

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

In the Matter of:

Crossroads Massachusetts, LLC

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PHASE I SUITABILITY DECISION

Crossroads Massachusetts, LLC (hereinafter “Applicant” or “Crossroads”) submitted a Phase 1 application for a gaming license to the Massachusetts Gaming Commission (hereinafter “Commission” or “MGC”). This decision results from the adjudicatory proceeding conducted by the Commission on November 13, 2013 at the Boston Convention and Exhibition Center, 415 Summer Street, Boston, MA. At the direction of the Chair, the entire Commission presided over the matter. At the hearing, the applicant was represented by Robert Allen and Jennifer Gilbert from the Law Office of Robert L. Allen Jr., LLP. The Investigations and Enforcement Bureau (hereinafter “IEB”) was represented by David Mackey, Esq. and Nina Pickering-Cook, Esq., from the firm of Anderson & Kreiger. For the reasons set forth below, the Commission finds by a unanimous vote that the Applicant, Crossroads Massachusetts, LLC has met its burden of proof with respect to the completed parts of its application and accordingly is conditionally issued a **POSITIVE** determination of suitability in accordance with 205 CMR 115.00. This determination is subject to certain conditions which are set forth below.

Further, the Commission hereby issues a **POSITIVE** determination of suitability to all individual qualifiers referenced in the Report of Suitability of Applicant Entities and Individual Qualifiers dated October 30, 2013.

I. Background

The application for a gaming license consists of two parts. See 205 CMR 110.01. The first, called the Phase 1 application, essentially focuses on the qualifications and suitability of the Applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, §12(a) and 205 CMR 115.00 through 117.00. The Phase 2 application focuses on the site, design, operation and other attributes of the gaming facility itself. See generally 205 CMR 118.00 and 119.00. “The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.” 205 CMR 110.01; see also 205 CMR 115.05(4) and 118.01(1) (a). This hearing involved the Phase 1 segment of the process.

The Applicant initiated the Phase 1 application process on January 15, 2013. Upon receipt of the application, the Commission instructed the IEB to commence an investigation into the suitability of the Applicant. See G.L. c.23K, 12(a). The investigation was to include all qualifiers

associated with the Applicant. See G.L. c. 23K, §14 and 205 CMR 116.00. The IEB conducted such an investigation and reported its findings and recommendations to the Commission by way of a Report of Suitability of Applicant Entities and Individual Qualifiers (hereinafter the “Report”). See 205 CMR 115.03(2).

The Report contains information relative to the following areas:

- (1) the integrity, honesty, good character and reputation of the applicant;
- (2) the financial stability, integrity and background of the applicant;
- (3) the business practices and the business ability of the applicant to establish and maintain a successful gaming establishment;
- (4) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
- (5) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;
- (6) the suitability of all parties in interest to the prospective gaming license, including affiliates and close associates and the financial resources of the applicant; and
- (7) whether the applicant is disqualified from receiving a license under G.L. c.23K, §16.

“All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.” 205 CMR 115.01(2); see also G.L. c.23K, §13(a). “Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be ‘strong, positive and free from doubt’, and ‘full, clear and decisive.’” Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 871 (1975) (internal citations omitted).

A copy of the Report was provided to the applicant along with a notice of this adjudicatory proceeding. See 205 CMR 115.04(1). The adjudicatory hearing was noticed for and convened on the Commission’s own initiative on November 13, 2013. See 205 CMR 115.04(3). Karen Wells, the Director of the Bureau, appeared and testified at the hearing on behalf of the Bureau. Scott Butera, Rodney Butler and David Nunes appeared and testified on behalf of Applicant. Further, Jackson King, General Counsel to the Mashantucket Pequot Tribal Nation, appeared and provided information to the Commission. All witnesses were duly sworn and found to be credible.

II. Exhibits

The exhibits identified below were taken into evidence at the proceeding without objection. All exhibits were considered, in conjunction with witness testimony, in reaching the final decision.

IEB Exhibits

EXHIBIT 1: Notice of Adjudicatory Proceeding for Crossroads Massachusetts LLC

- EXHIBIT 2: Memorandum Regarding Adjudicatory Proceedings for Crossroads Massachusetts LLC
- EXHIBIT 3: Redacted Cover Letter to MA Gaming Commission from Bureau Director Karen Wells, regarding the Suitability Investigation for Crossroads Massachusetts, LLC Applicant for a Category 1 Gaming License dated October 31, 2013
- EXHIBIT 4: Redacted Suitability Report of Applicant Entities and Individual Qualifiers for the Applicant prepared on behalf of the Bureau dated October 30, 2013
- EXHIBIT 5: Sworn Transcript of David Nunes
- EXHIBIT 6: Letter from Robert Allen to Commissioner Gayle Cameron dated February 26, 2013 concerning assignment of interests and reassignment of same between Ajax Gaming Ventures LLC and WG-Massachusetts (with attachments)
- EXHIBIT 7: Letter from David Nunes to Richard Villani, Town Administrator for the Town of Milford dated April 3, 2013
- EXHIBIT 8: Sworn Transcript of Scott Butera
- EXHIBIT 9: MP Tribal Council Resolution Number TCR030413-01 (referred to as Resolution 413)
- EXHIBIT 10: MP Tribal Council Resolution Number TCR061913-01 (referred to as Resolution 913)
- EXHIBIT 11: Foxwoods MA, LLC Operating Agreement
- EXHIBIT 12: Sworn Transcript of Rodney Butler
- EXHIBIT 13: US Attorney's Office Press Release dated January 3, 2013 concerning indictments against Steven and Michael Thomas
- EXHIBIT 14: Stipulation of Offense Conduct signed by Steven Thomas
- EXHIBIT 15: Sworn Transcript of Crystal Whipple
- EXHIBIT 16: Hartford Courant Article
- EXHIBIT 17: Email re: Interchange Issue

Applicant Exhibits

None.

III. Findings and Discussion

The Report contains a description of the investigation conducted by the IEB and detailed findings of fact. The Commission generally adopts the findings of fact therein though certain facts, particularly those that were elucidated at the hearing, are set forth below for purposes of discussing the specific areas of focus at the hearing.

There were five issues that the IEB recommended be addressed by the Applicant at the hearing. Each of the issues was addressed as recommended: (1) the inability of the Applicant, as of the date of this decision, to identify its planned majority owner and financial source, (2) the suitability of the Applicant's principal organizer, David Nunes, (3) the potential impact on Applicant's suitability given the information in the report regarding Michael Thomas, Steven Thomas and Anthony Beltran, and (4) the business ability of the Applicant to run a successful gaming operation in Massachusetts given its difficulty in finding an additional equity partner and

financial source and the current debt load and declining revenues of the proposed operator, and (5) the legitimacy of the provision in the operating agreement for Foxwoods MA, LLC that the entity has exclusive and irrevocable control over the proposed gaming enterprise.

The Commission finds that the evidence collectively demonstrates that, subject to the conditions identified below, the Applicant, as presently constituted, has met its burden of proving its qualification for licensure by clear and convincing evidence. In support of this conclusion we provide the following analysis.

A. Suitability of Individuals

It is important to clarify the manner in which determinations are made as to the suitability of individual qualifiers; that is, how one's integrity, honesty, good character and reputation are evaluated. As the Commission has noted in past decisions, the New Jersey Casino Control Commission has best described the standard for evaluating the good character, honesty and integrity of an individual applicant. We look to that standard for guidance. In *In re Bally's Casino Application*, 10 N.J.A.R 356, 393 (1981), the New Jersey Casino Control Commission stated:

The law requires us to judge each applicant's character. We find this a most difficult task for several reasons. First "character" is an elusive concept which defies precise definition. Next we can know the character of another only indirectly, but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a [person's] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry.

In employing the principles articulated in the *Bally's* decision we find that the individual qualifiers identified in the Report have satisfactorily demonstrated their good character, honesty, and integrity. Based upon the factual findings contained in the Report, we find that each has satisfied their burden of proving their suitability. We make the following specific observations, however, relative to certain of the qualifiers.

In the context of evaluating the Applicant's overall suitability, it is noteworthy that Scott Butera will play a critical role in this project. Mr. Butera's successes in the gaming industry are clear and impressive. Further, his efforts in coordinating the restructuring of the debt load of the Mashantucket Pequot Gaming Enterprise¹ ("MP Gaming Enterprise") are laudable. The

¹ The Mashantucket Pequot Gaming Enterprise ("MP Gaming Enterprise") is an unincorporated instrumentality of the Mashantucket Pequot Tribal Nation. The MP Gaming Enterprise is the gaming arm of the tribe. The Mashantucket Pequot Tribal Council members serve as the managers of the MP Gaming Enterprise. The MP Gaming Enterprise does business as and operates the Foxwoods Resort Casino in Ledyard, Connecticut.

‘turnaround artist’ moniker given him by others appears to be an apt title. In considering his body of work and extensive experience in the gaming industry, his forthright testimony before the Commission, and the magnitude of his responsibilities within Crossroads, the Commission finds that Mr. Butera’s involvement in the process is a tremendous asset to the Applicant. That is, in the context of an Applicant that has ridden and is presently riding some ebbs and tides; he is the proverbial rising tide that lifts all boats.

David Nunes has been described as the moving force in the initiation and development of this project. He is presently serving as the Chief Development Officer of Crossroads. His duties essentially consist of engaging in community relations and fund raising for the project. Over the course of the application process he has been involved in some turbulent episodes. Further, as the Report indicates and was discussed at the hearing, Mr. Nunes conveyed certain information to the IEB during the course of the investigation that may have been far too preliminary in nature to have been fairly reported as accurate. Developing a trusting relationship between regulator and the regulated is a crucial element in the successful oversight of a gaming establishment. To that end, any incomplete or inaccurate comments made by Mr. Nunes to the IEB that would tend to erode that type of relationship are of concern to the Commission. To his credit though, we find that Mr. Nunes acknowledged his shortcomings and adequately answered the questions posed to him at the hearing. Nevertheless, when viewed in the context of his body of work over the years that have led the Applicant to this point, and in considering his present role within Crossroads, we find that the concerns do not alter our determination as to his suitability.

B. Financing of the Project

On the issue of the Applicant’s inability to obtain its additional equity and debt financing as of the time of the hearing, the Commission accepts the testimony of Mr. Butera and Chairman Butler regarding their efforts to date. Essentially, they explained that the difficulty in securing the necessary financing is largely attributable to a number of factors including: (1) the need for MP Gaming Enterprise to complete the restructuring of its debt load in order to make it a more attractive investment partner (the restructuring was completed on July 1, 2013), and (2) the need to execute a Host Community Agreement with the Town of Milford (an agreement was executed on September 9, 2013 following a thorough review process by the Town). Now that those issues have been resolved, both Mr. Butera and Chairman Butler testified, and the testimony was supported by the Applicant’s attorney, Mr. Allen, that the consummation of such additional equity and debt financing is imminent. They reported that the negotiations with the prospective financiers were ‘well advanced’ and that such financing is likely to take one of two essential forms. It could either be in the form of equity financing from a private equity fund to be supplemented by secured debt funding or it could be in the form of a sale-lease back structure in which funding for the real estate portion of the project would be provided by a publicly traded company and supplemented with debt funding from that same entity. Each scenario, as described at the hearing, appears to be plausible and, as described, would likely provide the Applicant with sufficient capital to proceed with the proposal described in the Report.

The Commission finds, however, that such financing is essential to the Applicant’s ability to build and operate the project and proceed to the RFA-2 phase of the licensing process. The Commission must review the suitability of the financial source of such additional equity and debt

financing. The time necessary to perform that review is dependent upon the identity and structure of the equity and debt financing partners. Thus, as a condition of this positive determination of suitability the Applicant must provide the Commission with the identity and structure of the additional debt and equity partner in sufficient time so that the IEB can complete its background investigation and the Commission can issue a positive determination of suitability of the financing sources no later than December 31, 2013, the date the RFA-2 application for Category 1 applicants is due. If the Commission cannot complete its review by December 31, 2013, the Applicant will not be allowed to file an RFA-2 application.

C. Individuals associated with the Mashantucket Pequot Tribal Nation

Based on the public attention paid to the criminal histories of three individuals associated with the Mashantucket Pequot Tribal Nation we think it important to address the subject in this decision. It is worthy of note, however, that none of the individuals in question are qualifiers to the Applicant. That is, none of them have a direct financial interest in the Applicant and none of them have the ability to exercise control or provide direction to the Applicant. See G.L. c.23K, §14 and 205 CMR 116.00. The consideration of these issues is relevant to the suitability consideration though, to the extent that it bears on the decision making of Chairman Butler and Ms. Whipple as they will be members of the Board of Managers of Foxwoods MA, LLC.²

The Commission questioned Chairman Butler in detail regarding the issues pertaining to each individual and the due diligence process undertaken by the Mashantucket Pequot Tribal Council regarding each individual and their role in the tribal organization. Michael Thomas and Steven Thomas have no current role in the tribal organization and will not have any role in the operation and management of the Applicant. Anthony Beltran, though presently involved in the tribal organization, will have no role in the operation or management of the Applicant. Furthermore, based on their respective criminal histories, it is unlikely at best that any of them would qualify for licensure for employment at any Massachusetts gaming establishment. See G.L. c.23K, §§16 and 30. The Commission finds that Chairman Butler was truthful, candid, and forthright in his acknowledgement of the matters relating to these individuals.

In the cases of Michael Thomas and Steven Thomas, it is noteworthy that these were essentially elected tribal officials, not individuals whom the Tribal Council employed. As such, to some extent it would be unreasonable to associate their actions to the decision making abilities of Chairman Butler or Ms. Whipple. Furthermore, we must view these situations with deference to the sovereignty and will of the Mashantucket Pequot Tribal Nation. In consideration of these factors, in conjunction with the fact that these individuals are not qualifiers to the Applicant, we do not make any negative findings against the Applicant in the context of overall suitability, or against Chairman Butler or Ms. Whipple.

We take a slightly different approach to our review of the Anthony Beltran matter. Mr. Beltran was convicted of some serious, violent crimes. It is fair, we think, to question the wisdom of

² Foxwoods MA, LLC is wholly owned by MP Gaming Enterprise and was created solely for the purpose of managing the interests of MP Gaming Enterprise with respect to the proposed Massachusetts resort casino project. Foxwoods MA, LLC is managed by a Board of Managers consisting of Chairman Butler, Mr. Butera, and Ms. Whipple.

employing such an individual in the position of chief of staff to the tribal government; a position that involves the direct oversight of many public safety entities of the government. It is important to note in this context, however, that Mr. Beltran does not have any involvement in the gaming operations of Foxwoods (MP Gaming Enterprise) or in the framework of Crossroads. Chairman Butler described the Tribal Council's review of Mr. Beltran's suitability for the position. In doing so, he articulated the tribe's repatriation efforts, its overall familial approach to its affairs, and the many positive attributes Mr. Beltran displayed when he served the Tribe in other capacities before his most recent appointment. In recognition of these considerations, in conjunction with the fact that he is not a qualifier to the Applicant and lacks any involvement with the Applicant, the Commission will not make any negative finding against the applicant in the context of its overall suitability, or against Chairman Butler or Ms. Whipple.

D. Ability to run a successful gaming operation

On the issue of the Applicant's ability to run a successful gaming operation in Massachusetts given the debt load and declining revenues of the proposed operator, the Commission questioned Mr. Butera in detail regarding how MP Gaming Enterprise developed debt issues and the restructuring of the debt. Mr. Butera stated that the debt was due to attempts to expand into other gaming markets and the general economic down turn during the 2008-2012 period. Mr. Butera explained that the Mashantucket Pequot Tribal Council, led by Chairman Butler, took the difficult steps necessary to cut its expenses; those steps included cutting distributions and benefits to tribal members, among other cost cutting measures. Mr. Butera also discussed the steps taken to renegotiate MP Gaming Enterprise's debt by extending the maturity dates and decreasing the interest rate exposure. These measures over the last 2 ½ years have created additional cash flow and have placed MP Gaming Enterprise on a much better financial footing. Furthermore, in attempting to place MP Gaming Enterprise's recent financial history in context it is important to consider the fact that MP Gaming Enterprise's equity contribution will account for less than 10% of the overall equity in the project (the remaining 90% plus will come from the other Crossroads members including the prospective new investor).

The Commission questioned Mr. Butera about the requirement that revenues earned by MP Gaming Enterprise within 150 miles of its Connecticut location be applied first to funding the MP Gaming Enterprise's outstanding debt and whether this requirement would be challenged by the additional equity and debt partners that must come into the project. Mr. Butera did not believe that the additional equity and debt partners would challenge the requirement. However, to ensure that the structure of the applicant is not substantially altered upon a new financial partner being secured conditions 2 and 6 below have been included.

On the whole, based upon the historically successful track record of MP Gaming Enterprise and the Foxwoods Resort Casino in Connecticut, the recognition of the difficult financial times faced by many during the recent economic recession, MP Gaming Enterprise's restructuring of its existing debt load, and the leadership and experience provided by Mr. Butera, the Commission finds that the Applicant has met its burden of demonstrating its ability to run a successful gaming operation.

E. The Irrevocable Delegation of Authority

The Commission questioned Chairman Butler and Mr. Butera about the resolution by the Tribal Council granting Foxwoods MA, LLC exclusive and irrevocable control over the proposed gaming operations of the proposed Massachusetts resort casino. The core issue is whether the “wall” Foxwoods MA, LLC creates between MP Gaming Enterprise (which is managed by the Mashantucket Pequot Tribal Council) and the Applicant’s Massachusetts gaming operations is firm and unyielding. It is important to recognize that by virtue of the “wall,” members of the Tribal Council are not Applicant qualifiers and accordingly are not subject to the Commission’s comprehensive background investigation. As such, it is critical that the “wall” not be illusory.

Chairman Butler, Mr. Butera, and Attorney King explained the irrevocable delegation of authority given to the three members of the Board of Managers of Foxwoods MA, LLC. They made note that this arrangement, commonly referred to as the ‘Colony Capital’ structure, is not unique in the arena of Indian tribes engaging in commercial gaming. The irrevocable authority was granted by resolution of the Mashantucket Pequot Tribal Council. Chairman Butler also explained the relationship between Foxwoods MA, LLC and Crossroads MA, LLC, the larger Applicant organization, and how Crossroads will have final control over the operator and the budget for the project. The Commission accepts this explanation. However, the Commission expects the Applicant to require that the “wall” remain in place as a condition of suitability and for however long the operator remains involved with the project. Though the Commission recognizes the ability of the Tribal Council to supersede the existing resolution, such an act could result in negative action being taken against the Applicant’s gaming license were it to be issued. Further, the Applicant will be required to establish an independent compliance committee to further ensure the integrity of the structure.

F. Interchange

A question was raised as to whether the Applicant had misled the public and the Commission in its reference to the inclusion of an ‘interchange’ off of I-495 in the design of the project. The Commission is satisfied with the explanation provided at the hearing by the Applicant, through its engineer, that the proposed ‘interchange’ was in actuality a collector/distributor road which serves to essentially connect the two subject roadways. It seems clear that the Applicant was not attempting to mislead the public relative to its intentions, but rather to present the proposal in a more understandable way.

IV. Conclusion

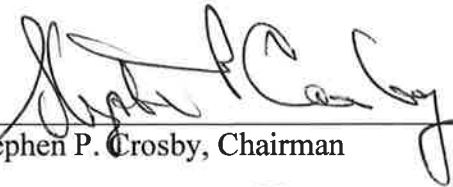
Based upon the testimony provided to the Commission at the hearing as well as the exhibits provided by the IEB the Commission, by unanimous vote, finds that the Applicant has satisfied its burden of proving by clear and convincing evidence that it meets the standards for suitability under M.G.L. 23K, §12. It is accordingly issued a positive finding of suitability. This finding, however, is conditioned upon the occurrence of the following:

1. The Applicant must obtain its additional equity financing and demonstrate an ability to obtain debt financing with partners suitable to the Commission and provide this information to the Commission in sufficient time to allow the IEB to complete its background investigation and for the Commission to issue a positive determination of suitability no later than December 31, 2013;
2. If the additional equity financing partners require or result in a change in the management structure of the Applicant as currently presented to the Commission, the Applicant must present the details of the revised structure to the Commission in sufficient time for the Commission to review and approve that structure no later than December 31, 2013;
3. Applicant must maintain the structure, authority, power and responsibility of Foxwoods MA, LLC, as described during the suitability hearing for as long as any Foxwoods entity is involved in the operation of the project;
4. Applicant must agree in writing to a complete waiver of its sovereign nation status in all activities it conducts under the authority of its Category 1 gaming license;
5. Applicant must establish an independent compliance committee and provide the Commission with the committee charter and list of committee members;
6. In addition to the requirements of condition 1, above, the Applicant is required to promptly report any changes relating to its ownership, members, managers, and/or directors; any new owners, members, managers are required to submit a PHD or BED form to the Commission and any owners, members, managers and/or directors must be found suitable by the Commission; and
7. If selected for licensure, the Applicant is required to submit a plan for compliance with the United States Currency and Foreign Transactions Reporting Act (a.k.a. The Bank Secrecy Act of 1970) that is satisfactory to the Commission.

In light of this positive determination of suitability, the Applicant will be eligible to submit an RFA-2 application in accordance with 205 CMR 118.01(1) upon satisfaction of the seven conditions.

SO ORDERED.


MASSACHUSETTS GAMING COMMISSION



Stephen P. Crosby, Chairman



Gayle Cameron, Commissioner



James F. McHugh, Commissioner



Bruce Stebbins, Commissioner



Enrique Zuniga, Commissioner

DATED: November 15, 2013