



Massachusetts Gaming Commission Meeting Minutes

Date/Time: March 10, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 748 1097

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Gayle Cameron
Commissioner Eileen O'Brien
Commissioner Bradford Hill

1. [Call to Order](#) (0:20)

Chair Judd-Stein called to order the 373rd public meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all four commissioners were present.

2. [Approval of Minutes](#) (1:18)

Commissioner O'Brien stated that there had been a technical glitch in sending the minutes to the other commissioners and asked if the Commission felt comfortable moving on them. Chair Judd-Stein and Commissioner Cameron stated that they had read the minutes, and Commissioner Hill reported that he would abstain from voting on these minutes, as he was not present for the meetings.

a. June 24, 2021

Commissioner O'Brien moved that the Commission approve the Public Meeting minutes from June 24, 2021, included in the Commissioners' Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously 3-0, with one abstention.

b. August 4, 2021

Commissioner O'Brien moved that the Commission approve the Public Meeting minutes from August 4, 2021, included in the Commissioners' Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously 3-0, with one abstention.

c. September 9, 2021

Commissioner O'Brien moved that the Commission approve the Public Meeting minutes from September 9, 2021, included in the Commissioners' Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously 3-0, with one abstention.

3. [Development East of Broadway in Everett, MA](#) (4:14)

a. The Commission will consider whether the development proposed across the street from Encore Boston Harbor will be determined as part of the existing gaming establishment and associated issues, including the permissible use of certain areas of the gaming establishment, such as the ballrooms, for the conduct of live entertainment, and MEPA related matters.

Chair Judd-Stein introduced Joe Delaney, Chief of Community Affairs. Chief Delaney recapped the February 10, 2022, public meeting where representatives from Encore Boston Harbor

(“EBH”) presented their development proposal to the Commission. Chief Delaney reported that public comments were compiled, and a public hearing was held on February 28, 2022. He stated that today’s meeting was for the Commissioners to deliberate on whether the proposed development would be considered part of the gaming establishment, thus subject to regulatory oversight by the Commission. Chief Delaney highlighted, however, that if the Commissioners decided there was no regulatory interest in the proposed development, they could address their concerns through conditions placed on EBH’s gaming license.

Chief Delaney introduced General Counsel Todd Grossman to present the elements for the four-part test to determine whether the development is considered part of the gaming establishment. General Counsel Grossman stated that the Commission was afforded great latitude in determining the components of a gaming establishment under G.L. Chapter 23K, § 2. He also stated that the Commission should also consider interplay between the proposed development and the Massachusetts Environmental Policy Act (“MEPA”).

General Counsel Grossman stated that one issue raised at the public hearing was the size of live entertainment venues. He stated that G.L. Chapter 23K, § 9(11) provided a statutory description limiting the number of patrons allowed in gaming licensee’s entertainment venues as less than 1,000 or more than 3,500. He explained that the components for the four-part analysis determining whether an amenity or area is part of the gaming establishment were: that the development was a non-gaming structure; that the development was related to the gaming area; that the development was under common ownership or control by the gaming licensee; and whether the Commission had a regulatory interest in including the development as part of the gaming establishment. He noted that the fourth criterion was only addressed by the Commission if the prior first three criteria are satisfied.

General Counsel Grossman stated that while the proposed development was owned by East Broadway, LLC, and Wynn MA, LLC would oversee the construction. He added that both corporations were wholly owned subsidiaries of the licensee’s parent company, Wynn Resorts, LLC. He stated that it was not ownership, but control of the development that influenced the third factor.

General Counsel Grossman explained that G.L. Chapter 23K § 13 required a gaming licensee to receive a certified and binding vote on a ballot question in the host community in favor of the gaming license. He stated that the City of Everett held the vote on the location of the property on June 22, 2013, and that the area of the proposed development was not included in the description for the vote. He raised the question of whether any area or amenity of the gaming establishment could be located outside the confines approved by voters, and that future developments would need to consider that issue.

Chair Judd-Stein asked if the Commission should consider the four factors for each of the proposed development projects. Chief Delaney stated that the elements do not need to be broken down individually by structure within the development. He stated that some concerns raised at the public hearing were that underage individuals would have to exit through the bridge when they were not allowed entrance to the gaming establishment, but EBH stated they would install stairs and elevators on the elevated bridge to take underage patrons down to the sidewalk.

Chair Judd-Stein stated that it was obvious the other three proposed developments were non-gaming structures, but the bridge had a certain nexus with the casino entrance. Commissioner Cameron agreed with Chair Judd-Stein, and expressed satisfaction in EBH's response of installing alternative exits to the pedestrian bridge.

Commissioner O'Brien added that while she was satisfied the components were non-gaming structures, she had concerns regarding the maintenance and security of the pedestrian bridge. She stated she wanted to see how the walkway would look schematically with the stairs to the ground level. Commissioner Hill stated echoed Commissioner O'Brien's concerns, but stated that his initial concerns were allayed upon learning of the plans to build an alternative exit for patrons. Chair Judd-Stein stated that the bridge was a way to ensure safety and mitigate traffic concerns, but that she had concerns about security on the pedestrian bridge and monitoring of this entrance for minor access.

General Counsel Grossman stated that the language the Commission used for the second factor in prior decisions was "whether the proposed development supported the gaming area, by making the facility a more attractive destination." Commissioner O'Brien stated that in her inspection of the general schematic, she came to the conclusion that the development was related to the gaming area. She stated that while Everett's Urban Renewal Plan was referenced, EBH's first refusal to purchase nearby properties was included in their host agreement, and therefore nearby structures such as this proposed development were therefore related to the gaming area. Commissioner Cameron, Commissioner Hill, and Chair Judd-Stein agreed that the structures would enhance the gaming area at EBH.

Chair Judd-Stein inquired about the proposed owner of the development and the corporate structure. Jacqui Krum, Senior Vice President and General Counsel at Encore Boston Harbor stated that once the structure is built, there will be a landlord and an affiliated entity responsible for maintaining common areas and security between the premises. Chair Judd-Stein inquired whom the lessor would be. Tony Starr, Attorney at Mintz Levin, replied that East Broadway LLC would be the lessor, and that Counselor Krum was their registered agent. Counselor Krum stated that the corporate structure had not been built past that point. The Commissioners reached a consensus that the proposed development was under common ownership and control of the licensee.

General Counsel Grossman stated that in the past, when deciding if the Commission had a regulatory interest in a development, criteria considered included an interest in licensed employees, registered vendors, and surveillance in accordance with Commission regulations.

Chair Judd-Stein noted that during the comment period, the media had inquired why a licensee wouldn't be interested in regulation for their proposed development. Attorney Starr stated that regulation of these additional structures would be a burden upon both the Commission and the licensee, as it would require Commission monitoring of construction, and oversight by the Gaming Enforcement Unit. He stated that the proposed development was already subject to regulatory oversight by the Alcohol Beverages Control Commission and the City of Everett. He

added that the concerns raised by the public and the Commission could be addressed by establishing conditions on EBH's gaming license.

Commissioner Cameron stated that the Commission had consistently addressed its concerns by placing conditions on gaming licenses in the past, and that she did not believe there was a regulatory interest in making the proposed development part of the gaming establishment.

Commissioner O'Brien stated that she partially agreed, but that she wanted more details regarding the pedestrian bridge and the capacity at the live entertainment venues prior to a determination of whether the Commission had a regulatory interest. Chair Judd-Stein sought clarification regarding Commissioner O'Brien's concerns for the pedestrian bridge. Commissioner O'Brien clarified that if the schematics changed after this meeting, it would be a material change in circumstance and wondered where the separation between the bridge and gaming establishment would occur.

Commissioner Hill also echoed Commissioner O'Brien's concerns regarding the statutory limit for capacity at live entertainment venues. He stated that he would like more information regarding security in the garage, as there were reports of patrons leaving children in their cars while gambling. Chair Judd-Stein stated that she did not recognize a regulatory interest that would require strict oversight by the Commission and opined that placing conditions on the gaming license could address the Commissioners' concerns.

Commissioner O'Brien questioned if the employees for the proposed development would have credentials that would allow them back-of-house access at EBH. Chair Judd-Stein highlighted to the public, that access to the back-of-house would require employee licensing. Counselor Krum stated that none of the employees at the development would have access to back-of-house areas or the employee dining room. Commissioner O'Brien asked if the security team for the parking garage would be EBH's existing security. Counselor Krum stated that the lessor would hire a separate security team, employed by a different entity, and that the security staff for the garage would not check in at the employee entrance for EBH. She added that the separate security force would monitor the garage and pedestrian bridge, and that EBH security would intercept people and request identification once they attempted to enter the gaming establishment.

Chair Judd-Stein asked if EBH anticipated any arrangements with the Everett Police Department or state police. Counselor Krum stated that EBH had discussions with the Chief of the Everett Police Department, and that the department was aware of the development. Chair Judd-Stein noted that the Chief of the Everett Police Department submitted a public comment in support of the development. Commissioner O'Brien stated that a small portion of the bridge was in a right of way owned by the City of Boston and asked Counselor Krum if Boston Police Department would need to be consulted. Counselor Krum stated that the burden would be on EBH to secure ties, given the bridge's respective jurisdiction.

Attorney Starr stated that the live entertainment venue's statutory limits on capacity would be followed, and that restaurants in the proximity of the event space would not be allowed to build out in a manner that would exceed the limit. He added that East Broadway, LLC would submit security plans to address children left in vehicles, and would include more details regarding the

elevator and security checkpoints to the Commission. Commissioner O'Brien stated that she would appreciate the further detail and expressed an interest in receiving information from East Broadway as soon as possible to address her concerns as the project progresses.

Chair Judd-Stein inquired about the development of hotels in the future. Chief Delaney stated that the discussion of hotels would have to be brought back before the Commission, as the topics prepared by EBH representatives for this meeting were solely for the event center, parking garage, restaurant space and pedestrian bridge. He stated that the proposal for development did include anticipated traffic numbers for other potential future developments.

Chief Delaney presented the issues raised by the Commission and public comments that would need to be addressed by conditions on EBH's gaming license. The issues included EBH's required MEPA filings; the capacity of the entertainment venues; the potential impact of the entertainment venue on other local entertainment venues and theatres; geographic non-competes for entertainers at the proposed development; ownership and security of the bridge; and the jurisdiction of the bridge.

Chair Judd-Stein asked if there was a way to structure the Commission's decision that would satisfy the licensee and the public. Commissioner O'Brien opined that the conditions would have to be drafted first, as the determination of whether the Commission had a regulatory interest in the project hinged upon the Commission's satisfaction with the conditions for the licensee. Chair Judd-Stein agreed with this assessment. Chair Judd-Stein then inquired what security would resemble in the interior of the building upon entering the gaming establishment, as she had concerns about minors accessing the game floor, and unruly behavior if a patron was asked to exit the way they entered. Counselor Krum stated that the checkpoint next to the pedestrian bridge would be similar in construction to the existing security checkpoints in the gaming establishment.

Commissioner O'Brien stated that there appeared to be a consensus about applying conditions on the licensee's gaming license, but that she would like to review a set of draft conditions prior to a formal vote. Commissioner Cameron shared Commissioner O'Brien's concerns and agreed that draft conditions should be written and circulated as quickly as possible. Commissioner Hill inquired when the Commission would see the bridge design before the decision. Chief Delaney stated that in drafting these conditions, Commission could have the authority to establish deadlines for document production, including: the schematics for the bridge; the security plans for the garage and pedestrian bridge; and the entertainment venue's seating and ticket policy. Commissioner Hill thanked Chief Delaney for the clarification.

Commissioners had no further questions for Ms. Krum and Attorney star. Chair-Judd Stein thanked parties for their work and time on the matter. Parties thanked the Commission as well.

4. [Other Business](#) (2:07:10)

Hearing no other business, Chair Judd-Stein asked for a motion to adjourn.

Commissioner O'Brien moved to adjourn. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously 4-0.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated March 7, 2022
2. [Meeting Packet](#) from the March 10, 2022, Open Meeting