

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: December 4, 2012

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: None

Call to Order:

Chairman Crosby opened the 38th public meeting.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that the minutes for November 20 have been distributed for approval.

*Motion made by Commissioner McHugh to approve the minutes of November 20 as distributed.
Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

Project Work Plan:

See transcript pages 3-65.

Project Management Report – Chairman Crosby reviewed the Project Management Chart to provide an update on the status of the Commission’s workflow. He stated that because some of the bidders will be submitting their material early, the IEB can begin the background check process one month earlier than the anticipated January 15 commencement date. The Commission can start the Phase II application process as soon as June 1 if there are no hearings and the background checks begin early.

Chairman Crosby stated that the Commission is on track for issuing scope of licensing decisions. Commissioner Cameron stated that the Commission has not drafted the MOUs designed to support the IEB's activities, but she is working collaboratively with law enforcement agencies, the Attorney General, and other entities and will be ready to complete the MOU's soon. Chairman Crosby stated that there are several finalists for the Executive Director position, and the Commission's goal is to fill the position by the end of December. The Executive Director will then assist in hiring for the positions of Deputy Director of Investigations and Enforcement and General Counsel. Chairman Crosby stated that the Gaming Policy Advisory Committee should be up and running by January 15, 2013, pending appointments by the Governor.

Chairman Crosby stated that the Commission is approximately 45 days away from the deadline for submission of Phase 1 applications. When the deadline arrives, the Commission will know the identity of all of the applicants for Regions A and B and slots licenses.

Scope of Licensing and RFA-1 Status Report – Frederic Gushin, Managing Director of Spectrum Gaming Group, addressed the Commission to provide an update. He stated that Spectrum and Michael & Carroll are well into the scope of licensing evaluations, and they have issued reports to the Acting Director of IEB. Mr. Gushin stressed that the investigations are comprehensive and the consultants will move as quickly as possible while addressing all of the critical issues. He stated that the applicants bear the investigative cost, which is the standard across the United States. He stated that Spectrum and Michael & Carroll will be present next week at the meetings to discuss policy issues.

Commissioner Cameron provided an update on the scope of licensing. She stated that nine potential applicants have submitted proposals for the scope of licensing, two more proposals are expected, and the process of preparing responses is underway. She stated that the IEB will waive investigation of certain individuals, particularly those with less than a 1% interest in an applicant. However, if during the investigation the IEB determines that an individual who was waived exercises more influence than an owner with an interest greater than 1% or for some other reason should be investigated, the IEB will fully investigate that person. She stated that the IEB is empowered to investigate anyone it deems relevant to the application. Commissioner McHugh emphasized that, at the end of Phase I, the Commission will determine whether to accept the results of the investigation and whether there is someone who was not investigated that the Commission determines should have been investigated. He stated that the Commission will have an opportunity to correct any deficiencies in the investigation at that point. Commissioner Zuniga announced that the contract for investigations was executed this morning.

Commissioner McHugh provided a summary of the waiver process. He stated that applicants send their applications and requests for waivers to the IEB, and the IEB refers those materials to the consultants. The consultants perform the investigation and prepare a tentative set of recommendations. The consultants give the recommendations, with respect to waiver and non-waiver, back to the IEB for a check by the State Police. The State Police will make a recommendation to the Director of IEB, who will send a letter from the IEB to the applicant stating whether the IEB granted the requested waivers and listing those who must qualify and those who need not qualify. The IEB will reserve the right to have further investigation and add

further qualifiers as the investigation proceeds. At any time, the Commission has the full right to request whatever information is necessary for a complete investigation. The IEB will also advise the applicant that it may appeal to the full Commission any IEB denial of a requested waiver.

Motion made by Commissioner McHugh to acknowledge this process and approve of it as the Commission's waiver process. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Key Policy Questions Status Report – Chairman Crosby confirmed that the Commission is prepared to move forward with a series of public meetings to address the key policy questions. The Commission has scheduled these meetings for December 11 through December 14.

Region C Status Review – Chairman Crosby stated that Commissioner McHugh has prepared a memorandum reviewing the status of Region C and asked Commissioner McHugh to provide an overview for the Commission.

Commissioner McHugh stated that on October 12 the Secretary of the Interior rejected the Compact negotiated between the State and the Mashpee Wampanoag tribe. He stated that the tribe's federal process has three primary components: a site controlled by the Wampanoag tribe, a plan for developing the site, and an agreement with the City of Taunton that had been approved by the City's voters. He stated that obstacles in the path to a casino nevertheless remain. The first is the Compact, which the State and the Mashpee Wampanoag tribe will have to renegotiate. The second is a lawsuit filed by K.G. Urban, a commercial developer with a site in the New Bedford area. K.G. Urban claims that the whole tribal set-aside is a race based preference that violates the Fourteenth Amendment to the US Constitution. The third obstacle is the Commonwealth's own equivalent to the Fourteenth Amendment. A lawsuit may raise the same issues in state courts. The fourth obstacle is the fact that the tribal land has to be taken into trust, but the Supreme Court has determined that only tribes under "Federal jurisdiction" when the statute was passed in 1934 can have land taken into trust. At this time, it is unclear whether the Wampanoag tribe was under Federal jurisdiction in 1934.

Commissioner McHugh stated that these obstacles raise the question whether, by the time these issues are worked out, Region C will fall behind the other regions in terms of casino development and the benefits that the statute was designed to create. He recommended that the Commission consider some way to preserve all options and ensure that the benefits of the statute accrue to Region C, either through a tribal gaming facility or a commercial facility, before a lapse of time puts Region C substantially behind the other regions of the state.

Chairman Crosby stated that the Commission has advised the Tribe that this topic would be on the agenda today. He stated that the Commission received a letter from Chairman Cromwell stating that the Tribe is moving forward expeditiously and, as Chairman Cromwell understands it, Region C remains exclusively available for tribal gaming. Chairman Crosby stated that he disagrees with Chairman Cromwell regarding Region C remaining exclusively for tribal gaming. Commissioner McHugh stated that the exclusivity is in the Compact, but the Compact was disapproved and has no force and effect. The statute itself does not contain an exclusivity

provision. He stated that Section 91E of the Expanded Gaming legislation says that the Commission must issue a commercial RFA if a compact were not negotiated by the end of July or if the Commission concludes that the land will not be placed in trust. The legislation does not prevent the Commission from issuing an RFA before these two events occur.

Commissioner Cameron asked if Commissioner McHugh was considering a dual process of letting the Compact work itself out and, at the same time, starting a commercial process. Commissioner McHugh stated that this is an approach that may be worth thinking about to preserve the interests of Region C, the Tribe, and those who are interested in a commercial license. Commissioner Zuniga asked if the Commission should consider a timeline that would constitute an acceptable time to allow some of these issues to work themselves out.

Chairman Crosby stated that the Commission is respectful of the Tribe's rights to fully pursue its options under the law. After discussion, the Commission agreed that Commissioner McHugh would put in writing the options that have been discussed today and this discussion would continue at the next Commission meeting. Chairman Crosby stated that the discussion should take place through a process that will give all interested parties time to provide commentary.

Administration:

See transcript pages 65-69.

Personnel Searches – Chairman Crosby stated that the Commission has posted the Director of Supplier and Workforce Development position.

Stenography Procurement – Commissioner Zuniga stated that Director Glovsky has recommended that the Commission accept three vendors to prequalify for stenographic and transcript services based on the responses to the RFR conducted on October 26, 2012. The recommended vendors are Catuogno and Sten-Tel, Reporters, Inc., and Copley Court Reporting.

Motion made by Commissioner Zuniga to accept three vendors, Catuogno and Sten-Tel, Reporters, Inc., and Copley Court Reporting for stenographic and transcript services. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Employee Manual, Chapters 4 and 5 – Commissioner Zuniga stated that he has provided the Commission with a draft of chapters 4 and 5 of the Employee Manual, with the intention of voting to accept the chapters at the next Commission meeting.

Racing Division:

See transcript pages 69-71.

Report from Director of Racing Division – Commissioner Cameron stated that she is providing this report in Director Durenberger’s absence. She stated that the working group conducted its second meeting this past week at Plainridge and discussed equine medications, best practices, and model rules. She stated that today is the deadline for the posted positions for the Racing Division, and the Racing Division will schedule interviews for next week. She stated that staff is beginning to clean out the lab and is looking for storage for racing files dating back to 1935, which the Racing Division will eventually archive electronically.

Public Education and Information:

See transcript pages 71-93.

Report from the Ombudsman – Mr. Ziemba stated that he continues to field questions from host and potential surrounding communities. His focus over this past week has been on the cities of Holyoke and Everett. He stated that the Commission received a number of questions this week regarding racing fund local aid payments, and the Commission will be providing an historical analysis of how those payments have been made going back to FY 2008. Mr. Ziemba stated that Counsel Murray has prepared a memorandum that the Commission will circulate in the next few days and distribute to the Legislature. He stated that the Commission continues to work on the policy questions and has reached out to the regional planning agencies, host communities, and surrounding communities to get answers to the questions that will be discussed next week. He asked the Commission whether the public comments that the Commission received should be posted to the Commission website. Chairman Crosby stated that the comments should be posted to the website.

Mr. Ziemba stated that he, along with Commissioner Zuniga, met with three of the regional planning agencies and potential host communities to discuss how the Commission can help smooth out the host and surrounding community process and discussion. Mr. Ziemba stated that he will work on getting out further notice to the entire region that may be impacted by any decisions made relative to Region C. Mr. Ziemba stated that he intends to issue an advisory to communities outlining the process of applying to the Commission for funding and the limitations that the communities may experience relative to municipal finance law.

AIA Forum – Commissioner Stebbins stated that the Commission is continuing to get the word out about the upcoming AIA forum. He stated that the forum will provide the commission with information that will be helpful as it exercises its statutory authority to create regulations regarding casino design, sustainability, and ability to reach certain LEED certification levels.

A brief recess was taken.

Chairman Crosby reconvened the 38th meeting.

Report from Director of Communications and Outreach – Director Driscoll provided information on the Commission’s new website. She stated that the Commission is establishing a portal that will provide easy access to information in an easily accessible and user friendly manner. She

provided the designers with information about how she wanted the information to be displayed and what information she wanted on the site's home page. The designers provided her with three design options. She stated that she is in the process of deciding which design of the three achieves her goals most effectively. She provided a PowerPoint presentation on the new website and each design option. She stated that the designers will finish the layout and then move on to the build out with a goal of having the website ready in January.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission December 4, 2012 Notice of Meeting & Agenda
2. Massachusetts Gaming Commission 11/28/12 Summary Schedule Work Plan Update
3. December 3, 2012 Mashpee Wampanoag Tribe Letter
4. December 4, 2012 Memorandum Regarding Region C
5. November 27, 2012 Memorandum Regarding Recommendation to Pre-Qualify Vendors for Stenographic Services
6. Massachusetts Gaming Commission Section 4 of Employee Handbook
7. Massachusetts Gaming Commission Section 5 of Employee Handbook

/s/ James F. McHugh
James F. McHugh
Secretary