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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** June 2, 2022, 10:00 a.m.

**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 112 760 4163

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 Eileen M. O'Brien  
Commissioner Bradford R. Hill  
Commissioner Nakisha L. Skinner

#### 1. [Call to Order](#) (0:10)

Chair Judd-Stein called to order the 381st public meeting of the Massachusetts Gaming Commission. Roll call attendance was conducted, and all four commissioners were present.

#### 2. [Review of Racing License Application for Opening a New Racetrack](#) (1:20)

General Counsel Grossman, joined by Director of Licensing, Dr. Lightbown, presented a draft of the new Application for a Racing License to Operate a Racetrack. Counsel Grossman clarified that this application would be utilized by new applicants who are seeking licenses from the Commission, not for use by existing licensees. The application is intended to gather all necessary information from applicants, but also address several issues the Commission identified in 2021 when it received an application for a new thoroughbred racetrack. This will ensure the Commission is prepared if any entities indicate an interest in applying for a license in the future. The application was included on pages 2 through 20 of the meeting packet and provided to Commissioners in advance of the meeting.

Before reviewing the application, Counsel Grossman provided Commissioners with a brief overview of the law relevant to horse racing in the Commonwealth; explaining that G.L. c. 128A and 128C predominately guide most of the processes involved in horse racing and licensure. Additionally, G.L. c. 23K, § 7(a) grants the Commission with authority to administer and enforce the racing statutes. Counsel Grossman highlighted that G.L. c. 128A, § 3(i), sets forth certain aspects the Commission should take into consideration when granting and evaluating licensure. Counsel Grossman added that

this provision was included within the application so that applicants would grasp from the outset exactly why the Commission was seeking the information within in the application, but also give the applicant an opportunity to provide supplemental information that would assist the Commission in its decision-making process. From there, Counsel Grossman and Dr. Lightbown moved through different sections of the application while also indicating to Commissioners whether certain questions within sections were newly formulated, or whether they were included in the existing versions of the license application utilized by the Commission in previous years.

#### A. Section 1 – Background Information

Counsel Grossman and Dr. Lightbown provided an overview of Section One of the application, commenting that the section was intended to seek the background information from the applicant, including: their organizational structure, mailing address, business address, as well as the proposed location of the racetrack and the county it is or will be located in. Dr. Lightbown clarified that the county where the track would be located is information the Commission has always requested from applicants, but that the question was simply moved to section one within this application. Counsel Grossman added that the application fee would be set at three-hundred dollars (\$300.00) in accordance with G.L. c. 128, §4. Additionally, applicants would be required to submit a surety bond in the amount of \$125,000, pursuant to G.L. c. 128, §3(o).

#### B. Section 2 – Project Summary and Financing

Counsel Grossman explained to Commissioners that G.L. c. 128, §3(i) sets out factors that the Commission may take into consideration when determining whether to grant a license, including: the financial ability of an applicant to operate a race track; the maximization of state revenues; the suitability of racing facilities for operation at the time of the year for which racing dates are assigned; the circumstance that large groups of spectators require safe and convenient facilities; and the interest of members of the public in racing competition honestly managed and of good quality.

Accordingly, Section Two of the application seeks information from the applicant regarding the broader project as well as the racetrack, clubhouse, grandstand, parimutuel kiosks, and parking areas. Applicants also have an opportunity to submit any blueprints or renderings that they have designed as a supplement to the application. General Counsel Grossman noted that the Commissioners may find this information helpful in their evaluation of applications; and that the Commission also has discretion to request updated information as an applicant's construction and development progresses. Within Section Two, applicants are also asked to provide information detailing the project's budget, the anticipated capital investment, as well as any feasibility studies they have conducted or will conduct pertaining to the project.

Commissioner Hill asked for clarification regarding whether a license issued by the Commission for horse racing would also allow for simulcasting or sports wagering in advance of racing taking place on the premises. Counsel Grossman agreed that the Commission would need to address simulcasting requirements, and when an entity would be allowed to simulcast if awarded a license, especially if they were applying before construction had concluded on a racetrack. Counsel Grossman added that it was hard to say with certainty how the Commission would handle sports wagering relative to current or potential horse racing entities, given the differences in the current house and senate bills.

#### C. Section 3 – Schedule of Proposed Races

Section Three of the application is intended for the applicant to inform the Commission when they expect to commence their racing program, by seeking the calendar year the applicant expects to conduct races onsite, and their proposed number of racing days. Counsel Grossman added that the ultimate question will be for the Commission to determine the essential purpose of the racing license they award, i.e.- to construct a new track versus authorizing the conduct of live horse racing and associated simulcasting. He clarified, that while the law does allow for the issuance of a new license, it is not necessarily the focus of the statute, so much as regulation and oversight of racing within the Commonwealth. Given the time necessary for construction and evaluation, Counsel Grossman recognized that a new applicant would not likely be able to construct a facility within the short time between submission of an application, and the following racing season. Accordingly, the Commission would likely have to award a license for racing in a future calendar year conditioned upon certain terms being met.

#### D. Section 4 – Non-Commission Approvals

Section Four of the racing application covers the approvals the applicant has to acquire by entities other than the Commission in advance of the Commission’s decision relative to licensure. By law, an applicant’s proposed facility and premises must be approved by local authorities pursuant to G.L. c. 128A, §13A. Additionally, the county where the applicant proposed to conduct racing must have also approved horse racing by vote in accordance with G.L. c. 128A, §14. Counsel Grossman added that county-wide votes of approval do not expire, which is why the Commission has not engaged in an annual review of this requirement in Norfolk County, where racing is currently taking place. Section 4.4 details additional approvals that are required of the licensee including, federal environmental standards, permits, and any other necessary approvals. The application also requests documentation of all approvals the applicant has received, as well as a timeframe for approvals they plan on acquiring in the future.

#### E. Section 5 – Qualifiers and Suitability

Section Five of the application asks for information pertaining to the suitability of an applicant, or eventual licensee. Counsel Grossman clarified to the Commissioners that unlike in G.L. c. 23K, §§12 and 16, which set out the standards the Commission applies when evaluating suitability, G.L. c. 128A does not have this same language or process. Nevertheless, Counsel Grossman pointed out to the Commissioners that various sections of the law and jurisprudence support and invite the Commission to evaluate suitability if it was so inclined. The Commission will need to establish what the standard of suitability is, what type of information they are seeking from applicants, and whom within the entity the Commission will be seeking information about.

With that, if the Commission were so inclined, Counsel Grossman suggested that the Commission would need to determine out who would be deemed a Qualifier on the racing side; similar to how a Qualifier is defined within 205 CMR 116.02 for gaming licensees. From there, the Commission’s next consideration will be how the Commission goes about determining suitability, what considerations will be included, and which documents will be required upon submission of the application. Commissioners could also consider whether: a CORI or background check is required; if there are any automatic disqualifications; and whether there will be reciprocity for individuals who may already possess licenses elsewhere. Counsel Grossman noted that on the gaming side, Qualifiers are required to submit entity or individual forms to the Investigation and Enforcement Bureau (“IEB”). Alternatively, Counsel

Grossman pointed out, similar questions within the present draft application are included within the existing gaming qualifier applications, but they could be submitted by the applicant in a different manner separate from the application, if the Commission so desires.

Counsel Grossman highlighted to Commissioners that Section 5.13 asks for information that is not currently included in the Commission's existing suitability applications, but is likely information that the Commission would be interested in reviewing when determining whether to award a license, or would certainly wish to view prior to allowing an applicant to commence operations. Section 5.14 requests an applicant's audited financial statements, however, Counsel Grossman recognized that an applicant may be a new corporate entity that does not have previous financial statements. So, the Commission may need to identify whose finances it is interested in. In the same vein, sections 5.15 and 5.16 pertain to the funding of the project, and whether any of the qualifiers are funding the process, as well as the type of insurance the facility will carry in advance of commencing operations.

#### F. Section 6 – Public Interest

Section Six of the application details the Commission's consideration of "the interest of members of the public in racing competition honestly managed and of good quality." G.L. c. 128A, §3(i). Accordingly, Section 6.1 asks for a broad description by the applicant as to why they believe its proposal is beneficial to the public at large, the Commonwealth, and racing stakeholders. Section 6.2 requires submission of agreements with the horsemen's organizations, or a plan for executing the agreement if it has not yet been executed. So that the Commission has a clear understanding of the expected revenue, Section 6.3 requests that the applicant submit supporting documentation including analysis or studies performed relating to projected purses, handle, tax revenue to the Commonwealth, parimutuel revenue, attendance estimates and projections as to how many employees they anticipate having in the first three years of operation. Dr. Lightbown added that this information is similar that which the Commission asks of its current licensee in the existing application. Similar to the data collected in Section 4, Section 6.4 asks the applicant for information pertaining to the support and opposition the project has received from the local governing body or officials in the host and surrounding communities. Before moving onto Section 7, Counsel Grossman highlighted Section 6.5, a new provision similar to one within gaming, that seeks the applicant's plan to attract and retain a diverse workforce including women, minorities, and veterans throughout both the construction and operation phases of the project.

#### G. Section 7 – Facilities and Equipment

Section 7 of the application seeks information regarding the real property upon which the racing facility will be constructed including the ownership and control of the land, the equipment expected to be used at the facility or a plan for how they will procure the equipment the applicant does not currently possess. Additionally, the application solicits information as to the applicant's anticipated security measures for the care and protection of patrons, employees, licensees, horses, and roadways leading to and from the premises. Dr. Lightbown clarified that much of Section 7, aside from Section 7.2 are all questions that are contained in the existing license application. Counsel Grossman highlighted that the Commission, within its discretion and authority, may condition any license on an applicant providing sufficient security measures listed within Section 7 of the application.

#### H. Section 8 – Wagering and Simulcasting

Section 8 seeks two categories of information from the applicants. The first, is whether the applicant intends to offer ADW (account deposit wagering), and if so, the applicant is asked to provide a description of the system, and any service providers they anticipate using. Counsel Grossman recognized, that while an applicant may not have all of this information available at the outset of the application process, it will ultimately be required and pertinent to the Commission's ultimate decision to license the applicant and allow for ADW operations on the premises. Next, Section 8.2 sets out the part of the statute that governs whether an entity may simulcast, pursuant to the requirements listed under G.L. c. 128C, §2. Counsel Grossman explained that simulcasting is directly tethered to the conduct of live horseracing within the statute, but clarified that Suffolk Downs and Raynham have the ability to simulcast, as those two entities are granted the ability to do so under separate special acts.

From there, Commissioners discussed the statutory requirements relative to simulcasting, and the consideration as to whether a new entity would need to first construct premises and conduct live racing prior to being permitted to simulcast. After much discussion, Commissioners agreed that they would revisit this section again at a future forum after the legal team could provide more information on the requirements, and the different interpretations of the statute.

#### I. Section 9 – General Conditions, Attestation and Signatures

Section Nine of the application contains conditions and provisions that would be automatically attached and must be acknowledged by the applicant before submitting their application. The attestations include the affirmative obligation by the applicant to abide by the statements made in their application to the Commission. Counsel Grossman explained that this is a similar condition imposed on the three gaming licensees, but that does not currently exist for current racing licensees. He clarified, however, the condition is an excellent way to ensure the statements in the application are adhered to by the applicants and are not simply aspirational.

With that, Counsel Grossman concluded his remarks on the application and welcomed comments and questions from the Commissioners. Chair Judd-Stein and suggested that given the legal and policy related issues before the Commission, it may be beneficial to invite public comment on the application and hold a public hearing to receive input from interested parties and the greater racing community. Commissioners agreed that this would be a beneficial step in the process. After discussing potential dates and providing opportunities for public participation, Commissioners agreed that a hearing date in July would be beneficial, as it would provide time for comments to be submitted relative to the draft application and allow the Commission to review the written comments in advance of the public hearing date.

#### 3. [Other Business](#) (1:53:21)

Hearing no other business before the Commission, Commissioner O'Brien moved to adjourn. by Commissioner Skinner seconded.

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Chair Judd-Stein: Aye.*

*Commissioner Skinner: Aye.*

*The motion passed unanimously. Meeting Adjourned.*

### **List of Documents and Other Items Used**

1. Notice of Meeting and Agenda, dated May 25, 2022
2. [Meeting Packet](#) from the June 2nd Open Meeting