

The Commonwealth of Massachusetts
MASSACHUSETTS GAMING COMMISSION

Meeting Minutes

Date: August 7, 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 20th public meeting.

Approval of Minutes:

See transcript pages 2-3.

Chairman Crosby stated that that minutes of the July 17 regular meeting, the July 17 meeting for receiving comments on permanent racing regulations and the July 26 meeting are ready for approval.

Motion made by Commissioner McHugh to approve the minutes of the July 17 regular and special meetings, and the July 26 meeting, in the form in which they are presently before the Commission. Motion seconded by Commissioner Stebbins. The motion passed by a 5-0-0 vote.

Project Work Plan:

See transcript pages 3-81.

Consideration of Phase I Regulations - Chairman Crosby stated that that this topic is being moved to the start of the meeting as it is the most important topic today. The Commission would like to finalize the discussion of the first set of regulations. Present for this discussion were consultants Stephen Anderson, Robert Carroll, Guy Michael and Steven Ingis. Commissioner McHugh stated that that the draft regulations before the Commission deal with three structural aspects of the Commissions operations, i.e., hearings and practice before the Commission, access to and confidentiality of records, and the Investigation and Enforcement Bureau (IEB). The

regulations also deal with political contributions and financial aid to cities and towns, and, perhaps most importantly, the Phase 1 application process. Subsequent regulations will deal with the Phase 2 process and the standing rules that will govern the operation of casinos. He stated that after today's draft is approved and any revisions emanating from the discussion are incorporated, notice of approval and of the date for public comment on the regulations will be sent to the Secretary of State on August 17 and the regulations will be published on August 31. In the interim, the regulations will be on the Commission's website for public comment. During the second week of September there will be a public hearing on the regulations. All public comments will be considered and any necessary changes will be made before submitting the final version of the regulations to the Secretary of State at the end of September for publication at the end of the second week of October. As soon as the Secretary of State publishes the final version of the regulations, the RFA-1 applications can be issued. Chairman Crosby emphasized the process being followed is not the Commission's process, but is one prescribed by the statute. Commissioner McHugh stated that that all organizations in the Commonwealth who wish to promulgate regulations must follow the process just described.

Mr. Michael addressed the Commission. He stated that that the regulations contain seventeen chapters. He outlined the application process, in which an application will be filed and referred to the IEB for investigation. At the conclusion of its investigation, the IEB will make a recommendation to the Commission regarding the applicant's suitability to hold a gaming license. Mr. Michael stated that the regulations also contain limitations on an applicant's ability to make political contributions, mirroring the limitations contained in Chapter 23K. The application form will contain a requirement for mandatory disclosure of all in-kind payments, political contributions, and community contributions beginning on November 22, 2011, the effective date of the legislation. Mr. Carroll addressed the Commission and stated that that the regulations contain provisions for payment of application fees and distributing portions of those fees to host and surrounding communities to help defray the costs of determining local impact and negotiating with developers. In that regard, Commissioner McHugh stated that these regulations do not provide for Commission payments to communities out of Commission funds. Instead, all Commission payments to communities contemplated by the regulations will be made from funds deposited with the Commission by applicants for gaming licenses.

Chairman Crosby asked if there is any mechanism for providing funding to communities that have already conducted negotiations with developers whose plans have fallen through or otherwise been abandoned. Commissioner McHugh stated that that there is no mechanism in in the statute or in the regulations for payments to those communities. Commissioner Zuniga stated that that if the developer in Chairman Crosby's example were to become an applicant there would be a mechanism in the regulations to help that community, as it is a developer's status as an "applicant" that produces a community's entitlement to part of an application fee. Commissioner McHugh stated that that some thought would have to be given to such a circumstance before payments were made because the developer's application would not be for a project in the community from which the developer had walked away.

The regulations were reviewed and questions and comments were addressed. A concern was raised about whether to include questions relative to gender and ethnicity on the application

form. Commissioner McHugh stated that that there is a risk that, if the Commission requires an applicant to provide information the Commission is not entitled to use as a basis for its licensing, a disappointed applicant could argue that the Commission in fact had improperly taken the information into account during its decision-making process. He recommended putting the gender and ethnicity requirements into the current version of the regulations and making a final judgment about whether to keep them after public comments are reviewed.

Chairman Crosby questioned the level of detail the application form requires, such as the number of cars the applicant owns and whether the applicant has tattoos. He was concerned that this information may be irrelevant. Commissioner Cameron stated that that all these questions are intrusive, but are necessary in determining the applicant's background and financial standing. Chairman Crosby stated that that he wants to be sure these questions help the Commission with public policy objectives, and are not being asked simply because they are questions that are always asked.

Chairman Crosby congratulated the consultants on a great job and stated that that the Commission will now submit the draft to the Secretary of State.

Motion made by Commissioner McHugh that, subject to the corrections discussed on pages 45 and 63 of the transcript, and subject to technical corrections for such things as capitalization, internal citation consistency, and other mechanical features, that the Commission approve this draft of regulations for submission to the Secretary of State for the purpose of public comment and continuation with the regulation promulgation process. Motion seconded by Commissioner Cameron. The motion passed by a 5-0-0 vote.

Administration:

See transcript pages 81-112.

Executive Director Search Update – Commissioner Stebbins stated that that JuriStaff has developed a list of 45-50 contacts for prospective candidates. Approximately ten calls have resulted in a person who is interested in applying or in learning more about the Executive Director position. Director Driscoll has worked on a PowerPoint presentation that will be made available to JuriStaff to share with prospective candidates.

Commissioner Stebbins stated that the Commission should have a further discussion on the two search and interview scenarios. Commissioner McHugh stated that the two scenarios are in the Commissioners' meeting packet. Under the first scenario, a single Commissioner would work with JuriStaff and conduct the screening process. Under the second, a subcommittee would conduct the screening. Under the single Commissioner screening approach, all materials would be submitted by the applicant to the Commissioner, the Commissioner would select the finalists and the finalists would appear at a public meeting with the Commission after there had been a background investigation and drug screening. The materials submitted by those who were not finalists would remain confidential as part of their personnel file and there would be no record of the interviews the single Commissioner held with those applicants. The interviews between the

finalists and the Commission would be public. Other than the Candidate's resume, the materials used in the final interview would not be public documents.

If two Commissioners conducted the interviews, they would constitute a subcommittee subject to the provisions of Open Meeting Law. Interview meetings would be posted and held in executive session. The meeting would require the preparation of minutes of the discussion between the Commissioners and the applicant. The documents submitted by the applicant would be confidential. The screening process would result in finalists and then the process would be the same as it would be under the single Commissioner approach. The Attorney General takes the position that the reason for confidentiality of the subcommittee process ends and the subcommittee minutes become public records as soon as one of the applicants is hired. Nevertheless, the identities of the non-finalists and all elements of the interviews that serve to identify them would be redacted from the public version of the minutes. Likewise, the documents submitted during the course of the interviews would remain confidential and not available for public view. The only documents released would be the resume of the person who is ultimately selected.

Commissioners McHugh and Stebbins spoke with representatives of the Attorney General who were very helpful in outlining these processes and their consequences. Commissioner McHugh stated that the subcommittee process requires greater attention to detail but has the same outcome relative to confidentiality of applicants. Chairman Crosby asked if JuriStaff had a preferred method for conducting the interviews. Commissioner Stebbins stated that JuriStaff's main concern is for the Commission to choose a process that will enable them to assure applicants that the content of interviews and materials they submit are confidential unless and until they become finalists. Commissioner Cameron stated that having someone in the room taking minutes during an interview changes the dynamic of the interview. She stated that she is very comfortable with one Commissioner moving forward with this process. Commissioner McHugh stated that it would surely be easier if a single commissioner were to conduct the screening process. However, this will be a closely scrutinized process and following the subcommittee process underscores the Commission's commitment to transparency. He also stated that it is unfair for one Commissioner to bear the sole burden of the screening process and, due to the working relationship between the Executive Director and the Chairman, it would be important for the Chairman to have a role in selecting the finalists. Commissioner Zuniga stated that the goals of transparency are met with a set of finalists that will come to a public meeting. Chairman Crosby stated that the Commission could move forward with the single Commissioner process and, if the designated Commissioner determines the process is not working, a subcommittee model could be utilized.

Jim LaRosa, of JuriStaff, addressed the Commission via telephone. He stated that at the end of the day the goal is to get the best candidate available and with the subcommittee process the mere fact of having to post the meeting would cause some candidates to drop out of the running, as some of the better candidates are now sitting as the Executive Director at another gaming commission. He stated that utilization of a single Commissioner would decrease the risk of losing qualified candidates.

Commissioner Stebbins stated that that the single Commissioner scenario would get good candidates in front of the Commission without some of the encumbrances of using the two Commissioner process. The Commission decided to move forward with one Commissioner conducting the initial interviews and selected Commissioner Stebbins to carry out the screening. Commissioner McHugh stated that he did not agree with the single Commissioner approach to screening but, understanding the Commission's contrary view, agreed that Commissioner Stebbins is an excellent choice to carry out the screening process.

Additional Hires – Chairman Crosby stated that, along with the ombudsman and Executive Director positions, the Commission is conducting a search for a staff attorney and has decided to begin the search for general counsel, as well as a deputy director for the IEB. Commissioner McHugh asked if these positions will be filled before the Executive Director is hired. Commissioner Cameron stated that that she would prefer to have the Executive Director involved in these hires. The Commission decided to move forward with the hiring process with the intention of having the Executive Director involved if these positions are not filled prior to his/her hiring.

Chairman Crosby stated that that there is a recommendation from Spectrum to hire a supervisor of data management. Commissioner McHugh stated that that he sees this position as a high-level policy position for someone who has a great deal of technological experience. Commissioner Zuniga stated that that the table of organization is coming up next on the list of deliverables from the Commission consultants and this position should be discussed in conjunction with the overall organization plan.

Discussion of MGC Internal Policies – Commissioner Zuniga stated that that his goal is to have a set of policy questions relative to the employee manual ready for the next Commission meeting.

Project Management Consultant – Commissioner Zuniga stated that that the Commission consultants met with PMA and had a good exchange. Work on the timeline components of the strategic plan will continue throughout August.

Racing Division:

See transcript pages 112-121.

Update – Commissioner Cameron stated that she has provided a job description for the Director of Racing. She stated that that the Director would report to the Commission's Executive Director and that she would like to move forward with posting this position. The Commission agreed that she should do so.

On another aspect of racing governance, Commissioner McHugh stated there is no mechanism for Commissioner Cameron to accept a waiver of appellate rights from individuals against whom she has imposed a sanction at the conclusion of an adjudicatory hearing. The absence of such a mechanism is important, for some people wish to accept the sanction and move on promptly. He recommended the Commission vote to give Commissioner Cameron the authority to accept

waivers, understanding that doing so would give Commissioner Cameron the right to impose sanctions that were effectively immunized from further scrutiny by the full Commission if the individual against whom the sanctions ran agreed to accept them.

Motion made by Commissioner McHugh that Commissioner Cameron, who has already been delegated certain powers with respect to racing, be delegated the power to accept waivers of appellate rights in contested hearings and that sanctions imposed as a result of those hearings be binding on the Commission when she accepts those waivers. Motion seconded by Commissioner Stebbins. The motion passed by a 5-0-0 vote.

Commissioner Cameron stated that jockey Jacqueline Davis at Suffolk Downs has asked to serve her three-day suspension and in writing has waived her rights to a hearing before the full Commission.

Project Work Plan (Continued):

See transcript pages 121-126.

Commissioner Zuniga stated that that he is drafting the body of an RFR that will serve as an open solicitation for assistance in carrying out the Phase 1 investigations. Director Glovsky is assisting with drafting that RFR and Commissioner Cameron is reviewing the scope of work the RFR will contain.

Technical Assistance to Communities – Commissioner Stebbins stated that that a number of excellent resumes have been received for the ombudsman position. Chairman Crosby stated that that the application process has closed and the Commission should have a candidate soon.

Commissioner Zuniga stated that he has had discussions with a financial advisory firm and will be speaking with other firms, as a financial advisor could assist the Commission with in its analysis of financing proposals and revenue projections submitted by gaming license applicants.

Finance/Budget Update:

See transcript pages 126-132.

Commissioner Zuniga stated that he submitted to the Commission a preliminary budget for FY 2013 that totals \$7.4 million. The Commission has an available balance of \$14.2 million after expenses from FY 2012. Commissioner Zuniga stated that he did not make assumptions relative to application fees in the FY 13 budget as these fees will be applied directly to the cost of investigations. He has made assumptions about having to increase office space. He reviewed other aspects of the budget with the Commission, stating that adjustments can be made as the Commission's efforts proceed. Chairman Crosby stressed that the money being discussed is not tax dollars; it is money loaned to the Commission from the rainy day fund and will be reimbursed out of the licensing fees.

Motion made by Commissioner Zuniga to accept and approve the proposed budget of \$7,411,652 for fiscal year 2013, the components of which are detailed in the memorandum he presented at this meeting. Motion seconded by Commissioner Stebbins. The motion passed by a 5-0-0 vote.

Commissioner Zuniga stated that there are two contracts the Commission has to extend. The first is for JuriStaff work in the search for a staff attorney in which they will be acting as a screener for a large volume of resumes. The flat fee is anticipated to be \$15,000. The second contract is with Mr. Jack Derby of Derby Management for service as a group trainer and facilitator. The fee is anticipated not to exceed \$18,000.

Motion made by Commissioner Zuniga to execute a contract for JuriStaff in the amount of \$15,000 and Mr. Jack Derby of Derby Management, fee not to exceed \$18,000. Motion seconded by Commissioner McHugh. The motion passed by a 5-0-0 vote.

Public Education and Information:

See transcript pages 132-157.

Community Outreach/Responses to Requests for Information – Commissioner Stebbins stated that he and Commissioner McHugh had had a conversation with the Palmer Town Manager regarding the role of fire and water districts in the process that ultimately results in a host community agreement. They advised him that the Chapter 23K contemplates an agreement between the host community and the developer, not separate “host community” agreements between the community, constituent parts of the community and the developer. Chairman Crosby asked that this information be posted on the Commission website.

Report from Director of Communications and Outreach – Elaine Driscoll stated that she has prepared a presentation for prospective Executive Director candidates to enable them to learn more about the Commission. She has issued a speakers bureau announcement, which included a press release, social media placement, as well as an E-Mail blast to a targeted list of Chambers of Commerce. She has been promoting the Western Mass Forum and Commissioner Stebbins has conducted two television interviews on the Forum. She stated that she has been issuing a number of releases and doing social media placements for job positions. She worked with Director Glovsky to assist in issuing an official RFR for the logo and website, with the intent of picking a company by September 4.

Western Mass Forum – Commissioner Stebbins thanked Western New England University and Senator Candaras for helping to organize this forum. There are 88 official registrants and the panelists are excited. The topics will be community mitigation, tourism, and workforce development and job training. He stated that at a future meeting the Commission should hear from the construction trades, as individuals have expressed concern about the size of the casino construction projects and their impact on contractors.

Chairman Crosby stated that the Commission will announce at the Western New England University forum that it is ready to begin accepting application fees and will be releasing a two-

page form for applicants to complete. A discussion was held regarding this form. A change in wording was made to allow for payment of the application fee via wire transfer. Commissioner Zuniga raised a question about whether the form should be limited to projects in region A or B, but not C. Commissioner McHugh stated that the form is designed to inform applicants that the application fee is nonrefundable unless the Commission decides not to issue an RFA in the region for which they plan to apply. After further discussion, the Commission decided to amend the form to make completing the region optional and to add an “s” after the word license in order to accommodate an applicant who might be applying for a license in more than one region. Commissioner Zuniga raised concern with using the word “may” versus “will” in Section 5, which led to an extensive discussion about issuing an RFA in region C. It was decided to leave the word “will” in the document and have a future discussion about issuing an RFA, or accepting application fees from developers proposing a project, in region C.

Motion made by Commissioner McHugh to accept, with the specified corrections, the draft certificate for purposes of accepting application deposits in advance of promulgating RFA-1. Motion seconded by Commissioner Zuniga. The motion passed by a 5-0-0 vote.

Possible Diversity/Inclusion Forum – Chairman Crosby stated that that he has distributed to the Commissioners notes from the brainstorming session he had with a range of people regarding diversity in employment and vendor relationships. He stated that that he raised the question of whether to have a forum on this topic and received a proposal from the Governor’s Office of Access and Opportunity to hold a forum with a suggested date of September 17. The Commission decided to go forward with this forum and Chairman Crosby stated that that he will handle coordination.

October Industry Conference – Chairman Crosby stated that that there are several industry conferences coming up and the Commission should discuss them when more information is available.

Research Agenda:

See transcript pages 157-159.

Chairman Crosby stated that that a decision was made to issue an RFI to see who is interested in submitting a research proposal. If there are enough responses, an RFP may be issued. Commissioner Zuniga will prepare an RFI draft to get this moving forward, as there are many people interested in being involved in this project.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission August 7, 2012 Notice of Meeting & Agenda
2. July 17, 2012 Meeting Minutes of Massachusetts Gaming Commission

3. July 17, 2012 Meeting Minutes of Massachusetts Gaming Commission (Special Meeting)
4. July 26, 2012 Meeting Minutes of Massachusetts Gaming Commission
5. Massachusetts Gaming Commission Possible Executive Director Search Scenarios
6. Position Description: Director of Racing
7. Draft Phase 1 Regulations
8. August 6, 2012 Memorandum Regarding Recommendation to Execute Certain Contracts
9. August 3, 2012 Memorandum Regarding Recommendation to Approve Fiscal Year 2013 Budget
10. Massachusetts Gaming Commission Applicant Deposit Certificate
11. Sketch of Gaming Commission Diversity and Inclusion Educational Forum

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