

April 17, 2014

BY EMAIL

MASSACHUSETTS GAMING COMMISSION
84 State Street
10th Floor
Boston, Mass. 02109



Dear Commissioners:

No Eastie Casino is an East-Boston based neighborhood advocacy organization which represents the interests of Boston residents opposed to a casino in Region A. This letter is intended as a brief to be filed in response to the Gaming Commission's call for briefs regarding the ongoing question as to the determination of the premises of the gaming establishments proposed for development in Everett and Revere.¹

As a preliminary matter, a ballot question which would have approved a gaming establishment at Suffolk Downs was previously defeated by East Boston voters in an election held November 5, 2013. Our position since that time has remained that this should preclude the development of any future gaming establishment at Suffolk Downs (geographical technicalities aside), and that further attempts to move the project to Revere have been in direct violation of the expressed will of the people as well as the letter and spirit of the Massachusetts Expanded Gaming Act.

We join the city of Boston in rejecting this Commission's jurisdiction to consider the question of whether Boston should properly qualify as a host community for either Region A proposal, and must again reiterate that we do not recognize the legitimacy of any further discussion of a casino at Suffolk Downs after November 5, 2013.

Regardless, we appreciate the opportunity for further public discussion of the questions posed.

I. THE RACE TRACK AT SUFFOLK DOWNS REMAINS AN "AMENITY" FOR PURPOSES OF THE EXPANDED GAMING ACT, AND NOT ENOUGH INFORMATION HAS OTHERWISE BEEN MADE PUBLICLY AVAILABLE TO ASSESS CONSTRUCTION ON THE EAST BOSTON SIDE OF THE SUFFOLK DOWNS SITE

A "host community" is defined by statute as anywhere in which a "gaming establishment" is located; the premises of such an establishment include "a gaming area and other nongaming structures related to the gaming area and may include, but shall not be limited to, hotels restaurants or other amenities." M.G.L. c. 23K §2.

The racetrack at Suffolk Downs remains an integral and absolutely inseparable part of the proposed gaming establishment. Until very recently, there was no serious question from this Commission that the track should be counted as an amenity.

In light of the above, we continue to argue that Boston's claim to host community status is equal to (and likely far greater than) that rightfully held by Revere in the pre-November 5th proposal previously advanced by former

¹ We reserve the right to file reply briefs relating to this issue as well as in response to briefs filed by proponents of the Wynn proposal for Everett (to which we are equally opposed).

applicant Sterling Suffolk LLC. While the gaming establishment and structural improvements for Suffolk Downs were proposed almost entirely on the East Boston side of the Suffolk Downs site, the city of Revere immediately claimed and received host community status with no significant public debate. A brief misunderstanding on this point which arose during the summer of 2012 led the editors of the *Revere Journal* to respond that any claim that Revere was not a host community for a casino at Suffolk Downs was “specious at best, foolish and uninformed at worst” as well as “factually and legally incorrect.”² We recognize no cognizable practical difference between the latest of iteration of this so-called “Revere-only” gaming establishment and the prior plan which was based almost entirely upon the East Boston side of the property.

Suffolk Downs and Mohegan Sun have continued to maintain the legal fiction that Suffolk Downs will merely act as a “landlord” to a casino which has been explicitly designed around its racetrack. Although the terms of the proposed lease on this site have not yet been made public, it has been noted that the lease will include a profit-sharing agreement which would strongly indicate an intentional financial partnership between these two entities.³

Furthermore, no plans have yet been released to the public which include any indication of Mohegan Sun’s development plans beyond the Revere-Boston border. Regardless, it is clearly apparent from the Schematic Design (RFA 4-05-01) that significant improvements on the East Boston side (including, at the very minimum, road improvements to Tomasello Way) will inevitably be required.

From as much as we can ascertain from publicly-available information, the proposed gaming establishment is Boston-facing, and oriented to welcome the majority of visitors from the existing East Boston 1A Suffolk Downs entrance. Despite this fairly obvious point, the applicant posits that this entrance is “available for existing [race track] users” and that the current main gate “will not be signed or encouraged for use.” We do not share the applicant’s optimism in this regard. However, it is beyond question that significant improvements will be required to Tomasello Way along the entirety of the lengthy entryway into the site.

The only other points of entry to the casino would be at 1A in Revere at Furlong Drive (currently serving a heavily-trafficked shopping plaza) and a major thoroughfare at Winthrop Avenue near a major entrance to 1A. Given that 1A is expected (by Mohegan Sun’s own estimate) to carry up to 80% of the gaming establishment’s traffic and the existing Suffolk Downs 1A entrance is by far the most convenient point of entry to the site, we feel that further close study of this point is necessary.

A casino at Suffolk Downs remains a casino at Suffolk Downs. We urge this Commission to reject the applicant’s claims that the city of Boston is merely a surrounding community.

II. THE CITY OF BOSTON WOULD HOST NUMEROUS INTANGIBLE AMENITIES IN CONNECTION WITH ANY GAMING ESTABLISHMENT IN REGION A.

“Amenities” are not defined with M.G.L. c. 23K, but the concept of an “amenity” is a well-recognized term of art in the real estate industry. Under this definition,⁴ amenities may be defined as “tangible” (*i.e.* on-site restaurants and spa facilities) or “intangible” (convenience of location, desirable views from the premises, local

² “Revere a Host City,” *Revere Journal* (June 13, 2012)(attached as Ex. 1)

³ We must again reiterate our disappointment that Mohegan Sun has continued to withhold these proposed terms under the flimsy guise of “trade secrets.”

⁴ See, e.g., *The Language of Real Estate Appraisal*, Jeffrey D. Fisher, Robert S. Martin, Paige Mosbaugh, Dearborn Real Estate Education (1991), at 9.

attractions, etc.). While the Commission's focus has largely been upon the physical boundaries of the property and the tangible amenities within it, we submit that **the city of Boston is in and of itself an intangible amenity** (as well as host to any number of other intangible amenities) without which neither Region A proposal would be realistically possible.

These intangible amenities include, among many others: the city's international brand and reputation as a center for academic, scientific, technical, and artistic innovation, treasured historic landmarks, major international airport, outstanding athletic teams, and any number of other attractions which have made the city of Boston one of America's top tourist destinations.⁵

The applicants have demonstrated that they are well aware of Boston's intangible amenities and their potential to profit their proposed casinos. The following excerpts are drawn from the public presentations to the Commission held January 22, 2014:

There is no doubt Mohegan Sun Massachusetts will extend people's stay in the Boston area and create even more visits to the Commonwealth. And Boston, of course, can be reached by air from all over the United States.... [i]t's going to capitalize on our location next to Logan.

Transcript of Mohegan Sun presentation to the MGC, 1/22/2014, at 14 (Mitchell Etess)

...if you look closely, you can see the skyline of Boston in the distance.

Id., at 27 (Hugh Trumbull)

But the strength of our entertainment program at Mohegan Sun Massachusetts is clearly our partnership with the Citi Center for the Performing Arts. And the way we're going to interact with the entire arts community with all of the Citi Center venues and the Strand Theater. We're going to send our guests to local venues. And we're going to have transportation back and forth. Citi Center is our partner. They're going to operate our live entertainment venue. We're going to collaborate on booking and marketing and presenting and co-presenting events at their different venues. There is no doubt that when you combine the amazing power of the buying power of Citi Center with the power of our organization, which as I mentioned before operates the number one arena of its size in the world and has a myriad of venues in different states, we're going to have great buying power. And we're going to greatly enhance the entertainment offering in the entire Boston region.

Id., at 36 (Mitchell Etess)(emphasis added)

We're going to work to continue to weave ourselves into the fabric of the greater Boston area.

Id.

...we're going to encourage movement back and forth between our casino and the local area attractions.

Id., at 45 (Mitchell Etess)

⁵ We aver that casino development in the Boston area would significantly risk this well-earned reputation as the city joined the ranks of "casino towns" around the United States.

Nearly 90 percent of the residents voted in favor of a gaming institution on the water of the Boston Harbor in the city of Everett. We are minutes, seconds from Boston Garden, the North End, South End, downtown Boston. It's a great, great location.

Transcript of Wynn presentation to the MGC, 1/22/2014, at 68. (Mayor De Maria)

...we have the resources, the proximity to Boston. We are not 10, 20 miles away from Boston, we are Boston, we are on the border.

Id., at 69 (De Maria)

And the waterfront development is very important to everybody in the Boston metropolitan area. The use of the harbor is a wonderfully popular, wonderfully popular dynamic at the moment. From Hingham to Rowes Wharf the boats are crowded every day as people (A) avoid traffic, but (B) enjoy the harbor and the excitement and the fun of waterfront transportation.

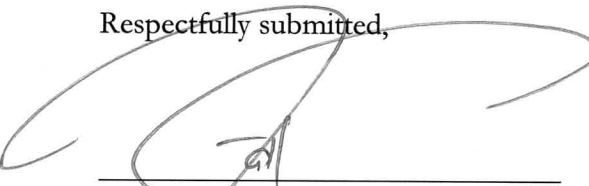
Id., at 85 (Steve Wynn)

These sentiments speak for themselves. Both applicants clearly consider the city of Boston to be the single most significant amenity offered by their proposed gaming establishments. The fact that they have carefully circumscribed the physical footprints of both proposals to within *actual inches* of Boston city limits only underscores this unavoidable fact.

CONCLUSION

The Commission now finds itself in exactly the circumstance which this provision was clearly designed to avoid: one host community which has voted against a gaming establishment by a significant margin and continues to oppose it, and another which appears to favor it. Allowing this project to go forward under these circumstances would pose a significant threat not only to future relations between Boston and Revere, but to the single most important responsibility held by this Commission: ensuring the integrity and public confidence in the Massachusetts casino licensing process. M.G.L. c. 23K §1(1). We respectfully request that the Commission not force the city of Boston to host a guest which it has already disinvited.

Respectfully submitted,



Matt Cameron, General Counsel
Celeste Ribeiro Myers, Co-Chair

EX. 1: REVERE JOURNAL EDITORIAL

Available online at <http://www.reverejournal.com/2012/06/13/revere-a-host-city/#>

Revere a Host City

June 13, 2012

By Journal Staff

Revere is a host city if and when a casino comes to Suffolk Downs.

The casino legislation provides for this designation for Revere exactly and specifically.

“A Host community is a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment,” reads the state law (MGL,c. 24K, s. 2).

In addition, the state law provides that Revere is a host city if a casino is located at Suffolk Downs: “A Gaming Establishment is the Premises approved under a gaming license which includes a gaming area and any other non gaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants and other amenities,” reads the state law (MGL, c. 24K, s. 2).

Further, a condition of the gaming license(for licensed racetracks as of July 1, 2011) shall be to maintain and complete the annual live racing season,” the law further reads (MGL, c. 24K, s.19(e)).

In addition, the state law directs in Section 15 of the chapter specifically this: “if a proposed gaming establishment is situated in 2 or more cities and towns, the applicant shall execute an agreement with each host community, or a joint agreement with both communities, and receive a certified and binding vote on a ballot question at an election held in each host community in favor of such a license.”

Because Suffolk Downs has been a licensed gaming facility located in East Boston and Revere for 77 years, the laws as defined in the gaming statutes makes Revere’s host community designation perfectly clear.

The same exact reasoning applies to East Boston, if and when a casino comes to Suffolk Downs.

Bottom line, Revere and East Boston are host communities to Suffolk Downs. If and when Suffolk Downs receives its casino license, Revere and East Boston are host cities. Even before that, Revere and East Boston, as host cities, must complete referendums that allow for such a casino to exist on the property.

Adding to this, House Speaker Robert DeLeo asserted that Revere is a host community if the Gaming Commission approves its application. “I have no doubt about the law defining host community ... and Revere would most certainly be a host community.”

Local reports spiraling out of control this week that Revere is not a host city are specious at best, foolish and uninformed at worst.

The efforts of a few people to cast the false impression that Revere is not a host city does nothing for the administration of Mayor Dan Rizzo, who, right now, is negotiating a host city mitigation package with the owners of Suffolk Downs.

On April 10 of this year, Suffolk Downs began negotiating in earnest with the city of Revere as a host city under the conditions set forth under the gaming legislation for Region A – for a casino located at Suffolk Downs, pursuant to Section 15(8) of Chapter 23K of the General Laws.

The only possibility for Revere not being a host city is if Suffolk Downs withdraws from the application process for a casino license located at its facility in East Boston and Revere.

A man who is his own lawyer has a fool for a client. Listening to people around here claiming to be lawyers about Revere's host city status is a mistake in judgment as well as being factually and legally incorrect.

BEFORE THE MASSACHUSETTS GAMING COMMISSION

In the Matter of:

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

Opening Brief of Mohegan Sun Massachusetts, LLC

In accordance with the Commission’s vote on April 3, 2014, and the subsequent memorandum concerning the preparatory process for the Commission’s May 1, 2014 meeting (the “May 1 Process Memorandum”), Region A category 1 gaming license applicant Mohegan Sun Massachusetts, LLC (“MSM”) submits this memorandum concerning the gaming establishment for which it seeks approval.

I. MOHEGAN SUN MASSACHUSETTS, LLC SEEKS APPROVAL OF A GAMING ESTABLISHMENT ON LEASED PREMISES LOCATED ENTIRELY IN REVERE.

The task before the Commission, as stated at the April 3 meeting and in the May 1 Process Memorandum, is to:

Determine the premises of the gaming establishment for which Mohegan Sun Massachusetts, LLC seeks approval in its RFA-2 application.

The question is answered in the first instance by MSM’s RFA-2 application, in particular its original and supplementary filings in response to RFA-2 Question No. 4-79, which asks the applicant to “[p]rovide documentation showing the location of the proposed gaming establishment, including all amenities and significant structures.” As stated in those responses,

MSM's RFA-2 application seeks approval of a gaming establishment located on approximately 40 acres of land leased from Sterling Suffolk Racecourse, LLC ("Sterling Suffolk") and located in the City of Revere (the "Leased Premises").

The project site is located at the corner of Tomasello Drive and Winthrop Avenue in Revere. (See MSM RFA-2 Attachment 4-79-01 (Tab 1 of the accompanying Affidavit of Gary Luderitz "Luderitz Affidavit") and MSM RFA-2 Attachment 4-79-05 (Luderitz Aff. Tab 2)). In response to a request for clarification from the Commission, MSM provided RFA-2 Attachment 4-79-06 (Luderitz Aff. Tab 3), which is the Lease Plan, and RFA-2 Attachment 4-79-07, which is the legal description of Leased Premises depicted on the Lease Plan (Luderitz Aff. Tab 4). As shown on the Lease Plan and described in the legal description, the boundary of the Leased Premises runs along the city line between Boston and Revere for approximately 878 feet, but the property line does not cross over into Boston at any point.

The preliminary plan of the Leased Premises attached to the Binding Agreement for Definitive Ground Lease in Revere, Massachusetts, entered into on November 27, 2013 (the "Binding Agreement"), provides that "no portion of the Leased Premises shall be within the City of Boston." (MSM RFA-2 Attachment 2-04-02 Ex. A (Luderitz Aff. Tab 5)). More specifically, the plan, which is Exhibit A to the Binding Agreement, contains the following provision:

To the extent that further research into the definitive municipal boundary line between the Cities of Revere and Boston, Massachusetts determines that any portion of the Leased Premises shown on the attached plan is located within the municipal boundary of the City of Boston, then such portion shall automatically be deemed to be removed from the Leased Premises. For the purpose of clarity, no portion of the Leased Premises shall be within the City of Boston.

In sum, MSM seeks approval in its RFA-2 application of a gaming establishment located entirely in Revere and as depicted in MSM Attachment 4-79-06 and as described in MSM Attachment 4-79-07.

Looking to MSM's response to Question 4-79 to determine its gaming establishment is consistent with the Commission's precedent in designating the gaming establishment of the category 2 licensee, Springfield Gaming and Redevelopment LLC. In its Determination of Issuance of a License to Operate a Category 2 Gaming Establishment, at page 26, the Commission granted the license and stated simply that "[t]he gaming establishment is defined as: the site plan as provided by Springfield Gaming and Redevelopment LLC as part of its RFA 2 application as attachment 4-79-02."

II. THE LEASED PREMISES WILL CONTAIN ALL OF THE ELEMENTS OF THE GAMING ESTABLISHMENT, AS DEFINED BY CHAPTER 23K.

MSM is not suggesting that the Commission, in determining an applicant's gaming establishment, must accept at face value the site plan and legal description included in response to Question 4-79. Mass. General Laws Chapter 23K (the "Gaming Act" or the "Act") defines the term "gaming establishment," and the Question 4-79 site plan controls the determination of the gaming establishment only if the premises it depicts include the elements of a gaming establishment identified in the Act's definition. For MSM, it does.

A. The Gaming Establishment Includes The Gaming Area And Those Related Non-Gaming Structures Built And Operated By The Licensee On Its Land.

The Gaming Act defines a gaming establishment to be "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities." M.G.L. c. 23K, § 2.

By making the gaming establishment a "premises," the Act makes clear that the establishment is a geographic area. See, e.g., Black's Law Dictionary (7th ed.) at 1199 (defining premises as "[a] house or building, along with its grounds"). By defining it as the premises "approved under a gaming license," the Act gives the Commission a role in determining that

area, subject to the guiding principle that premises must include the “gaming area and any other nongaming structure related to the gaming area.”

Identifying the “gaming area” is straightforward. The Act provides a definition of “gaming area” as the “portion of the premises of a gaming establishment in which or on which gaming is conducted.” M.G.L. c. 23K, § 2. While it takes two other definitions from the Act to specifically identify what counts as “gaming,” locating the gaming area is the easy part of determining the gaming establishment.¹

The Act does not provide a separate definition of “other nongaming structure related to the gaming area,” although it gives guidance within the definition of gaming establishment by noting that the premises “may include hotels, restaurants, and other amenities.” Id. When the definition is read in conjunction with the remainder of the Gaming Act, and the whole statute is construed together as part of a comprehensive scheme, it is clear that the related nongaming structures to be included in the gaming establishment are those elements of a project built and operated by the licensee on its own land to provide, or to support provision of, entertainment and services to patrons.

Numerous provisions of the Gaming Act link the gaming establishment to the structures the licensee will build and operate on its land. For example, the elements included in the definition of gaming establishment correspond to the elements an applicant is required to build as part of its project, as established in the capital investment requirement. Section 10(a) provides that investment shall include “a gaming area, at least 1 hotel, and other amenities as proposed in the application for a category 1 license.” M.G.L. c. 23K, § 10(a). Also, the Act requires that an

¹ “Gaming” is defined as “dealing, operating, carrying on, conducting, maintaining or exposing any game for pay” and a “Game” is a “banking or percentage game played with cards, dice, tiles, dominoes or an electronic, electrical or mechanical device or machine played for money, property, checks, credit or any other representative of value which has been approved by the commission.” M.G.L. c. 23K, § 2.

application include “the designs for the proposed gaming establishment, including the names and addresses of the architects, engineers and designers.” Id. § 9(9). References to the gaming establishment in the Act’s evaluation criteria also indicate it is limited to the applicant’s built project. Section 5(3) provides that, “with regard to the proposed gaming establishment,” the criteria are to include “an evaluation of architectural design and concept excellence, integration of the establishment into its surroundings, [and] potential access to multi-modal means of transportation,” among others.

In other places, the Act contemplates that the gaming establishment is that which is constructed on land owned or leased by the applicant. For example, to be eligible for a gaming license, an applicant must demonstrate that it will “own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed.” M.G.L. c. 23K, § 15(3). Moreover, in connection with the capital investment in the project, the Commission is directed to determine whether “it will include the purchase or lease price of the land where the gaming establishment will be located.” M.G.L. c. 23K, § 10(a); see also M.G.L. c. 23K, § 9(19) (requiring an applicant to state whether “the applicant purchased or intends to purchase publicly-owned land for the proposed gaming establishment”).

In sum, the gaming establishment includes a licensee’s gaming area and the non-gaming structures related to the gaming area that it builds and operates on the land that it acquires.

B. All Elements Of Mohegan Sun’s Gaming Establishment Will Be On The Leased Premises In Revere.

As part of its project, MSM is proposing to build gaming areas (referred to as the casinos or the casino floors), two hotels, food and beverage establishments, retail shopping stores, entertainment venues, meeting and conference space, a spa, and structured parking. Referring

back to the definition of “gaming establishment,” everything other than the casino floor constitutes “other nongaming structures related to the gaming area.”

The basic locations of these gaming and nongaming structures on the Leased Premises are shown on the plans submitted with MSM’s January RFA-2 supplement as Attachment 4-05-03. (Luderitz Aff. Tab 6). All elements of the project are located within Revere.

While the arrangement of some of the elements has shifted within the footprint of the building as planning has advanced since January, it remains the case that the gaming area and its related non-gaming structures will be entirely on the Leased Premises in Revere. Compare, for example, the floor plan diagram on page 12 of MSM RFA-2 Attachment 4-05-03 (Luderitz Aff. Tab 7) with an updated plan of the Resort Main Floor provided in response to the Commission’s requests for clarification as MSM RFA-2 Attachment 4-19-03 (Luderitz Aff. Tab 8). Planning will continue to evolve moving forward, but the result will remain the same: no element of the gaming establishment will be located in the City of Boston.

C. MSM’s Entrances And Primary Access Points Are In Revere.

Although roadways are not always conventionally considered structures, it seems appropriate to consider a resort casino’s entrance to be part of the gaming establishment. In the case of the MSM vehicle entrance at the intersection of Furlong Drive and Tomasello Drive, for example, there will be a monument sign (a structure) and the roadway leading to and from the port cochere will be built up so that it finishes above the entrance to the garage.

If the Commission were to determine that the vehicle entrance is part of the establishment itself, that would not change the fact that all of MSM’s gaming establishment is in Revere. As depicted on the site plans in MSM Attachment 4-05-03, the entrance is entirely on the Revere side of the city line. The same is shown on a conceptual site plan for the gaming establishment

dated March 31, 2014 (Luderitz Aff. Tab 9). A depiction of the monument sign is included at Tab 10 of the Luderitz Affidavit.

Similarly, MSM's principal access road from a public way will be entirely in Revere. Specifically, the primary approach will be on Furlong Drive off of Route 1A. A recent concept plan for this entrance can be found at Tab 11 of the Luderitz Affidavit. While this plan does not depict the Revere city line, it does show the end of this access way at the intersection of Furlong Drive and Tomasello Drive. Other plans referred to above confirm that the intersection is comfortably within Revere.

MSM understands that Revere City Planner Frank L. Stringi will be providing the Commission with an affidavit stating that he understands Furlong Drive to be the primary vehicle access drive and confirming that Furlong Drive is a public way from its intersection with Route 1A to approximately its first bend.

The primary pedestrian and public transportation entrance for the gaming establishment will be located at the intersection of Winthrop Avenue and Washburn Avenue in Revere. This entrance is near the MBTA's Beachmont Station as well as the bus stops located on either side of Winthrop Avenue. It is depicted on various pages of Attachment 4-05-03, most particularly on page 17.

The gaming establishment's secondary vehicle driveway will be across the Leased Premises via Tomasello Drive in Revere, from its intersection with Winthrop Avenue in Revere. This access way is depicted on the March 31 site plan (Luderitz Aff. Tab 9).

Due to existing legal commitments to permit unrelated third parties to access land adjacent to the Leased Premises from the Sterling Suffolk property, the gaming establishment

will also be accessible via Furlong Drive from the shopping center to the northwest of the Leased Premises and via Tomasello Drive from the remainder of the Sterling Suffolk property.

D. MSM's Water And Sewer Connections Will Be In Revere.

As with the resort casino's entrance, it is not clear whether the facility's connections to municipal water and sewer should be considered part of the gaming establishment. However, to the extent they are, it bears noting that MSM's gaming establishment will be connecting to the City of Revere's water and sewer systems and all of the connection points will be in the Revere. (Luderitz Aff. ¶ 13.) MSM understands that the City of Revere's Superintendent of Public Works will be submitting an affidavit to the Commission confirming that MSM has requested that Revere provide all necessary water and sewer service for the project and that, after system improvements for which MSM will pay, Revere will be able to provide the requested service.

III. **BOSTON IS NOT A HOST COMMUNITY FOR THE MSM PROJECT BECAUSE NO PART OF THE GAMING ESTABLISHMENT IS LOCATED IN BOSTON.**

Whether a municipality is a host community for a gaming establishment is entirely derivative of the location of the gaming establishment. 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. Because neither MSM's gaming area nor any of its "other non gaming structure[s] related to the gaming area" are located in the City of Boston, Boston is not a host community for the MSM gaming establishment.

The various points made by the City of Boston in its declaration of host community status as to Mohegan Sun do not alter the geographic facts as to location of the gaming establishment. Indeed, the Gaming Act anticipates and addresses many of the factors cited by Boston, but the

Act does not support a conclusion that those factors render Boston a host community for the MSM gaming establishment.

A. Access From Boston Via The Transportation Infrastructure Makes Boston A Surrounding Community, Not A Host.

In its declaration, Boston notes that MSM’s patrons will make use of “Boston’s airport, bus and rail service, harbor tunnels, roadways and other means for transportation.” As an initial matter, it bears noting that the City of Boston does not own or operate the Massachusetts Port Authority’s Logan Airport, the MBTA’s bus and rail service, or MassDOT’s harbor tunnels. But even putting that aside, the fact that the transportation infrastructure links the City of Boston to the resort makes Boston a prototypical surrounding community, not a host community. The Gaming Act defines “surrounding community” as a “municipalit[y] in proximity to a host community which the commission determines experience[s] or [is] likely to experience impacts from the development or operation of a gaming establishment, including [a] municipalit[y] from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.” M.G.L. c. 23K, § 2 (emphasis added).

B. The Gaming Act Requires A Licensee To Cooperate With And Promote Regional Businesses.

The City of Boston also contends that it is a host community because MSM will offer its patrons “access to the City of Boston and its retail stores, restaurants, museums, cultural institutions, tourist attractions, institutions and other amenities of the City of Boston.” MSM readily acknowledges that it will encourage its patrons to visit such places, not only in Boston but also in Revere and in all of its other surrounding communities. Indeed, the Gaming Act encourages it do so, while at the same time recognizing that providing access to institutions in the region does not convert the municipalities in which those institutions are located into host communities.

A “fundamental . . . policy objective[]” of the Gaming Act is “promoting local small businesses and the tourism industry, including the development of new and existing small business and tourism amenities such as lodging, dining, retail and cultural and social facilities.” To implement that goal, the Act requires the Commission to evaluate an applicant on the extent to which it will:

- promote local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues (M.G.L. c. 23K, § 18(2)); and
- build a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail and entertainment facilities so that patrons experience the diversified regional tourism industry (M.G.L. c. 23K, § 18(5)).

MSM has worked hard, even before receiving a license, to build a network of local businesses with which it will partner. Over 160 businesses in MSM’s host and surrounding communities, including but not limited to Boston, have already signed up to participate in the Momentum rewards program. By its terms, the Gaming Act contemplates that such partners will be located in both the gaming establishment’s host community and in its surrounding communities. It nowhere suggests that an applicant creates a host community wherever it enters into a partnership with a local or regional establishment.

The Gaming Act also *requires* applicants to enter into agreements with the so-called impacted live entertainment venues (ILEVs), which are municipally owned and not-for-profit performance venues likely to experience negative impacts from the operation of the gaming establishment. MSM has two ILEV agreements, one covering the three theaters of the Citi Performing Arts Center in Boston and the other with the Massachusetts Performing Arts Coalition (MPAC), which includes seven theatres in seven cities and towns.

As with other local establishments, the Act never suggests that a municipality that hosts an ILEV becomes a host community for the gaming establishment. Accordingly, none of Boston, Cohasset, Hyannis, Lowell, Lynn, New Bedford, Springfield or Worcester are MSM host communities on account of the ILEV agreements.

C. The Location Of A Licensee’s Off-Site Impact Mitigation And Infrastructure Improvement Projects Does Not Affect The Determination Of The Location Of Its Gaming Establishment.

The Gaming Act requires an applicant to identify the impacts of its proposed gaming establishment and enter into mitigations agreements with communities to address them. M.G.L. c. 23K, § 15(7). The act also contemplates infrastructure improvements in conjunction with the development of gaming establishments. See, e.g., M.G.L. c. 23K, § 10(a). Once again, however, there is no indication that the location of traffic mitigation projects or off-site infrastructure improvements triggers host community status in a municipality where the gaming establishment is not located.

With respect to mitigation, for example, applicants are required to submit studies on both the local and regional infrastructure impacts of their developments. See M.G.L. c. 23K, § 9(13). To be eligible for a license, an applicant must “identify the infrastructure costs of the host and surrounding communities incurred in direct relation to the construction and operation of a gaming establishment and commit to a community mitigation plan for those communities.” Id. § 15(7). Similarly, the Act recognizes that some infrastructure improvements will take place within the premises of the gaming establishment and some are likely to be outside that boundary. Section 10(a) refers to infrastructure “designed to support the site,” as distinguished from being part of the site, and gives examples of “drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues.” Id. § 10(a). Later in the same section, the Act again acknowledges a distinction between “infrastructure improvements on-site”

and those “around the vicinity of the gaming establishment.” Id. § 10(c). There is a significant distinction between the on-site and off-site infrastructure improvements: the off-site improvements, although paid for by the licensee, will be owned and operated by public entities (for example, the City of Revere or MassDOT).

Accordingly, that MSM has committed to a traffic mitigation project on Route 1A in Boston does not make that area of Boston part of MSM’s gaming establishment and does not convert Boston from a surrounding community to a host community.

D. The MSM Gaming Establishment Is Not Entangled With The Remainder Of Sterling Suffolk’s Property In East Boston.

As MSM’s Leased Premises is a subset of the land that Sterling Suffolk owns in Revere and East Boston, it necessarily abuts the remainder of Sterling Suffolk’s land. However, nothing in the proximity of the parcels, the terms of the Binding Agreement, or the Gaming Act or any other law or regulation makes the Boston portion of Suffolk Downs land part of the MSM gaming establishment. While the City of Boston’s declaration of host community status as to MSM states that the “Mohegan Sun development is intimately related and cannot be disentangled from the Suffolk Downs site,” it does not identify any basis for this conclusion or provide a connection between any such relationship or entanglement and the determination of the MSM gaming establishment.

Conclusion

For the reasons stated above, the Commission should conclude that the gaming establishment for which Mohegan Sun seeks approval in its RFA 2 application is the Leased Premises set forth on the plan at MSM RFA-2 Attachment 4-79-06 and described on MSM RFA–2 Attachment 4-79-07.

Respectfully submitted,

MOHEGAN SUN MASSACHUSETTS, LLC

By its counsel,



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Dated: April 17, 2014

BEFORE THE MASSACHUSETTS GAMING COMMISSION

In the Matter of:

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

Affidavit of Gary Luderitz in Support of

Opening Brief of Mohegan Sun Massachusetts, LLC

I, Gary Luderitz, depose and say as follows:

- 1) I am the Vice President of Operations & Development for the Mohegan Gaming Advisors. In that capacity, I am responsible for the gaming license application process for Mohegan Sun Massachusetts, LLC (“MSM”). I have been involved in the development of MSM’s proposed gaming establishment, and I make this affidavit based on my personal knowledge.
- 2) Attached at Tab 1 is a true and correct copy of Attachment 4-79-01 to MSM’s RFA-2 Application, which is on file with the Massachusetts Gaming Commission (the “Commission”).
- 3) Attached at Tab 2 is a true and correct copy of Attachment 4-79-05 to MSM’s RFA-2 Application, which was submitted in response to the Commission’s request for clarification on certain aspects of the RFA-2 application.

4) Attached at Tab 3 is a true and correct copy of Attachment 4-79-06 to MSM's RFA-2 Application, which was also submitted in response to the Commission's request for clarifications.

5) Attached at Tab 4 is a true and correct copy of Attachment 4-79-07 to MSM's RFA-2 Application, which was also submitted in response to the Commission's request for clarifications.

6) Attached at Tab 5 is a true and correct copy of Exhibit A to Attachment 2-04-02 to MSM's RFA-2 Application.

7) Attached at Tab 6 is a true and correct copy of Attachment 4-05-03 to MSM's RFA-2 Application, which was submitted in MSM's January supplement to the application.

8) Attached at Tab 7 is a true and correct copy of page twelve of Attachment 4-05-03.

9) Attached at Tab 8 is a true and correct copy of Attachment 4-19-03 to MSM's RFA-2 Application, which was submitted in response to the Commission's request for clarifications.

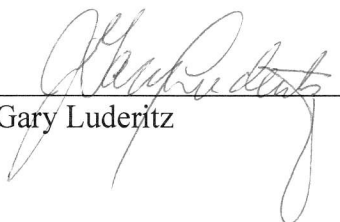
10) Attached at Tab 9 is a conceptual site plan for the MSM gaming establishment dated March 31, 2014.

11) Attached at Tab 10 is a rendering of the monument sign to be placed at the entrance to MSM's gaming establishment at the intersection of Furlong Drive and Tomasello Road in Revere.

12) Attached at Tab 11 is a recent concept plan for the primary vehicle driveway for MSM's gaming establishment, which will be on Furlong Drive from Route 1A to Tomasello Road.

13) MSM's gaming establishment will obtain water and sewer services from the City of Revere municipal service. We have been in discussions with the Revere Department of Public Works to plan the necessary infrastructure improvements to accommodate the water and sewer needs of the project.

Signed under the penalties of perjury this 17th day of April, 2014.



Gary Luderitz

Site Plan

The project site consists of approximately 39.699 acres of land located in Revere, Massachusetts, at the corner of Tomasello Drive and Winthrop Avenue. On November 27, 2013, Mohegan Sun Massachusetts (MSM) and Sterling Suffolk Racecourse, LLC (SSR) entered a “Binding Agreement for Definitive Ground Lease in Revere, Massachusetts” (Binding Agreement), provided as Attachment 4-79-02, pursuant to which MSM will own or acquire the land where the resort is proposed to be constructed within 60 days after a license has been awarded. As set forth in the Binding Agreement, MSM and SSR have agreed to enter a 99-year ground lease of the land.

SSR acquired the project site, along with other adjoining lands, in 1997 by Deed from Belle Isle Limited Partnership, recorded with the Suffolk County Registry of Deeds at Book 21541, Page 247. Belle Isle Limited Partnership acquired the project site, along with other adjoining lands, in 1986 by Deed recorded with the Registry in Book 12611, Page 271. Copies of the two Deeds mentioned above are attached as Attachment 4-79-03 and Attachment 4-79-04.

The address of the project is Winthrop Avenue, Revere, Massachusetts. The project site includes a portion of Revere Tax Parcel 4-80-14B. The assessed value of the project site at the time of application is a portion of the assessed valuation of such Tax Parcel, which is \$10,873,400 according the tax information service for the City of Revere, PatriotProperties.com.

The project site may be subject, in part, to certain locatable interests in real property, including:

1. Rights and easements in favor of the Commonwealth of Massachusetts Department of Environmental Quality Engineering as set forth in an Agreement and Grant dated July 11, 1980 and recorded with the Registry in Book 9494, Page 189 (Drainage Easement);
2. Rights and easements in favor of the Boston Gas Company as set forth in grant dated February 17, 1978, and recorded with the Registry in Book 9049, Page 585;
3. Declaration of Covenants, Restrictions and Easements by and between SSR and Revere Diner Realty, LLC dated as of March 31, 2003 and recorded with the Registry in Book 31003, Page 28, as amended by First Amendment to Declaration of Covenants, Restrictions and Easements dated September 23, 2004 and recorded in Book 36063, Page 273; and
4. Rights and easements set forth in grant to Massachusetts Electric Company and Verizon New England, Inc. dated September 23, 2004 and recorded with the Registry in Book 35768, Page 256.

The project site and other adjoining land is the subject of a Response Action Outcome (RAO) Report and accompanying Method 3 Risk Characterization, both dated February 12, 1998, prepared by Rizzo Associates, Inc. and filed with MassDEP under Release Tracking Number (RTN) 3-0014857.

The project site has previously been occupied by horse stables, barns, maintenance facilities and similar facilities accessory to the operation of the thoroughbred horse racing track at Suffolk Downs. Such pre-existing uses of the project site will be discontinued and such buildings removed as part of the project.

The project is currently contemplated to include a casino resort including gaming positions, food and beverage establishments, specialty retail, entertainment venues, two hotels, meeting / conference space, a spa, parking and landscaping.

The location of the proposed gaming establishment, amenities and significant structures are shown conceptually on the plans attached as Attachment 4-05-01 prepared by the project architects, KPF.

Site Plan and Legal Description

In response to the Commission's request for clarification, Mohegan Sun Massachusetts (MSM) provides Attachment 4-79-05.

MSM through its consultant, Nitsch Engineering, has prepared a Lease Plan based on a professional survey of the property within the City of Revere that MSM will lease and control for operation of the destination resort casino (the "Leased Premises"). This plan is provided as Attachment 4-79-06, unambiguously delineates the City of Revere municipal boundary based on the professional survey, and confirms that the entire Leased Premises is within the City of Revere.

This Lease Plan will be attached to the Ground Lease between MSM and Sterling Suffolk Racecourse, LLC (SSR). While it is more accurate, it depicts the same parcel of land shown on the "Plan of Premises" that is appended as "Exhibit A" to the Binding Agreement for Definitive Ground Lease (the "Binding Agreement") executed between MSM and SSR. Both this plan and the "Plan of Premises" previously submitted exclude the so-called "racing parcel" within the City of Revere. On the Lease Plan, the curved line that forms a boundary of the Leased Premises is located outside and along the backstretch of SSR's racing oval. SSR will retain this area for its racing purposes. Accordingly, this portion of SSR's property, while located in Revere, is not a part of the Leased Premises.

In total the Leased Premises comprises 39.867 acres.

Consistent with the terms of the Binding Agreement, MSM has prepared a metes and bounds description of the Leased Premises which is provided at Attachment 4-79-07.

A certain parcel of land located in the City of Revere, County of Suffolk, Commonwealth of Massachusetts, and more specifically described as follows:

Beginning at the northeasterly corner of the parcel at a point at the southwesterly intersection of Winthrop Avenue and Washburn Avenue, thence $S25^{\circ}50'12''W$ along said Washburn Avenue a distance of 932.79 feet to a point;

Thence $N64^{\circ}09'48''W$ a distance of 39.74 feet to a point;

Thence along a non-tangent curve to the left having a radius of 350.00 feet with a chord bearing of $S04^{\circ}13'21''W$ and a chord distance of 133.27 feet, a distance of 134.09 feet to a point of compound curvature;

Thence along a curve to the left having a radius of 550.00 feet with a chord bearing of $N48^{\circ}13'09''W$ and a chord distance of 729.35 feet, a distance of 797.37 feet to a point of compound curvature;

Thence along a curve to the left having a radius of 400.00 feet and a chord bearing of $S57^{\circ}12'27''W$ and a chord distance of 436.19 feet, a distance of 461.34 feet to a point on the city line between Boston and Revere;

Thence along said city line $N64^{\circ}00'28''W$ a distance of 122.30 feet to a point;

Thence $N73^{\circ}05'28''W$ along said city line a distance of 89.69 feet to a point;

Thence $N89^{\circ}53'03''W$ along said city line a distance of 109.48 feet to a point;

Thence $S78^{\circ}35'37''W$ along said city line a distance of 239.43 feet to a point;

Thence $S83^{\circ}20'57''W$ along said city line a distance of 190.40 feet to a point;

Thence S89°49'24"W along said city line a distance of 74.99 feet to a point;

Thence S78°09'19"W along said city line a distance of 51.51 feet to a point;

Thence N37°08'31"E a distance of 1213.43 feet to a point;

Thence N19°45'35"W a distance of 533.10 feet to a point in the center of Sales Creek;

Thence along the centerline of Sales Creek a distance of 366 feet more or less, with a tie across last course with a bearing of N86°28'54"E and a distance of 356.91 feet to a point on the southerly sideline of Winthrop Avenue;

Thence along said Winthrop Avenue S50°48'13"E a distance of 1663.00 feet to the point of beginning.

Said parcel containing 1,736,595± square feet (39.867± Acres)

Exhibit A

Plan of Premises

[See attached]

Note: To the extent that further research into the definitive municipal boundary line between the Cities of Revere and Boston, Massachusetts determines that any portion of the Leased Premises shown on the attached plan is located within the municipal boundary of the City of Boston, then such portion shall automatically be deemed to be removed from the Leased Premises. For the purpose of clarity, no portion of the Leased Premises shall be within the City of Boston.

