



October 17, 2014

Charles A. Baker, III Esq.
DLA Piper LLP
33 Arch Street, 26th Floor
Boston, MA 02110-1447

Re: October 8, 2014 Letter to the Massachusetts Gaming Commission

Dear Mr. Baker:

The Massachusetts Gaming Commission (“Commission”) received and reviewed your October 8, 2014 letter. It is unclear from your letter whether you submitted it as a concerned citizen; as the secretary of Sterling Suffolk Racecourse LLC; as a qualifier in the Mohegan Sun Massachusetts LLC Region A application, or as the attorney representing Mohegan Sun Massachusetts LLC (“MSM”) and/or Sterling Suffolk Racecourse LLC (“SSR”). Nevertheless, as the General Counsel to the Commission, I have reviewed your letter, disagree with your characterization of certain facts and disagree with your interpretation of the Commission’s regulations, especially in light of your detailed participation in the Commission’s process as a qualifier and as a representative of a former applicant in Region A. My response to the issues raised in your letter follows.

Section A: Protecting the Integrity of Gaming under the Massachusetts Gaming Act.

Section A contains a recitation of various sections of c.23K several of which contain terms defined in c.23K §2. Neither FBT Everett Realty, LLC (“FBT”) nor its principals, both of which are a principal focus of your letter, come within those defined terms. Chapter 23K speaks for itself. I disagree with your interpretation of the purpose of c. 23K § 9 (15). It is correct that § 9 (15) requires that an applicant submit the ownership interests in the land on which the proposed gaming establishment is located for the past 20 years; however it is more likely that the purpose of that section is not to require an investigation of the sellers of the land but rather to conform with G.L. c.260 §21 which provides that an action for the recovery of land shall be commenced or an entry made thereon, only within twenty years after the right of action or of entry first accrued and to ensure that title to the land is not otherwise in dispute.



Massachusetts Gaming Commission

Sections B and C: Commission's Review of Wynn's Suitability Relative to the Everett Parcel and Stated Owner's Execute "Confirmation of Representation" Document.

In section B you describe the documents provided by the principals of FBT. The Commission issued the requirement for these documents at its December 13, 2013 meeting. The Commission did not require a particular format for the certifications and did not specify that they be provided by a particular time.¹ The documents provided by the principals of FBT were publicly available and speak for themselves.

The IEB pursued the arrangement with Mr. Russo as far as it could, disclosed that arrangement publicly and, as with all other aspects of its investigation of FBT property ownership, referred the arrangement to its law-enforcement partners. As the current indictments clearly demonstrate, those partners are fully prepared to pursue information they receive from the IEB vigorously and exhaustively. Equally important, nothing the IEB uncovered suggests that Wynn had any role in Mr. Russo's arrangement or that Mr. Russo has had or will have any role in Wynn's past or future operations. Finally, insofar as your focus on Commissioner McHugh's comments is concerned and putting aside your failure to recognize the context in which those comments were made, those comments were followed by a motion that the entire Commission, including Commissioner McHugh, adopted. The terms of that motion, not individual Commissioner comments, embody the Commission's position and those terms have been fulfilled. Beyond that, if any of those who have been indicted lied to the Commission under oath and if those lies led to their receipt of all or part of the Wynn purchase money, then the federal indictment seeks forfeiture of that money so that they do not receive any benefit from those lies.

Section D: The Appraisal of the Everett Parcel is Based on an Erroneous "Extraordinary Assumption".

You provided as an attachment to your letter a copy of a letter dated October 7, 2013 from Everett Mayor Carlo De Maria to Secretary of Transportation Richard Davey. Mayor DeMaria's letter includes as an attachment a letter referred to as an October 2, 2013 letter, but which is dated October 3, 2013 from Steven Mazzie, Chief of Police and David Butler, Chief of Department.

The 3 page letter from Mayor DeMaria to Secretary Davy characterizes the recommendation from the Chiefs as "necessary to ensure public safety" The letter from the Chiefs states "First, improved access will be needed at the intersection of Route 99 and

¹ A transcript of the Commission's December 13 meeting is currently available on the Commission's website.

Horizon Way to accommodate public safety apparatus responding to the Monsanto site. *See* Public Safety Letter of October 2, 2013 attached as Exhibit B.”²

The Mayor’s letter does not mention any particular proposed development of the Monsanto parcel. In fact, the letter predates the filing of Wynn’s RFA 2 and at least some parts of the Lower Broadway Master Plan referred to in the first section of that letter describe entirely different uses for the Monsanto parcel from those Wynn proposed. Moreover, Wynn’s RFA 2 application and subsequent MEPA filings, which are part of the extensive record upon which the Commission’s decision was based, did describe in detail access to the parcel on which the proposed gaming establishment would be located. The Chiefs’ letter makes no mention of their unwillingness to grant permits for the Wynn gaming establishment. The Commission, as you are aware from the proceedings, reviewed access in great detail.

The Colliers appraisal, which is available on the Commission’s website, speaks for itself. Although all appraisals are an art as well as a science, and different appraisers may make different judgments about the value of the same piece of property, the Colliers appraisal is thorough, rests on a sound foundation and produced a reliable result.

Most important, the Commission, as you know, held two host community meetings in Everett, the first on June 24, 2014 and the second on August 12, 2014 as well as a surrounding community meeting in Boston on March 26, 2014 to accept comments from residents of Everett and the surrounding communities. Mayor DeMaria spoke at all three meetings; Chief Mazzie spoke at the June 24, 2014 meeting. At no time did Mayor DeMaria raise the issue of Wynn’s access to the proposed site. At the June 24, 2014 meeting, Chief Mazzie stated “We feel comfortable about what we know and expect to see if a casino resort is licensed in Everett.”³ Chief Butler did not speak at any of the meetings. The Mayor and the Chiefs did not express any concern regarding access or public safety issues during their comments at any of the three public meetings.

Section E: The Indictments of Messrs DeNunzio, Gattineri and Lightbody.

Section E of your letter describes the federal and state indictments handed down regarding Messrs DeNunzio, Gattineri and Lightbody. Those indictments speak for themselves. At the September 8, 2014 Commission meeting the IEB provided an update on its investigation of the FBT matters and at the October 9, 2014 Commission meeting the Commission publicly discussed the indictments. The IEB did a thorough investigation of the FBT matters and provided its files to the appropriate federal, state and county authorities as requested by the Commission at its December 13, 2014 meeting. The indictments

² The letter which is attached is the October 3, 2013 letter from Chiefs Mazzie and Butler.

³ Transcript, June 24, 2014 page 95.

reinforced the IEB finding that Wynn had no involvement in the FBT matter and was in fact a victim of the indicted individuals' alleged actions.

Section F: Wynn Has Not Obtained the Essential MBTA parcels and Likely Cannot Do So In a Timely Fashion.

As you point out in your letter, the MBTA has instituted a Request for Responses to solicit bids for the disposition of MBTA property located at the MTBA facility in Everett. The MBTA is in the best position to manage its process and to determine what steps are necessary to make a legal disposition of the property. The Commission is confident that the MBTA will take the steps that it deems necessary to comply with all procedures, rules, regulations and statutes regarding the proposed disposition. It is premature to speculate on matters that may or may not arise from an as yet uncompleted process under the control of another agency of the Commonwealth. Should an issue arise from the disposition that impacts the Commission's statute or regulations, the Commission will address the issue at that time.

Section G: A Re-evaluation of the Risks Relating to the Viability of the Wynn Proposal under Massachusetts Law is Needed.

In section G, you raise four reasons why you believe that Wynn cannot implement its proposal for a gaming establishment under Massachusetts law. Taking out your opinions regarding what may or may not occur as well as your apparent advocacy for an as yet undisclosed client, those reasons are summarized below.

1. The Gaming Act's Suitability and Licensing Provisions and the Terms of the Commission's Approval of the Revised Land Sale Transaction Preclude Wynn From Buying the Everett Parcel from FBT Realty.

As previously discussed, the Federal indictment speaks for itself. It represents the determination by a grand jury. The indictment is the beginning of a process, the ultimate outcome of which will be determined by a trial in federal court.

Your statement that "it would be easy to conclude that people who receive almost \$2 million in option payments from an applicant and will receive \$25 million after the license award 'have an interest in the business' of the applicant/licensee" fails to appropriately describe the situation. Persons who receive option payments for the purpose of keeping a piece of real property off the market for a period of time and who then receive a negotiated purchase price when the option is exercised and the sale is closed do not have an "interest in the business" that is purchasing the property, although those persons certainly have an interest in the business' ability to move forward and exercise the option. Notwithstanding that determination, as discussed publicly by the Commission, the IEB did in fact conduct a

robust investigation of the FBT principals to determine whether they had or would have any role in Wynn operations and, after satisfying itself that they did not and would not have any such role, referred the results of that investigation to federal, state and local authorities.

Your letter goes on to state that FBT and its principals meet the definition of a vendor and as such should be required to meet the vendor licensing standards. This reading of c. 23K and the Commission's regulations ignores the basic definitions found in c. 23K and in common legal understanding. Chapter 23K §2 defines the term "gaming vendor" as "a person who offers goods or services to a gaming applicant or gaming licensee on a regular or continuing basis which directly relates to gaming including but not limited to, gaming equipment and simulcast wagering equipment manufacturers, suppliers and repairers." That same section defines "non-gaming vendor" as "a supplier or vendor including, but not limited to, a construction company, vending machine provider, linen supplier, garbage handler, maintenance company, limousine service company, food purveyor or supplier of alcoholic beverages, which provides goods or services to a gaming establishment or gaming licensee but which is not directly related to games." A quick review of the definition of "goods" as found in Black's Law Dictionary or in the Uniform Commercial Code makes clear that goods consist of personal property that is generally movable in nature. The term does not include real estate and never has. See generally, e.g., White v. Ditson, 140 Mass. 351, 360-361 (1885). "Service" is generally defined in Black's Law Dictionary as "duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter". The transfer of real property does not fit into the definitions of either "goods" or "services". Based upon the definitions in c. 23K and the common meaning of the terms "goods" and "services", therefore, it is clear that FBT and its principals are not gaming vendors or non-gaming vendors and thus are not subject to the vendor licensing requirements of c.23K or 205 CMR 134.00. Notwithstanding that, the IEB did, as noted above, conduct a robust investigation of the FBT principals pursuant to its regulatory authority and referred the results of that investigation to federal, state and local authorities.

2. Contrary to the Commission's Directive, the Price Wynn Would Pay to FBT Realty Under the Revised Land Sale Is Inflated Above the Fair Market Value For Non-Gaming Purposes.

As previously stated above, the Colliers appraisal of the property speaks for itself. You mischaracterize the statements made in the Mayor's October 7, 2013 letter and you speculate on what may or may not be included in the offer made by Wynn to the MBTA pursuant to the MBTA's Request for Responses for the disposition of the MBTA property.

3. The Indictment of FBT Realty Owners Raises Questions Regarding Wynn's Ability to Comply with M.G.L. c. 23K § 15 (3).

You advise the Commission to inquire, given the Federal indictment's forfeiture count, whether Wynn can complete its land transaction within the period required under c.23K §15 (3). The language of the indictment appears to contemplate a transfer of the property and a possible forfeiture of the proceeds from the transfer, not a forfeiture of the property itself. As such, there does not currently appear to be any reason why the existence of the indictment itself would prevent the transfer of the property in accordance with the option agreement. It is premature for the Commission to speculate at this point as to what may or may not arise from the indictment. However, if issues arise due to the indictment that impact the Commission's statute or regulations, the Commission will make all necessary inquiries at the appropriate time based upon all of the available facts.

4. Wynn's MEPA Hurdles Raise Questions Regarding Its Ability to Comply with M.G.L. c. 23K §15 (3).

Your letter makes several unsupported assumptions regarding the transfer of the MBTA property and the issues that Wynn must address in its Supplemental Final Environmental Impact Review ("SFEIR"). The MEPA process is continuing as is the process regarding the transfer of the MBTA property. It is premature for the Commission to speculate as to the issues that may arise from this process or the ultimate outcome. However, should issues arise, the Commission will review those issues and take any appropriate actions necessary based upon a full review of the facts.

Very truly yours,



Catherine Blue
General Counsel