

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: September 25, 2012

Time: 1:00 p.m.

Place: Boston Convention and Exhibition Center
415 Summer Street, Room 150
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 29th public meeting.

Approval of Minutes:

See transcript pages 2-4.

Chairman Crosby stated that two sets of minutes are ready for approval, September 11 and September 18. Commissioner Stebbins and Chairman Crosby made two suggested revisions to the September 11 minutes.

Motion made by Commissioner McHugh to approve the minutes of September 11, 2012. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Motion made Commissioner Cameron to approve the minutes of September 18, 2012. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Project Work Plan:

See transcript pages 4-113.

Consultant Status Report

Draft Master Schedule – Eric Lowther of PMA Consultants addressed the Board. He stated that he is assisting the Commission with developing a schedule and work plan and now has an integrated schedule that reflects the scope of the gaming consultants and Commission’s work. He provided copies of the schedule to the Commission and provided an overview. He stated that

based on this schedule the first casino license will be awarded at the end of February, 2014. Chairman Crosby stated that this date is based on the gaming consultants' estimates. If everything goes smoothly, however, the Commission could move more quickly, as plausible license issuing dates lie somewhere between October and November of 2012 and February to March of 2014. Commissioner Zuniga stated that if any phase of this schedule is completed early, such as investigations, the PMA scheduling tool would incorporate the early completion date and calculate a new timeline based on it.

Strategic Plan Draft – Chairman Crosby stated that one of the primary work products for the Commission's consultants was development of a strategic work plan. The consultants have presented the Commission with a draft plan and today's meeting is designed to present them with feedback so that the next, and possibly final, draft can be produced. Present for this discussion were consultants Guy Michael, Robert Carroll, Michael Epps, and Frederick Gushin.

Commissioner Zuniga stated that he would like to discuss how the Commission organize itself to meet the timeline suggested for drafting the Phase 2 regulations. Commissioner McHugh asked whether the Commission could conduct suitability hearings one quarter earlier if applicants supplied sufficient information more quickly than the draft timeline anticipated. Mr. Michael responded that compressing the timeline would be feasible but would probably have to be determined on a case-by-case analysis. He stated that the times suggested in the draft are reasonable estimates. Mr. Gushin stated that other areas in the timeline also could be compressed and, although there are certain benchmarks on the timeline, the overall process could be accelerated.

Commissioner McHugh stated that the Commission has to provide a full set of regulations to the local government advisory committee by March, 2013, in order to promulgate them by the end of June in accordance with the timeline contained in the draft schedule. Mr. Michael pointed out that it is possible to prioritize components of the regulations and work on the necessary ones first. Chairman Crosby stated that regulations dealing with licensing issues should be done first and all the operating regulations for gaming facilities could be done later.

Commissioner Zuniga asked if the six month timeline for investigations is realistic or can be shortened. Mr. Gushin stated that the timeline for investigation in major gaming states is anywhere from nine months to eighteen months. He stated his experience suggests that six months is a reasonable timeframe. A discussion was held on factors that may slow down an investigation, such as a company's internal bureaucracy or a local partner's need for more time to fill out forms for the first time than is required by another entity to fill out forms similar to those it filled up before.

Commissioner Zuniga asked if releasing the slots parlor license first would advance the schedule. Mr. Michael responded positively. Chairman Crosby stressed that this discussion raises again the critical need to get the Bureau up and running promptly. Chairman Crosby and Commission Zuniga raised concerns about the unknown impact and implications of the tribal compact. Mr. Carroll stated that bridges between the Tribal Gaming Commission, the Commission and other state agencies are going to have to be built before the amount of resources required for

Commission involvement in tribal gaming can be determined accurately. Chairman Crosby stated that the Commission is reaching out to the Tribe to begin relationship building. If both Commissions do not work together and have similar standards, then everything will have to be done twice.

Commissioner Stebbins stated that appointing a gaming policy advisory committee and structuring where it fits into the Commission's organizational structure is important. Commissioner McHugh asked if the consultants have a comprehensive list of the entities and kinds of MOUs the Commission will need as it moves forward. Mr. Carroll stated that the consultants are working on compiling such a list and have discussed it with the Attorney General. At the moment, however, they do not have a comprehensive list of all the agencies that may require MOUs. Chairman Crosby asked that the consultants include in the organization chart positions related to small business promotion, workforce development, and supplier diversity. Commissioner Zuniga recommended including a CIO or information technology person in the organization chart as well.

Chairman Crosby asked if there were any sound reasons for issuing a license to the slots facility first. Mr. Gushin responded doing so would begin the flow of revenues to the state more quickly than if the Commission decided to issue a Category I license first. He also stated that the construction time for a slots facility is shorter because such a facility would not necessarily require new construction and certainly would not require construction as elaborate as would be required for a casino with table games. Mr. Michael stated that one initial reaction might be that opening a slots facility in an area that may have a Category 1 licensee could provide the slots parlor with some type of a competitive advantage. On balance, however, the sooner a slots license could be issued, the better public policy would be served.

Chairman Crosby asked why it would be the Commission's responsibility, and not the casino's, to protect from robbery or fraud. Mr. Michael stated that the casino and the state have a joint interest in making sure the casinos are well run, efficient, and honest. Mr. Epps stated that the Commission has two overarching duties, to protect the revenue for the state and to protect the guests of the industry to make sure they will have a fair game. The Commission needs to be vigilant to ensure that both goals are met.

Commissioner Zuniga asked what the consultants believe the Commission's immediate next steps should be. Mr. Gushin stated that getting the scope of licensing process started, while the Phase 2 regulations are being discussed, so that when the investigations are completed the regulations are in place and the Commission can move forward on evaluation of projects and ultimately make a decision. Commissioner Stebbins asked that as the consultants move into Phase 2 they address the notion of phasing, such as phasing construction and temporary facilities. With those thoughts in mind, the gaming consultant stated that they would return to the task of drafting the strategic plan and would present a revised draft to the Commission for its consideration.

Phase 1 Regulations – Commissioner McHugh stated that three documents relative to the Phase 1 regulations are before the Commission. One document is a matrix incorporating all of the

substantive public comments received through September 10. In the matrix, the comments are tied to the specific section of the draft regulations to which they are addressed. In connection with each comment, there is a recommendation as to whether the Commission should accept the suggested change or not. The recommendation is based on consultations between himself, the gaming and the legal consultants. The second document is a matrix directed at what one commentator called typos and matters of form. The third document is a redline version of the regulations in which all of the recommendations in both matrices have been incorporated. He stated that the plan is to submit the draft to the Secretary of State on Friday for publication, with the goal of issuing the RFA-1 regulations on October 12.

Commissioner McHugh reviewed the major changes proposed in the matrices. The first narrows the ban on political contributions but maintains a broad requirement for disclosure of all contributions. The next removes an ambiguity about the definition of confidential information and the mechanism for defining it. The next deals with community reimbursement and the process involved in obtaining that reimbursement, as well as a suggestion on which it is not necessary to act at this time, that if an applicant provides the \$400,000 fee from which \$50,000 is paid to a host or surrounding community, the applicant will still have a \$400,000 credit against the costs of the investigation.

Motion made by Commissioner Stebbins that Commission accept the recommended changes contained in the document entitled Summary of Public Comments on Draft Phase I Regulations 9/13/12 draft that is part of the meeting packet and the changes and the recommendations in the column labeled Commission resolution in the document entitled proposed 205 CMR 16 101.00-117.000, Suffolk Downs' Notes Regarding Form Consistency Errata and Typographical Errors that is also part of the meeting packet and authorize Commissioner McHugh to incorporate the substance of those changes in the current draft of the Phase I regulations and file a draft incorporating those changes with the Secretary of State on the Commission's behalf. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

A recess was taken.

Chairman Crosby reconvened the 29th meeting.

Chairman Crosby stated that one area that was not discussed with the consultants was job titles. He stated that there will be an Executive Director, with Directors reporting to him, but asked about the title of the Deputy Director of IEB. Commissioner Cameron stated that everyone should have the title of Director, such as the Director of IEB and positions under the Director would be Deputy Directors. Commissioner Stebbins recommended leaving flexibility to consider someone serving in a joint role as director of a division, but deputy director of the overall Commission, under the Executive Director.

Chairman Crosby stated that the Commission will be amending its contract with the team of gaming consultants with an extension that deals with RFA-2. Commissioner Zuniga stated that he has been working with Director Glovsky on drafting an agreement to pay the consultants on a monthly basis and there are some additional items, such as travel reimbursement, that have to be

worked out before an agreement can be finalized. He has asked the consultants to put together a chart showing the number of individuals will be working on the project, as well as the Commission staff who will be involved and necessary timing elements.

Motion made by Commissioner McHugh to authorize Commissioner Zuniga to negotiate a contract with Spectrum Corporation and the firm of Michael and Carroll for provision of the services necessary for promulgating the Phase II regulations including a schedule of payments, costs and requirements for travel and allied contractual components. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Chairman Crosby then stated that the Commission has to prepare itself to do the background investigations that will become necessary as soon as the Phase 1 applications are filed. Those investigations will, of necessity, be outsourced because the Commission does not have the capability to do them in-house. He stated that no tax money will be involved in the investigative process, as the full costs of the investigation will be borne by the applicants. He stated that the question before the Commission is whether to utilize the consulting firms that are already working for the Commission. He stated that the present team is the best in the industry, was competitively procured, and has worked seamlessly to accomplish a great deal during the past five months. Payments for the investigations, however, could be quite substantial, perhaps running into the millions of dollars. He continued by stating that the Commission is exempt from the state procurement regulations but voluntarily chose to use them. In this case, however, following those regulations is in competition with the need to move very quickly to prepare for the applications.

Commissioner Zuniga stated that, given the manner in which the Commission originally hired the two firms, the purposes served by the procurement regulations would be served even if the Commission exempted itself from those regulations for this procurement. Commissioner McHugh stated that utilizing the current consultants would be cost effective. He stated that they have high ethics and vast experience. In addition, Spectrum has just conducted investigations in Ohio and may have fresh information that would be valuable in the investigative process. Commissioner Cameron stated that gaming background investigations are unique and intricate and require many contacts with individuals and agencies in other jurisdictions. She stated that she has confidence in the staff the consultants could provide and the quality and ethics of the individuals who will be conducting the investigations. Commissioner Stebbins was in agreement with the recommendation and stated that he valued the expertise of the consultant team. Chairman Crosby recommended that the Commission proceed with either a sole-source procurement or amendment to the existing contract. Commissioner Zuniga asked if the consensus is to exempt the Commission from the regulations adopted in April for the purposes of this one procurement and received a positive response.

Motion made by Commissioner McHugh that the Commission exempt itself from the procurement regulations found in 801 CMR that the Commission adopted earlier this year but that it do so for the sole purpose of engaging the firm of Spectrum and the firm of Michael and Carroll to assist the Commission with the investigation of Phase 1 applicants, provided that suitable terms,

arrangements, and conditions of the contract covering the investigation can be arranged. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 113-124.

Personnel Searches - Chairman Crosby stated that all the job searches are moving ahead and several may be completed within the next few days. The Commission decided to move forward with hiring for these positions by the appropriate hiring manager next week, if it is possible to do so, even though several Commissioners will be out of town.

Report from Director of Administration – Director Glovsky stated that she has been coordinating meetings between the Commissioners and consultants and ensuring different parts of the strategic plan have been addressed. She stated that she has been working with Kristen Gooch to establish a protocol for communication between the Commission and the consultants during the Phase 2 process. She stated that she has been working with Commissioner Zuniga on the extension of the contract with the consultants and has begun working with Commissioner Stebbins on an ISA with the Collins Institute to do research regarding host communities and surrounding communities. She is working on procurements for research and financial advisory services. She has been preparing office space and equipment for the new hires. She stated that she also has prepared and would like to post a job description for a generalist.

Personnel Policies - Chairman Crosby stated that he provided the Commission with a set of core values which he would like to adopt. He reviewed the content and stated that he would like to have the values set out in the beginning of the employee manual.

Motion made by Commissioner Stebbins to adopt the proposed set of core values for the Commission and for all future and current employees of the Mass Gaming Commission. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

Chairman Crosby stated that Commissioners McHugh and Stebbins will be conducting the regular weekly Commission meeting next week while he and Commissioners Cameron and Zuniga are out of town attending a national gaming meeting.

Finance/Budget:

See transcript pages 124-143.

Update - Commissioner Zuniga stated that he has developed a draft memorandum outlining a procedure for reimbursing host communities. This procedure reflects Commission regulations allowing the Commission to pay money to a host community if a developer or operator and a host or surrounding community come to an agreement as to the amount to be paid and send a letter to the Commission to start the process of reimbursement. Commissioner Zuniga stated that when an agreement is submitted, the community will be given 50% of the agreed upon amount.

The community can also get the money directly from the developer. Commissioner Stebbins stated that, in order to prevent double payments, the Commission should have the ability to determine whether a community has already received money from the developer when it receives a community's payment request. Commissioner McHugh stated that in Phase 2 the developer has to disclose all payments made to a community.

Commissioner Stebbins expressed concern about releasing additional money when the initial \$50,000 is expended, as the Commission will need that money for investigations. Commissioner Zuniga clarified if the community expenses go beyond \$50,000, it does not come out of the remaining \$350,000, at this time. Instead, the additional sums would have to come from the developer. The remaining \$350,000 will be used by the Commission for the investigatory process.

Commissioner Zuniga stated that he has distributed the third draft of the employee manual and has incorporated all the changes discussed at the Commission's August 14 meeting.

Racing Division:

See transcript pages 143-148.

Operations Update – Commissioner Cameron stated that the greyhound dog owners have brought forward an issue with regard to payments. When greyhound racing was discontinued, statutory provisions were made for payments to people who were losing their livelihood. The owners disagree with an interpretation of the governing statute made by the Department of Professional Licensure, which has been handling racing operations. She conducted a meeting with the owners and requested outside counsel to provide an opinion on what the statute meant. She has concluded that one of the claims advanced by the owners has merit and has notified them, on an informal basis, of her conclusion. As a result, she anticipates the issue will be resolved in the near future.

Commissioner Cameron also stated that she has been contacted by Ms. Dorchak, President and General Counsel representing GREY2K USA. Ms. Dorchak believes that the law prohibiting greyhound racing in Massachusetts also prohibits simulcasts of greyhound racing. Commissioner Cameron stated that one of the Commission's responsibilities is to analyze the simulcast and pari-mutuel statutes to determine their efficiency and whether some need replacement. A report on that subject must be filed with the Legislature no later than January 1. Commissioner Cameron stated that she is contemplating a contract with an attorney who has great subject matter knowledge and who will be making a recommendation to the full Commission when his investigation is complete.

Public Education and Information:

See transcript pages 148-161.

Community and/or Developer Outreach/Responses to Requests for Information – Commissioner McHugh stated that he is continuing to work on the answers to the questions posed by the City of Chelsea.

Springfield Ethics Commission Opinion – Chairman Crosby stated that the Commission has received the opinion from the State Ethics Commission regarding the Springfield consultant. He stated that the Commission is considering whether to respond, but will probably take the position that it is fundamentally accepting of the decision. The Commission decided to give Chairman Crosby authority to respond to the opinion if in his judgment a response is appropriate.

Acting Ombudsman Report – Chairman Crosby stated that he received a suggestion that the Commission compile a list of key contacts for applicants. He agrees that compilation of such a list would be a good idea and will ask the Ombudsman to do so once the ombudsman is hired.

Chairman Crosby stated that he received correspondence from MEPA informing the Commission that Suffolk Downs is filing its environmental notice form. He stated that he would like to have the Director of MEPA attend one of the Commission meetings to provide an overview of the environmental review process.

Chairman Crosby stated that he has had discussions with the Governor's office and recommended establishing the gaming policy committee as soon as possible. Under the statute, the Governor will appoint the chair. Chairman Crosby anticipates that the Commission's Ombudsman will staff the committee.

Discussion of Diversity/Inclusion Forum, September 19, 2012 – Chairman Crosby stated that the Commission walked away from the forum with a sense that much can be done but also that nothing in this area happens by itself. He has discussed with Commissioner Stebbins putting together a job description that focuses on a job description for a person whose responsibility will center on workforce and supplier development and would like to hire that person soon. Commissioner Stebbins stated that his initial thought before hiring a staff person is to ask representatives from organizations such as Access and Opportunity, Mass Development, Associated Industries of Massachusetts, and other agencies to gather and talk about a sound strategic approach to the diversity issues discussed at the forum, with the thought of perhaps finding support for the Commission's effort from within the existing partners.

Research Agenda:

See transcript page 161.

Status Report – Chairman Crosby stated that Director Glovsky talked about the research agenda in her presentation and an RFI is in process.

Chairman Crosby stated that he, along with Commissioners Zuniga and Cameron, will be going to Las Vegas for the National Responsible Gambling Conference on Sunday, and then will spend the next three days attending the American Gaming Association Conference, also in Las Vegas.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission September 25, 2012 Notice of Meeting & Agenda
2. September 11, 2012 Meeting Minutes of Massachusetts Gaming Commission
3. September 18, 2012 Meeting Minutes of Massachusetts Gaming Commission
4. Massachusetts Gaming Commission Work Plan
5. Proposed CMR 101.00 – 117.00 Suffolk Downs’ Notes Regarding Form, Consistency, Errata and Typographical Errors
6. Summary of Public Comments on Draft Phase I Regulations - 9/13/12 draft
7. 205 CMR Massachusetts Gaming Commission Redline draft – September 25, 2012
8. Core Values
9. September 25, 2012 Memorandum Regarding Procedure for Reimbursing Host Communities

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