



Massachusetts Gaming Commission Meeting Minutes

Date/Time: June 24, 2021, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 489 1642

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 Enrique Zuniga

1. [Call to Order](#) (0:00)

Chair Judd-Stein called to order the 348th public meeting of the Massachusetts Gaming Commission. Roll call attendance was conducted, and all four commissioners were present for the meeting.

2. [Approval of Minutes](#) (0:52) a. April 26, 2021

Commissioner O'Brien moved that the Commission approve the minutes of April 26, 2021, subject to any necessary changes for typographical errors or ministerial changes. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

3. [Administrative Update](#) (1:39)

a. Update on Internal COVID Policies

Executive Director Karen Wells updated the Commission on the results of the survey related to the Commission's internal Covid policy, particularly with respect to individuals working on-site. Executive Director Wells did not recommend any additional policy changes. The Commission thanked Executive Director Wells for a positive report.

b. [Update on Public Meetings](#) (5:07)

General Counsel Todd Grossman updated the Commission on the status of the Open Meeting Law following the rescission of the State of Emergency declared by the Governor during the pandemic. He advised that on June 15th, Chapter 20 of the Acts of 2021 was enacted, which instituted temporary amendments to the Open Meeting Law that will remain in effect until April 1, 2022. Specifically, the Special Act extended the suspension of the requirements that meetings be open to the public and that a quorum of the public body be physically present at a meeting.

Chair Judd-Stein noted that there will be additional IT implications for the return to public meetings. Digital Coordinator Austin Bumpus presented technology options for the Commission to use for public meetings moving forward. The Commission asked clarifying questions regarding the differences between what has been used in the past and what would be used under the new options. Communications Director Elaine Driscoll and Digital Coordinator Bumpus recommended that the Commission provide a link to meeting participants and post the live stream feed to the website for people wishing to view the meeting. The Commission agreed with this recommendation.

c. [On-site Casino Updates](#) (30:02)

IEB Director Loretta Lillios updated the Commission on on-site activities at the licensee properties. Director Lillios noted that the IEB is continuing to work with operational teams at the properties to ensure adequate security and safety measures are in place for events. Assistant Director of Investigations & Enforcement Bureau/Gaming Agents Division Chief Bruce Band reported that the properties have all been very busy and operations have been going smoothly. The Commission thanked Director Lillios and Assistant Director Band for this report.

4. [Legal Division and Investigations and Enforcement](#) Bureau (33:58)

a. MGM Transfer of Interest REIT Threshold Issues

General Counsel Todd Grossman introduced the proposed transfer of interest of the gaming establishment that comprises MGM Springfield from the licensee to a real estate investment trust (REIT). General Counsel Grossman noted that teams from the two parties in interest were present: MGM Growth Properties representing the REIT and MGM Resorts International, the parent of the gaming licensee.

Attorney Jed Nosal, on behalf of MGM Resorts International and certain of its affiliates collectively petitioning for a transfer in connection with MGM Springfield and MGM Growth Properties, introduced the following members of the team: James Stewart, Chief Executive Officer of MGM Growth Properties; Patrick Madamba, Senior Vice President and Legal Counsel for MGM Resorts International; Laura Norton, Senior Vice President and Legal Counsel for MGM Resorts International; Jessica Cunningham, Senior Vice President, Legal Counsel, and Assistant Secretary to MGM Resorts International; and Seth Stratton, Vice President and Legal Counsel to MGM Springfield.

General Counsel Grossman provided an overview of the legal authority related to transfers of interest and noted that the petitioners were requesting that the Commission opine on two legal issues related to the transaction: (1) whether the term of years from the resulting lease and sublease are satisfactory under the law, and (2) for approval of the trust instrument that was submitted in accordance with the regulations.

Mr. Nosal, Mr. Stewart, Ms. Norton, and Ms. Cunningham presented specific details and background regarding the petitioners' request for approval of a contractual transfer under the Commission's regulations of MGM Springfield's gaming establishment property from MGM to MGM Growth Properties, a publicly-traded real estate trust.

Commissioner Zuniga and Chair Judd-Stein asked clarifying questions regarding the lease renewal and Ms. Norton confirmed that the renewal option is at the sole discretion of the tenant. Mr. Nosal noted that there are other governing documents that would ensure the licensee continued to meet its commitments to the Commonwealth and to the host community.

Chair Judd-Stein asked several questions regarding the specific details of the agreement and noted that the Commission's role is to ensure that the agreement complies with both regulations and statute. There was a lengthy discussion regarding what the process would be in the event of suitability concerns with respect to the transferee and whether discretion would fall to the IEB or to the Commission. Commissioner O'Brien and Chair Judd-Stein clarified that the statute requires the Commission to make any final determination with respect to suitability.

Commissioner O'Brien moved that the Commission find that the Springfield Trust discussed today and as further specifically amended by discussion today meets the requirements set out in 205 CMR 116.10(6). The motion was seconded by Commissioner Zuniga.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Chair Judd-Stein: Aye.

Commissioner Zuniga: Aye.

The motion passed unanimously.

Mr. Nosal further presented regarding the lease term, noting that the lease incorporates all renewals for a total term of 45 years. Mr. Nosal requested that the Commission find that the lease

term is consistent with the gaming act, Commission regulations, and prior precedent. There were comments from the Commission recognizing that this is advantageous for the Commonwealth.

Commissioner Zuniga moved that the Commission find that Chapter 23K § 15(3) relative to the term of years under a lease is not applicable to the proposed transfer of the MGM Springfield gaming establishment and that the term of years proposed in the master lease and sublease before it is satisfactory for all of the reasons discussed here today. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Chair Judd-Stein: Aye.

Commissioner Zuniga: Aye.

The motion passed unanimously.

5. [Investigations and Enforcement Bureau](#) (2:03:58)

a. Suitability Hearing Discussion

Director Lillios presented regarding the process for the Commission's determination of the suitability of casino qualifiers and summarized how this process has worked historically. She noted that the Commission's existing regulations provide that after receiving an IEB investigation report, the Commission may determine whether to hold a public hearing or an adjudicatory proceeding. She pointed out that the determination itself is up to the Commission to confirm or deny. She also noted that earlier, particularly during the RFA-1 process, the Commission conducted these determinations in a public adjudicatory hearing. She also noted that any negative determination would need to be made in an adjudicatory process to protect the applicants' rights and afford an opportunity to appeal. After the initial application processes, the Commission "transitioned" to a non-adjudicatory process. It is within the Commission's discretion to make that determination on a case-by-case basis.

Director Lillios suggested the possibility that the IEB could provide a completed investigation report to the Commission in advance of an agenda setting meeting and that the Commission could determine at that agenda setting meeting whether to move forward with a public hearing or an adjudicatory proceeding. She pointed out that the legal division would assist with any procedural requirements for the adjudicatory hearings.

The Chair commented that the qualifier determination responsibility is a core function of the Commission's mission. She further commented on the public adjudicatory hearing conducted shortly after her arrival which prompted her to ask the legal team and Commissioner O'Brien to review this process. Commissioner O'Brien commented that it would be helpful to review the language of the regulations in addition to the historic review of how we drifted to the less formal process to frame the discussion about compliance. She also drew an analogy to adjudicatory motions in the litigation context where there could be stipulated facts hearings in addition to full blown evidentiary hearings which may be akin to the clean reports frequently seen.

General Counsel Grossman provided an overview of the statutes and regulations governing the Commission's suitability review process for qualifiers. He pointed out that the Commission may only utilize the public hearing process with the qualifier's consent so the default in the regulation is an adjudicatory hearing. He further discussed the options for varying the scope of any adjudicatory process. He then described the public hearing process which requires making the redacted report public and receiving public comment. The Commission discussed the issue of receiving public comment on a suitability report and what that process would be. General Counsel Grossman noted that public comment would only be part of a public hearing process and not part of an adjudicatory proceeding process. Director Lillios commented that it would be helpful to remember the context of those requirements in the initial application phase compared to the present. She further noted that they have not been inviting public comment or publishing the redacted report as of late. General Counsel Grossman added that the public comment requirement was intended to allow a member of the public to bring forward any relevant information although he could not recall if that had in fact ever occurred.

Commissioner Zuniga asked for clarification as to whether public comment could be solicited prior to the completion of the report. General Counsel Grossman confirmed that it was intended to follow the report. Commissioner O'Brien then discussed conversations with IEB that had occurred to restructure the reports to make publication and redaction less cumbersome. Commissioner Zuniga recalled the public interest in the initial applications and raised the question as to whether the Commission intended to continue to seek that comment for all qualifiers.

There was discussion concerning the ability to ask questions that might not be appropriately asked in a public setting. General Counsel Grossman pointed out that the hearing is presumptively public but with mechanisms in line with jurisprudence to allow for closed sessions. Commissioner Cameron commented on the appropriateness of the process discussion given the possibility of online and sports betting. She further stated that she always understood that derogatory information would be handled in an adjudicatory process. She further stated that she always felt free to ask any question about the reports. The Chair commented that the current process was more informal that did not always allow for all Commissioners to hear each other's questions. The Commission further discussed the option of the Commission reviewing investigation reports prior to agenda setting meetings potentially in the revised format and determining at an agenda setting meeting if they would like an adjudicatory proceeding or could move forward with a public hearing depending on the information in the report and the need for questioning.

The Commission discussed next steps and advised Director Lillios and General Counsel Grossman to review the regulations for potential interim language as well as updated language related to the public comment requirement in the event a public hearing process is used.

6. [Commissioner Updates](#) (2:56:10)

Commissioner Zuniga informed the Commission that he had filed a 23(b)(3) disclosure to his appointing authority under Chapter 268A relative to the appearance of a conflict of interest. He

explained that this resulted from advice he received from the Ethics Commission prior to responding to a job posting for the International Center for Responsible Gaming (ICGR), on whose board members of Wynn Resorts, a former member of MGM Resorts, and the Commission's Mark VanderLinden sit. Commissioner Zuniga noted that he was disclosing this in conformance with the Commission's enhanced code of ethics.

7. [Other business](#) (3:00:33)

Commissioner Zuniga moved to adjourn. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Chair Judd-Stein: Aye.

Commissioner Zuniga: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated June 24, 2021
2. [Commissioners' Packet](#) from the June 24, 2021, meeting (posted on massgaming.com)