



Massachusetts Gaming Commission Meeting Minutes

Date/Time: September 12, 2022, 9:30 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 019 3806

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](#) (00:29)

Chair Judd-Stein called to order the 391st Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Play My Way Launch at Encore Boston Harbor](#) (1:20)

Chair Judd-Stein introduced Director of Research and Responsible Gaming Mark Vander Linden. Director Vander Linden explained that Play My Way ("PMW") is a budget setting tool that was available on every slot machine at Encore Boston Harbor ("EBH"). Director Vander Linden stated that PMW was unique as it was a partnership between the casinos and the GameSense program. He stated that PMW had 27,500 actively enrolled patrons, and that PMW was a voluntary tool for patrons to enroll in.

Director Vander Linden stated that the launch of PMW at EBH was going smoothly. He stated that random slot machines were being tested, and PMW was working as intended on those machines. He noted that EBH was in the process of getting the kiosk outside of their GameSense area working, and the kiosk was expected to be running by noon. The Commissioners

unanimously congratulated Director Vander Linden and his team on the PMW launch. Chair Judd-Stein also thanked EBH for their work in the collaboration, and stated she looked forward to seeing the number of enrollees from EBH.

3. [Racing Division](#) (9:12)

a. Standardbred Owners of Massachusetts Recognition Request as Breeders' Representative Group

Chair Judd Stein introduced Director of Racing and Chief Veterinarian Dr. Alexandra Lightbown. Dr. Lightbown explained that in accordance with G.L. 128, the Commission must recognize a Breeder's Representative Group. She stated that the Standardbred Owners of Massachusetts ("SOM") had been recognized as the representative group since 1992.

Dr. Lightbown introduced Nancy Longobardi, Secretary and Treasurer of SOM. Ms. Longobardi stated that SOM had given away \$2.5 million in purses for the year, had 83 individual starters in 36 races, and had 137 broodmares. She stated that SOM expected to match the 2021 purses, with their races beginning on September 25 and all eight finals occurring on October 24. The *SOM Recognition Request* was included on pages 3 through 4 of the Meeting Packet.

Commissioner Skinner asked Dr. Lightbown if this process is an annual one, and what made SOM uniquely qualified to hold this recognition. Dr Lightbown stated that per statute this recognition required an annual vote by the Commission. She stated that SOM was the only group that had presented themselves for this recognition and have held the position since 1992.

Chair Judd-Stein asked for an update on the breeding program. Ms. Longobardi stated that funds from the Race Horse Development Fund had helped, and that there was an increased interest in breeding that had attracted larger farms from other states' involvement in the breeding program. She stated that COVID had slowed progress, but the numbers were increasing and the anticipated numbers were good. Dr. Lightbown stated that competitiveness in races had increased, resulting in growth in field sizes and additional races. Dr. Lightbown recommended the Commission approve SOM's request.

Commissioner O'Brien moved that the Commission approve the request of the Standardbred Owners of Massachusetts, Inc. to be recognized as the group of representatives for standardbred breeders to administer Massachusetts' standardbred breeding program and the sire state races for 2022. 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.

b. [Review of Revisions to Draft Application for License to Hold or Conduct a Racing Meeting for Future Applicants](#) (20:09)

Chair Judd-Stein introduced Executive Director Karen Wells and General Counsel Todd Grossman. General Counsel Grossman stated that the draft application for a license to conduct horse racing was previously reviewed by the Commission at the August 17, 2022, meeting. He stated that a series of public comments and issues raised by the Commission were addressed in the draft application revisions being presented for this meeting. He stated that the Commission may elect to approve the application for formal use, and promptly post the application to the Commission website prior to the statutory filing deadline on October 1.

General Counsel Grossman stated that the contents of the application were addressed in the racing statute, G.L. Chapter 128A § 2, and that certain portions of the application were authorized by caselaw. Chair Judd-Stein noted that the commissioners had received a privileged memorandum from Anderson and Kreiger that analyzed the legal issues the Commission was briefed on in public comments and silent briefings. Chair Judd-Stein introduced and thanked Paul Kominers from Anderson and Kreiger for appearing in the meeting with short notice.

Deputy General Counsel Caitlin Monahan presented the revisions for the application for a license to conduct horse racing. The *Revisions to the Draft Application* were included on pages 5 through 46 of the Meeting Packet.

Deputy General Counsel Monahan explained that an application fee of \$300 must be enclosed in the application, and that a surety bond must be issued and included in the application. She explained that section one of the application was related to background information for the applicant; that section two was a project summary and description of financing; and that section three contained a schedule of proposed races.

Deputy General Counsel Monahan stated that an additional question had been added in section three, which requested additional information regarding the applicant's timeline if they sought a license for future years. Chair Judd-Stein stated that this was a positive addition that allowed the Commission to address horse racing for future years. Mr. Kominers explained that the statute stated the license request must occur before October 1 in the calendar year preceding the calendar year for which the applicant requested the license. He stated that while filing prior to October 1, 2022, would be the year preceding a 2023 racing schedule, the license request was also preceding all future years. He stated that circumstances had changed since horse racing was first permitted, and that construction and permitting take longer than they had in the past.

Commissioner O'Brien noted concern that the choice of language in the statute refers to "the calendar year" and not "a calendar year," leaving less room for interpretation regarding future racing years. She asked if this distinction is dispositive of allowing applicants to file requests for future years. Mr. Kominers stated that the language quoted raised ambiguity, but that he did not believe the use of an article would be entirely dispositive. Commissioner O'Brien stated she understood Mr. Kominers' interpretation of the statute, but she did not agree. Chair Judd-Stein inquired as to whether Suffolk Downs began its operations under the same legislative language when it opened as a racetrack. Mr. Kominers stated that he would have to check if the statutory

language had changed over time. Deputy General Counsel Monahan stated that the legal division agreed with Mr. Kominers' interpretation regarding future years, but applicants would be required to provide sufficient information that they could operate in the future.

Deputy General Counsel Monahan stated that section four of the application was in regard to non-Commission approvals required under statutory regulations. She stated that racetracks required local community approval under G.L. 128A §13(a) which required the mayor or board of selectmen to approve the development of a racetrack and G.L. 128A § 14(a) which required county approval. She explained that local community approval must be in place prior to the license being granted and stated that additional language was added if approval had yet to be received but a vote on approval was scheduled. Commissioner Hill stated that he was satisfied with the new clarifying language that addressed previous concerns.

Deputy General Counsel Monahan explained that section five of the application was in regard to qualifiers and suitability. She stated that the legal division intended for the definition of qualifier to be consistent for the purposes of horse racing and its anticipated use in sports wagering. Chair Judd-Stein asked if there was a way the application could include catch-all language to include additional qualifiers at the Commission's discretion. Deputy General Counsel Monahan stated that additional language could be included, but there is a tight deadline as the applications are due by October 1, and the Commission must make their decision on the applications by November 15. Commissioner Skinner suggested the language Chair Judd-Stein requested is covered by subsection five. Deputy General Counsel Monahan stated that the language in subsection five should be sufficient to allow the Commission the discretion to include additional qualifiers. Executive Director Wells stated that the questions in this section are consistent with qualifier discretion for casino gaming, and anticipated similar questions for sports wagering qualifiers.

Commissioner O'Brien asked whether the language in section five subsection nine was limited in scope due to its wording of "limited or revoked by a governing authority." Deputy General Counsel Monahan stated that the governing authority was whoever had the authority to issue the license, but if the language could be interpreted more restrictively it could be changed. Commissioner O'Brien suggested broader language regarding if the applicant or its qualifiers had a gaming license revoked or suspended, with the goal of removing ambiguity if the license was not revoked via an order from the governing authority. Chair Judd-Stein suggested the Commission include a question about the applicant withdrawing an application in the past. Commissioner O'Brien stated that such a question would be valid and should be included.

Deputy General Counsel Monahan stated that section six was related to public interest. She stated that subsection seven regarding promises made to the community or mitigation agreements was informed by public comment during the comment period. Commissioner O'Brien suggested that "promises or rewards" should be changed to include inducements. Chair Judd-Stein expressed appreciation for the public's participation, as subsections six and seven were designed from public input.

Deputy General Counsel Monahan explained that section seven was regarding the applicant's facilities and equipment. She noted that a question was added related to whether the applicants

premises was owned by the Commonwealth or a political subdivision, as racetracks can't be placed on those lands per statute. She explained that section eight was in regards to wagering and simulcasting and that additional language was added to subsection two to reflect the language in G.L. Chapter 128C. a political subdivision, as racetracks can't be placed on those lands per statute. She explained that section eight was in regards to wagering and simulcasting and that additional language was added to subsection two to reflect the language in G.L. Chapter 128C.

Deputy General Counsel Monahan explained that section eight was regarding wagering and simulcasting. She stated that additional language was included in subsection two to reflect the language in G.L. Chapter 128C related to the number of race days. Chair Judd-Stein asked if Mr. Kominers had advice in his memorandum related to this provision. Mr. Kominers replied that this provision was addressed in the second footnote. Deputy General Monahan presented section nine, which included general provisions, attestations, and applicants' signatures.

Chair Judd-Stein asked if the Commissioners felt comfortable referencing their privileged memorandum in a public meeting. General Counsel Grossman stated that there was not a great way for the Commission to discuss legal issues outside of their public meetings. Commissioner O'Brien stated she had no further questions and was willing to move forward on finalizing the application, notwithstanding reservations related to statute interpretation.

Mr. Kominers stated that the critical point of the statute is the date of receipt of the application, which must be on or before October 1. He stated than an application submitted that date would be on or before October 1, 2022, but also each subsequent October 1 in future years. Commissioner O'Brien stated she understood his interpretation, but was still processing how to interpret the statute. Executive Director Wells stated she agreed with Commissioner O'Brien's interpretation. Commissioner O'Brien raised concerns that if the finalized application is accepted now it would lock the Commission into making decision about the interpretation of this issue. General Counsel Grossman stated that the application would not lock the Commission's decision in, but he expressed an interest in avoiding mixed messages.

General Counsel Grossman stated that a legal principle that would be useful to this interpretation is to read the statutes in harmony with each other. He stated that the licensing of a new racetrack is discussed in statute and is permissible, but there is no clear mechanism to take in applications. He stated that in order to license a new racetrack it would likely take longer than the November 15 to March construction period to develop and build the site. He agreed that the Commission's concerns with the article use of "the" in the statute is concerning, but Mr. Kominers' interpretation would follow the Commission's exercise of discretion with no great alternatives.

Chair Judd-Stein noted that the application process was being revised as a new applicant had applied in the previous year. She stated that the applicant withdrew their application, and no decision was required from the Commission. Chair Judd-Stein raised the issue of simulcasting for horse racing and its interconnectedness with sports wagering. Mr. Kominers stated that under a new provision in G.L. Chapter 128C § 9 a horse racing licensee could conduct simulcasting with 20 live-racing days at a thoroughbred racetrack. He stated that the statute was meant to revise the number of races an operator needed to conduct to be considered to have held a racing season and therefore be permitted to simulcast. He noted that this provision did not directly

amend G.L. Chapter 128C § 2 which limited the days simulcasting could occur. He stated that the changes were related to what constituted a racing season, but did not change the other requirements for the licensee to simulcast.

Commissioner Maynard noted that lowered standard requiring 20 live-racing days to simulcast was cited in section 8.2 of the application, and wondered if the Commission should take this into consideration for this year's applicants as the statute would not go into effect until the next year. Deputy General Counsel Monahan stated that as the statute does not go into effect until the following year, the 2023 applicants will be considered under the old rule. She stated that future years will be under the new statute which required fewer race days in order to simulcast.

Mr. Kominers stated that a category two sports wagering licensee allows in-person sports wagering where live horse racing is conducted. He stated that the present tense is important to interpretation, and that the premises must be operating horse races for sports wagering to occur under the category two license. Chair Judd-Stein stated that is a condition for sports wagering to occur was that horse racing was being conducted, and sports wagering could not occur first. Executive Director Wells asked if this condition applied to mobile sports wagering as opposed to in-person. Mr. Kominers stated that online wagering would take place under a category three license and not a category two license. Chair Judd-Stein stated she believed the licenses were tethered, as the category three license was contingent upon the category two license. Mr. Kominers stated that the category two license still required the licensee's mobile sports wagering operator to apply for a category three license, and that licensing is independent of the category two licensing. Deputy General Counsel Monahan stated that the legal division had not contemplated separating the licenses in that way, and expressed an interest in reviewing the statute.

Chair Judd-Stein asked if the applicant awarded license would allow for mobile sports wagering absent horse racing, as it seemed obtaining a category two license was a condition precedent that must be obtained prior to a category three license. Mr. Kominers stated that he would collaborate with the legal division regarding the timing issue and would return to the Commission with an answer. He stated that a request to conduct off-site mobile sports wagering by the same operator would be under a category three license, and not a category two license. Chair Judd-Stein asked if this answer assumed the licensee would be partnered with one of the seven category three licensees, or a mobile sports wagering operator tethered to their category two license. Mr. Kominers stated that it was based upon partnership with one of the seven category three licensees. Chair Judd-Stein inquired as to if an applicant from the approaching deadline was not able to conduct category two in-person sports wagering until they could conduct live horse racing, whether they would have the ability through the conditional tethered license to operate mobile sports wagering upon issuance of the license. Mr. Kominers stated that looking at section six of the legislation, the language stated was "may offer a category three license," but that he would like to conduct further research. He stated that the category three license, even if tethered to a category two license was still discretionary. General Counsel Grossman stated that it was a complicated question which would require more time to analyze.

Chair Judd-Stein stated the application needed to be available for any interested party, and that the sports wagering issue would be should be separate from the application. Executive Director

Wells stated that given the advice from Anderson and Kreiger regarding the added protections of utilizing regulations, she recommended moving on the application at this meeting, and putting in place a regulation prior to October 1 which would cover the application. Chair Judd-Stein asked if the category three mobile sports wagering operators tethered to licensee's in-person sports wagering licenses would be part of the seven category three sports wagering operators or in addition to the seven. She stated her understanding was that the tethered mobile sports wagering operators would be in addition to the seven category three licensees. Executive Director Wells agreed with the Chair's understanding. Commissioner O'Brien stated that the legal division should take some time to research this issue and circle back.

Executive Director Wells asked whether, after the vote on the application, the application would be posted to the Commission's website with the caveat that the Commission would adopt the application once a regulation had been established. The Commissioners unanimously agreed.

Commissioner Maynard expressed that in his estimation, the application and its contents for a horse racing license should be utilized in the arena of horse racing, and the application for a Category 2 sports wagering license should be the basis of consideration for the award of a sports wagering license. Chair Judd-Stein stated that being a horseracing licensee was a pre-condition of the sports wagering license; and horseracing would have to continue for sports wagering to be conducted. She inquired if there would be consequences for licensees should horseracing not occur. General Counsel Grossman stated that a series of conditions were attached to any future licensee awarded horseracing licenses, and that the prioritization on the application was for horseracing. Commissioner Skinner stated that she was in favor of moving forward on the application, but that the conditions must match the Commission's interpretation of the statute.

Commissioner O'Brien asked what language should be added to the motion to move on the application. Executive Director Wells stated that the language should move to accept the document as the application for horseracing subject to further regulatory action.

Commissioner O'Brien moved that the Commission approve the version of the new application for license to hold or conduct a racing meeting, which is included in the Commissioner's Packet, including the edits as discussed here today, which will be effective upon the execution of further regulation by this Commission and further authorize staff to make any necessary typographical or other non-material edits and to post the application on the Commission's website for immediate use. 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.

4. [Executive Session](#) (1:34:34)

a. Review of Executive Session Minutes

Chair Judd-Stein read into the record that the Commission anticipates that it will meet in executive session to review minutes from previous executive sessions convened 1) in accordance with G.L. c. 30A, § 21(a)(3) in order for the Commission to discuss strategy with respect to litigation where such discussion at an open meeting may have a detrimental effect on the Commission's litigating position; 2) in accordance with G.L. c. 30A, § 21(a)(7) to comply with G.L. c. 23K, § 21(a)(7) for the specific purpose of reviewing the proposed multi-year capital expenditure plan described in 205 CMR 139.09, and any corresponding materials, submitted relative to Encore Boston Harbor and Plainridge Park Casino, as discussion of this matter in public may frustrate the purpose of the statute and associated legal authorities; and 3) in accordance with G.L. c. 30A, § 21(a)(6) to consider the lease of real property, as its discussion at an open meeting may have a detrimental effect on the negotiating position of the Commission.

- i. 1/10/22
- ii. 2/10/22
- iii. 6/9/22

b. Litigation strategy pursuant to G.L. c.30A, §21(a)(3) to discuss strategy with respect to Massachusetts Gaming Commission v. Landmark American Insurance Co.

Chair Judd Stein read into the record that the Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(3) to discuss strategy with respect to Massachusetts Gaming Commission v. Landmark American Insurance Co., as discussion at an open meeting may have a detrimental effect on the litigating position of the Commission.

c. Litigation strategy pursuant to G.L. c.30A, §21(a)(3) to discuss strategy with respect to FBT Everett Realty, LLC v. Massachusetts Gaming Commission

Chair Judd-Stein read into the record that the Commission also anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(3) to discuss strategy with respect to FBT Everett Realty, LLC v. Massachusetts Gaming Commission, as discussion at an open meeting may have a detrimental effect on the litigating position of the Commission.

Commissioner O'Brien moved that the Commission enter an executive session for the basis stated by the chair and for the reasons enunciated in the record. The motion was seconded by Commissioner Hill.

Roll call vote:

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| <i>Commissioner O'Brien:</i> | <i>Aye.</i> |
| <i>Commissioner Hill:</i> | <i>Aye.</i> |
| <i>Commissioner Skinner:</i> | <i>Aye.</i> |
| <i>Commissioner Maynard:</i> | <i>Aye.</i> |
| <i>Chair Judd-Stein:</i> | <i>Aye.</i> |

The motion passed unanimously 5-0.

Commissioners entered executive session. The public session of the Commission meeting did not reconvene at the conclusion of the executive session.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated September 9, 2022; revised September 9, 2022
2. [Meeting Packet](#) from the September 12, 2022, Open Meeting