



Massachusetts Gaming Commission Meeting Minutes

Date/Time: August 17, 2022, 11:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 490 2595

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 O'Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

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

Chair Judd-Stein called to order the 388th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Review of Draft Application for License to Hold or Conduct a Racing Meeting for Future Applicants](#) (00:30)

Chair Judd-Stein began the meeting by stating that the draft application for a license to hold or conduct a racing meeting had previously been reviewed by the Commission in June, and the Commission had received public comments and oral commentary at a public hearing as well. The *Draft Application for License to Hold or Conduct a Racing Meeting for Future Applicants* was included in the Commissioner's Packet on pages 2 through 28, and the Public Comments received were also included in the Commissioner's Packet on pages 29 through 65.

Commissioner Skinner inquired as to whether the Commission had proposed changes to the application in response to the public comments. General Counsel Todd Grossman stated that the draft in the packet was the same draft application previously reviewed by the Commission,

however, he noted that comments had been considered for amendments but had yet to be incorporated into the final draft.

Commissioner O'Brien inquired if the application would require further changes in response to the recently passed sports wagering legislation. Commissioner Maynard and Commissioner Hill echoed Commissioner O'Brien's concerns regarding the provisions of the sports wagering legislation related to horse racing. Chair Judd-Stein assured Commissioners that the sports wagering bill and its impacts would be discussed later in the meeting, but asked that the Commission begin with discussion of comments received from the public.

Chair Judd-Stein reported that the Commission would begin with a public comment from Butters Brazilian, LLP on behalf of Commonwealth Investors LLC, which suggested several edits to the application. Commissioner Skinner noted that some of the comments fed into larger issues related to the implications of the language in the sports wagering act relative to simulcasting. Chair Judd-Stein agreed and stated that the sports wagering implications would be discussed later in the meeting.

Chair Judd-Stein presented the suggested edits in the public comments from Commonwealth Investors LLC. Commissioner Maynard stated that the current language relative to location was clear and sufficient. Chair Judd-Stein asked if there was a legal implication in changing "in calendar year" to "for calendar year" within the document. Commissioner O'Brien stated she believed the language choice would affect the ability of applicants to advocate for themselves in certain situations.

General Counsel Grossman stated the calendar year was not necessary in the current section, as it was addressed later in the application. He suggested removing the date from the first page to increase clarity and avoid confusion. Commissioner Maynard asked if there was a reason it was included on the first page within the initial draft. General Counsel Grossman stated that the draft application was modelled after the existing application and was likely a placeholder from an earlier iteration of the application.

Commissioner O'Brien suggested changing the date, to the date the application was submitted. General Counsel Grossman agreed and confirmed that Legal Division would produce a document for review that incorporated the comments and discussion from the meeting.

Deputy General Counsel Monahan explained that the Commission would have to decide what language would be utilized to discuss the surety bond, but that General Law Chapter 128A required that a surety bond be submitted with the completed horseracing application. She stated that the Commission had a regulation in place that allowed for the surety bond to be paid within thirty days of the license, and that the application could match the language of the regulation.

General Counsel Grossman explained that the purpose of the bond was for compliance with racing rules, and that no license shall be issued unless a surety bond was submitted within thirty

days. Director of Racing and Chief Veterinarian Dr. Alex Lightbown stated that if applicants were allowed to simulcast prior to live racing, then the bond should be required prior to simulcast operations, as well. Commissioner Skinner inquired if the line related to the bond was necessary. General Counsel Grossman stated that the best approach may be to reference the regulation within the application, and direct applicants there to review the timing and submission requirements associated with bond. Commissioner Skinner agreed.

Chair Judd-Stein explained that the sports wagering statute would have implications for the surety bond and inquired whether the surety bond should be paid up front. She added that she could not reconcile the statutory language with the regulatory language allowing for an additional thirty days. Commissioner O'Brien expressed concern that the regulation was inconsistent with the statutory language, as did Commissioner Maynard.

General Counsel Grossman stated the safest approach would be to require the bond as required by the statute. Chair Judd-Stein asked why the public comment from Commonwealth Investors LLC suggested deleting the description of the anticipated number of outlets for fresh drinking water. Dr. Lightbown agreed, stating that patrons in the gaming area have access to drinking fountains and was unsure why the deletion was suggested. Commissioner Hill asked if this provision was part of the original application. Dr. Lightbown stated that it was. Chair Judd-Stein stated that freshwater access was important.

Chair Judd-Stein suggested edits relative to the comments to integrate the two studies requested into a single study. Commissioner Skinner noted that the economic impact study was listed in two separate subsections, and suggested edits within the application to remove the redundancy. General Counsel Grossman stated that it was fair recommendation to combine the questions. General Counsel Grossman explained that the provision likely came from the RFA2 applications for potential gaming licensees. Commissioner O'Brien expressed an interest to further clarify the language. Commissioner Skinner stated that the questions should be identical so that there would not be a distinction between them.

Chair Judd-Stein expressed concern about whether the information submitted in an application would qualify for exemptions under the public records law. General Counsel Grossman stated that there was no specific language in G.L. c. 128A or G.L. c. 128C that exempts such information submitted in an application for a license, unlike the gaming and sports wagering legislation which included that language. He explained however, that public records law would need to be applied to all information received as part of the application, and all exemptions would have to be evaluated if the materials were ever requested. He stated that the privacy exemption would allow the Commission to withhold personal information from public dissemination, but not financial or entity information.

Chair Judd-Stein stated that the public records law applied to records in the Commission's custody, and that a practical solution could be to review documents in a portal without taking custody of the documents.

Commissioner O'Brien inquired whether the public records exemption from the sports wagering legislation would apply here, as applicants were applying for both horse racing and sports wagering licensure. General Counsel Grossman explained that it was not a combined application, however, and explained that in order to apply for a sports wagering license the applicant must first have a license under G.L. c. 128A.

Commissioner Skinner asked if the public records law defined whether viewing documents through a portal would constitute "custody" of the records, as the Chair had mentioned. Chair Judd-Stein explained that her understanding was that using a portal was a device that could work within the restrictions that it is used only for analysis. She stated that if the issue had to come before the Commission, then the portal suggestion would not work. General Counsel Grossman explained his opinion that once the Commission relied on information in making a decision that information becomes part of the public record regardless of how it is viewed, or accessed.

General Counsel Grossman noted that another public records exemption was the Investigatory Exemption. He explained that the exemption was temporary, and applies only while the matter is being investigated, and if the records request would affect the Commission's ability to complete their investigation.

Commissioner Maynard asked if current licensees had to provide similar information without exemptions from the public records law. General Counsel Grossman stated that Plainridge Park Casino ("PPC") was the only current racing licensee, and stated that this information was not part of their renewal application. He explained that as their track was operational, PPC would not require a feasibility study.

Chair Judd-Stein noted that a lot was exempt from the public records law under the privacy exemption and further inquired whether the Commission wanted to perform more suitability reviews for new applicants. General Counsel Grossman stated that a more thorough background check had been conducted for existing licensees, and that the initial suitability review was more rigorous than the review for a renewal of a license.

Chair Judd-Stein stated it would be helpful for the General Counsel to now update the Commission on the implications of the sports wagering legislation on horseracing licensees, both potential and existing. General Counsel Grossman explained that a category two sports wagering license permitted the operation of sports wagering on premises where live horseracing was conducted under G.L. c. 128A. He explained that if a holder of a license met the requirements of G.L. c. 23N, in addition to the rules and regulations required by the Commission, they would be eligible for a category two sports wagering license.

Chair Judd-Stein inquired whether there was a cap to the number of horse racing licenses that could be granted. General Counsel Grossman stated that there was no cap in G.L. c. 128A that stipulated the number of horse racing licenses.

General Counsel Grossman explained that the sports wagering legislation also amended G.L. c. 128C; changing the number of live-racing days required to simulcast. He stated that a thoroughbred racetrack would require not less than twenty live-racing days to simulcast, but that the Commission could waive this requirement. He noted that the requirement for simulcasting would not change for PPC, as they do standardbred racing which required 100 race days, as opposed to thoroughbred racing's twenty race day requirement.

General Counsel Grossman explained that the language in the sports wagering legislation that called for twenty live race days was intended to supplant the previous 100 race days requirement.

Deputy General Counsel Monahan stated that the provision lowering the number of race days required to simulcast would not go into effect for a year and would not apply to the 2023 applications. Chair Judd-Stein asked if the twenty race days should be interpreted as twenty days annually. General Counsel Grossman stated her interpretation was correct. Chair Judd-Stein asked how this change would alter the application. General Counsel Grossman stated that if a horse racing license was awarded under G.L. c. 128A in the next few months the applicant likely could not request a license to simulcast within the next year.

General Counsel Grossman noted that the application applied to both thoroughbred and standardbred racing, and existing language should not be removed for that reason. He suggested supplementing the language in the application with the new language in G.L. c. 128C, § 9.

Chair Judd-Stein asked if the application should include the trigger date in which the law takes effect. General Counsel Grossman stated that it was important to include language that the law does not go into effect for a year, and that the Commission should not if race days are less than 100. Chair Judd-Stein asked if the race-day requirements were only connected to simulcasting. Dr. Lightbown stated that the number of race-days affects the licensees' ability to have simulcasting, and that it is not financially viable for a racetrack to not offer simulcasting in addition to live racing. Chair Judd-Stein asked if it was required by statute for the licensees to have simulcasting. Dr. Lightbown replied that simulcasting was not required, but desired by licensees.

Commissioner Skinner raised the issue that the timing of the application of the change in law related to the question of whether the Commission could grant licenses for future racing seasons and asked whether the Commission could consider an application for a new track that would not be operational for at least a year under the newly worded statute. Commissioner Maynard stated that he would like to include the date where the new law goes into effect in the application. Commissioner O'Brien noted that it was dependent upon whether the Commission interpreted the statute to allow applicants for future years beyond the next calendar year.

Chair Judd-Stein asked that the Commission turn to the remaining public comments. She presented the public comments from New England United for Justice and the Massachusetts

Building Trade Union which suggested including objectives such as labor harmony and project labor agreements (“PLAs”), which were used during casino construction. General Counsel Grossman stated that 18 criteria were incorporated into the RFA2 application, but there was not language in G.L. c. 128A or G.L. c. 128C that required these labor agreements. However, he noted that G.L. Chapter 128A gave the Commission broad discretion and flexibility to include questions on the application.

Chair Judd-Stein asked if the \$7.5 million capital investment applied only to the proposed track and amenities. Commissioner Maynard stated that he read the statute as requiring a minimum of a \$7.5 million investment within three years of receiving a sports wagering license. Commissioner O’Brien noted she was impressed by the success of the construction phase of the casino, and requested similar language be applicable to horse racing licensees.

Chief Administrative Officer to the Chair and Special Projects Manager Crystal Beauchemin stated that the section six of the application related to public interest included employing a diverse workforce, and a question related to PLAs or labor harmony could be included in section six. Chair Judd-Stein inquired whether casinos had entered PLAs for their developments. Ms. Beauchemin stated that PLAs were discussed in the Access and Opportunity Committee meetings, and that the committee tracked workforce and union agreements during the development and construction of casinos. She stated that PLAs were in place either prior to development or soon after.

The Commission reached unanimous consensus about adding language related to PLAs and labor harmony to the application. Commissioner Skinner suggested broader language encompassing a comment that mentioned community transparency and holding applicants accountable for promises they made to the communities in furtherance of gaining a license. Chair Judd-Stein stated that could be added as another section within the attestations required of applicants. Commissioner Maynard supported adding the additional language and voiced desire to consider factors such as diversity standards. The Commission reached unanimous consensus to add a section in section six related to applicants promises made to communities.

Chair Judd-Stein asked if licensees were required to report to the Commission during construction. Ms. Beauchemin explained that casino licensees were required to report their progress on a quarterly basis, but they had met with the Commission monthly for further access and opportunity. She stated that sports wagering could be modeled after the casino system.

Chair Judd-Stein presented the public comment from Paul Umbrello as the Executive Director of the New England Horsemen’s Benevolent and Protective Association. Mr. Umbrello suggested that section 5.9 be broken down by category for clarity. Commissioner O’Brien agreed that this edit would make the document more clarified. Chair Judd-Stein stated that the discussion regarding race-days had addressed Mr. Umbrello’s concerns within section eight. Commissioner O’Brien suggested edits to also address his concerns related to purse agreements.

Commissioner Skinner sought context regarding the changes to purse agreements. Dr. Lightbown explained that tracks and horsemen may not have purse agreements in place at the time of the application, but the racetrack would not lose simulcast rights as long as the track and horsemen were working towards a purse agreement in good faith.

Commissioner Skinner asked if the restrictions to race days related to the purse agreement referred to licensing limitations and restrictions. Dr. Lightbown stated that the public comment was submitted prior to the sports wagering bill specifying twenty race-days. Commissioner O'Brien asked if the comment regarding purse agreements should be taken into consideration, but not as a substitute for a statutory minimum of race-days.

Chair Judd-Stein stated that some of the public comments pertained to a potential applicant and were not relevant to today's review of the general application. Commissioner Hill agreed that the comments were not pertinent as they did not address any portion of the application's proposal. Commissioner O'Brien, Commissioner Skinner, and Commissioner Maynard agreed.

Chair Judd-Stein asked whether the application should include language pertaining to the anticipated spectator number- in addition to seating capacity. Dr. Lightbown stated that applicants, may provide an estimate that is closer to the median number of spectators they anticipate at the property. Chair Judd-Stein stated that the seating capacity should reflect the largest number of spectators, and if that was the case the Commission, did not need to ask about anticipated spectators.

Chair Judd-Stein requested edits to the section numbers on the draft application to provide clarity on where section three began. Commissioner O'Brien suggested additional language related to financing and construction plans if the applicant was not ready to race by the next year. General Counsel Grossman stated that a question existed related to the proposed construction timeline, and that Commissioner O'Brien's concerns were captured within the application.

General Counsel Grossman suggested the inclusion of a question regarding the local authority vote, and when it would be received- if it had not been by the time of the application. He explained that local authority approval by the county, selectman, and mayor were prerequisites to being granted a license under G.L. c. 128A. He explained that the Legal Division thought it wise to clarify that local approval must occur prior to the license being awarded.

Chair Judd-Stein offered a suggestion that language be included to more broadly request information related to the types of permits the applicant requires for the development. General Counsel Grossman stated that generally the applicants identified the permits. Commissioner O'Brien noted that the application only listed the city council, town council and mayoral approval required, but not the permits. Deputy General Counsel Monahan stated that the statute did not require that information, but the Commission had the discretion to ask any questions of applicants during the application process.

Commissioner Hill asked if the Commission had the authority to circumvent the vote of a board of selectmen. Deputy General Counsel Monahan stated that the Commission did not have that authority. Commissioner Skinner asked whether the Commission could require local approval prior to the submission of the application. General Counsel Grossman stated that approval had to occur prior to the Commission awarding the license, but in recognition of the submission deadline flexibility was built in for when local approval could occur. Commissioner Skinner asked whether the deadline was the same for new applications and renewal applications. General Counsel Grossman confirmed that the applications had the same deadline.

Commissioner Maynard suggested including language in the application asking whether the applicant had ever been denied local approval on this project. Deputy General Counsel Monahan stated that it could be included in the application. Commissioner Skinner suggested language requesting when the applicant expected to receive local approval if they did not already have it. Commissioner O'Brien suggested a question about when the local approval vote is scheduled.

Chair Judd-Stein noted that in the prior year an applicant had relied upon an old county approval. Commissioner O'Brien suggested adding language that the applicant avers to their knowledge that a county approval vote had not been superseded at a later point. General Counsel Grossman stated that local votes should be recent, as they are specific to the project.

Commissioner Skinner offered edits to section 4.4 to clarify that the specific approvals were the ones referenced in the subsection and that they are prerequisites. General Counsel Grossman explained that statute and caselaw were clear that the Commission can require a suitability review prior to awarding a license, but gave no direction as to what that process entails. He stated that gaming's suitability review was effective, and asked Commissioners whether the same approach should be used for entities and qualifiers. He stated that if the same forms from gaming were not used, additional questions related to suitability would have to be added to the application.

Chair Judd-Stein stated that if an applicant received a horse racing license, they would be eligible for a category two sports wagering license, and that there is no a cap on the amount of category two licenses. She stated that the application should ask if the applicant plans to pursue a sports wagering license, so that the full suitability would not have to be performed twice- for both horse racing and sports wagering. The Commission reached a consensus in support of this idea. General Counsel Grossman stated that there may be issues with the timing of suitability and the timing of the horse racing application by statute.

Deputy General Counsel Monahan inquired Commissioner's thoughts if a horse racing applicant could apply for a sports wagering license during their construction period. Commissioner O'Brien stated that while the license may be effective, the applicant cannot launch until they receive an operations certificate, and that she believed sports wagering was attached to operations. Chair Judd-Stein expressed an interest in having applicants undergo full suitability to the sports wagering standard if they intended to apply for a sports wagering license. General

Counsel Grossman stated it made sense to not have the applicants resubmit their documents if they had submitted them for a sports wagering review under G.L. c. 23N accordingly.

General Counselor Grossman stated that a public comment suggested language be added to the application identifying how the applicant would provide welfare and aftercare for the horses on site. He stated that the language related to animal treatment and medicines administered was covered by existing regulations, and would support the language being added to the document. Commissioner Hill expressed an interest in including the language in the application. Chair Judd-Stein and Commissioner Maynard agreed. General Counsel Grossman stated that it would be added to the end of section seven.

Commissioner Hill asked when the finished draft application would return to the Commission with the edits discussed in today's meeting. The Commission discussed when there would be adequate time to review the application and added it to the agenda for the September 12, 2022 public meeting.

3. [Other Business](#) (3:10:39)

Hearing no further business, Chair Judd-Stein requested a motion to adjourn.

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated August 11, 2022
2. [Commissioner's Packet](#) from the August 17, 2022, meeting (posted on massgaming.com)