

April 17, 2014

**BY EMAIL**

MASSACHUSETTS GAMING COMMISSION  
84 State Street  
10<sup>th</sup> 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.<sup>1</sup>

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 5<sup>th</sup> proposal previously advanced by former

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<sup>1</sup> 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).

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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.”<sup>2</sup> 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.<sup>3</sup>

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,<sup>4</sup> 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

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

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

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

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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.<sup>5</sup>

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)

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<sup>5</sup> 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.**

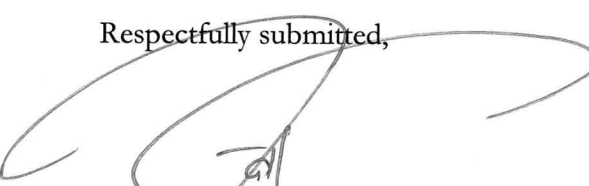
*Id.*, at 85 (Steve Wynn)

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,



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

# EX. 1: REVERE JOURNAL EDITORIAL

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*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.