

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

DRAFT

Meeting Minutes

Date: February 14, 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 52nd public meeting.

Approval of Minutes:

See transcript pages 2-4.

Commissioner McHugh stated that he has distributed the February 7, 2013 minutes to the Commissioners for review. Chairman Crosby and Commissioner Stebbins suggested making two revisions.

Motion made by Commissioner McHugh that the minutes of February 7, 2013 be approved as amended. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 4-24.

Master Schedule – Chairman Crosby stated that the Commission is working very hard on issuing the slots license as soon as possible. The Commission set September 1, 2013 as an aspirational

target date. A number of issues, however, must be resolved before the Commission can firmly settle on that date.

Personnel Update – Chairman Crosby stated that the hiring process for a Director of Workforce Supplier and Diversity Development is well underway. The Commission posted an advertisement for the Director of Licensing and the Director of Research and Problem Gaming positions. He stated that he asked Marlene Warner from the Mass Council and Joel Weisman, formerly a senior researcher for the Department of Health and Human Services, to be part of the interview team.

License Fee Discussion – Commissioner McHugh stated that the M.G.L. c. 23K provides that the Category 1 licensee must pay \$85 million as a licensing fee and the Category 2 licensee must pay \$25 million as a licensing fee. The Commission anticipates that the licenses it issues will carry conditions that may not be satisfied for a substantial period of time, so the question becomes whether the Commission should collect the fee when the license is awarded or when the conditions are fulfilled. Under the statute, the bulk of that initial licensing money goes into a fund that the Commonwealth distributes to other statutory funds, some of which are distributed through appropriations. In his FY 2014 budget proposal, the Governor has relied on appropriations from those funds. The statute says that the licensee must pay the license fee within 30 days after the Commission awards the license. In the case of the Category 1 license, the statute also provides that the licensee must place in escrow ten percent of the total amount the licensee plans to spend on the project.

Commissioner McHugh stated that the practical problem with waiting to collect the fee until the licensee fulfills all the conditions is that the money, in all likelihood, will have been allocated and the entire fund into which these monies are put expires on December 31, 2015. It is unlikely that all of the conditions will have been met by that time. Commissioner Cameron stated that she discussed the timing issue with the gaming consultants, who were adamant in saying that the fee is always collected upfront when the license is awarded, however conditionally. All licenses have some conditions, the fee is always nonrefundable, and it is up to the applicant to meet those conditions. She stated that the consultants were not aware of another jurisdiction that has some kind of a failsafe, as it is incumbent upon the applicant to resolve problems. Commissioner Zuniga stated that it has always been his interpretation of the statute that the fee would be collected upfront. Commissioner Stebbins stated that he agrees with the interpretation that the fee would be due upfront.

Chairman Crosby stated that he checked with the Legislature and the Senate informed him that the intent was to collect the licensing fee upfront, but they never considered how the license conditions would affect fee collection. Now that this issue has been raised, the Senate wants to think about it a little more. He stated that the House also has not formally contemplated the specific issue. His discussions clarified that there are two types of conditions: those that are within the licensee's control and those outside of the licensee's control, such as not getting federal highway approval for something that is absolutely essential to the project. He discussed with legislators what would happen if the licensee paid the fee upfront, but the project could not go forward through no fault of the developer. In such a scenario, the license would go to another developer and the House would be open to considering a time period, either through a change to

the law or the Commission's own regulations, for the Commission to return the money to the original licensee upon receipt of the license fee from the successor licensee.

Commissioner McHugh stated that the developer may be able to get insurance to protect it against a condition that is beyond its control. Commissioner Stebbins stated that the ENF certificate, received far in advance of the license award, will outline where the major environmental, traffic, or other hurdles may come up. When making licensing determinations, the Commission will consider these potential hurdles in determining the likelihood of success of each applicant. Chairman Crosby asked that the Commission request public comment on this issue. Commissioner McHugh agreed that it would be helpful to get a wide range of comments and do more research on this topic. Chairman Crosby stated that the Commission will revisit this topic in two weeks.

Public Education and Information:

See transcript pages 24-55.

Report from the Ombudsman – Ombudsman Ziembra stated that the Commission received 20-25 comments on the surrounding community definition. The Commission is reviewing these comments to determine if there is any need to amend the current draft. He stated that communities are submitting requests for community disbursements and the Commission will process the requests as they come in. He continues to have conversations with applicants and communities on a number of different issues. He stated that he received a recommendation that the Commission should be mindful of the differences between resort casino and slots applicants when developing policies and procedures.

Chairman Crosby stated that in a month the Commission will be reopening the Region C discussion and next week's meeting agenda will include a discussion of what information the Commission will need to begin this discussion. He asked the Commissioners to consider how they would like to handle this discussion.

Discussion of Preliminary Evaluation Criteria Matrix – Commissioner McHugh stated that he and Commissioner Zuniga have created a preliminary evaluation criteria matrix to start preliminary discussion. He stated that the question is: what criteria should the Commission use to evaluate the applications for Category 1 and Category 2 licenses. This matrix is designed to lay out the criteria and indicate the supporting evidence needed for each criterion. He stated that he has grouped the criteria listed into five categories with topics attached to each of the five categories. The sources for the topics are varied and include the statute as well as the applications for casino licenses used in Pennsylvania, Missouri, Louisiana, Philadelphia, and Springfield. He also reviewed the evaluations used in Pittsburgh, Pennsylvania, Maryland, Kansas, and Singapore. He reviewed the strategic plan and recommendations of the gaming consultants, as well as a draft of an AIA white paper.

Commissioner Zuniga stated that there is a great deal of substance behind all the references Commissioner McHugh has outlined. He indicated that thinking about the criteria in five rational groupings is of great value to the Commission. Chairman Crosby stated that it is important to determine if these are the correct groupings. Commissioner McHugh organized the

criteria into revenue generation, employment, goods and services, building and site design, and mitigation. Chairman Crosby indicated that the legislation talks most about economic development, jobs, and revenue. He recommended that the Commission consider changing the five groupings to finance, economic development, design, mitigation, and amenities and enhancements. Commissioner McHugh stated that these ideas are intriguing, as he thought his original third category was weak. Commissioner Zuniga stated that the Commission should balance needs, as the largest facility may generate the most revenues and jobs, but there could be a place for the Commission to look at things holistically to ensure that proposals meet the spirit of the legislation and the vision of the Commission.

Commissioner McHugh asked about the best way to work on category five and enhance the others. Commissioner Stebbins stated that laying out thought provoking questions and putting them out for broader public dissemination may provide feedback and enhancement. He stated that the amenities and enhancement group has a blurred connection to finance and economic development and the Commission may broaden category three to include unique business strategies. Chairman Crosby stated that he would work on reordering the categories and recommended in the meantime posting the present draft for public comment. Commissioner Zuniga stated that the Commission should consider in the future how to weight the criteria. Chairman Crosby stated that there are four main steps that the Commission must undertake in connection with the applications: (1) identifying the evaluation criteria and writing an application form, (2) develop a weighting mechanism for the criteria, (3) designing and describing the application process, and (4) developing a list of outside resources that the Commission will use in the evaluation process.

Chairman Crosby stated that the Commission will post online for comment the preliminary evaluation criteria matrix and the Commission will continue discussions at the next meeting. Commissioner Zuniga stated that the Commission has already held discussions on some of the policy questions that dovetail into several of these categories, such as finance, and the Commission will write regulations relative to a number of financial ratios that are not alluded to in this matrix. Commissioner Cameron stated that this matrix is well thought out and pointed out that the Commission needs a group of criteria to evaluate innovative competitive ideas that do not squarely fit within any criterion that the Commission could predict ahead of time. She stated that a bigger facility does not necessarily generate more revenue and there are many questions to think about. Commissioner Stebbins stated that he would like to see what an applicant's track record has been in areas such as retention of employees. Commissioner McHugh agreed that historical data would be very helpful in many of the evaluation criteria.

Regulation Update:

See transcript pages 55-62.

Key Policy Questions – Commissioner McHugh stated that the key policy question sessions in January resulted in key policy decisions which the Commission has included in a matrix that it will post today. Chairman Crosby stated that the Commission still must address policy questions related to the second phase of Phase 2. Commissioner McHugh stated that the second part of the Phase 2 regulations deals with operational matters and he anticipates fewer policy questions. The Commission can deal with these questions as they arise.

Attorney Grossman addressed the Commission. He stated that the Commission has made substantial progress in drafting the regulations. He noted that he altered the regulation grid to identify internal target dates, thereby allowing the Commission to keep track of milestones in the drafting process. He stated that he will compile portions of the regulations for the Commission to review at public meetings over the course of the next few weeks. He stated that he has met internally with staff and the consultants to develop a plan, with a goal of meeting on March 12, 2013 to make a final run through of the projected draft language and then send it to the Commission for a review before sending it to the Local Government Advisory Committee. He asked the Commission to consider how it would like to look at this language and recommended setting aside a large amount of time to go through the Phase 2 draft language in its entirety, either before the Commission's March 14, 2013 meeting or in a full day on March 13 or 15, 2013. He stated that this time frame would allow promulgation of the Phase 2 regulations sooner than projected.

IEB Report:

See transcript pages 62-85.

Scope of Licensing – Director Wells stated that she has sent letters to those applicants who did not state which license they were seeking and gave them until February 19, 2013 to respond. She stated that she heard from one applicant who indicated that it will meet this deadline. The second applicant expressed initial concerns because of the structure of its negotiations and anticipates providing further information over the next few days. She stated that if the applicants are not prepared to make a declaration on February 19, 2013, then they should submit something in writing regarding their status and she will discuss the submissions with the Commission at its February 21 meeting. Chairman Crosby expressed concern that this may not be fair to the applicant that intends to meet the February 19, 2013 date. Commissioner Cameron stated that these two applicants are different from every other applicant who has designated the type of license for which it is applying. Commissioner Cameron stated that the Commission did not anticipate this situation and must now decide how to acquire the information that the Commission needs to prioritize Category 2 investigations. Chairman Crosby stated that he agrees with Director Wells' plan as long as the IEB gives both applicants the same option to delay declaring the license it is interested in pursuing.

Investigation Status Report – Director Wells stated that the IEB has sent all applications to the gaming consultants and the background investigations are continuing. She stated that the investigators are updating her on a regular basis and the State Police are also involved in the investigatory process.

Public Records – Director Wells stated that the State Police reviewed the applications as well as the redacted forms, which the Commission stated should be in compliance with the specimen form posted online. Certain applicants have over redacted and certain applicants have under redacted. She stated that the proposed procedure for going forward with public records requests is to inform the applicants of any discrepancies and applicants who desire additional redactions beyond the specimen form would submit a written request to the Commission, which the legal

department will review. She stated that the applicant would be notified of the legal department's determination and if the applicant is not satisfied with that determination it may appeal to the full Commission.

Director Wells stated that discussion is needed on the method of disclosure once the applications have been properly redacted. She notified the applicants that the Commission would discuss this issue at today's meeting and gave them an opportunity to comment. Commissioner McHugh stated that the Commission wrote a set of instructions that told applicants what they were supposed to do, created a specimen form that showed them how to do what they were told to do, and wrote a letter telling them that the Commission wanted them to do what the instructions and the specimen form told them to do. After all of these requests, many of the applicants still did not do the redactions properly. He stated that at this point it is fair to assess the cost of the processing against the applicants whose applications required correction. Chairman Crosby agreed and stated that the Commission should already be billing for any hours spent on the background investigation process. Commissioner Cameron stated that she agreed and commended the State Police for supplying additional troopers. Commissioner Zuniga stated that this billing is already being done to some extent, but agrees that if additional resources are being expended the cost should be assessed against applicants.

Chairman Crosby asked whether the Commission is in agreement to authorize Attorney Grossman to review the confidentiality requests submitted to the Commission. Commissioner McHugh stated that the regulations provide for a process under which people can ask for information to be redacted and list the criteria that the Commission should consider. He stated that he supports Director Wells' recommendation for delegating this responsibility. Commissioner Cameron stated that she is in agreement, as delegation will expedite the process and she is confident in Attorney Grossman's ability to make good decisions. Commissioner McHugh recommended revising this recommendation and delegate to the Director of the IEB the responsibility for making this decision, knowing that the Director will rely on legal staff to give the appropriate advice in close cases. Commissioner McHugh is concerned with putting another labor intensive process in the hands of the small legal staff at the same time as it is working on regulation drafting. Director Wells and the members of the Commission were in agreement with this recommendation.

Motion made by Commissioner McHugh that the decision on whether to allow requests for additional confidentiality be delegated in the first instance to the Director of the IEB, with the right of a dissatisfied applicant to appeal to the full Commission any action the Director takes. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh asked how to respond to public records requests once this process is finished and the applications are redacted. It was decided to invite written comment and make a final decision at the next Commission meeting.

Racing Division:

See transcript pages 85-93.

Racing Division Update – Director Durenberger reported there has been tremendous success this week with the IT difficulties previously reported. She stated that the Racing Division sent out the letter to the Division of Local Services regarding the calculation of local aid payments, and the Racing Division has begun processing payments to the racing stabilization fund. She stated that new administrative hires are going through the background check process and seasonal employee interviews are underway. She anticipates coming before the Commission next week to make recommendations on laboratory services and the auditing software.

Legislative Review Update – Director Durenberger stated that a finalized version of the legislation will be ready to present at the Commission’s next meeting. She stated that significant stakeholders have submitted two requests to have an additional opportunity to submit some advocacy documents. She determined that these requests were reasonable and will not affect the timetable. She stated that the Commission was tasked with reviewing the current pari-mutuel and simulcast laws in Chapters 128A and 128C for efficacy and has determined that there is a very real need for changing the legislation.

She reminded everyone that the Commission has scheduled a public hearing for Monday, February 25, 2013 at 1:00 p.m. to discuss the proposed changes to 205 CMR 3.00 and 4.00 and that the document is still available on the website for public comment.

Chairman Crosby stated that he has received a great deal of positive feedback on the hiring of Rick Day as the Commission’s Executive Director. He stated that he had a conversation with the Chairman of the Washington State Gaming Commission to discuss interaction with Mr. Day and he indicated that the Commission is free to contact him at work during the transition, in the hope that the Commission will reciprocate when Mr. Day moves to Massachusetts by allowing Mr. Day to be available if he is needed to solve a problem in Washington. Chairman Crosby announced that Mr. Day will be joining the Commission on March 18, 2013.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission February 14, 2013 Notice of Meeting and Agenda
2. February 7, 2013 Massachusetts Gaming Commission Meeting Minutes
3. Massachusetts Gaming Commission Draft Evaluation Criteria Matrix

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