



Casino developer decries application process

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The developer proposing to build a commercial casino on the New Bedford waterfront says a plan by the Massachusetts Gaming Commission to open the region to commercial applicants remains flawed.

In a letter posted Monday on the commission's website, Barry Gosin, a principal with KG Urban Enterprises of New York, said the proposal by the commission to create a so-called "parallel process" for Southeastern Massachusetts, known as Region C in the legislation, is "profoundly problematic."

The commission, which is expected to vote on the idea today at its meeting in Boston, would begin accepting applications for commercial companies to prequalify for a license while the Mashpee Wampanoag tribe continues to seek federal approvals for its \$500 million Indian casino in Taunton.

The letter from Gosin is the first indication that potential developers don't like the idea of opening the process if the tribe remains in the driver's seat.

"Under the 'dual track' process discussed by the commission, an applicant is forced to assess not just its own ability to win a license on the merits, as in regions A and B, but faces an additional and highly-significant variable totally outside each applicant's control, or even the ability to influence through its own business decisions," Gosin wrote. "Specifically, there is the possibility that the strength of a Region C applicant's qualifications, and the quality of the proposal itself, could be rendered irrelevant if the Mashpee tribe is deemed to have achieved 'significant progress' toward an Indian casino."

Andy Paven, a spokesman for KG Urban, said the company would have no comment beyond its letter to the commission.

KG Urban is suing the state in federal court arguing that what it calls a "race-based set aside" for the tribe in the Expanded Gaming Act violates the Equal Protection Clause of the U.S. Constitution. The legislation gives a federally recognized tribe the ability to secure a license in the region first, as long as it can meet certain criteria including the federal hurdle of getting land taken into federal trust.

Tribe leaders have insisted their federal approvals are on track and that they remain in negotiations with Gov. Deval Patrick's office on a compact. The federal Bureau of Indian Affairs rejected the first deal because it was too generous to the state, at 21.5 percent of gross gambling revenues, with not enough concessions made to the tribe.

Commercial bidders would be required to pay a \$400,000 application fee and begin the process of spending thousands more on project planning, Gosin wrote, with no guarantee that they would get a fair shot at winning the license.

"It is exactly this type of uncertainty that frightens away those who invest in high-quality, large-scale commercial gaming development," he wrote.

In closing, Gosin urged the commission to level the playing field by opening the process to bidders with no restrictions to "attract the largest and deepest pool of candidates."

Two New Bedford legislators have also written letters during the weeklong public comment period.

State Rep. Antonio Cabral, D-New Bedford, wrote that it is more difficult than ever for a tribe to win federal approval for a casino "in any reasonable time frame." He urged the commission to open up the process to commercial bidders.

In a separate letter, state Rep. Robert Koczera, D-New Bedford, seeks a deadline of June for the tribe to get federal approvals. At that point, if the tribe hasn't made enough progress, the commission should allow commercial applicants to continue to the next stage of seeking a license, he wrote. The time frame would ensure the region is "not left behind" in pursuit of the jobs and revenue predicted from casinos, he wrote.

The tribe also submitted written comments asking the commission to hold off on allowing commercial bids while its land application winds its way through the federal process. The letter also contradicts an opinion submitted by E. Abim Thomas, former deputy chief counsel for Patrick, who now works for a private client. Thomas wrote that the tribe did not meet the July 31 deadline because the BIA rejected the compact, which obligates the commission to open the process to competitive bids.

In the other regions of the state, four companies have submitted the \$400,000 application fee to begin the pre-qualifying process, which includes extensive background checks, said Elaine Driscoll, spokeswoman for the commission.

MGM and Penn National have filed applications for the Western Massachusetts license, Suffolk Downs is interested in the Greater Boston license and Plainridge Racecourse seeks the lone slot parlor license. Potential applicants have until Jan. 15 to pay the \$400,000 fee.

Watch the meeting

Comment letters are posted on the Massachusetts Gaming Commission's website, www.mass.gov/gaming. Today's meeting of the commission will be live-streamed beginning at 1 p.m. on the same site.

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