



---

## Meeting Minutes

---

**Date:** May 3, 2013

**Time:** 9:00 a.m.

**Place:** Division of Insurance  
1000 Washington Street  
1<sup>st</sup> Floor, Meeting Room 1-E  
Boston, Massachusetts

Bristol Community College  
777 Elsbree Street, Building G  
Fall River, Massachusetts

Marlborough Courtyard Marriott  
75 Felton Street  
Marlborough, Massachusetts

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh (via teleconference from Fall River)  
Commissioner Bruce Stebbins (via teleconference from Marlborough)  
Commissioner Enrique Zuniga

**Absent:** None.

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

### **Call to Order:**

Chairman Crosby opened the 66<sup>th</sup> public meeting.

### **Public Hearing on the Proposed Phase 2 Regulations:**

See transcript pages 2-23. All times noted in the margin track to the time on the video version of the meeting.

9:12 a.m. Chairman Crosby announced that the public meeting is being held simultaneously in three locations, and all three locations are being broadcast live on the

Commission's website. Commissioner McHugh is participating in the meeting via teleconference from Fall River, Commissioner Stebbins from Marlborough, and the remainder of the Commissioners from Boston. All votes taken during the meeting will be taken by roll call vote.

The Commission will receive oral public comments during the hearing from those interested and will review and discuss all the written comments already received at a future public meeting.

- 9:14 a.m. Attorney Kevin Conroy from Foley Hoag representing Mohegan Sun addressed the Commission. His client anticipates working with the Regional Planning Agencies and supports the Commission's proposal to move the RFA-2 application deadline for a Category 1 license to early December. Mohegan plans on signing a host community agreement in June and holding the referendum in September. Attorney Conroy stressed the importance of the Commission formally setting a firm application deadline to assist applicants in scheduling.

Attorney Conroy expressed concerns with the Commission's proposed language in 205 CMR 118 as it discourages applicants from submitting their best and final offers if they know that the Commission will ask for a better offer. He stated that the legislature considered placing a "best and final offer" provision in the statute but chose not to do so. He was also concerned about the transparency of the process and potential for favoritism occurring if meetings with applicants occur behind closed doors.

Attorney Conroy believes that the Commission's specimen forms for the RFA-1 application were very helpful and he would like to see a similar process to maintain confidentiality for the RFA-2 applications. His client was concerned that the Commission is not providing any guidance on which supplemental materials requested during investigations will remain confidential. He would like the Commission to provide blanket confidentiality, as it did with the specimen forms, for broad categories of materials requested during the investigations.

- 9:26 a.m. Ms. Catherine Rollins, a legislative analyst for economic development with the Massachusetts Municipal Association, addressed the Commission. She believes that host and surrounding communities have experience in dealing with large construction projects such as the proposed gaming establishments and the Commission should give serious weight to the comments received from these communities.

Ms. Rollins also expressed that the Commission will not be able to accurately quantify the positive impacts of the proposals and should not try to precisely weigh these benefits against the negative consequences of the project.

- 9:32 a.m. Mr. Sean Sullivan, a resident of Charleston, Massachusetts, addressed the Commission. He asked the Commission to more favorably consider gaming

establishments located on State land because those establishments will bring the maximum amount of revenue to the Commonwealth.

9:33 a.m. No other individuals were present to comment. Chairman Crosby temporarily suspended the hearing on the proposed Phase 2 regulations until 10:00 a.m.

**Approval of Minutes:**

See transcript pages 23-30.

9:34 a.m. The Commission began its regular public meeting. Commissioner McHugh advised the Commission that the minutes being approved are in a new format prepared by the legal department. As clarification to the April 11 minutes, Chairman Crosby stated that the Commission has not yet decided to receive public comment on the IEB determination regarding qualification.

*Motion made by Commissioner McHugh that the minutes of April 11, 2013 be approved as submitted. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of April 18, 2013 be approved as submitted. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of April 25, 2013 be approved as submitted. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

**Administration:**

Report by Executive Director Day. See transcript pages 30-60.

9:42 a.m. The Commission is scheduled to discuss at its next meeting on May 16 the timetable for Region C and the RFA-2 evaluation process. Director Day addressed the Comment by Attorney Conroy and pointed out that the Commission is in favor of protecting the applicant's confidential information to the fullest extent possible by law, but cannot offer a guarantee of confidentiality because the final decision is beyond the Commission's control.

The hiring processes for the Director of Licensing, CFAO, and CIO are moving forward, and the Commission is now reviewing the finalists for the Director of Workforce and Supplier Development and Director of Research and Problem Gambling positions.

9:56 a.m. The Master Schedule has been updated to reflect the timeline changes for the application deadline and the surrounding community process, but still needs to incorporate the referendum dates as triggers to the surrounding community process. The Commission is interested in receiving comments on whether applicants and communities can meet a November 1 deadline for Category 1 RFA-2 applications.

Commissioner McHugh emphasized that he would like applicants and communities to provide specific details about why they would or would not be able to meet this deadline so that the Commission can more properly adjust the timeline.

10:11 a.m. Commissioner Zuniga is currently working on the FY 2014 budget, but briefly summarized the Commission's financial position. The Commission is assessing applicants for the investigations costs and will assess licensees for the research agenda, but until the Commission awards a license, the research agenda needs financing from the legislature's original \$15 million loan.

**Public Hearing on the Proposed Phase 2 Regulations:**

See transcript pages 60-61.

10:17 a.m. The Commission suspended the regular public meeting and resumed its public hearing on the Phase 2 regulations. There being no further comments, the hearing was closed.

**Evaluation Process:**

See transcript pages 62-118.

10:18 a.m. The Commission resumed its regular public meeting. Commissioners McHugh and Stebbins have been researching the different ways other organizations conduct evaluations of large scale proposals. Executive Director Day and Commissioner McHugh will provide a more formal analysis at the next Commission meeting.

10:19 a.m. The Commission took a brief recess.

10:26 a.m. Commissioners McHugh and Stebbins presented the information they compiled from reviewing how other organizations handle evaluation of large scale proposals. The evaluation process has four major elements: the content of the proposal, the review process, the composition of the review team, and the format of the award. They described each of these elements in detail. Commissioner Zuniga, with the concurrence of other Commissioners, stated that it was important that final decision-making on significant aspects of the evaluations remain the responsibility of the Commissioners and not be delegated to staff or outside consultants.

The Commissioners will look into meeting with the Inspector General to determine if there are any other considerations for the application process. The Commission will also consider asking the public at large in a systematic process for their opinions on which proposal is best. The Commission should also address the timing of the award because the issuance of the license will trigger revenue streams to the Commission.

11:18 a.m. The RFP for a financial advisor is almost ready and the Commission is close to completing the RFP for site development advisors. The Commission authorized Executive Director Day to issue the RFP as soon as it is complete for these two

positions. The Commission will discuss a timeline for the remainder of the consultants at the next meeting.

11:26 a.m. The Commission discussed whether a comparative system of evaluation or a numerically weighted system should be used, but reached no final decision.

### **Ombudsman Report**

Report by Ombudsman Ziemba from Marlborough. See transcript pages 118-137.

11:42 a.m. All of the applicants are willing to consider the RPA process and several have already agreed to participate. The Commission should make clear to surrounding communities that only the applicant and host community will be doing independent studies. The surrounding communities and RPAs should only need to perform peer reviews of the initial studies. There is a fairly strong presumption for peer review, and the Commission will decide whether any surrounding community needs additional funds to perform an independent study.

12:05 p.m. The Commission took a brief recess.

### **Legal Report:**

Report by Attorney Grossman from Fall River and General Counsel Blue from Boston. See transcript pages 137-149.

12:15 p.m. Attorney Grossman discussed the legal implications of placing a cap on an applicant's expenditures advocating for a positive vote in the host community. To place a cap, the Commission would need to show a compelling interest in preventing an applicant from drowning out the views of the public and undermining the democratic process. The case law suggests that such a cap could violate existing law. The Commission agreed with Attorney Grossman's analysis.

12:28 p.m. General Counsel Blue asked that the Commission appoint David Murray as a hearing officer with the Racing Division for a one year term.

*Motion made by Commissioner Zuniga to accept the recommendation and appoint Mr. Murray as a hearing officer. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### **Racing Division:**

Report by Director Durenberger. See transcript pages 149-158.

12:31 p.m. The Racing Division has no major updates to report on. The Commission has received the 2011 Annual Report from the former Racing Commission. Director Durenberger asks that the Commission approve the filing of the 2011 Annual Report with the condition that the Commission take no position on the preparation or content of the 2011 Annual Report since the Commission was not sitting and had no involvement with its preparation. Raynham Park requested that the Commission

approve its list of fifteen special events for which it is not required to pay premiums, and Director Durenberger agreed.

*Motion made by Commissioner Cameron to accept the 2011 Annual Report for filing without taking any position or making any judgment on its contents. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

*Motion made by Commissioner Cameron to accept Director Durenberger's recommendation to approve the fifteen special events for which Raynham Park is not required to pay premiums. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

### **Research Agenda:**

See transcript pages 158-180.

12:39 p.m. The Commission is currently in the process of consummating an agreement with the research team. The research team will present at the next Commission meeting the current status of their study. Chairman Crosby recapped the discussions of the prior Commission meeting.

12:44 p.m. Due to the characteristics of the research, costs will need to be front-loaded to properly conduct the baseline study prior to the construction of gaming establishments. The research agenda will be funded out of the Commission's \$15 million loan until a license is awarded, at which point the Public Health Trust Fund will have the requisite capital for research. The Commission decided to expend additional money on the research in order to provide small incentives to encourage responses. These incentives should increase the response rate from 10% to 25% and dramatically improve the confidence of the analysis. The projected fifteen month budget is \$3,459,391.

The Commission wanted to preserve its rights to postpone the research if the expenditures are anticipated to interfere with the Commission's ability to properly conduct the licensing process.

*Motion made by Commissioner Zuniga to approve the fifteen month research budget of \$3,459,391 subject to the Commission's ability to finance the project and giving the Commission an option to suspend the project if necessary. Motion seconded by Commissioner McHugh. The motion passed unanimously.*

1:08 p.m. *Motion made to adjourn, motion seconded and carried unanimously.*

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

1. Massachusetts Gaming Commission May 3, 2013 Notice of Meeting and Agenda
2. Written Responses Regarding Phase 2 Regulations
3. Massachusetts Gaming Commission April 11, 2013 Meeting Minutes
4. Massachusetts Gaming Commission April 18, 2013 Meeting Minutes

5. Massachusetts Gaming Commission April 25, 2013 Meeting Minutes
6. Division of Racing May 3, 2013 Memorandum Regarding Annual Report – State Racing Commission 2011
7. Division of Racing May 3, 2013 Memorandum Regarding Approval of 2013 “Special Events” to be simulcast at Raynham Park

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary