

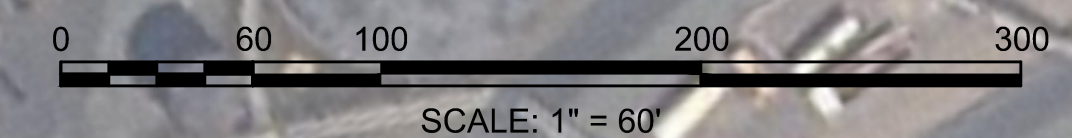


THE CENTRAL TRAFFIC CIRCLE AT THE INTERSECTION OF TOMASELLO AND FURLONG DRIVES IS THE POSITION FOR OUR MAIN MONUMENT SIGN. ABOVE IS THE GRAPHIC ILLUSTRATING A POTENTIAL SIGNAGE SCHEME. THE COMPOSITION IS A COMBINATION OF NATURAL PLANTING, A RANDOM ASHLAR ROCK ARC AND A STAINLESS AND CORTEN STEEL MOHEGAN SUN SIGN FLOATING ABOVE A REFLECTING POND WATER FEATURE.

SUFFOLK DOWNS - REVERE  
FURLONG DRIVE

STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	N/A	01	01

PROJECT FILE NO. N/A  
SITE ENTRANCE CONCEPT PLAN  
OPTION A  
DRAFT



---

# MIRICK O'CONNELL

---

ATTORNEYS AT LAW

**Brian R. Falk**  
Mirick O'Connell  
100 Front Street  
Worcester, MA 01608-1477  
bfalk@mirickoconnell.com  
t 508.929.1678  
f 508.983.6256

*VIA EMAIL and HAND DELIVERY*

April 17, 2014

Catherine Blue, Esq., General Counsel  
Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Re: In the Matter of: The Determination of the Premises of the Gaming Establishment  
for Which Mohegan Sun Massachusetts, LLC Seeks a Gaming License

Dear Attorney Blue:

Enclosed for consideration by the Gaming Commission is the City of Revere's Legal Brief regarding the above-referenced matter.

Please feel free to contact me with any questions or concerns.

Sincerely,



Brian R. Falk

BRF/dcl  
Enclosure

cc: Hon. Daniel Rizzo, Mayor  
Paul Capizzi, Esq., City Solicitor  
John Festa, Director of Economic Development

---

**MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP**

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

## MASSACHUSETTS GAMING COMMISSION

In the Matter of:

THE DETERMINATION OF THE  
PREMISES OF THE GAMING  
ESTABLISHMENT FOR WHICH  
MOHEGAN SUN MASSACHUSETTS, LLC  
SEEKS A GAMING LICENSE

**MEMORANDUM OF THE CITY OF REVERE****Introduction**

This memorandum provides factual information relative to the status of the City of Revere (“Revere”) as the sole Host Community of the gaming establishment for which Mohegan Sun Massachusetts, LLC (“Mohegan Sun”) seeks approval in its RFA-2 application. This memorandum is intended to supplement the memorandum submitted in this matter by Mohegan Sun.

The Gaming Act defines “Host Community” as “a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.” M.G.L. c. 23K, § 2. With respect to the gaming establishment proposed by Mohegan Sun, only one municipality in the Commonwealth meets this definition – Revere.

This memorandum demonstrates that:

1. Revere’s Host Community Agreement with Mohegan Sun and subsequent host community referendum concern a gaming establishment to be located solely within the municipal boundaries of Revere.
2. The project proposed by Mohegan Sun is accessible from Revere and will rely on essential services from Revere.

**I. REVERE'S HOST COMMUNITY AGREEMENT WITH MOHEGAN SUN AND SUBSEQUENT HOST COMMUNITY REFERENDUM CONCERN A GAMING ESTABLISHMENT TO BE LOCATED SOLELY WITHIN THE MUNICIPAL BOUNDARIES OF REVERE.**

Following Revere's November 5, 2013 host community referendum (the "First Revere Referendum"), Revere began working with Sterling Suffolk Racecourse, LLC ("Suffolk Downs") on plans for a gaming establishment on property owned by Suffolk Downs and located solely within the municipal boundaries of Revere (the "Project"). Revere was aware that no portion of the Project's gaming establishment could be located in the City of Boston after voters in East Boston rejected host community status. Local support for the Project was high: 60% of voters said 'yes' to a gaming establishment in Revere at the First Revere Referendum, and the Revere City Council voted unanimously on December 2, 2013 in favor of a Revere-only gaming establishment. See City Council Order No. 13-279, previously submitted to the Gaming Commission by Mohegan Sun, and attached hereto as Exhibit A. When considering possible amendments to Revere's Host Community Agreement with Suffolk Downs (the "First Revere HCA", previously submitted to the Gaming Commission by Suffolk Downs), Revere knew that its impact fees and other mitigation would need to reflect Revere's obligation, as the sole host community, to supply all necessary municipal services to the gaming establishment.

The Gaming Commission weighed in on the Project, deliberating over whether the First Revere Referendum and an amended and assigned version of the First Revere HCA were sufficient to accommodate a gaming establishment (now proposed by Mohegan Sun) to be located solely in Revere. See MGC 11-21-13 Transcript at 137 – 226; MGC 12-3-13 Transcript at 97 – 155; MGC 12-10-13 Transcript at 2 – 45. Following those deliberations, the Gaming Commission voted on December 10, 2013 to allow Revere and Mohegan Sun to request a waiver from the requirements of 205 CMR 119.01(7). The wavier would accommodate a second host

community referendum in Revere and allow Mohegan Sun to submit certification of that second referendum after the RFA-2 filing deadline of December 31, 2013. Revere and Mohegan Sun respected the Gaming Commission's position and requested the waiver, which was granted by the Gaming Commission on December 19, 2013. In accordance with the Gaming Commission's suggested timeline, Revere entered a new Host Community Agreement with Mohegan Sun on December 23, 2013 (the "Second Revere HCA", previously submitted to the Gaming Commission by Mohegan Sun) and held a second host community referendum on February 25, 2014 (the "Second Revere Referendum.")

Both the First Revere HCA and the Second Revere HCA, in their respective Recitals #1 and #2, describe the location of the proposed gaming establishment to be licensed by the Gaming Commission:

- Recital #1 and #2 of the First Revere HCA provide:
  1. The Owner is the owner of a 161-acre parcel of land (the "Property") located both in the City and the City of Boston, Massachusetts, of which approximately 45 acres are located in the City and approximately 116 acres are located in the City of Boston, on which the Owner operates historic Suffolk Downs, a thoroughbred horse racing facility licensed pursuant to the provisions of M.G.L. chapter 128A, and which is licensed to conduct simulcast wagering pursuant to the provisions of M.G.L. chapter 128C.
  2. The Owner has filed an application with the Massachusetts Gaming Commission (the "Commission") seeking a license to operate a resort gaming establishment (a "Gaming License") at the Property together with Caesars Massachusetts Management Company, LLC (the "Project") pursuant to the provisions of M.G.L. chapter 23K ("Chapter 23K").

(Emphasis added).

- Recital #1 and #2 of the Second Revere HCA provide:
  1. The Developer has entered into a binding agreement pursuant to which the Developer will hold a long term lease of an approximately 40-acre parcel of land located off of Winthrop Avenue in the City of Revere, Massachusetts, which is a portion of the properties identified by the City's Assessors as Parcel 6-120B-1A and Parcel 4-80-14B (the "Property"), on which it has proposed to construct and

thereafter own and operate a first class resort-style gaming establishment and related amenities (the “Project”, as more particularly described in Exhibit A).

2. The Developer will file an RFA-2 Response (the “RFA-2 Response”) with the Massachusetts Gaming Commission (the “Commission”) seeking to operate the Project pursuant to a category 1 gaming license (a “Gaming License”) at the Property in accordance with the provisions of M.G.L. chapter 23K (“Chapter 23K”).

(Emphasis added).

Therefore, unlike the First Revere HCA, the Second Revere HCA clearly identified a gaming establishment to be located solely in Revere.

The summaries used on the ballot at each of Revere’s host community referendums also describe the location of the proposed gaming establishment:

- The summary on the ballot at the First Revere Referendum (the “First Ballot Summary”, previously submitted to the Gaming Commission by Suffolk Downs) provides:

**The Project**

Suffolk Downs proposes a resort-style casino at the Suffolk Downs racetrack property, located partially in the City and partially in East Boston. Suffolk Downs proposes to invest approximately \$1 billion to develop the casino and make improvements to the regional transportation infrastructure, and expects to generate approximately \$1 billion in gaming revenue each year once the casino is fully constructed. The project is expected to create 2,500 construction jobs and 4,000 permanent jobs.

(Emphasis added).

- The summary on the ballot at the Second Revere Referendum (the “Second Ballot Summary”, previously submitted to the Gaming Commission by Mohegan Sun) provides:

**The Project**

Mohegan Sun proposes a resort-style casino to be located off of Winthrop Avenue in the City. Mohegan Sun proposes to invest more than \$1 billion to develop the casino and make improvements to the regional transportation and other infrastructure, and expects to generate approximately \$1 billion in gaming revenue

each year at maturity. The project is expected to create 2,500 construction jobs and 4,000 permanent jobs.

(Emphasis added).

Consistent with the Second Revere HCA, the Second Ballot Summary informed voters that the gaming establishment would be located solely in Revere.

In addition, various site plans and construction renderings submitted to Revere by Mohegan Sun, including the preliminary plan incorporated as “Exhibit A” to the Second Revere HCA and the plans submitted with Mohegan Sun’s RFA-2 application, show that all structures proposed for the Project will be located solely within Revere’s municipal boundaries. See Affidavit of City Planner Frank Stringi, dated April 15, 2014, and attached hereto as Exhibit B.

Thus, Revere entered the Second Revere HCA with the clear understanding that it would be the sole Host Community for the gaming establishment. At the Second Revere Referendum, voters were asked to approve a gaming establishment to be located solely within Revere, as described in the Second Ballot Summary. Over 63% of voters at the Second Revere Referendum said ‘yes’ to a gaming establishment to be located solely in Revere.

## **II. THE PROJECT IS ACCESSIBLE FROM REVERE AND WILL RELY ON ESSENTIAL SERVICES FROM REVERE.**

### **A. The Project’s Main and Secondary Vehicular Entrances are Located off of Public Ways Located Solely Within Revere.**

The Project’s main entrance driveway for vehicles will be located off of Furlong Drive, which is a public way owned and maintained by the City of Revere from its intersection with Route 1A to approximately its first bend, and which is located entirely within the City of Revere. See Exhibit A. In addition, the Project’s secondary entrance driveway for vehicles will be located off of Winthrop Avenue, which is a public way owned and maintained by the Commonwealth of Massachusetts and located entirely within Revere. Id. Mohegan Sun will pay for significant improvements to Furlong Drive, the intersection of Furlong Drive and Route 1A



(an intersection located entirely within Revere), and the intersection of Winthrop Avenue and Tomasello Drive (an intersection also located entirely within Revere), in order to accommodate one hundred percent of the Project's vehicular traffic. Id.

B. Public Transportation Stations Servicing the Project are Located Solely Within Revere.

As shown in Mohegan Sun's RFA-2 application, the main pedestrian entrance to the Project will be located one block away from the MBTA's Beachmont Blue Line Station, which is located entirely within Revere. In addition, as shown in Mohegan Sun's RFA-2 application, the Project will be served by MBTA bus stops along Winthrop Avenue located entirely within Revere.

C. Revere Will Provide All Water and Sewer Service to the Project.

Mohegan Sun has requested that Revere provide all water and sewer service to the Project. See Affidavit of Donald Goodwin, dated April 15, 2014, and attached hereto as Exhibit C. Based upon studies conducted by Revere's engineering consultants, Revere will be able to provide all water and sewer service to the Project following various infrastructure improvements to Revere's water and sewer systems, to be completed at Mohegan Sun's expense. Id.

D. Revere will Provide Public Safety and Emergency Services to the Project.

Revere's Police Department will provide public safety services to the Project, and due to the financial resources available to Revere through the Second Revere HCA, Revere will not need to rely on mutual aid from neighboring municipal police departments in order to serve the Project. See Letter from Police Chief Joseph Cafarelli to Mitchell Etess, dated January 23, 2014, previously submitted to the Gaming Commission by Mohegan Sun, and attached hereto as Exhibit D. Revere's Fire Department will provide emergency services to the Project, and due to

the financial resources available to Revere through the Second Revere HCA, Revere will not need to rely on mutual aid from neighboring municipal fire departments in order to serve the Project. See Letter from Fire Chief Eugene W. Doherty to Mitchell Etess, dated January 23, 2014, previously submitted to the Gaming Commission by Mohegan Sun, and attached as Exhibit E.

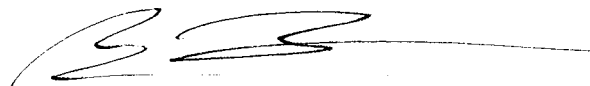
### **Conclusion**

For the reasons stated above, as well as the reasons set forth in Mohegan Sun's memorandum, the City of Revere is the sole Host Community of the gaming establishment for which Mohegan Sun seeks approval in its RFA-2 application.

Respectfully submitted,

THE CITY OF REVERE

By its attorney,



---

Brian R. Falk, Esq. BBO #667425  
Mirick, O'Connell, DeMallie & Lougee, LLP  
100 Front Street  
Worcester, MA 01608-1477  
(508) 791-8500  
bfalk@mirickoconnell.com

Dated: April 17, 2014

# Exhibit A



City of Revere  
City Council

City Council Order No. 13-279

Date: December 2, 2013

Offered by Revere City Council

**RESOLUTION AFFIRMING SUPPORT FOR A GAMING ESTABLISHMENT LOCATED OFF OF WINTHROP AVENUE**

WHEREAS, the Mayor, City Council and citizens of Revere have consistently urged the owners of Suffolk Downs to locate all or a more substantial portion of the proposed gaming establishment in the City of Revere;

WHEREAS, the Mayor, City Council, and citizens of Revere intended a flexible Host Community Agreement that allows for the location of a gaming establishment solely within the boundaries of Revere;

WHEREAS, the citizens of the City of Revere were aware that the proposed gaming establishment located off of Winthrop Avenue in the City of Revere might be located solely in Revere if the votes of East Boston rejected the dual community proposal;

WHEREAS, after the withdrawal of Caesars, Suffolk Downs made clear throughout the referendum campaign that it would find a new qualified gaming operator to manage and develop any proposed gaming establishment; and

WHEREAS, the results of the November 5, 2013 referendum demonstrated overwhelming support for a gaming establishment located off of Winthrop Avenue by the votes of the Beachmont neighborhood, which is the most impacted Revere neighborhood, and the citizens of Revere generally.

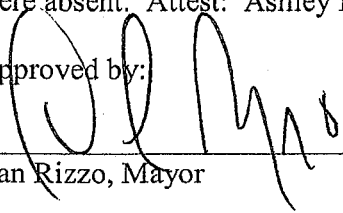
NOW, THEREFORE, BE IT RESOLVED by the Revere City Council as follows:

1. That the City Council hereby ratifies and confirms the foregoing recitals and affirms its support and the support of the citizens of Revere for a gaming establishment located off of Winthrop Avenue entirely within the City of Revere.
2. That the City Council hereby affirms that the Host Community Agreement provides the flexibility for the location of a gaming establishment entirely within the City of Revere.
3. That the City Council hereby confirms that the affirmative referendum vote, which was a land use vote, remains in effect for the proposed Revere-only project.

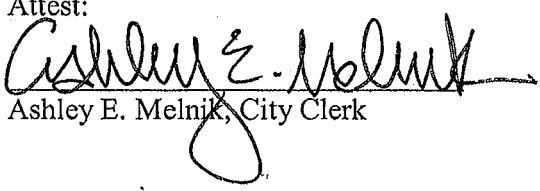
In City Council December 2, 2013:

Ordered on a Roll Call: Councillors Arrigo, Correggio, Giannino, Guinasso, Haas, Patch, Penta, Zambuto, and Council President Novoselsky voting "YES." Councillors Powers and Reardon were absent. Attest: Ashley E. Melnik, City Clerk

Approved by:

  
\_\_\_\_\_  
Dan Rizzo, Mayor

Attest:

  
\_\_\_\_\_  
Ashley E. Melnik, City Clerk

Date: DEC. 2, 2013

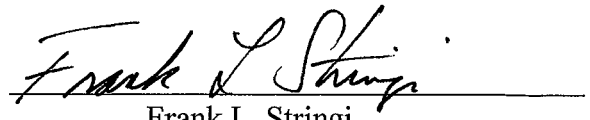
# Exhibit B

**AFFIDAVIT OF FRANK L. STRINGI**

I, Frank L. Stringi, being first duly sworn, depose and say as follows:

1. I am the duly appointed City Planner of the City of Revere, a position I have held for 31 years.
2. In my official capacity, I am responsible for coordinating the City's review of permit applications for large projects.
3. In my official capacity, I serve as Chair of the City's Site Plan Review Committee and Clerk of the City's Planning Board.
4. In my official capacity, I routinely meet with developers of large projects in advance of formal applications.
5. In December of 2014, representatives of Mohegan Sun Massachusetts LLC ("Mohegan Sun") initiated discussions with me regarding the proposed resort casino to be located in the City of Revere (the "Project").
6. I have reviewed various site plans and construction renderings submitted to the City of Revere by Mohegan Sun, including the preliminary plan incorporated as "Exhibit A" to Revere's Host Community Agreement with Mohegan Sun (the "HCA") and the plans submitted with Mohegan Sun's RFA-2 application to the Massachusetts Gaming Commission ("Mohegan Sun's Plans.")
7. Based upon my review of Mohegan Sun's Plans, all structures proposed by Mohegan Sun as part of the Project will be located within the municipal boundaries of the City of Revere.
8. Based upon my review of Mohegan Sun's Plans, the Project's main entrance driveway for vehicles will be located off of Furlong Drive, which is a public way owned and maintained by the City of Revere from its intersection with Route 1A to approximately its first bend, and which is located entirely within the City of Revere.
9. Based upon my review of Mohegan Sun's Plans, the Project's secondary entrance driveway for vehicles will be located off of Winthrop Avenue, which is a public way owned and maintained by the Commonwealth of Massachusetts and located entirely within the City of Revere.
10. Based upon my review of Mohegan Sun's Plans, the HCA and discussions with Mohegan Sun representatives, Mohegan Sun will, as part of the Project, pay for significant improvements to Furlong Drive, the intersection of Furlong Drive and Route 1A (said intersection being located entirely within the City of Revere), and the intersection of Winthrop Avenue and Tomasello Drive (said intersection being located entirely within the City of Revere) in order to accommodate one hundred percent of the Project's vehicular traffic.

Executed under the pains and penalties of perjury this 5 day of April, 2014.

  
Frank L. Stringi

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

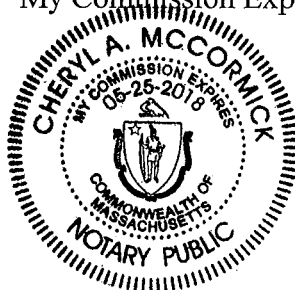
On July 15, 2014, before me, the undersigned notary public, personally appeared Frank L. Stringi (the "Principal"), and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

- A current document issued by a federal or state government agency bearing the photographic image of the Principal's face and signature; or
- On the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the Principal; or
- Identification of the Principal based on the notary public's personal knowledge of the identity of the Principal; or
- The following evidence of identification: \_\_\_\_\_

Notary Public: Cheryl A. McCormick

Printed Name: Cheryl A. McCormick

My Commission Expires: May 25, 2018



[Seal]




# Exhibit C

**AFFIDAVIT OF DONALD GOODWIN**

I, Donald Goodwin, being first duly sworn, depose and say as follows:

1. I am the duly appointed Superintendent of the Department of Public Works of the City of Revere.
2. In my official capacity, I am responsible for reviewing and approving applications to connect properties to the City of Revere's water and sewer systems.
3. In my official capacity, I routinely meet with developers of large projects in advance of formal applications.
4. In December of 2014, representatives of Mohegan Sun Massachusetts LLC ("Mohegan Sun") initiated discussions with me regarding the proposed resort casino to be located in the City of Revere (the "Project").
5. Mohegan Sun's representatives have requested that the City of Revere provide all water and sewer service to the Project, without relying on any water or sewer service from neighboring municipalities.
6. Since early December of 2014, I have been working with various City departments and representatives of Mohegan Sun to determine what infrastructure improvements to the City of Revere's water and sewer systems will be necessary to service the Project.
7. Based upon studies conducted by the City of Revere's engineering consultants, the City of Revere will be able to provide all water and sewer service to the Project following various infrastructure improvements to the City of Revere's water and sewer systems.
8. Mohegan Sun has agreed to pay for the necessary infrastructure improvements to the City of Revere's water and sewer systems, through a combination of connection fees, inflow and infiltration fees, and other payments to the City of Revere.

Executed under the pains and penalties of perjury this 15<sup>th</sup> day of April, 2014.



---

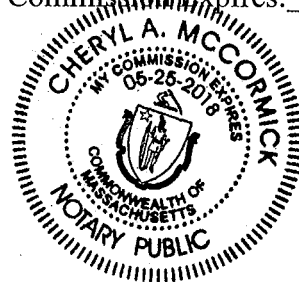
Donald Goodwin

## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On July 15, 2014, before me, the undersigned notary public, personally appeared Donald Goodwin (the "Principal"), and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

- A current document issued by a federal or state government agency bearing the photographic image of the Principal's face and signature; or
- On the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the Principal; or
- Identification of the Principal based on the notary public's personal knowledge of the identity of the Principal; or
- The following evidence of identification: \_\_\_\_\_

Notary Public: Cheryl A. McCormickPrinted Name: Cheryl A. McCormickMy Commission Expires: May 25, 2018

[Seal]

# Exhibit D



DANIEL RIZZO  
Mayor

# The City of REVERE, MASSACHUSETTS

POLICE DEPARTMENT  
Joseph Cafarelli • CHIEF OF POLICE  
400 REVERE BEACH PARKWAY, REVERE, MA 02151

(781) 286-8326 FAX (781) 286-8328

January 23, 2014

Mitchell Etes  
Mohegan Sun Massachusetts, LLC  
One Mohegan Sun Boulevard  
Uncasville, CT 06382

RE: Mutual Aid – Revere Police Department

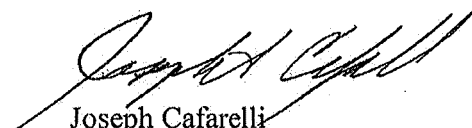
Dear Mr. Etes:

As provided by Mass. Gen. Laws ch. 40, section 8G, the City of Revere Police Department is a party to a number of mutual aid agreements with neighboring municipalities, including an agreement with the City of Everett. Public safety services can be greatly enhanced through a mutual aid agreement, the obvious benefit of which is assistance from outside police departments should the need arise.

However, it is my opinion that no increase in mutual aid assistance from any of Revere's neighboring municipalities is to be expected because of the opening of the proposed gaming facility at Suffolk Downs in Revere. The expected financial resources available to the City, as provided in the Host Community Agreement with Mohegan Sun, should adequately support the public safety demands associated with the gaming facility. Assuming the allocation of these financial resources to address public safety needs, I have no reason to anticipate any increased demand for mutual aid once the gaming facility is open to the public.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Joseph Cafarelli  
City of Revere Police Chief

# Exhibit E

# The City of REVERE, MASSACHUSETTS

## FIRE DEPARTMENT

EUGENE W. DOHERTY • CHIEF OF DEPARTMENT

400 BROADWAY, REVERE, MA 02151

781-286-8365 • FAX 781-286-8375



DANIEL RIZZO  
Mayor

January 23, 2014

Mitchell Etes  
Mohegan Sun Massachusetts, LLC  
One Mohegan Sun Boulevard  
Uncasville, CT 06382

**RE: Mutual Aid – Revere Fire Department**

Dear Mr. Etes:

As provided by Mass. Gen. Law's Ch. 48, section 59A, the City of Revere Fire Department and its counterparts in neighboring communities provide and receive mutual aid assistance. Revere is a party to the MetroFire, Inc., mutual aid agreement. Fire safety and emergency services can be greatly enhanced through mutual aid, the obvious benefit of which is assistance from neighboring fire departments should the need arise.

However, it is my opinion that no increase in mutual aid assistance from any of Revere's neighboring municipalities is to be expected because of the opening of the proposed gaming facility at Suffolk Downs in Revere. The expected financial resources available to the City, as provided in the Host Community Agreement with Mohegan Sun, should adequately support the demands on fire and emergency services associated with the gaming facility. Assuming the allocation of these financial resources to address fire and emergency service needs, I have no reason to anticipate any increased demand for mutual aid once the gaming facility is open to the public. Moreover, although Revere and the City of Malden share a fire station with separate and distinct facilities on the north side of Revere, I do not anticipate any increase in mutual aid assistance from the City of Malden from the shared station due to the proposed gaming facility at Suffolk Downs.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Eugene W. Doherty  
Chief of Department

**MASSACHUSETTS GAMING COMMISSION**

In re:	)
CITY OF BOSTON'S	)
HOST COMMUNITY STATUS	)
RELATIVE TO REGION A	)
APPLICATIONS	)
	)

**NO EASTIE CASINO'S OMNIBUS REPLY BRIEF**

The following omnibus reply brief is intended as No Eastie Casino's comprehensive response to each of the four other briefs filed before the Commission in advance of its scheduled May 1, 2014 meeting to consider the city of Boston's host community status. Given the similar facts and issues raised in each initial brief, we have consolidated our reply into a single brief as a matter of administrative convenience. Claims raised by the city of Boston, Mohegan Sun Massachusetts, Wynn, LLC, and the city of Revere will now all be addressed in turn.

**I. ENDORSEMENT OF THE CITY OF BOSTON'S BRIEF**

We fully endorse the city of Boston's recent letter brief<sup>1</sup> to this Commission in which it has denied the Commission's jurisdiction to decide host community status, called for Chairman Crosby to recuse himself from all further Region A proceedings, and called into question the validity of the extralegal *ad hoc* process under which these briefs have been filed and will be heard on May 1st.

The Gaming Commission has already plainly signaled its intention to find against Boston's rightful host community status<sup>2</sup> in connection with either Region A proposal, and we take the Commission at its word that it will do so at the earliest possible opportunity on or after May 1st. This outcome is entirely inevitable. We must conclude that the briefing schedule and hearing scheduled for next week on these questions are intended only to provide the illusion of due process without the hazard to Region A casino development which actual due process would have introduced.

We agree with the city of Boston's position that the questions posed are fundamentally unfair and designed to favor the applicants. Any reasonable person armed only with the relevant filings and a map of the three municipalities involved could likely determine the literal physical limits of the *new construction* proposed by both applicants. But these relatively simple questions come at the expense of

---

<sup>1</sup> Correspondence from the city of Boston dated April 17, 2014 available at <http://massgaming.com/wp-content/uploads/Letter-from-the-City-of-Boston.pdf>

<sup>2</sup> This intent has been evidenced by a series of comments spanning several meetings. *E.g.*, "Just for the record, [Boston's surrounding community status] has been resolved...this process has been going on for a long time." Chairman Crosby, March 20, 2014 (p. 163-164).



any consideration of the larger legal, political, and moral implications of this Commission's decisions which have overshadowed the Region A licensing process since Boston voters rejected a casino at Suffolk Downs on November 5, 2013.

We are concerned by the apparent animus motivating the Commission's determination to find against the city of Boston's host community status: the certain knowledge that the city of Boston is now opposed to casino development anywhere near its borders, and that either proposal would fail if Boston residents were properly enfranchised to vote on them.

East Boston's rejection of a casino at Suffolk Downs—not, to be clear, a casino in Revere or a casino in East Boston, *but a casino at Suffolk Downs*—on November 5, 2013 is already a matter of public record. We have reason to believe that the Wynn proposal would face overwhelming opposition from Boston's Charlestown neighborhood if it were brought to its residents for a vote, and the city as a whole is now vigorously defending itself against the imminent casino threat posed by both applicants through the commendable efforts of its legal counsel. Even former Boston mayor Thomas Menino has recently changed his position from his previous support of a casino at Suffolk Downs based in part upon sustained local resistance to siting a Region A in the greater Boston area.<sup>3</sup>

We see no support in the Gaming Act for the Commission's insistence that it has a duty to issue gaming licenses in any given period of time, or even as expeditiously as possible. The Commission's primary responsibility under the Act is “ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments”<sup>4</sup>—a public trust which we believe is in imminent jeopardy as the push to grant a Region A license continues to accelerate.

We would remind both applicants that the Commission is under no obligation whatsoever to site a resort casino in Region A.<sup>5</sup> This Commission's ultimate responsibilities are not to casino developers, casino-friendly municipalities, or even the Commonwealth's budget, but **to the people of the Commonwealth and the rule of law**. Issuance of a license to either of these applicants in the face of sustained opposition from a host community would constitute a willful dereliction of this Commonwealth's duty to the former and an open insult to the latter.

A total of twenty-three municipalities<sup>6</sup> in the Commonwealth have now formally rejected casino development in or adjacent to their jurisdictions (either through referenda, formal motions, or otherwise via the political process), and popular opinion is now turning against casinos statewide.

---

<sup>3</sup> See Mayor Menino's remarks on WBZ's *Keller at Large*, April 13, 2014: <http://boston.cbslocal.com/2014/04/13/keller-large-former-mayor-tom-menino/>

<sup>4</sup> G.L.C. 23K §1(1)

<sup>5</sup> At the risk of belaboring a fairly obvious point, the Gaming Act permits licensure of *up to* three resort casinos, but does not call for a minimum number of licenses.

<sup>6</sup> These include Holyoke, West Springfield, Palmer, Brimfield, Millbury, Worcester, Foxboro, Middleboro, Lakeville, Freetown, Boxborough, Tewksbury, Danvers, Salisbury, Longmeadow, Monson, Holliston, Hopkinton, Medway, Ashland, Westport, Barnstable, and Winthrop.

Several days after this Commission inevitably finds that Boston is not a host community to either of the proposals designed to exploit Boston's reputation and resources, the Supreme Judicial Court will be hearing arguments in connection a proposed ballot question to repeal the Gaming Act.<sup>7</sup> If, as is widely expected, the repeal question subsequently proceeds to the ballot in this year's statewide election, proponents may be fairly expected to cite this Commission's open disregard for the city of Boston and its surrounding communities (and the unpredictably mutable Region A licensing process generally) as conclusive proof that this Commission will not hesitate to act *ultra vires* beyond even the loosest restrictions imposed by the Gaming Act for the benefit of private developers at the expense of residents and taxpayers.

## II. RESPONSES TO ARGUMENTS RAISED BY BOTH APPLICANTS

In their respective briefs, both applicants have argued that Boston is merely a surrounding community while claiming that (1) no part of their proposed respective gaming establishments are physically located in Boston and (2) their acknowledged intent to exploit Boston's infrastructure, reputation, and innumerable other tangible and intangible amenities is characteristic of a community which is designated as surrounding, rather than host.

As a preliminary matter, we do not concede that Mohegan Sun's proposed gaming establishment is located only in Revere, and will address this argument further below. Regardless, in both cases we renew the argument outlined in our opening brief that the city of Boston will effectively find itself hosting a casino either in Revere or in Everett with or without the city's consent.

Region A is different in kind from the other designated Category 1 license regions. Although it is geographically the largest of the three, it is also the most urban and densely-populated as well as the only one to contain the capital of the Commonwealth. It is also home to the only two casino proposals in the brief history of Massachusetts casino licensing in which host community status is not immediately evident from the location of the proposed sites.

By way of comparison, most other recent casino proposals (including, but not limited to, those in Palmer, Milford, West Springfield, and Plainville) were all squarely within the city limits of their respective host communities with (arguably) no dramatically disproportionate impacts upon any other surrounding community. There was never any serious debate that each town was properly designated a host community, or that any other municipality should have a claim to host community status.

Mohegan Sun's former plan for a gaming establishment in Palmer, for example, was clearly in every respect a "Palmer casino" and could more or less be fairly characterized as "Palmer only." Conversely, its plans for Suffolk Downs must be recognized for what they truly are: a "Boston casino" artlessly concealed behind the flimsy veil of a "Revere-only" development built on the

---

<sup>7</sup> *Abdow v. Attorney General*, SJC #11641 (oral argument scheduled for May 5, 2014)

Boston city line.

It is no coincidence that these two proposals are each within several miles of one another while encroaching directly upon the Boston's municipal limits. As of the date of this brief, casino-free Boston is a world-class city of international renown, and any association with the city's brand is likely to be extremely lucrative for the gambling industry once it has established a foothold on our borders. Boston's position is truly unique in this regard, and there is no fair comparison to be made to any of the other former or existing casino proposals.

Even assuming for the sake of argument only that Boston should not be considered a host community to either gaming establishment, it will bear *far* more of the burden than a mere "surrounding community" should ever be expected to manage. In their respective briefs, both applicants argue that their wholesale dependence on Boston's infrastructure, reputation, attractions, live entertainment venues, and innumerable other intangible amenities are all burdens which a surrounding, rather than a host, community should be expected to bear.<sup>8</sup> We disagree.

But assuming for the sake of argument that this claim is accurate, this would leave the Gaming Act even more deeply flawed than we had previously appreciated. If the applicants are to be believed, the legislature has sanctioned something resembling a medieval feudal system in which surrounding communities—even those within *actual inches* of massive destination resort casinos—are little more than helpless vassals which are entirely subject to the whims of neighboring casino host communities.

Everett mayor Carlo De Maria's claim that "we [Everett] are Boston"<sup>9</sup> belies the true intention of the both the Wynn and MSM projects: to co-opt the reputation and exploit the resources of the city of Boston to the fullest possible extent while simultaneously working to disenfranchise and ignore the the strong opposition to Region A casino development which they continue to receive from the city and its residents.

The harm to the city of Boston's reputation, economy, infrastructure, social fabric, and overall quality of life which would come from either of these proposals is immeasurable. We recognize no acceptable form of mitigation, and will accept no compromise with either applicant.

---

<sup>8</sup> MSM Opening Brief, pp. 9-10, Wynn Pre-Hearing Statement, pp. 8-11.

<sup>9</sup> See transcript of Jan. 22, 2014 Mass. Gaming Commission meeting, p. 69.

### III. THERE IS NO LEGAL DISTINCTION BETWEEN MOHEGAN SUN'S PROPOSED GAMING ESTABLISHMENT AND THE PHYSICALLY INTEGRATED RACE TRACK AT SUFFOLK DOWNS, AND THE TRACK REMAINS AN "AMENITY" FOR ANY CASINO AT SUFFOLK DOWNS

A reasonable reader with no prior knowledge of the Region A licensing process would never learn from Mohegan Sun's opening brief that their proposed gaming establishment has been carefully designed around an historic seven-furlong race track located almost entirely within the city of Boston. No mention is made of horse racing, and MSM intentionally downgrades the track from its position as one of the project's most significant selling points to merely "the remainder of Sterling Suffolk's property in East Boston."<sup>10</sup>

Yet in every *other* step of this lengthy process—including all of its appearances before this Commission as well as its public campaign—MSM has touted Suffolk Downs as an essential selling point to set it apart from the Wynn proposal. Mohegan Sun and Suffolk Downs have not hesitated to promote the track as an amenity of the proposed casino in their ongoing attempts to sell their partnership to the public, or to openly threaten the future of thoroughbred racing (despite funds guaranteed pursuant to the Gaming Act<sup>11</sup> to the track whether or not a casino is ultimately sited at Suffolk Downs) at Suffolk Downs if its development partner does not receive a gaming license.<sup>12</sup>

Just as Mohegan Sun plainly intends to insult and ignore the city of Boston while enjoying the invaluable benefits of its location on the city line, it seems equally comfortable in exploiting its partnership with Suffolk Downs in public while denying any legal connection to the track whatsoever for the purpose of the hearing scheduled for May 1st.

MSM alleges that its proposed casino merely “abuts” the race track and that the track is not an amenity to the casino simply because it is not included with the “leased premises.”<sup>13</sup> These technicalities have no bearing on the practical reality that the race track remains a critical amenity of the proposed gaming establishment.

---

<sup>10</sup> MSM's Opening Brief, at 12.

<sup>11</sup> By Sterling Suffolk's own estimate, the Race Horse Development Fund mandated by the Gaming Act will guarantee the track's survival. Although Suffolk Downs's study of the impact of this fund presumes that a license will go to Suffolk Downs, a significant revenue stream is guaranteed from this source as long as casinos are sited anywhere in Massachusetts. *See* “The Economic Impact of the Massachusetts Thoroughbred Equine Industry,” Christiansen Capital Advisors, LLC (10/22/13), p. 42., available at <http://www.suffolkdowns.com/pdf/economicimpactofinathoroughbredIndustrystudy.pdf>. As neighbors of Suffolk Downs, we share their concern for the future of the track and its employees and wish them many prosperous future racing seasons.

<sup>12</sup> *See* “Suffolk Downs horse track warns 2014 racing season could be its last,” MassLive.com (April 23, 2014), available at:

[http://www.masslive.com/news/boston/index.ssf/2014/04/suffolk\\_downs\\_horse\\_track\\_warn.html](http://www.masslive.com/news/boston/index.ssf/2014/04/suffolk_downs_horse_track_warn.html)

<sup>13</sup> MSM Opening Brief, p. 12.

In support of its claim that the leased premises will be entirely within Revere, MSM cites the "Binding Agreement for Ground Lease"—a document which it has withheld from the public and requested (on the grounds that this document contains "trade secrets") that this Commission continue to hold confidential in perpetuity.<sup>14</sup> While we must take MSM at its word that this is an accurate excerpt from the Binding Agreement, we are left with a single paragraph of text and a hand-annotated map which exempts the so-called "Racing Parcel" (the portion of the track which extends into Revere which this Commission previously found sufficient to deem Revere a host community) from MSM property.

In its presentation to the Commission, Mohegan Sun's design team strongly emphasized the physical integration of the track into the casino.<sup>15</sup> Reference was made to the desirable view patrons would have of the racing area and "horses practicing" from the hotel and casino, and the way in which the casino's design "receives" the track. The presentation and supporting slides also drew a somewhat strained comparison between the incorporation of the track's crescent with famed crescent-shaped sites such as Rome's Piazza Navona (among others). **There can be no question that the track is literally "built in" to this proposal.** MSM's claim that it is merely "the remainder of Sterling Suffolk's property" is wholly disingenuous.

Moving forward with the limited information which is publicly available on this point, we note that although the same proposed lease terms which apparently provide for a profit-sharing agreement between the track and the casino would also keep the two entities operationally distinct,<sup>16</sup> this would be no different from the prior proposal in which Caesars Entertainment was designated the "Operator" for the purposes of the original Suffolk Downs casino proposal.<sup>17</sup>

Finally, we generally agree with Wynn's analysis of the RFA-2's broader term "gaming establishment site."<sup>18</sup> While this term appears to have been created by the Commission *sui generis*, it is actually far more helpful to this discussion than the more limited statutory gaming establishment." In requesting that the applicants describe a "gaming establishment site," the Commission is apparently recognizing the reality that a development of the size and scope of a destination resort casino—especially one located within a densely-populated urban area which includes a number of distinct municipalities—is far more than the sum of its parts. Although Wynn did not explicitly make this argument, it is hard

---

<sup>14</sup> We have recently appealed the Commission's denial of a public records request seeking this document to the Secretary of State.

<sup>15</sup> Information in this paragraph drawn from the presentation of architect A. Eugene Kohn at January 22, 2014 MGC meeting. Video available at [https://www.youtube.com/watch?v=et-8Ru\\_uUbA](https://www.youtube.com/watch?v=et-8Ru_uUbA), starting at approx. 22:00.

<sup>16</sup> See remarks of Comm. McHugh, MGC meeting of Jan. 29, 2014, at 142. <http://massgaming.com/wp-content/uploads/Transcript-1-29-14.pdf>

<sup>17</sup> See Host Community Agreement (Aug. 28, 2013), p. 1-2. The wide degree of separation between Caesars and Suffolk Downs was further publicly highlighted through the course of the suitability process, in which the Commission's investigation revealed both Sterling Suffolk's failure to properly vet its operating partner as well as its partner's apparent intent to conceal vital information from Sterling Suffolk.

<sup>18</sup> Wynn Pre-Hearing Memorandum, pp. 6-7

to miss the inevitable conclusion that all of Suffolk Downs should be designated as the “gaming establishment site” for the purposes of this Commission.<sup>19</sup>

Mohegan Sun's best efforts aside, Suffolk Downs and its proposed resort casino are as inseparable as their extensive cross-promotion campaigns. The ongoing legal fiction of a “Revere-only” casino at Suffolk Downs only highlights the abject absurdity of the arbitrary line which Mohegan Sun has drawn down the center of the Suffolk Downs site. It is impossible to locate the Boston-Revere city line within the 163-acre parcel absent the assistance of a particularly well-calibrated GPS,<sup>20</sup> and there is no reason to believe that anyone other than local tax assessors and cartography enthusiasts would have been aware of its exact location prior to November 5th.

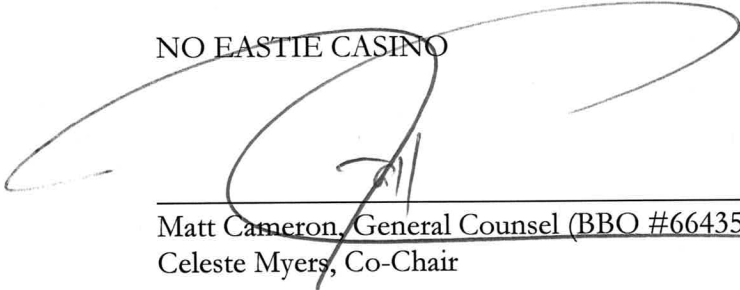
MSM have continued to insist upon their intent to be "a good neighbor" to the city of Boston, even as they continue to do everything possible to disenfranchise its residents, insult its city government, and construct a massive public nuisance on its city line. If these kinds of practices have made Mohegan Sun "good neighbors" to its host and surrounding communities in rural Connecticut, we wish them continued success there. We continue to believe that Boston can do better.

#### IV. REPLY TO CITY OF REVERE

In response to arguments raised within the city of Revere’s brief, we renew and incorporate by reference the analysis of the East Boston entry to the Suffolk Downs site within our opening brief as well as the arguments regarding the rack track’s status as an amenity to any gaming establishment at Suffolk Downs more comprehensively outlined above.

Respectfully submitted,

NO EASTIE CASINO



\_\_\_\_\_  
 Matt Cameron, General Counsel (BBO #664359)  
 Celeste Myers, Co-Chair

<sup>19</sup> Similarly, we would argue that all entrances and exits to the Wynn property (including Horizon Way in Boston) should be properly classified as part of the “gaming establishment site” given the literal impossibility of successfully implementing this (or any other) proposal without them.

<sup>20</sup> This reality is apparently acknowledged in the excerpt from the Binding Agreement, which allows for the possibility that “further research... determines that any portion of the Leased Premises... is located within the municipal boundary of the City of Boston.”



CITY OF BOSTON • MASSACHUSETTS  
**OFFICE OF GAMING ACCOUNTABILITY**  
 City Hall, Room 620 Boston, MA 02201

April 17, 2014

Via Electronic Mail Delivery  
 Massachusetts Gaming Commissioners  
 Massachusetts Gaming Commission  
 84 State Street, 10<sup>th</sup> Floor  
 Boston, Massachusetts 02109

Re: *Objections to Public Hearing on Determining a Gaming Establishment*

Dear Massachusetts Gaming Commissioners and staff:

The City of Boston (the “City”), on behalf of its residents, families, businesses and visitors, objects to the nature of the hearing to be conducted by the Massachusetts Gaming Commission (the “Commission”) as described in the Memorandum dated April 3, 2013, entitled *Determining a Gaming Establishment*. The process described therein unreasonably limits and compromises the City’s ability to receive and present evidence in support of the City’s declarations as a host community to both Region A gaming applicants. For the Commission to proceed in accordance with the process as outlined in the Memorandum would be violative of the City’s due process rights. Additionally, the City has grave concerns about prejudicial statements made by the Commission, as well as issues reported recently in the media regarding Region A.

**A. Prejudicial Statements**

Throughout the process, Chairman Crosby has made several statements, which the City deems prejudicial, including criticizing the City for asserting its host status on behalf of its public. Section 3(u) of the Gaming Act requires Commissioners to conduct themselves in a manner to render decisions that are fair and impartial and in the public interest, and to avoid impropriety and the appearance of impropriety. Taken together, the pending federal lawsuit, recent Commission statements, current press articles, and the Commissions’ own actions, create a cloud over the proceedings when Chairman Crosby participates. Therefore, the City believes, in the best interest of a transparent process, that Chairman Crosby should recuse himself from all licensing matters in Region A.

## **B. Mutable Process and Unfair Forum**

To begin with, the Commission has set up various unfair processes. First, it called for an adjudicatory hearing that was not in compliance with its own Regulations. Next, it amended its own process for an adjudicatory hearing which further compromised the due process rights of the citizens of the City. Finally, after the City sent a letter questioning jurisdiction,<sup>1</sup> as well as the fairness and legality of the adjudicatory process, the Commission changed the process again, this time announcing a public meeting with extremely limited or no due process or civil procedure rights.

Setting aside any issues of jurisdiction, the City objects to the “legislative” procedure announced by the Commission because it does not match the “adjudicatory” question the Commission has set out to answer. The Commission intends to “[d]etermine the premises of the gaming establishment for which” both Region A applicants seek approval, and to issue findings describing them. Based on those findings, the Commission further intends to conclude whether Boston is a host community to either proposed casino.<sup>2</sup> Those determinations carry the hallmarks of adjudicatory decisions. They concern specific projects and determinations of fact related to the location of their sites and elements. They overwhelmingly affect the interests of two specific casino applicants and one municipality that claims each application deprives it of its statutory entitlement to a community impact fee and other contractual benefits.<sup>3</sup>

By contrast, acting in a legislative capacity involves making rules of general application and prospective effect.<sup>4</sup> The determinations the Commission proposes will not set out rules that will take effect prospectively outside the context of these two casino applications. In fact, members of the Commission and its counsel took pains to clarify that its determinations would not have a broader ongoing effect outside of Region A. *See* Transcript, Massachusetts Gaming Commission Meeting April 3, 2014, p. 129.<sup>5</sup>

---

<sup>1</sup> On March 25, 2014, the City’s counsel informed the Commission “that there is a significant preliminary legal question concerning whether the Commission has jurisdiction to decide the issue of Boston’s host community status.”

<sup>2</sup> The Commission is attempting to create a forum to “organically” define the City’s status.

<sup>3</sup> See Borden, Inc. v. Comm’r of Pub. Health, 388 Mass. 707, 716 (1983); see also Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226 (1908) (Holmes, J.) (“judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.”).

<sup>4</sup> See Cambridge Elec. Light Co. v. Dep’t of Pub. Utilities, 363 Mass. 474, 486 (1973); see also Prentis (“[l]egislation . . . looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.”).

<sup>5</sup> If the Commission was to engage in an actual legislative process of interpreting the definition of “gaming facility” contained in G. L. c. 23K, § 3, such an interpretation would have application throughout the state, comments of the City of Boston, Wynn MA, LLC, and Mohegan Sun MA, LLC, would not be prioritized, and the Commission would likely seek input on how an interpretation would impact the operation of other statutory provisions that operate on the term “gaming establishment,” such as the jurisdiction of the Commission Enforcement Division, § 6(c), jurisdiction of the State Police, § 6(f), necessity of Commission approval for transfer of various assets, § 19(c), and compliance with ongoing capital expense requirements, § 21.



The Commission proposes no process for the City to obtain discovery from the applicants. It eliminates the City's opportunity to call witnesses, to cross-examine witnesses and to create an appropriate evidentiary record that is subject to legal review. It also fails to address the burden of proof and a mechanism to resolve factual disputes based on documentary submissions with no live testimony. In sum, the proposed procedure represents a thinly veiled attempt to "stack the deck" against the City on the "host community" issue so that the Commission can issue a Category 1 license in Region A without the City's interference in the process.

The City sheds light on the insufficiency of the Commission's process not to "nickel and dime issues," which the City believes is an unfair characterization; but to accurately express to the Commission and City's residents the thoughtful and fair approach the City is taking to this issue.

### **C. Commission Investigation Request**

The City requests that the Commission investigate issues based on the following two (2) *The Boston Globe* articles: Andrea Estes and Sean P. Murphy, *Everett May Buy Site, Sell it to Wynn for Casino Use: Plan Comes as Gambling Panel Worries about Felon's Ties to Land*, THE BOSTON GLOBE, April 16, 2014, p. A1; and Andrea Estes and Sean P. Murphy, *Everett Landowner Resists Disclosure Pledge: Gambling Panel Wants Assurances Criminals won't Profit from Selling Property to Wynn*, THE BOSTON GLOBE, April 11, 2014, p. A1. The City believes that issues raised in these articles require the Commission to conduct further investigation. Our request appears to be consistent with statements of the Commission's spokesman that the Commission would need to review the new land proposal.

Furthermore, the City believes that the issues must be investigated, if not resolved, before Region A decisions of any kind can be made. The City requests that all proceedings relating to licensure in Region A be postponed pending the Commission's investigation into these matters. The City's concern is that results of such investigation could impact licensure of the entire region, and that conducting a public hearing on Boston's "host community" status is premature and could be rendered moot as it appears that the applicant has failed to meet the requirements of the Commission's conditional suitability determination. Decisions involving the Region A applicants cannot be made at this time given the uncertainty of the issues as raised in these articles.

While the Commission may think "[a] big price is being paid by a lot of people to try to accommodate the City's concerns," the City believes that preserving the democratic process and due process rights of its citizens is invaluable and consistent with the purposes of the Gaming Act.

Sincerely,



Elizabeth Dello Russo  
Senior Assistant Corporation Counsel  
Gaming Accountability Office

Cc: Via Electronic Delivery

John Ziemba, Massachusetts Gaming Commission  
Catherine Blue, Massachusetts Gaming Commission  
Eugene O'Flaherty, City of Boston Corporation Counsel  
Alexis Tkachuk, Office of the Corporation Counsel  
Thomas C. Frongillo, Fish & Richardson P.C.  
Ariel I. Raphael, Fish & Richardson P.C.  
Mary Marshall, Nutter, McClennen & Fish  
William F. Kennedy, Nutter, McClennen & Fish  
S. Anderson, Anderson & Krieger  
David Mackey, Anderson & Krieger



*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

**WAYNE A. MATEWSKY**

REPRESENTING THE  
28TH MIDDLESEX DISTRICT  
Wayne.Matewsky@MAhouse.gov



COMMITTEES:  
LABOR AND WORKFORCE DEVELOPMENT  
MUNICIPALITIES AND REGIONAL GOVERNMENT  
GLOBAL WARMING AND CLIMATE CHANGE  
STEERING, POLICY AND SCHEDULING

STATE HOUSE, ROOM 540  
TEL: (617) 722-2090  
FAX: (617) 722-2848  
DISTRICT: (617) 389-5106

Massachusetts Gaming Commission  
Attention: Chairman Stephen Crosby  
84 State Street 10th floor  
Boston, Ma. 02109

April 9<sup>th</sup> 2014

Dear Chairman Crosby,

Re: Boston a Host or Surrounding Community / Revenue Sharing

Boston is not Everett nor is it Revere but each is an independent municipality that is self-governed and functions in compliance with state and federal mandates. The cities of Everett and Revere unlike present day Boston have never made any claim that demonstrates dominance and/or an initiative that is deemed to be exclusionary to other cities and towns.

Furthermore, each city inclusive of Boston does not exist without the financial resources provided by the State of Massachusetts and the Federal Government. Accordingly, throughout our past and present history cities and towns have advanced predicated on the financial infusion of capital provided by government and in compliance with the mandates and controls established by government. At no time in the past since the inception and definition of Everett's and Revere's geographical boundaries, has it been set forth in defining these boundaries that either is a municipality of Boston.

All claims that Boston is a host community to either Everett or Revere because they touch a municipality of Boston would invalidate the intent and purpose in the establishment of land boundaries. Therein, if Boston is to prevail with its claim it must also recognize that it will have opened itself up to counter claims by both cities for revenue sharing and distribution. More specifically if boundaries are to be invalidated then too Boston's ability to retain revenues derived from venues equally becomes invalidated. Thus, requiring equal distribution to Everett and Revere regardless of whether a casino comes to fruition or not

Pursuant to Boston's claim it is understood that Boston does not exist without the infrastructure and resources of other cities and towns. Foremost recognize that the primary generation of Boston's electric power is provided from Everett. Secondly that Boston's water and sewerage is treated at, Deer Islands Water Treatment Plant in Winthrop. Furthermore, Boston's water is provided from the Quabbin, Wachusett reservoirs and the Ware River in central and western Massachusetts. These components

demonstrate that the city of Boston is not self-contained but equally dependent on other cities and towns to function and prosper.

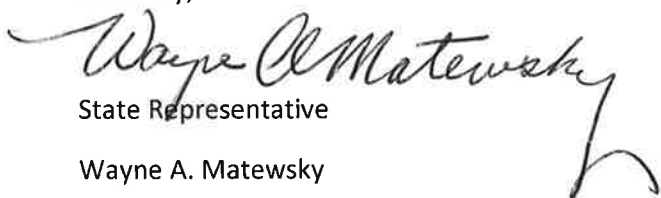
Boston is by choice and design the Capitol of Massachusetts Government and in this capacity is not granted any extra ordinary rights to pursue dominance over any other city and town in the Commonwealth. Furthermore, Boston demonstrates that its existence was and is predicated on the infusion of monies over decades from state and federal Government.

Logan International Airport was built with federal government monies and is regulated by Masport a state agency. The Boston Exhibition & Convention Center was built with state and federal monies and is regulated by Massport. Historical landmarks in and around greater Boston are regulated maintained and controlled by federal and state agencies. All commerce in the greater Boston harbor, all environmental mandates pursuant to Boston Harbor, all traffic within Boston Harbor is regulated and controlled by the federal government and the state. Most important all state highways including known state thoroughfares in and thru Boston are maintained, regulated and controlled by the state.

Thus, Boston cannot arbitrarily claim possession of state roadways, the airport, or harbor in making any claim for being impacted as they become state and federal issues not borne by the city. Of course, we can examine this in an alternative measure recognizing all business travel to and from the suburbs to Boston impacts Everett and Revere and as such they are impacted by Boston. This claim lacks substance once more because the roadways are state financed, maintained and regulated.

In conclusion, I respectfully provide the aforesaid considerations for your judgment knowing also that the mandates within the Ma. Gaming legislation previously passed should pre-empt Boston from enjoining itself as a host community as opposed to a surrounding community.

Sincerely,



Wayne A. Matewsky

State Representative

Wayne A. Matewsky

Cc: Mayor of Everett: Carlo De Maria  
House Speaker: Robert De Leo  
Everett United




---

## Meeting Minutes

---

- Date/Time:** March 6, 2014 – 9:30 a.m.
- Place:** Boston Convention and Exhibition Center  
415 Summer Street, Room 102  
Boston, Massachusetts
- Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
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

See transcript page 2.

9:29 a.m. Chairman Crosby opened the 112th public meeting.

### Approval of Minutes

See transcript pages 2-5.

9:30 a.m. Commissioner McHugh stated that the minutes for the January 28, January 29, February 6, February 18, and February 20 public meetings are ready for approval.

*Motion made by Commissioner McHugh that the minutes of February 6, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of February 20, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of January 28, 2014, January 29, 2014, and February 18, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### **Administration**

See transcript pages 5-67.

- 9:33 a.m. Executive Director Day provided an administrative update relative to license applications, a video guide for gaming employees, the MOU with State Police, recruitment of new employees, and the process for regulation promulgation.
- 9:43 a.m. Director Lennon provided an updated on Commission finances and internal operations.
- 10:04 a.m. Executive Director Day described the licensing schedule and highlighted the changes to the Region A schedule.
- 10:11 a.m. Ombudsman Ziemba presented the status of Region C and the Commission discussed methods for increasing competitiveness in the region.
- 10:35 a.m. Executive Director Day presented the final agenda for the Commission's Internet Gaming Forum.

### **RFA-2 Evaluation Process**

See transcript pages 67-97.

- 10:38 a.m. Jennifer Pinck and Nancy Stack provided an overview of the Category 2 licensing process and the implications for Category 1 evaluations.
- 11:11 a.m. The Commission took a brief recess.

### **Gaming Technology**

See transcript pages 97-127.

- 11:24 a.m. Director Glennon and Attorney Shtatnov provided an overview of the draft regulations for gaming devices and noted policy issues for Commission discussion at a future public meeting.

### **Surrounding Community Arbitration**

See transcript pages 127-142.

- 11:57 a.m. The Commission discussed the arbitration process for surrounding communities.

12:14 p.m. *Motion made by Commissioner McHugh that the Commission adopt a provision for allowing the Commission to alter an arbitrator's award if in the Commission's judgment that award is fundamentally inconsistent with the provisions or purpose of General Laws Chapter 23K, and further that the arbitrator's handbook be modified by striking the final sentence of the portion of the handbook labeled final decision of the arbitrators. And replacing that final sentence with a sentence that reads, "the arbitrators may make adjustments to the selected best and final offer only if necessary to remove a direct conflict between a provision of the selected award and a provision of the Gaming Act." Motion seconded by Commissioner Cameron. The motion passed unanimously.*

12:16 p.m. The Commission took a recess for lunch.

### **Research and Problem Gaming**

See transcript pages 142-205.

1:31 p.m. Director Vander Linden and Dr. Debi LaPlante discussed the efforts that Massachusetts has been taking to combat problem gaming.

1:42 p.m. Director Vander Linden and Marlene Warner discussed the Commission's responsible gaming framework.

1:58 p.m. Director Vander Linden and Deputy General Counsel Grossman presented the problem gaming voluntary self-exclusion regulations. The Commission discussed the public comments received and the changes made since the prior version of the regulations.

2:24 p.m. *Motion made by Commissioner Cameron that the Commission accept the draft of the voluntary self-exclusion regulations with whatever technical changes may be requested. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

2:25 p.m. Director Vander Linden provided an update on the current status of the research agenda.

### **Legal Division**

See transcript pages 205-206

2:38 p.m. Chairman Crosby requested that the legal division provide the Commissioners with more information on the public records process.

### **Workforce Development and Diversity**

See transcript pages 206-222.

2:40 p.m. Director Griffin discussed the Clean Energy Fair that occurred on February 2.

- 2:45 p.m. Director Griffin presented an overview of the diversity commitments from Penn National.
- 2:59 p.m. Chairman Crosby and Commissioner Cameron left the meeting.
- 3:00 p.m. The Commission took a brief recess.

### **Racing Division**

See transcript pages 222-248.

- 3:05 p.m. Director Durenberger presented the unclaimed wagers from 2012 and requested that the Commission approve the payments to the Commission for deposit into the appropriate accounts.
- 3:06 p.m. *Motion made by Commissioner Zuniga to approve the payments for the 2012 unclaimed wagers. Motion seconded by Commissioner Stebbins. The motion passed 3-0.*
- 3:07 p.m. Director Durenberger presented Raynham Park's request to simulcast special events and recommended that the Commission approve the request.
- 3:08 p.m. *Motion made by Commissioner Stebbins that the Commission approve the list of 2014 special events to be simulcast at Raynham Park. Motion seconded by Commissioner Zuniga. The motion passed 3-0.*
- 3:08 p.m. Director Durenberger presented updates to the racing legislation and recommended approving the first two sections as outlined in the memo.
- 3:12 p.m. *Motion made by Commissioner Zuniga that the Commission forward to the Legislature recommendations relative to extension of Chapters 128A and C as outlined in the memo here labeled Section one and Section two. Motion seconded by Commissioner Stebbins. The motion passed 3-0.*
- 3:13 p.m. Director Durenberger presented emergency regulations affecting 205 CMR 3.00 and 4.00 relative to conflict of interest, access to records, and the cost of fingerprinting. The Commission requested additional information and agreed to postpone the discussion until March 20.
- 3:32 p.m. Meeting adjourned.

### **List of Documents and Other Items Used**

1. Massachusetts Gaming Commission March 6, 2014 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission Minutes of February 18, 2014
3. Massachusetts Gaming Commission Minutes of February 20, 2014
4. Massachusetts Gaming Commission February 28, 2014 Licensing Schedule Update



5. Category 1 and 2 Applicant Timelines
6. Massachusetts Gaming Commission March 11, 2014 Internet Gaming Forum Agenda
7. Massachusetts Gaming Commission March 4, 2014 Memorandum Regarding Surrounding Community Arbitration Process
8. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Outstanding Tickets
9. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Approval of Special Events to be Simulcast at Raynham Park
10. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Proposed Extension of Existing Chapters 128A and 128C
11. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Emergency Regulation Changes Affecting 205 CMR 3.00 and 4.00
12. Cambridge Health Alliance document
13. 205 CMR 133 Voluntary Self-Exclusion Regulation
14. Responsible Gaming Framework
15. Clean Energy Expo Agenda
16. 205 CMR 138 Gaming Devices and Electronic Gaming Equipment Regulation

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary




---

## Meeting Minutes

---

**Date/Time:** April 17, 2014 – 10:30 a.m.

**Place:** Boston Convention and Exhibition Center  
415 Summer Street, Room 152  
Boston, Massachusetts

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
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**

See transcript pages 2.

10:31 a.m. Chairman Crosby opened the 117th public meeting.

### **Approval of Minutes**

See transcript pages 2-6.

10:31 a.m. Commissioner McHugh stated that the minutes for the March 20 and April 3 public meetings are ready for approval.

*Motion made by Commissioner McHugh that the minutes of March 20, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of April 3, 2014 be accepted subject to the two clarifications discussed and any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

**Ombudsman Report**

See transcript pages 6-141.

- 10:35 a.m. Commissioner Zuniga presented and the Commission discussed the definition of minimal capital investment as it applies to Region C.
- 11:38 a.m. *Motion made by Commissioner Zuniga that the Commission waive 205 CMR 122.04(4) for Region C gaming applicants. Motion seconded by Commissioner Crosby. The motion passed by a 3-2 vote with Commissioners Crosby, Stebbins, and Zuniga voting aye and Commissioners Cameron and McHugh voting nay.*
- 11:41 a.m. Ombudsman Ziemba presented and the Commission discussed possible modifications to the Region C schedule.
- 11:59 a.m. Ombudsman Ziemba introduced Blue Tarp Redevelopment's request relative to license timing. Michael Mathis, Jed Nosal, and Martin Nastasia presented the request on behalf of Blue Tarp Redevelopment.
- 12:13 p.m. Ombudsman Ziemba introduced the requests of the Town of Winthrop and Blue Tarp Redevelopment for a variance from the arbitration process and recommended that the Commission grant the extension requested.
- 12:16 p.m. *Motion made by Commissioner McHugh that the Commission grant the requests of the Town of Winthrop and Blue Tarp Redevelopment to extend the arbitration commencement deadline to May 1, 2014. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 12:17 p.m. Ombudsman Ziemba introduced petitions from the Town of Chelsea and the City of Somerville to extend the deadlines for the surrounding community process.
- 12:19 p.m. Frank Wright and Jason Grossfield presented the Town of Chelsea's petition. Tony Starr presented Wynn's response.
- 12:50 p.m. The Commission took a brief recess.
- 12:59 p.m. Ombudsman Ziemba and General Counsel Blue described the staff's proposed approach for handling Region A arbitration extension requests.
- 1:16 p.m. *Motion made by Commissioner McHugh that the Commission authorize Ombudsman Ziemba to grant mutually acceptable extensions to the arbitration deadlines so long as the total number of days of the extension does not exceed 14 days. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

**Legal Report**

See transcript pages 141-157.

- 1:18 p.m. Executive Director Day provided the Commission with the latest version of the project monitoring regulations and requested that the Commission adopt the regulations on an emergency basis.
- 1:36 p.m. *Motion made by Commissioner Zuniga that the Commission adopt by emergency 205 CMR 135 subject to the amendments discussed. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 1:36 p.m. General Counsel Blue and Deputy General Counsel Grossman provided a general overview and status of the public comment process relative to premises of the gaming establishments for which Mohegan Sun Massachusetts, LLC and Wynn MA, LLC seek approval in their RFA-2 applications.
- 1:38 p.m. Commissioner Zuniga left the public meeting. The Commission took a recess for lunch.

### **Racing Division**

See transcript pages 158-194.

- 2:26 p.m. Director Durenberger provided an administrative update relative to the start of the Plainridge racing season, the post time change request from Suffolk Downs, and the Racehorse Development Fund.
- 2:28 p.m. Director Durenberger presented to the Commission a list of racing officials that the Racing Division will be approving.
- 2:31 p.m. Director Durenberger presented her recommendation for split sample laboratories and requested Commission approval.
- 2:33 p.m. *Motion made by Commissioner Cameron that the Commission accept the list of four laboratories outlined in Director Durenberger's memo to conduct split sample testing. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 4-0 vote.*
- 2:34 p.m. Director Durenberger presented the controlled substance schedule advisory.
- 2:36 p.m. Director Durenberger presented her memo relative to horse welfare.

### **Workforce Development and Diversity**

See transcript pages 194-273.

- 3:05 p.m. Director Griffin presented the second draft of the Penn National Gaming and Turner Construction Diversity Plan for the Commission's consideration. Karen Bailey, Emil Giordano, John Rauen, and Alison Stanton, representing Penn National Gaming and Turner Construction, responded to the Commission's questions.

- 3:56 p.m. *Motion made by Commissioner Stebbins that the Commission give preliminary approval to the diversity plan for the design and construction phase of Plainridge Park Casino with subsequent issues to be addressed which are discussions around enforcement penalties and an expanded definition of pre- and post-design work for MBEs, WBEs and VBEs. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 4-0 vote.*
- 3:57 p.m. The Commission took a brief recess.
- 4:06 p.m. Director Griffin discussed the proposed changes relative to the 10 year mandatory disqualification period for gaming service employees.
- 4:27 p.m. *Motion made by Commissioner Stebbins that the Commission encourage the inclusion of an amendment to G.L. c. 23K, § 16, which would eliminate the automatic disqualifier language for a gaming service employee. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 4-0 vote.*
- 4:28 p.m. Director Griffin presented the preliminary draft of the Commission's gaming school regulations.

### **Administration**

See transcript pages 273-287.

- 4:46 p.m. The Commission briefly discussed the remaining topics on the agenda.
- 4:51 p.m. Jennifer Pinck described the OPM Project Management Plan for the slots parlor development.
- 4:59 p.m. Meeting adjourned.

### **List of Documents and Other Items Used**

1. Massachusetts Gaming Commission April 17, 2014 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission Meeting March 6, 2014 Meeting Minutes
3. Massachusetts Gaming Commission Meeting March 20, 2014 Meeting Minutes
4. Massachusetts Gaming Commission Meeting April 3, 2014 Meeting Minutes
5. Massachusetts Gaming Commission 3/31/2014 Licensing Schedule Update Region B
6. Massachusetts Gaming Commission 3/31/2014 Licensing Schedule Update Region C Scenario 1
7. Massachusetts Gaming Commission 3/31/2014 Licensing Schedule Update Region C Scenario 2
8. Massachusetts Gaming Commission 3/31/2014 Licensing Schedule Update Region C Scenario 3
9. Comment Letters Summary Issues

10. April 14, 2014 Massachusetts Gaming Commission Memorandum Regarding Discussion of Eligible Costs for Minimum Investment Amount – Region C with attachments
11. April 15, 2014 City of Somerville Memorandum
12. April 15, 2014 Mintz Levin Memorandum
13. April 16, 2014 Mintz Levin Memorandum
14. Massachusetts Gaming Commission April 16, 2014 Memorandum Regarding Region A Arbitration Extension Requests
15. Plainridge Racecourse March 14, 2014 Memorandum Regarding Key Operating Personnel
16. Plainridge Racecourse April 7, 2014 Memorandum Regarding 2014 Racing Officials
17. Massachusetts Gaming Commission April 17, 2014 Memorandum Recommendation Regarding Split Sample Laboratories for 2014
18. Massachusetts Gaming Commission Horses First and Attachments
19. Model Legislation for a National Racing Regulatory Entity
20. Massachusetts Gaming Commission April 17, 2014 Memorandum Regarding Horses First
21. RCI Medication Advisory
22. 205 CMR 135
23. Diversity Plan for the Design and Construction Phase of Plainridge Park Casino
24. Coastal Construction & Management Memorandum
25. DRAFT 205 CMR 141
26. DRAFT 205 CMR 138
27. DRAFT 205 CMR 139
28. DRAFT 205 CMR 140
29. Massachusetts Gaming Commission Gaming Lab Operating Model Roles
30. Pinck and Company Oversight Project Management Program Management Plan
31. Massachusetts Gaming Commission April 17, 2014 Memorandum Regarding FY14 Third Quarter Budget Update
32. Massachusetts Gaming Commission Employee Handbook
33. Massachusetts Gaming Commission April 10, 2014 Memorandum Regarding Proposed Legislative Changes Regarding Chapter 23K, Section 16

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary

**5(a) – NO DOCUMENTS**

**5(b) – NO DOCUMENTS**

# Massachusetts Gaming Commission

---

## MEMORANDUM

**Date:** April 25, 2014

**To:** The Honorable Deval L. Patrick, Governor  
The Honorable Therese Murray, Senate President  
The Honorable Robert A. DeLeo, Speaker of the House  
The Honorable Stephen M. Brewer, Chair, Senate Committee on Ways and Means  
The Honorable Brian S. Dempsey, Chair, House Committee on Ways and Means  
The Honorable Gale D. Candaras, Senate Chair, Joint Committee on Economic Development and Emerging Technologies  
The Honorable Joseph F. Wagner, House Chair, Joint Committee on Economic Development and Emerging Technologies

**From:** Stephen P. Crosby, Chair, Massachusetts Gaming Commission

**Re:** Request from Casino Applicants and Others for Changes in Expanded Gaming Legislation

---

Both the MGM and Wynn Category 1 license applications were accompanied by a number of issues the applicants say need to be resolved before they can operate successfully in Massachusetts. (It has not been made clear whether either MGM or Wynn would refuse to proceed with the license award without amendment to one or more of these issues. Mohegan Sun Massachusetts has stated clearly that it does not require any legislative changes to proceed, and in fact supports the legislation as it stands.)

In addition, there have been certain issues raised by other constituents that might require legislative change, which we have considered.

Consistent with our decision on the Category 2 license, our intention is that if we pick a Category 1 winner for Regions A and B, that we will offer the award contingent upon compliance with the law as it exists at the time. The Commission has never discussed how it will respond to a license winner if it sets changes in the law as preconditions for acceptance of the award. However, we have considered the substance of these issues to prepare ourselves for the possibility of license negotiations. And most importantly, we have considered these issues in order to provide the Governor and the Legislature with



our best judgment as to whether these issues actually would require legislative action for resolution; and if so, whether the MGC believes such action is desirable.

It is particularly time sensitive that we deal with all of the issues related to the present \$600 threshold for income tax withholding (found in Chapter 62B, Section 2, and previously addressed by the Commission), since the Legislature is awaiting our advice on these issues before it undertakes its own analysis.

Following are the major suggestions for Legislative action that have been brought to our attention, and our recommendations for Legislative response:

1. Pending Repeal Referendum.

Both MGM and Wynn have expressed concern about their considerable financial exposure in the case of a license award which is followed by repeal of the gaming legislation (should the SJC permit the ballot question to go forward, and should it be successful in the November election). There are 2 categories of financial issues that will be triggered by the license award and/or a delay caused by awaiting the outcome of the repeal initiative:

A. Costs under the control of the Gaming Commission.

The Gaming Commission has four different fees it is authorized to assess upon the award of the gaming license, and a fifth category of costs it can influence, associated with construction:

- \$85M one time licensing fee
- Slot machine fee of \$600 per unit
- Gaming assessment fee to cover operating costs
- Public Health Trust Fund fee
- Project construction and costs, schedule penalties, 10% investment deposit, and site acquisition requirements

In previous discussions, the Commission has provided itself flexibility to make license awards provisional or contingent, in a manner that would enable it to compromise on the date of assessing these fees, and modify construction constraints, if the Commission believes it is appropriate to do so. **While we have expressed our opinion that legislative action promising to return the \$85M license fee in the event of a subsequent repeal would be a reasonable action, we do not believe that legislative action is required to provide relief for these five cost categories.**

B. Costs not within the control of the Commission.

There are at least three costs which the Commission cannot control:

- Contingent project site payments
- Certain project construction costs
- Certain costs associated with Host Community Agreements and Surrounding Community Agreements.

MGM acknowledges that there may be little direct relief the Commission can provide for these potential costs, and requests that the Commission provide “guidance” for an appropriate form of relief. **We have not yet pursued what, if any, guidance we could provide here, but we do not believe that legislative action is required or appropriate in helping to deal with these issues.**

2. Chapter 23K, Section 18: On-site child daycare program.

**Section 18.** *In determining whether an applicant shall receive a gaming license, the commission shall evaluate and issue a statement of findings of how each applicant proposes to advance the following objectives: (9) 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 through a workforce training program that: (iii) establishes an on-site child day-care program.*

Both Wynn (calling for a repeal) and MGM (calling for amendment permitting a facility in proximity to the site) find this requirement unacceptable. However, on close reading of Section 18 (9)(iii), it is clear that providing a facility is not a requirement, but rather something the Commission should consider in determining whether an applicant shall receive a gaming license. **We believe the Commission can address this issue through its regulatory authority, and it will not require legislative action.**

3. Chapter 23K, Section 55(a): Tax Rates.

**Section 55 (a)** *A category 1 licensee shall pay a daily tax of 25 per cent on gross gaming revenues.*

Both Wynn and MGM call for assurances that the present 25% tax rate on gross gaming revenues will not be changed during the licensing period (for 15 years). The Commission does not have any authority relative to setting the tax rate. We have checked with other jurisdictions, and except for rare circumstances (like an underlying contract in Kansas), all tax rates are subject to Legislative change. **It is our view that it is unlikely that the present Legislature can or would bind a future Legislature vis a vis guaranteeing the present tax rate.**

4. License Parameters.

MGM expresses concern that the Legislature might allow the Category 2 licensee to offer table games, and that such a change would create an unfair competitive environment for the Category 1 license holders by changing the landscape, and accordingly the economics, on which they have relied in crafting their proposed projects. If this change were to occur, MGM asks that

the Commission consider a variety of types of relief, including reducing the Category 1 table game tax rate.

The Commission does not have any authority relative to setting the tax rate or reducing the Category 1 table game tax rate. Further, as mentioned above, it is unlikely that the present Legislature can or would bind a future Legislature vis a vis prohibiting a change (such as adding table games to Category 2) in the future. **Accordingly, we do not believe that either Commission or legislative action is called for on this issue at this point, although the Commission will consider establishing a position in favor of no changes to key licensing parameters during the 15 year license period.**

5. Chapter 23K, Section 21(A)(4): Capital Expenditures.

**Section 21 (a)** *The commission shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee. The licensee shall: (4) make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5 per cent of the net gaming revenues derived from the establishment; provided, however, that a gaming licensee may make capital expenditures in an amount less than 3.5 per cent per year as part of a multi-year capital expenditure plan approved by the commission*

Both Wynn and MGM interpret this section to require a minimum 3.5% *annual* investment of “net gaming revenues derived from the establishment” in renewing the capital infrastructure of the facility. Wynn calls for replacing the 3.5% with a qualitative standard, and MGM calls for repeal.

The Commission believes that Wynn and MGM have applied an overly narrow reading to this section: notably, the first part of Section 21(a)(4) does not use the word “annual” (though it could be imputed given the context). In the second section, the Commission is granted authority to approve expenditures of a lesser amount than 3.5% per year as part of a multi-year capital expenditure plan. **We believe that the Commission can handle this issue in its regulations, and there is no need for legislative action.**

(Incidentally, it is not clear to the Commission what the Legislature intended by “net gaming revenues derived from the establishment,” and we would welcome clarification should the Legislature see fit to do so. But absent further actions by the Legislature, the Commission is fully prepared to use its statutory authority to interpret this clause.)

6. Chapter 23K, Sections 9(A)(8) and 21(A)(16): On-site space for mental health treatments.

**Section 9 (a)** *The commission shall prescribe the form of the application for gaming licenses which shall require, but not be limited to: (8) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (ii) providing complimentary on-site space for an independent*

substance abuse and mental health counseling service to be selected by the commission.

**Section 21. (a)** *The commission shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee. The licensee shall: (16) provide complimentary on-site space for an independent substance abuse, compulsive gambling and mental health counseling service and establish a program to train gaming employees in the identification of and intervention with customers exhibiting problem gaming behavior.*

Wynn expresses concern that these sections require the licensees to provide comprehensive substance abuse, compulsive gambling and mental health counseling/treatment services. The Commission believes that the statute only requires that the licensee provide “complimentary on-site space” and that what services, if any, go in the space is determined by the Commission. **We believe that this issue can be managed within the Commission’s regulatory authority, and does not require legislative action.**

7. Chapter 23K, Section 25(G): Gratuities

**Section 25 (g)** *A dealer may accept tips or gratuities from a patron at the table game where such dealer is conducting play; provided, however, that such tips or gratuities shall be placed in a pool for distribution among other dealers. The commission shall determine how tips and gratuities shall be set aside for the dealer pool as well as the manner of distribution among dealers. No key gaming employee or any other gaming official who serves in a supervisory position shall solicit or accept a tip or gratuity from a player or patron in the gaming establishment where the employee is employed.*

Wynn proposes that this section be changed to permit the licensee to determine how tips are pooled and distributed (though excluding participation of “the employers”). Several unions testified at the Region A surrounding community hearing against any modification of this law.

There are two issues: one can be handled by way of regulation, one would require legislative action. First, it has been suggested that tip pooling should be left to the gaming licensee (and any labor organization where applicable) to determine the manner in which tips should be distributed. The Commission is authorized to determine the manner in which tips and gratuities shall be set aside and distributed among *dealers*. As such, it could, if it so chose, authorize by regulation the licensee and labor organization to resolve the issue amongst themselves. Secondly, it has been suggested that there are certain employees who may assist dealers, but who are not in fact dealers, and who are not in a managerial or supervisory position, who should be allowed a cut, though not a full dealer share, of the tips. **Addressing this issue would require legislative action; however, it does not seem to the Commission that this is an important enough issue for the Legislature to take action.**

8. Chapter 23K, Section 28(B) and (C): Reports of complimentary services.

**Section 28 (b)** *Gaming licensees shall submit quarterly reports to the commission covering all complimentary services offered or engaged in by the gaming licensee during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the commission may require. The report shall also document any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided. (c) Complimentary services or items shall be valued in an amount based upon the retail price normally charged by the gaming licensee for the service or item. The value of a complimentary service or item not normally offered for sale by a gaming licensee or provided by a third party on behalf of a gaming licensee shall be the cost to the gaming licensee of providing the service or item, as determined under rules adopted by the commission.*

Both Wynn and MGM call for repeal of these sections as administratively burdensome, incompatible with other jurisdictions, and an invasion of their customers' privacy. This requirement is quite similar to a New Jersey requirement, and other jurisdictions have reporting requirements at certain thresholds. At this point the Commission does not envision a compelling use for this data. **We recommend that the Legislature replace the words "Gaming licensees shall. . ." at the beginning of Section 28(b) with "The Commission may require gaming licensees to. . .".**

9. Chapter 23K, Section 29: Cashless wagering.

**Section 29** *A gaming establishment offering a cashless wagering system shall allow individuals to monitor and impose betting limits on their cashless wagering. The gaming establishment shall allow individuals to set betting limits on their cashless wagering including, but not limited to, per bet limits, hourly limits, daily limits, weekly limits and monthly limits. An individual may lower limits and increase limits; provided, however, that the individual shall not increase betting limits more than once in a 24-hour period. The gaming establishment shall issue to each patron who has been issued a rewards card or who participates in a cashless wagering system by the gaming establishment a monthly statement, mailed to the patron at the patron's physical mailing address, which shall include the patron's total bets, wins and losses; provided, however, that a patron shall be given the opportunity to decline receiving a monthly statement at the time the rewards card is issued or during initial participation in a cashless wagering system; provided further, that a patron may later opt out of receiving monthly statements by providing a written request to cease monthly statements to the gaming establishment. A gaming licensee who has implemented such a program or system shall annually report to the commission the amount of money spent and lost by patrons who have been issued a rewards card or who participated in a cashless wagering system, aggregated by zip code. Activity under this section shall be monitored by the commission. Individuals on the list of excluded persons shall not be permitted to participate in a cashless wagering system.*

Both Wynn and MGM call for repeal of this section as administratively burdensome, ultimately counterproductive and an invasion of privacy. As best we can determine, none of our applicants

intends to use a “costless wagering system” as defined in Section 2. There has been mixed reaction to the requirement of offering a monthly report to rewards card holders. **But at this point, we do not see a need for Legislative action on this matter.**

10. Chapter 23K, Section 51: Past-due child support or tax liability constraint on disbursement of cash in excess of \$600.

**Section 51 (a)** *Prior to disbursement of cash or a prize in excess of \$600, a gaming licensee shall review information made available by the IV-D agency, as set forth in chapter 119A and by the department of revenue to ascertain whether the winner of the cash or prize owes past-due child support to the commonwealth or to an individual to whom the IV-D agency is providing services and to ascertain whether the winner of the cash or prize owes any past-due tax liability to the commonwealth. (b) If the winner of the cash or prize owes past-due child support or has a past-due tax liability, the gaming licensee shall notify the IV-D agency or the commonwealth, respectively, of the winner’s name, address and social security number. Subsequent to statutory state and federal tax withholding, the gaming licensee shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the winner’s past-due child support obligation. (c) If funds remain available after the disbursement to the IV-D agency or if no such obligation to the IV-D agency is owed, the gaming licensee shall disburse to the department of revenue the full amount of the cash or prize or such portion of the cash prize that satisfies the winner’s past-due tax liability. The licensee shall disburse to the holder only that portion of the prize, if any, remaining after the holder’s past-due child support obligation and the holder’s past-due tax liability have been satisfied.*

Both Wynn and MGM urge repeal of this section. However, there are similar requirements in many other jurisdictions and the Commission supports the policy objectives in this section. The problem is that DOR does not yet have an online, 24/7 capacity to check for such information on an expeditious and absolutely current basis. Such a system will probably not be available when the Category 2 license becomes operational. **[Commissioners: do we recommend a jerry-rigged system or propose postponing until web portal available?]**

11. Chapter 23K, Section 52: Reports of winnings in excess of \$600.

**Section 52** *Gaming licensees shall, on a monthly basis, transmit to the department of transitional assistance and to the IV-D agency, as set forth in chapter 119A, a list of all persons who were awarded cash winnings or a prize in excess of \$600 in the prior month. The information shall be provided in a format which is compatible with the automated data processing systems of the department and the IV-D agency to ensure the immediate identification of persons who may be receiving public assistance benefits. The information provided shall include the name, address and social security number of the person who was awarded the cash or prize valued in excess of \$600.*

Wynn and MGM call for repeal of this section as administratively burdensome, inconsistent with other gaming jurisdictions, and of questionable public policy wisdom.

The Commonwealth accepts the public policy objective of having licensees report significant winnings to DTA and DOR, and the Commission agrees with this requirement. Please note that this section seems to apply to both slots and table game winnings (unlike the withholding tax requirement that applies only to slots winnings). **Other than changing the \$600 threshold to match the \$1200 threshold we have recommended elsewhere, the Commission does not believe legislative action is required.**

12. Chapter 23K, Section 56(C)(D) and (E): Commission costs and Public Health Trust Fund.

**Section 56 (c)** *Any remaining costs of the commission necessary to maintain regulatory control over gaming establishments that are not covered by: (i) the fees set forth in subsections (a) and (b); (ii) any other fees assessed under this chapter; or (iii) any other designated sources of funding, shall be assessed annually on gaming licensees under this chapter in proportion to the number of gaming positions at each gaming establishment. Each gaming licensee shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the commission. (d) If the fees collected in subsections (a) and (b) exceed the cost required to maintain regulatory control, the surplus funds shall be credited in proportional shares against each gaming licensee's next assessment. (e) In addition to the fees collected under this section and any additional costs of the commission, the commission shall assess an annual fee of not less than \$5,000,000 in proportional shares against each gaming licensee in proportion to the number of gaming positions at each gaming establishment for the costs of service and public health programs dedicated to addressing problems associated with compulsive gambling or other addiction services. Such assessed fees shall be deposited into the Public Health Trust Fund established in section 58.*

Generally these sections refer to the authority given to the Commission to assess its operating costs (not covered by the \$600 slot license fee and investigatory fees) by a proportional assessment on the licensees, as well as the assessment of an annual fee of not less than \$5M for the Public Health Trust Fund. MGM and Wynn find the uncertainty as to the potentially limitless amounts associated with each assessment to be unsettling and recommend deleting the authority to assess remaining operating costs on the licensees; replacing the open ended assessment with a fixed fee; and freezing the Public Health Fund assessment at \$5M.

The Commission has already indicated its intent to involve the licensees in oversight of the Commission's operating costs, and has expressed no expectations of assessing a Public Health Trust Fund fee higher than \$5M. **Furthermore, the Commission believes that this kind of funding mechanism for regulatory and public health costs is one of the strengths of the expanded gaming legislation, and we would not recommend that it be revisited by the Legislature.**

13. Chapter 62B, Section 2: Withholding of taxes on winnings of \$600 or greater.

The Commission has already submitted a proposal to the Legislature on this issue, which

recommends adopting the Internal Revenue Service’s standards for withholding tax, including raising the threshold to \$1200 (See **Attachment A**). **We further recommend that if the Legislature decides to replace this section with a section mirroring the federal IRS standards, that the Legislature change all the other \$600 thresholds in Chapter 23K (including Sections 51 and 52) to match the federal \$1200 threshold.**

14. Parity of tax rate.

Both Wynn and MGM express concern that a tribal casino could be authorized in Massachusetts, and operate at a tax rate significantly below the tax rate on the Massachusetts license holders. In various ways, they each call for matching the tax rate of commercial casinos to the tax rate of tribal casinos and reserve their right to lobby accordingly for such changes.

The Commission in its discussions to date clearly understands the potential challenges posed by a Tribal casino operating under the presently approved Compact, and the nearly insurmountable conundrums raised by the range of Tribal options. We will continue to discuss this issue in public, and will wrestle with the reconciliation of these competing interests with the same transparency with which we have approached our other work. **At this point, however, we do not see any action that the Commission should take other than to continue judiciously with the commercial process, and wait out the Tribal process. Any change in the tax rate would obviously require Legislative action, but the Commission does not recommend that the Legislature consider any action on this issue at this time.**

15. Chapter 23K, Section 27(E): Credit

*No person, other than a gaming licensee, shall issue credit to a patron in a gaming establishment.*

MGM reads this section to possibly preclude ATM’s located in the gaming establishment from being utilized for a cash advance. **Since the Commission does not interpret the section to preclude such transactions (believing that each use of a credit or debit card is not an issuance of credit; the issuance of credit occurs initially when the card is granted), no legislative action is required.**

16. CORI modifications.

A number of groups have expressed concern that CORI standards in the expanded gaming law (specifically the “automatic disqualifiers” identified in G.L. c.23K, §16) will preclude many people in the targeted groups for employment, and that they are unnecessarily rigid in protecting the integrity of the gaming process. We have researched this issue thoroughly, including soliciting an opinion from our gaming consultant Michael & Carroll, found in **Attachment B**. This opinion documents best practices in other jurisdictions, and concludes that the present Massachusetts statute is inconsistent with those best practices. **The Commission agrees, as do our applicants. Accordingly, the Commission recommends that the Legislature amend Section 16(b) in the following manner (amendments in red):**



**Section 16. (a)** *The commission shall deny an application for a gaming license or a license for a key gaming employee issued under this chapter, if the applicant: (i) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; (ii) submitted an application for a license under this chapter that contains false or misleading information; (iii) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this chapter; or (iv) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.*

**(b)** *The commission shall deny an application for a license or registration, other than a gaming license or a license for a key gaming employee, under this chapter if the applicant: (i) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that in the case of an applicant for a gaming employee license, for convictions which occurred before the 10-year period immediately preceding application for licensure, an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section; provided further, that in the case of an applicant for a registration or license other than a gaming employee license, key gaming employee license, or gaming license an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section; (ii) submitted an application for a license under this chapter that contains false or misleading information; (iii) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this chapter; or (iv) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.*

**[Question for the Commission: Is this how we want to handle this?]**

# ATTACHMENT A