

**The Commonwealth of Massachusetts**  
**Massachusetts Gaming Commission**

**Meeting Minutes**

**Date:** September 11, 2012

**Time:** 1:00 p.m.

**Place:** Springfield Technical Community College  
Scibelli Hall Auditorium  
Springfield, MA

**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 Commission's 26<sup>th</sup> public meeting. A moment of silence was observed for all who died as a result of the September 11, 2001 attacks.

**Approval of Minutes:**

See transcript pages 2-5.

Commissioner McHugh stated that the minutes for August 28, 2012 are ready for approval. Several corrections were made to the minutes.

*Motion made by Commissioner McHugh that the minutes of August 28, as corrected, be adopted. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

Chairman Crosby made a correction to the September 4, 2012 minutes.

*Motion made by Commissioner McHugh to approve the minutes of September 4 as corrected. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

**Springfield Schedule and Process:**

See transcript pages 5-117.

Chairman Crosby stated that the Commission invited Domenic J. Sarno, the Mayor of Springfield, to attend this meeting so that the Commission could discuss with him the City's selection of a gaming consultant and the process the City is using to select a Class I casino developer or developers. Mayor Sarno addressed the Commission. He stated that the City's goal

is to obtain the best possible casino proposal for the City, its residents, and the Commonwealth. The City's process, he stated, was designed to be open and transparent. To that end he and his representatives had met with the City Council, community groups, neighborhood groups and will continue to meet with those groups both to update them on the progress of the selection effort and to seek their input on it. He continued by stating that the Commission and the City both have roles in the selection process and he looks forward to working cooperatively with the Commission in that endeavor.

Mayor Sarno then invited Joseph F. Wagner, Co-chair of the Legislature's Joint Committee on Economic Development and Technology, to address the Commission. Chairman Wagner began by stating that application of many provisions of the expanded gaming legislation was, by legislative design, subject to the Commission's interpretation. He also stated that he appreciated the Commission's effort to create a transparent process, free of politics, for implementing the legislation and he also agreed that local officials in Springfield have tried to be transparent in their approach to choosing a potential developer or developers. He stated that the politics he sees being played are more often than not being played by people with casino interests. He would like to see a successful project in Western Massachusetts and he pledged his support to the Commission and to local officials to provide legislative guidance.

Edward Pikula, Springfield City Solicitor, and Kevin Kennedy, the City's Chief Development Officer, then addressed the Commission. Mr. Pikula stated that under the expanded gaming legislation the City is responsible for negotiating the best possible host community agreement. He stated that the gaming industry is highly specialized. Casino operators have high powered consultants in order to negotiate the best possible agreement they can obtain and the City needs to utilize the same kind of high-powered consultants. He stated that the City is concerned about the appearance of conflict of interest but that the consultant had followed the disclosure procedure required by Mass, Gen Laws 268A, § 26(b)(3). Mr. Pikula provided a copy of this disclosure to the Commission. As for the selection process, Mr. Pikula said that the City posted an RFP to solicit consultants and received replies from many consultants. The respondent ultimately chosen was the Chicago firm of Shesky and Froelich, which disclosed to the City that it represented MGM and Penn National in Illinois and that it had represented Hard Rock in the past. The firm stated, however, that it did not represent any gaming company with Massachusetts interests and would not do so while it was assisting the City.

Chairman Crosby asked if the City Council were involved in the consultant RFP and selection process. Mr. Pikula stated that Springfield has a Plan A charter under which the Mayor is responsible for the executive functions and the City Council is the legislative branch. He stated that, thus far, the City Council's only involvement in the consultant selection process had to do with appropriating a budget. Chairman Crosby asked if the City Council was aware of Shesky & Froelich's representation of MGM and Penn National at the time it approved the budget. Mr. Pikula stated that he believed that the budget process preceded the selection of a consultant. Chairman Crosby asked when the request for an opinion was made to the Ethics Commission. Mr. Pikula stated that the request was made on August 31. Mr. Pikula also stated that the City has a signed contract with the Shesky and Froelich for the services the firm will provide.

Commissioner Cameron asked how the City would respond to a potential casino bidder who claims to see a conflict. Mr. Pikula stated that the City, as well as Shefsky & Froelich, does not see a conflict and opinion from the Ethics Commission is pending. Commissioner Cameron asked if the City will make the Ethics Commission ruling public. Mr. Pikula stated that that would be a decision made by Shefsky & Froelich. Chairman Crosby stated that everyone involved in this process needs to go out of their way to be extraordinarily sensitive to what could possibly be construed as the opportunity, or the potential, for something other than total objectivity and the merits in this process. He stated that the Commission has an obligation to be fair, and transparent and participatory and to ensure public confidence in the integrity of the gaming licensing process. That obligation led it to ask the questions it was posing. Commissioner Zuniga asked if the City was planning on issuing the RFR it intended to issue on September 5. Mr. Pikula stated that the RFR is currently on hold.

Mr. Kennedy stated that if the Ethics Commission ruling comes back with a negative result, he will recommend to the Mayor the steps necessary to correct the situation. Moving beyond the subject of consultant selection, Mr. Kennedy stated that the City has four interested developers. He provided some background on the process the City has followed to date and on the City's future plans. He stated that the City will maintain its focus on creating the best possible world class casino and working with the Commission to attain the best result possible for Massachusetts. He outlined the criteria that will be used in the RFR process. Commissioner Zuniga stated that only one applicant interested in Springfield has submitted an application fee to the Commission and asked if Springfield had considered making payment of that fee a requirement for an acceptable RFR response. Mr. Pikula stated that the City is considering making the payment of the fee a requirement for the City's Phase 2 process. He stated that Springfield would like its process to complement the Commission's process.

Commissioner McHugh stated that he is concerned with the timing of the City's process, for it appears that the City's goal is to have an agreement with the developers signed in January, 2013. He stated that it is very unlikely the Commission will have in place by January all of the criteria that the Commission will ultimately used to select the best application. That being the case, he asked what will happen if Springfield has already put an agreement to a popular vote but the agreement does not address development criteria that are important to the Commission. He stated that the Commission and City should be working cooperatively in that regard and recommended holding off the execution of an agreement until the Commission promulgates regulations describing important Phase 2 criteria. Chairman Crosby stated that the Commission is also telling other communities not to close the door on their host community agreements until the Commission has promulgated regulations describing the criteria it deems essential. In response, Mr. Kennedy and Mayor Sarno outlined the economic difficulties facing the City and explained why they believed it was important for the City to work in a faster time frame than the Commission was contemplating. Chairman Crosby stressed that even if Springfield speeds up its end of the process, the entire process will not necessarily move more quickly because the Commission will still have to conduct suitability examinations which can take up to six months, and ultimately no final decision will be made on any Western Massachusetts casino until all applications are completed and submitted.

Commissioner Stebbins expressed concern with coordination of timelines between the City and Commission. He asked if one project or two projects will be put before the citizens for a vote. Mr. Kennedy stated that the City had not made a final decision on that question but it would probably put one project to a popular vote, though it is keeping all options open.

After Mayor Sarno, Mr. Kennedy and Mr. Pikula discussed these issues with the Commission, Michael Schaller and Kimberly Copp from the law firm of Shefsky and Froelich addressed the Commission. Mr. Schaller stated that the firm advised the City to follow the same two-phase selection process used in Detroit, Michigan and outlined the Detroit process for the Commission. Mr. Schaller also addressed the question of conflict of interest. He stated that in his industry integrity is paramount. He stated that his firm is registered in Illinois as a lobbyist for MGM and Penn Gaming, meaning that they represent both companies on routine regulatory matters before the Illinois Gaming Commission, and all of this work is done by Paul Jensen, one partner in the firm. Mr. Jensen will not be a part of the Shefsky & Froelich team advising Springfield. Shefsky & Froelich's representation of MGM and Penn, Gaming was fully disclosed to the City during the selection process. Moreover, the firm filed the disclosure required by Mass. Gen. Law c. 268A, § 23(b)(3) on August 31. It also requested a formal opinion from the State Ethics Commission on its representation of MGM and Penn Gaming under the circumstances outlined above. He stated that his firm will work in a fair and unbiased manner. Commissioner Cameron asked if they will make the Ethics Commission opinion public and Mr. Schaller stated that they will. Chairman Crosby stated that the firm must not have considered there could be an appearance of conflict.

At the end of the discussion Chairman Crosby thanked the Mayor and all who participated. He stated that the Commission will discuss the issues further and will await the Ethics Commission opinion.

*A brief recess was taken.*

### **Research Agenda:**

See transcript pages 117-129.

After the meeting resumed, Chairman Crosby introduced Frank Robinson, Executive Director of Partners for a Healthier Community. Mr. Robinson stated that Partners is a private not-for-profit organization that has a partnership with Baystate. He stated that Partners is interested in applying for a grant to conduct an assessment of the potential health impact of a major casino project on the communities in and surrounding the place where the casino is located. He stated that locating a casino in Western Massachusetts has the potential for creating benefits and/or having adverse effects on the health of the population. He stated that Partners is considering an application to Robert Wood Johnson Foundation that would create a health/casino partnership. If they are successful, Partners will receive the grant in January and will have three to six months to perform an in-depth and critical analysis a potential health benefits and impacts. He stated that the expanded gaming legislation requires consideration of public health and a project like the one contemplated by Partners would assist the Commission in meeting this requirement. He

stated that he would like the Commission to be a full partner in the Partners project.

Chairman Crosby stated that the Commission has been charged with conducting a broad, statewide research project on the socio-economic impact of gaming. He suggested contacting Robert Wood Johnson and explaining what the Commission is considering to see if the Foundation would consider the Commission's project and the Partners project to be two different projects, or a single project in which the Commission and Partners were collaborating. Mr. Robinson stated that this was a great idea and thought Robert Wood Johnson would be very excited to hear about it. It was agreed Mr. Robinson would provide Commissioner Stebbins with the appropriate contact information to move the discussion forward.

**Administration:**

See transcript pages 129-139.

Executive Director Search Update – Commissioner Stebbins stated that the posting for the Executive Director closed on September 7, 2012. He is in the process of setting up initial phone interviews, as well as in person visits to Boston. He stated that the agenda and process is being laid out so the Commission adheres to Open Meeting Law guidelines and respects the candidates' privacy.

Additional Hires – Commissioner Zuniga stated that he has submitted a memorandum to approve Isaacson Miller to help with the search for General Counsel. Commissioner McHugh will be coordinating the hiring process.

*Motion made by Commissioner Zuniga to enter into a contract with Isaacson Miller as articulated in the recommendation for the fee stipulated at \$45,000. Motion seconded by Commissioner Cameron. The motion passed by unanimously by a 5-0-0 vote.*

Commissioner McHugh stated that there are five finalists for the position of staff attorney. The interviews have been scheduled and should be concluded by next week. His goal is to have a recommendation of a candidate in the coming weeks, pending a background investigation. He stated that he will be sending Boston University a job description for its fellowship program and hopes to have someone on board soon.

Commissioner Cameron stated that she would like to use JuriStaff to assist in the hiring of a Deputy Director of Investigations and Enforcement, as they have identified potential candidates while conducting the Executive Director search. She will work with Commissioner Zuniga to put this process together.

Report from Director of Administration/Project Management Consultant – Director Glovsky stated that she has deferred presentation of the master schedule until she has had enough opportunity to review it. Late yesterday she received the strategic plan from the consultants and would like an opportunity to review it before she presents it to the Commission. She will be working with Commissioner Zuniga on the next phase of the contract with the consultants. She

reminded the Commissioners the deadline for submitting information about potential MIT externs is Saturday. She stated that the procurement has been completed for brand identity and web development.

**Finance/Budget:**

See transcript pages 139-145.

Commissioner Zuniga stated that Jackrabbit Designs has been selected as the firm for brand identity and website development. He supplied a memorandum outlining the RFR process which was handled by Brandon Milby and Directors Driscoll and Glovsky.

*Motion made by Commissioner Zuniga that the Commission accept the proposal submitted by Jackrabbit Designs and pursue contract negotiation and detailed scoping for the services described in the responses to the RFR 2012 dated August 22, 2012. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

Commission Personnel Policy – Chairman Crosby stated that he and Commissioner Zuniga have been charged with talking with the Human Resources Department of the Commonwealth to understand the Commission’s rights, obligations and options relative to bargaining units amongst its employees. He stated that a meeting was held with Paul Dietl and other staff from HRD who explained that the Commission is presumed to be subject to Mass. Gen. Laws c. 150E, the Commonwealth’s public employee law. He stated that Commissioner Zuniga and Director Glovsky will engage in research to determine best practices for the Commission to follow.

**Racing Division:**

See transcript pages 145-161.

Operations Update – Commissioner Cameron stated that each Massachusetts racetrack must submit an application each year outlining its proposed operations for the ensuing year. She has received applications and is in the process of scheduling hearings on them. The hearings will be held in October. She also stated that the one racing matter before the Commission for a decision today involves the appeal of Mr. Case, the details of which were described to the Commission at an earlier meeting. Mr. Case’s attorney has filed a letter with the Commission stating that Mr. Case does not intend to file any objections to the tentative decision rendered by Commissioner Cameron and has requested that the entire appeal, including Commissioner Cameron’s tentative decision, be withdrawn and the tentative decision removed from all publications where it appears. Commissioner Cameron recommended the Commission not allow the appellant to withdraw the entire matter. A brief discussion followed and revealed that the other Commissioners were in agreement with Commissioner Cameron’s recommendation.

*Motion made by Commissioner Cameron that the Commission deny the request by Mr. Pocaro on behalf of Mr. Case that the entire appeal be withdrawn. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

Commissioner Cameron stated that she is working on the matter of simulcasting for the racetracks and hopes to have a proposal to the full Commission in the coming weeks. She stated that she, along with Commissioner Stebbins, will be interviewing for an Executive Assistant next week, and has interviewed a candidate for the paralegal position.

Director of Racing Search – Commissioner Cameron stated that the process is moving forward and interviews and background checks are being completed.

EPA Suit Suffolk Downs – Commissioner Cameron stated that she received a detailed package from the EPA relative to all the issues that have transpired with Suffolk Downs, which has entered into a consent decree. Suffolk Downs will pay significant penalties for runoff issues. They have been working under a temporary pollution prevention measure which will become permanent with the consent decree. Compliance requirements have been put into place.

**Project Work Plan:**

See transcript pages 161-165.

Consultant Status Report - Chairman Crosby stated that the Commission has received the 421 page draft of the strategic plan. It will be reviewed with the consultants via telephone and in two weeks there will be a meeting to discuss the schedule and the strategic plan.

Phase 1 Regulations – Chairman Crosby stated that the September 10 public hearing was conducted and the Commission will process the oral and written comments. Commissioner McHugh stated that all the comments will be submitted to Anderson and Kreiger, who will assemble them and forward them to the gaming consultants, who will make a recommendation to the full Commission for action at its September 25 hearing. He is confident the regulations will be in final form for presentation to the Secretary of State by September 28, which will allow the Commission to release the RFA-1 application form on schedule in mid-October.

**Public Education and Information:**

See transcript pages 165-178.

Community and/or Developer Outreach/Responses to Requests for Information – Commissioner McHugh stated that there has been a request for information from the Palmer Water and Sewer Department and he is working on this, along with an inquiry from Chelsea.

Acting Ombudsman Report – Chairman Crosby stated that an inquiry was submitted from the Citizens Committee in Palmer asking what the next steps are after a host community agreement has been signed. Chairman Crosby stated that he will be advising it is desirable not to execute a host community agreement until the Commission has determined whether or not an applicant is qualified.

Chairman Crosby stated that a letter was received from Troy Siebels, Chair of the Mass Performing Arts Center Coalition, requesting to talk to the Commission about entertainment venues in casinos. He asked whether the Commission is ready to open up its public meetings for people who want to provide advice on matters pertaining to RFA-2. Commissioner Stebbins stated that the Commission could benefit from hearing from these groups and incorporate the information into the strategic planning process but the Commission has to determine now is the appropriate time to do so. Commissioner McHugh stated that it would not be practical to have presentations of that sort at least for the next couple of weeks because the commission will be heavily engaged in working out the details of the strategic plan. Chairman Crosby stated that entertaining public comment like this should be included on the Commission's Gantt chart. It was agreed the next couple of weeks would be premature but as the Commission hones its schedule this commentary can begin.

Ombudsman Search Update – Commissioner Stebbins stated that over 40 resumes were received for the Ombudsman position. The field has been narrowed down to four finalists and Chairman Crosby will be meeting with all four finalists tomorrow.

Discussion of Diversity/Inclusion Forum, September 19, 2012 – Brandon Milby indicated there are approximately 160 people signed up to attend this forum, which will begin at 8:30 a.m.

AIA Massachusetts Proposal – Chairman Crosby stated that the Commission has in its packet a letter from the American Institute of Architects, in collaboration with the Boston Society of Architects, asking if the Commission would value having an educational forum to discuss the issues of aesthetics, environment, and sustainability that they might be able to present. The Commission agreed that this is a great idea and decided to invite the Association to attend a Commission meeting and discuss substantive ideas in addition to content of a possible forum. Commissioner Stebbins agreed to coordinate this effort.

### **Research Agenda (Continued):**

See transcript pages 178-179.

Status Report – Chairman Crosby stated that he had a meeting with John Auerbach and his staff from the Department of Public Health, as well as representatives from the Lottery Commission, the Treasurer's Office, and the Department of Transportation to brainstorm the research RFI. He stated that the draft RFI should be ready tomorrow and he hopes to post it by the end of the week.

### **Discussion of Springfield Schedule and Process:**

See transcript pages 179-192.

Chairman Crosby opened discussion among the Commissioners relative to the Springfield process discussed earlier in the meeting. Commissioner Cameron stated that the Commission should hold off conversation on the ethics question until the Ethics Commission issues an



opinion. Commissioner Zuniga recommended looking at all the information presented today and having a discussion at the next Commission meeting. Commissioner McHugh stated that he would like to gather more information on the Detroit model which may help the Commission make a determination. Commissioner Stebbins agreed that he would also like to have more information on the Detroit model. He recommended that the Commission send a communication to the Mayor of Springfield expressing appreciation for his team being here today, but also expressing the Commission's continued concerns. Chairman Crosby and Commissioner Zuniga questioned Springfield's insistence on expediting this process. After further discussion the Commission agreed to gather additional information for discussion at a later meeting.

### **Other Business:**

See transcript pages 192-201.

Chairman Crosby stated that he and Commissioner Zuniga had a telephone conversation this morning with an investment banker about the idea of going to New York and talking to the participants in the financial markets. The investment banker felt quite strongly that the Commission could have a material impact on equity investors who might be interested in the casino licensing process. He recommended that the Commission explore the possibility of hiring the investment banker to assist in presentations to a targeted audience. The services would be billed on an hourly rate for up to \$150,000 and he asked for the Commission's feedback on whether to proceed with this process. Commissioner Zuniga stated that, as part of the discussion process, the Commission should talk to developers who, at least to this point, have remained on the sidelines. Commissioner McHugh stated that if discussions with investors can increase competition or the facility with which applicants can raise capital for their projects the discussions are a good idea, though they will have to take place quickly because the qualification piece of the application process is about to begin. He recommended seeking advice from a securities lawyer to outline what can and cannot be said that any such meetings. Commissioner Stebbins stated that he thinks the discussions are worth exploring and will be worthwhile if they help generate more competition. Chairman Crosby expressed reservation about the amount of money the process may cost. The investment banker projects that it will take several months to set up the presentations, get the appointments, and travel with the Commission to make the presentations. Commissioner Zuniga suggested asking the existing casino license applicants if the approach to Wall Street just described is a good idea. Commissioner McHugh stated that asking current applicants would be appropriate if it were done in a public, transparent way.

*Motion made to adjourn, motion seconded and carried unanimously.*

### **List of Documents and Other Items Used at the Meeting**

1. Massachusetts Gaming Commission September 11, 2012 Notice of Meeting & Agenda
2. August 28, 2012 Meeting Minutes
3. September 4, 2012 Meeting Minutes

4. September 10, 2012 Memorandum Regarding Recommendation to Approve Execution of a Contract for the Search of a General Counsel
5. September 10, 2012 Memorandum Regarding Recommendation to Contract for Brand Identity and Website Development
6. August 10, 2012 letter from Jeffrey R. Pocar, Esq. Regarding Walter Case
7. September 3, 2012 letter from William J. Geary, Esq.
8. Consent Decree entered by Suffolk Downs
9. August 27, 2012 letter from AIA Massachusetts
10. Casino Health Impact Assessment Partnership

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