

SELECTION OF THE NEW YORK GAMING FACILITY LOCATION BOARD

October 14, 2015

INTRODUCTION

In 2012, New York State Governor Andrew M. Cuomo proposed an amendment to the State constitution to permit casino gaming. The constitutional amendment process—passage of legislation by two consecutive Legislatures followed by a public referendum—culminated in November 2013, when voters overwhelmingly approved the constitutional amendment.

Governor Cuomo and the Legislature reasoned that New Yorkers spend more than \$1 billion per year at out-of-state casinos. As those dollars leave the State, so do good jobs, tourism and economic development that could be kept and grown within New York’s borders.

On July 30, 2013, Governor Cuomo signed into law The Upstate New York Gaming Economic Development Act of 2013 (“Act”). The Act authorized up to four Upstate destination gaming resorts with at least one gaming facility located in each of three defined regions of the State: Catskills/Hudson Valley (Region One, Zone Two), Capital (Region Two, Zone Two), and Eastern Southern Tier/Finger Lakes (Region Five, Zone Two). Pursuant to the Act, the New York State Gaming Commission (“Commission”) established the Gaming Facility Location Board (“Board”) to select up to four Applicants, following a competitive bid process, to be considered for a gaming facility license.

On March 31, 2014 the Board issued a Request for Applications to develop and operate a gaming facility in New York State (“RFA”). The RFA required Applicants to specify how they would meet certain criteria as specified in the Act. On June 30, 2014, the Board received 17 Applications seeking to develop and operate commercial gaming facilities in New York State. After public applicant presentations, public comment events and thorough evaluation of the Applications, the Board selected three Applications—one from each of Regions One, Two and Five in Zone Two—to be consideration for licensure by the Commission. In Region Five, the Board selected the Lago Resort & Casino application for a facility in Tyre, Seneca County, which is in the Finger Lakes portion of Region Five.

On March 23, 2015, the Board issued a second RFA for potential selection of an applicant for the fourth authorized gaming facility license. The Board limited applications to Region Five, and, in particular, emphasized that it wished to see applications from the Eastern Southern Tier portion of Region Five, an area with an acute need for economic development. By the July 6, 2015 deadline, the Board received one application: Tioga Downs Casino, Racing & Entertainment for a

facility in Nichols, Tioga County, which is in the Eastern Southern Tier portion of Region Five (the “Tioga Applicant” and the “Tioga Application”).

The Board evaluated the Tioga Application. As with the initial RFA responses in 2014 that resulted in the selection of the first three applicants, the Board treated the Tioga Application as a public record and has made it available to the public on the Commission’s Web site with applicable exemptions pursuant to the Freedom of Information Law.

On September 10, 2015, the Tioga Applicant was required to make an informational presentation of the Tioga Application to the Board. The presentation was intended to afford the Tioga Applicant an opportunity to provide the Board with an overview of the contents of the Tioga Application, explain any particularly complex information and highlight any specific areas it desired, particularly in regard to changes from its 2014 application. The Board had the opportunity to ask the Tioga Applicant questions during the presentation.

On September 18, 2015, the Board convened a public comment event in Binghamton to provide the Board with the opportunity to receive questions and concerns from the public in regard to the Tioga Applicant proposal, including the scope and quality of the gaming area and amenities, the integration of the gaming facility into the host municipality and nearby municipalities and the extent of required mitigation plans and to receive input from members of the public and impacted communities. The Board heard 50 individual speakers at the event, all of which expressed support of the Tioga Application.

In addition to the public comment event, the Board received more than 2,860 pieces of unique communications relating to the siting of a casino in the Eastern Southern Tier portion of Region Five. All but five of these communications were in support of the project. Board members also visited the proposed site.

EVALUATION

The Board reviewed and evaluated the Tioga Application submitted in response to the RFA issued on March 23, 2015. The Board was impressed by the Tioga Applicant's strong interest in investing in the development of Upstate New York and continuing its charitable efforts in the region. The Board appreciates the effort, care, time and skill that went into the preparation of the extensive responsive submission on an aggressive response schedule.

In evaluating the Application, the Board followed the statutory criteria of Racing, Pari-Mutuel Wagering and Breeding Law ("PML") section 1320 set forth below, which requires the evaluation of economic activity and business development (70 percent weight), local impact and siting (20 percent weight) and workforce enhancement (10 percent weight) including but not limited to the following factors:

Economic Activity & Business Development Factors—70 percent

- Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements
- Maximizing revenues received by the state and localities
- Providing the highest number of quality jobs in the gaming facility
- Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility
- Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state
- Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility
- Offering the fastest time to completion of the full gaming facility
- Demonstrating the ability to fully finance the gaming facility
- Demonstrating experience in the development and operation of a quality gaming facility

Local Impact and Siting Factors—20 percent

- Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility
- Gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant
- Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry

- Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues

Workforce Enhancement Factors—10 percent

- Implementing a workforce development plan that utilizes the existing labor force, including the development of workforce training programs that serve the unemployed
- Taking additional measures to address problem gambling including, but not limited to, training of gaming employees
- Utilizing sustainable development principles
- Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities
- Purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming facility
- Implementing a workforce development plan that^{*}
 - Incorporates an affirmative action program
 - Utilizes the existing labor force in the state
 - Includes specific goals for the utilization of minorities, women and veterans on construction jobs
 - Identifies workforce training programs
 - Identifies the methods for accessing employment
- Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its Application, which specifies:
 - The number of employees to be employed at the gaming facility
 - Detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation

In addition to the specific economic activity and business development factors set forth above, the Board developed an additional criterion as permitted under PML section 1306, subdivision 3. This criterion was that the Board consider whether the proposal fulfills the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York’s tourism industry. This additional criterion supports the legislative intent of the Act, namely that selected proposals capitalize on economic development potential, boost

^{*}As stated in the RFA, Board recognizes the importance placed upon minority- and women-owned business enterprise (MWBE) business participation by the State and encourages contract opportunities for all small businesses including State certified MWBEs. To this end, the Board recommended that the Gaming Commission implement conditions to licensure requiring the three successful Applicants to match or exceed Governor Andrew M. Cuomo’s goal of 30 percent participation for MWBE contracting.

economic development, create well-paying jobs, and enhance Upstate tourism. (PML section 1300, subdivisions 3, 5 and 6).

While all of these factors were considered, no single factor was determinative in the Board's evaluation. The Board received advice and assistance from Commission staff, expert consultants and various State agencies with expertise in particular aspects of the topics covered in the RFA. The Board expresses its gratitude to the Commission staff for their extensive and effective work. Similarly, numerous State agencies provided useful input regarding the Applicants and the Applications, work for which the Board is grateful.

The Board received expert analyses in regard to the revenue-generating capabilities of the Tioga Applicant as well as proposed financing and capital structures, credit support, impacts and mitigation plans. The Board directed expert analyses of revenue projections, potential cannibalization of existing gaming facilities, potential impact of competing new casinos within a single region and qualitative factors that might affect the attractiveness of the new gaming facility, including development and operating experience and project design.

In particular, the Board studied projections under various assumptions of gross gaming revenue and impacts to State revenue after accounting for potential cannibalization of revenue from existing video lottery gaming and Native American facilities and the potential impact of competing new casinos within a single region.

The Board considered proposed debt and equity financing structures of the Tioga Applicant and the reliability and sustainability of proposed financing plans. The Board considered debt-to-equity ratios, projected earnings relative to proposed debt levels and projected debt service requirements, as well as the sensitivity of earnings potential in various economic climates and in the event of earnings before interest, taxes, depreciation and amortization (EBITDA) margin compression.

Finally, the Board considered data provided by the New York State Division of Budget in regard to various indicators of economic distress within Tioga County. According to the New York State Division of Budget, in Tioga County the median family income is \$70,272.03; percent with a bachelor's degree or higher is 23.7 percent, median home prices is \$107,140, the unemployment rate is 5.8 percent and the poverty rate is 10.2 percent. The Board finds that Tioga County could benefit from economic development.

SELECTION

After careful evaluation of the Tioga Applicant's proposal, the Board has selected the Tioga Application to be considered for licensure by the Gaming Commission.

This Tioga Application is improved considerably from the one that the Tioga Applicant submitted in 2014 in response to the first gaming facility RFA. In contrast to the 2014 unsuccessful application, this Tioga Application commits substantially more equity to the project and decreases debt, which significantly improves the financial stability of the proposal. There is a greater than nine percent increase in proposed new investment, including a larger hotel, an enhanced outdoor concert venue and additional outdoor parking. The increased scope of the project is anticipated to create more construction job opportunities. The Tioga Applicant now commits to completing all phases of the project. The Tioga Applicant will guarantee grant funding to not-for-profit organizations and loans to small businesses in the Southern Tier.

As summarized below, the Board has determined that the Tioga Applicant has very strong local support, will provide a good environment for its workforce and is of the appropriate scope and quality to fulfill the intent of the Act to bring jobs and economic development to a long-distressed region of the State. The Tioga Applicant has a significant operational track record as a video lottery gaming vendor at the proposed location, which has enabled it to gather important information about the regional gaming market and its potential customers. The gaming facility has the potential to capture gaming revenue in-state that may currently be spent in a neighboring state.

Given the appropriate scope of the project for its market, the Board believes that the gaming facility is viable, will increase tax revenue to New York State and contribute to its tourism industry, becoming a benefit to the State economy in an area in great need of further economic development. Finally, the Board believes that the Tioga Application will meet the statutory criteria for measuring the potential for long term economic growth and sustainability.

The Board expects that before issuing a license in connection with the Tioga Applicant's proposal, the Commission will take appropriate steps to ensure that the Tioga Applicant substantially fulfill the commitments and execute the development plans that the Tioga Applicant has presented as part of this 2015 RFA process. The Board also expects that the Commission will take appropriate steps to ensure that the Tioga Applicant reaches agreements to not take actions

to increase debt-to-equity ratios beyond the levels presented in the Tioga Applicant's proposals and/or standard industry practices.

The Board unanimously selects Tioga to apply to the Commission for a gaming facility license in Region Five, Zone Two.



Tioga's Proposed Gaming Facility

Tioga Downs Racetrack, LLC proposes to further develop the Tioga Downs harness racetrack and current video lottery gaming facility in the Town of Nichols, expanding the facility and converting the gaming facility to a casino facility. Tioga's facility would include a 32,590-square-foot casino with 1,000 slot machines and 50 gaming tables, 161 hotel rooms, multiple restaurants and lounges, an event center and expansion to include the existing Tioga Country Club.

Board's Evaluation

The Tioga Applicant's total proposed capital investment is \$138 million in new investment. The minimum capital investment far exceeds the minimum required by regulation. The Board notes Tioga's commitment to pay the required \$35 million licensing fee.

The Tioga proposal is projected to generate greater tax revenues to the State than if it remained as a video lottery facility. There is low potential cannibalization of other gaming facilities in the State. Tioga projects gross gaming revenues and gaming tax revenues in 2019 of \$107 million and \$32 million, respectively.

The Tioga Applicant anticipates creating approximately 1,100 jobs and has an experienced team of professionals to execute project plans. The scope of the project is reasonable in relation to the potential market.

The Board finds that the Tioga Applicant has proposed a credible financing structure, with a substantially enhanced equity commitment compared to its 2014 application. Tioga proposes to finance the gaming facility through a combination of a cash equity infusion, which supplements prior equity contributions, from an

indirect parent company and a senior credit facility arranged by a leading bank. Equity investment will total \$47.7 million.

The Tioga Applicant is an affiliate of American Racing & Entertainment, LLC, which currently operates the State's video lottery gaming at Tioga Downs and will continue to operate the Tioga Downs Standardbred racing track at the project. The track affiliate has substantial marketing data and experience that will benefit gaming facility marketing and operations.

The Board finds that the Tioga Applicant presents a satisfactory analysis of the anticipated local impacts of its facility and provides reasonable strategies for mitigating those impacts. The Tioga Applicant has demonstrated extensive local support, from the town in which it is located and from many surrounding communities in the area. Support expressed at the Board's public comment event was uniformly enthusiastic. The Tioga Applicant intends to partner with local businesses and promote regional tourism.

The Tioga Applicant intends to implement a workforce development program that employs the existing nearby labor force, including those who are currently unemployed. Tioga has organized labor's support of the project through signed agreements.

The Board finds that the Tioga Applicant presents satisfactory measures, consistent with industry best practices, to address problem gambling, including training employees in recognizing problem gambling.

The Tioga Applicant proposes using sustainable development principles in construction and operation of the gaming facility, including seeking LEED silver certification.

CONCLUSION

The members of the Gaming Facility Location Board volunteered to serve on the Board with full appreciation of the importance and gravity that comes with their decisions. Individual opinions on gambling and related issues were set aside and each member applied the statutory criteria to the best of his abilities. The members have taken their role very seriously: they have traveled the State, visited locations, heard from hundreds of concerned citizens, consulted with renowned industry experts and thoroughly digested voluminous materials, all while applying their individual and collective experience and expertise to make the an appropriate choice for the region and the entire State of New York.

The Tioga Applicant has an important charge at hand. It is expected to act and perform with the utmost integrity and accountability to the State and taxpayers. The Board congratulates the Tioga Applicant and the local residents who support it and wishes the project success on its development.