and thus the basis for constructing the application and evaluating responses to the RFA-2 applications the version of the matrix currently embodied in 4.C.i of today's meeting packet. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

- 11:08 a.m. The Commission took a brief recess.

### **Ombudsman Report**

Report by Ombudsman Ziemba. See transcript pages 87-136.

- 11:16 a.m. Ombudsman Ziemba discussed the comments that the Commission received regarding moving the RFA-2 application deadline for Category 1 applications to early December or early November. Many of the comments expressed concern with meeting an earlier deadline. The Commission was in agreement that it should finalize the deadline at the next public meeting.
- 11:30 a.m. Ombudsman Ziemba presented a draft schedule for Region C. Scoping meetings prior to submission of the RFA-1 application were scheduled to start September 3, 2013; the RFA-1 deadline would be October 3, 2013; the IEB would complete its suitability determinations prior to March 23, 2014; the Commission would then conduct its hearings and issue suitability determination by July 8, 2014; the RFA-2 application deadline is set for September 3, 2014; and the Commission will make a final decision on issuing a license in December of 2014.

The Commission considered how it could condense the timeframe while avoiding straining IEB's resources and allowing all parties sufficient time to prepare an

application. The Commission agreed to start the process one month earlier than planned and condense the entire process by two months in order to finish three months ahead of the schedule. The staff will update the Region C timeline and present it at the next public meeting.

Chairman Crosby questioned whether the Commission should set a deadline for an applicant to designate a site in Region C even though the Commission never required such a designation in Regions A and B. Although such a requirement would be helpful for suitability investigations, the Commission agreed not to set a deadline for a site designation. The Commission will instead place in the regulations language that will allow the Commission to require site designation upon sufficient notice to the applicant if the designation is necessary for the suitability investigations.

The Commission discussed whether to allow current applicants who want to participate in the Region C process to enter without paying an additional \$400,000 application fee and without being required to meet the same deadlines for submission of an RFA-1 application. The Commission agreed that applicants who have already progressed through the suitability investigations process and have qualified would only be required to submit any new parties for qualification and at a slightly later date than the date for entirely new applicants and would not have to pay an additional application fee.

*Motion made by Commissioner McHugh that the Commission allow any applicant for Category 1 license in Region C that has favorably concluded suitability during the Region A, Region B, or Category 2 processes, to file an RFA-1 supplement and an RFA-2 application without paying the \$400,000 application fee to the extent not necessary to cover the supplemental investigations. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the Commission allow any applicant for Category 1 license in Region C that has favorably concluded suitability during the Region A, Region B, or Category 2 processes, to file an RFA-1 supplement at a date later than the date for applicants who have not participated in the Region A, Region B, or Category 2 processes. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

## **IEB Report**

Report by Director Wells. See transcript pages 136-141.

12:10 p.m. Director Wells provided an overview of the IEB's position on confidentiality of supplemental investigatory material. If the Commission receives a request for disclosure of the supplemental information, the IEB will notify the applicant and provide an opportunity to respond. She anticipates that the majority of the materials will be confidential. Despite the setbacks to the original plans of PPE Casino Resorts MA and Springfield Gaming and Redevelopment, the IEB is still conducting investigations at the applicants' requests. PPE is looking at other locations for its Category 2 project.

### **Racing Division**

Report by Director Durenberger. See transcript pages 141-150.

12:15 p.m. Director Durenberger was joined by Mr. Edward Nowak, President of the Standardbred Owners of Massachusetts. Mr. Nowak represents standardbred owners in the Commonwealth. His organization wishes to be designated as the organization to administer a series of sire stakes programs and the Mass. bred breeders program. His organization was annually appointed by the State Racing Commission since 1992, and he is now seeking reappointment from the Gaming Commission.

*Motion made by Commissioner Zuniga that the Commission approve the request from the Standardbred Owners of Massachusetts to be recognized as a duly organized representative group of the standardbred breeders and to administer the Massachusetts standardbred breeding program and sire stakes. Motion seconded by Commissioner McHugh. The motion passed unanimously.*

12:23 p.m. The Commission adjourned for lunch.

### **Research Agenda**

See transcript pages 150-193.

1:05 p.m. Dr. Rachel Volberg presented a status report of the research agenda. She described the difficulties involved with conducting the study stemming from the staggered openings of the gaming establishments, and she emphasized the need for cooperation between her team and the Commission and licensees to get the best data possible. Dr. Volberg agreed to assist in drafting the third phase of regulations to the extent that the regulations interact with the research agenda. Commissioner McHugh asked that Dr. Volberg's team make an effort to assign a monetary value to every impact from gaming.

### **Springfield Referendum Notice**

See transcript pages 193-201.

- 2:01 p.m. The Commission received a copy of the referendum notice from the City of Springfield for approval. The staff recommends the notice, be approved since it complies with the regulations. This notice and the accompanying letter will be sent to all registered voters.

*Motion made by Commissioner McHugh to approve the City of Springfield's notice of the host community election prior to determination of suitability in the form submitted to the Commission. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### **Proposed Phase 2 Regulations**

See transcript pages 201-296.

- 2:09 p.m. General Counsel Blue and Attorney Grossman reviewed the most recent version of the Phase 2 regulations and the updates to the Phase 1 regulations. Commissioner McHugh recommended that the Commission not include the language "vulnerable population," as used on the second page of the Phase 1 regulation updates, unless the Commission defines that language first. The Commission authorized Attorney Grossman to define the term prior to publishing the regulations.

Attorney Grossman stated that he needs to update the process for becoming a surrounding community so that the petitioner must also demonstrate that the request is reasonable in scope. Commissioner McHugh also asked that Attorney Grossman change "reasonably aware" in § 108.03(2) to "aware" and to limit the scope of that section to requests received from Massachusetts. Attorney Grossman recommended adding the word "overall" prior to the word "response" in the second paragraph of § 119.03. The Commission decided to remove the language that would allow 10% of the value of the land to be used in the calculation of the total investment.

- 3:08 p.m. The Commission took a brief recess.

- 3:20 p.m. The Commission continued reviewing each section of the proposed Phase 2 regulations. Commissioner McHugh recommended and the Commission agreed to temporarily remove § 129 regarding transfers of interest due to the confusion behind the term "Commonwealth's share."

- 3:33 p.m. Chairman Crosby asked that Attorney Grossman narrow the language in the Phase 1 regulations concerning challenges to the Commission's failure to act, and then recirculate the updated language prior to publishing the regulations.

*Motion made by Commissioner McHugh to approve the regulations in the form presented for sections 205 CMR 102-131, leaving out section 129, with the changes agreed upon and reserving the right to allow staff to make further editorial changes that do not materially change the regulations, and to circulate the changes agreed*

*upon to the Commission prior to publication. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

3:54 p.m. Attorney Grossman stated that there is no additional small business impact from the adjustments to the regulations after the public hearing. Attorney Grossman recommended delegating to Commissioner McHugh the authority to approve the final small business impact statement.

*Motion made by Commissioner Cameron to follow Attorney Grossman's recommendation and appoint Commissioner McHugh to approve the final draft of the small business impact statement. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

3:56 p.m. The Commission discussed the draft "42 Simple Steps to Issue a Gaming License" and the draft "41 Simple Steps to Issue a Gaming License". Commissioner Crosby recommended that the Commission move steps 22-25 to between steps 17 and 18. The Commission discussed whether it would ask for a best and final offer, and agreed not to ask for a best and final offer from Category 2 applicants but still retain the option to discuss with applicants how they can improve certain aspects of the applications. The Commission would leave the option to ask for a best and final offer from Category 1 applicants, but applicants should assume that the Commission will not be asking for a best and final offer.

4:14 p.m. *Motion made to adjourn, motion seconded and carried unanimously.*

#### **List of Documents and Other Items Used at the Meeting**

1. Massachusetts Gaming Commission May 16, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission May 3, 2013 Meeting Minutes
3. Massachusetts Gaming Commission July 18, 2012 Memorandum Regarding Meeting/Speaking Request Policy and New Public Speak-Out
4. Evaluation Process – Slots Parlor
5. Category 1 and Category 2 Evaluation Criteria
6. May 15, 2013 Suffolk Downs Memorandum
7. Written Comments
8. Draft Region C Schedule Potential Benefits
9. Massachusetts Gaming Commission 5-10-2013 Region C Draft Schedule
10. Massachusetts Gaming Commission Draft Regulations
11. Draft 42 Simple Steps to Issue a Gaming License – Category 1
12. Draft 41 Simple Steps to Issue a Gaming License – Category 2

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary