



Massachusetts Gaming Commission Meeting Minutes

Date/Time: November 16, 2022, 10:30 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 341 2862

The Commission conducted this public meeting remotely utilizing collaboration technology. The use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O'Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

1. [Call to Order](#) (00:00)

Chair Judd-Stein called to order the 402nd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Community Affairs](#) (1:00)

a. Release of MGM Springfield Bond

Chief of the Community Affairs Division Joe Delaney explained that MGM Springfield ("MGM") was requesting the release of a performance bond that was being held for their commitment to construct fifty-four market grade housing units as part of their gaming license.

Chief Delaney explained that the City of Springfield had requested MGM participate in the redevelopment of the 31 Elm Street property next to the MGM Site, and MGM negotiated to contribute a value of \$16 million to the site. He stated that the Commission required a bond be maintained until such time the payment was made, and that MGM fulfilled that payment on May 20, 2022. He stated that MGM had met its commitment and can be released from this bond.

Commissioner O'Brien moved that the Commission find that Blue Tarp reDevelopment has satisfied its initial RFA2 construction related obligations and is accordingly released from its obligation to maintain a deposit bond in accordance with Chapter 23K Section 10(a). Commissioner Hill seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

b. [Encore Boston Harbor Quarterly Report – Q3](#) (8:07)

Chief Delaney introduced Senior Vice President and General Counsel at Encore Boston Harbor ("EBH") Jacqui Krum and Executive Director at EBH Juliana Catanzariti. Ms. Krum and Ms. Catanzariti presented EBH's quarterly report, with topics including gaming revenue and taxes; lottery sales; employment; operating spending; compliance; launching *Play My Way*; Non-profit leadership retreats; and the ABCD program. The *EBH Third Quarter report* was included in the Commissioner's Packet on pages 6 through 30.

Commissioner Hill requested an update regarding opportunities opening regarding the employment of women at EBH. Ms. Krum noted that the employment of women had increased by one percent over the previous quarter and stated that EBH continues to make efforts to reach their employment goals.

Commissioner O'Brien asked what EBH does to increase the number management positions or above for women and minority employees. Ms. Krum stated that there were weekly meetings reviewing each job posted, and the candidates for those jobs. She stated that some women had left the company, and that EBH was focusing on hiring to meet the goal. Commissioner O'Brien noted that Plainridge Park Casino ("PPC") had a program for teaching and the opportunity to enter management positions, and asked if EBH had a similar program. Ms. Krum stated that EBH had a similar program that offered more management opportunities to current staff members.

Commissioner O'Brien questioned why the local spending numbers seemed low for this quarter. Chief Delaney explained that local spending goals were from the surrounding community agreement, and that they were developed prior to knowing what the spending would be. He noted that the local spending numbers were not entirely in the licensee's control. Commissioner O'Brien asked if the spending goals should be reassessed, given Chief Delaney's explanation. Chief Delaney stated that the local spending goals were in the surrounding community agreements and that the Commission would not be the entity to renegotiate the agreements, but more of a mediator if needed. Ms. Krum stated that EBH had trouble finding services to fit their needs from the more residential communities surrounding the gaming establishment.

Commissioner O'Brien sought clarification regarding the minor who had accessed and been on the gaming floor for over an hour. Ms. Catanzariti explained that the minor had borrowed another person's identification to gain access to the floor and was later identified by a server.

Commissioner O'Brien asked if the workers at EBH had sufficient access to a voucher for the ABCD Program. Ms. Krum stated that the employees have access to the program and that the program helps with maintaining the employment numbers of women employees. Commissioner Skinner expressed an interest in hearing how EBH could augment its existing management program to recruit additional women and POC into management and supervisory positions.

c. [Development of East of Broadway in Everett, MA](#) (28:01)

i. Project Introduction

Transitioning to a new agenda item, Chief Delaney provided an overview of the East of Broadway project to the Chair and Commissioners. He explained that EBH proposed the development of property on the east side of Broadway across from the casino. He noted that the Commission needed to first determine whether or not gaming could be permitted on the property across the street from the existing establishment. He stated that if the Commission permitted gaming at this property, there would be a public hearing for input and a public meeting to evaluate and deliberate on the aspects and design of the proposed project. He noted that if the project was approved, it would also require an amendment to the gaming license, and imposition of conditions as well.

Chief Delaney explained that the earlier development, approved by the Commission, did not include a gaming component, but the newly proposed development would include a poker room and sportsbook. He stated that this would require the Commission to regulate the development as part of the gaming establishment, and that the establishment would not belong to another entity as previously considered.

ii. [Project Presentation](#) (33:52)

Ms. Krum presented the proposed development, including sections on the project site; existing conditions; a rendering of the proposed structures. She explained that the structure would contain a sportsbook restaurant, a night club, a day club, a comedy club, a poker room, a theater, parking garage, and a pedestrian bridge.

Ms. Krum stated that the proposed development would create 4,000 construction jobs and also improve pedestrian safety and traffic. She noted that the anticipated permits required were from the Massachusetts Environmental Policy Act Office, Massachusetts Water Resources Authority, and local permits from the City of Everett. Additionally, the Commission would need to approve the expansion of the gaming establishment boundary.

Commissioner Hill noted that a night club was proposed, and inquired whether the current nightclub would be relocated. Ms. Krum stated that the current nightclub was being moved, and that EBH hoped the updated design would be better suited to address the issues of patrons leaving the nightclub. Commissioner Hill asked if patrons could engage in sports wagering at

both locations. Ms. Krum stated that the sports wagering bar in EBH would remain, and that additional facilities would be constructed across the street. She explained that the existing sports book bar only had three hundred seats, which was not enough to meet demand. Commissioner Hill inquired about the public safety issues associated with the pedestrian bridge and garage. Ms. Krum stated that security guards would be at each entrance and that identification would be checked at each entrance point.

Commissioner O'Brien asked what EBH had planned for the vacated nightclub space. Ms. Krum explained that there were no established plans for that space at this time but would update the Commission. Chair Judd-Stein asked if the bridge design impacted Mémoire's space more directly than earlier blueprints indicated. Ms. Krum confirmed that the bridge had been altered in this design, to enter where Mémoire was currently located.

Commissioner Hill asked why the new theater would not be subject to the ILEV agreements. Ms. Krum stated that the theater was under 1,000 seats, and the agreement was related to venues with between 1,000 and 3,500 seats. She stated that EBH had spoken with various theater groups, and they were comfortable with the proposal. Commissioner Hill expressed an interest in further discussion on this issue.

Chair Judd-Stein stated the previous design allowed for flexibility in the theater space, and asked if the theater would have set theater seats. Ms. Krum stated that there were going to be 979 theater seats and that the flexible area was going to be the gaming area. Commissioner O'Brien asked if there would be the same restrictions on the entrance into the gaming area. Ms. Krum stated that it was a standalone theater.

Chief Delaney noted that the surrounding community, host community, and interested parties could offer and submit comments at the public hearing should this project move forward. Commissioner Skinner expressed an interest in the opportunity to hear comments from the surrounding community and potentially reopen the surrounding community, and host community agreements.

Commissioner O'Brien asked if there were materials submitted that showed the boundaries of the 2013 Monsanto chemical site. Ms. Krum stated that the land discussed was not part of the Monsanto chemical site. Commissioner O'Brien requested an overlay of that site.

iii. [Legal Presentation: MGC](#) (49:41)

General Counsel Todd Grossman explained that the specific issue for consideration was whether the Commission had legal authority to allow gaming at the prospective development across the street. He explained that the law was silent when it came to the expansion of gaming operations beyond the footprint of the existing gaming establishment.

General Counsel Grossman explained that under Chapter 23K, the applicant required a favorable vote in the host community on a ballot question for the applicant to receive a gaming license. He noted that this vote occurred on June 22, 2013. He noted that the question on the ballot referred

to a specific location, the property located on Horizon Way off Lower Broadway in Everett, formerly known as the Monsanto chemical site.

General Counsel Grossman stated that there needed to be analysis of whether the voters approved of Wynn's license, or for the specific parcel of land listed on the ballot. He noted that the host community agreement had to be summarized and included on the ballot as part of the process, but the general consensus was that the location across the street was not part of the former Monsanto chemical site.

Commissioner O'Brien asked if the host community agreement was posted on the municipal website within seven days. General Counsel Grossman stated that he did not believe there to be a procedural issue with compliance on this requirement.

iv. [Legal Presentation: Mintz Levin](#) (1:01:04)

General Counsel Grossman introduced Attorney Tony Starr from Mintz Levin, outside counsel representing EBH. Mr. Starr stated that the first question for analysis was whether the Commission had authority to revise Wynn MA, LLC's gaming establishment boundary. He stated that the Commission had broad authority under General Law Chapter 23K, and the regulations promulgated thereunder. He noted that under 205 CMR 102.06 there was language that matters not specifically provided for in the regulations for the licensing and operation of gaming establishment shall be determined by the Commission. He stated that the Massachusetts Supreme Judicial Court in *Revere v The Massachusetts Gaming Commission* found that the legislature vested a tremendous amount of discretion in the Commission. He stated it was clear that the Commission had the authority to determine the boundary of a gaming establishment and revise it.

Mr. Starr explained that the second question was whether the June 22, 2013, election in Everett approved solely the license to Wynn, or also included the Host Community Agreement. He explained that the ballot included a fair and precise summary of the Host Community Agreement. He noted that under Chapter 23K, § 15, subsection 13, the applicant may not ask for a vote until the Host Community Agreement had been executed, and that it was his belief the legislature's intent was that the Host Community Agreement was part of the vote.

Mr. Starr stated that the third question for analysis was whether the April 19, 2013, Host Community Agreement, incorporated into the vote on June 22, 2013, had contemplated the expansion of the gaming establishment to the East of Broadway project as described. He stated that the Host Community Agreement did contemplate that Wynn may undertake substantial new construction on a property outside of the existing site. He then read part of the Host Community Agreement which referred to "acquired land or options to acquire land in and around the area specified in the Host Community Agreement." He explained that if after Wynn commenced operations, they began construction on an area not part of the initial construction, they were required to renegotiate their impact fee for new construction on new property. He stated that the proposed development met the definition of new property, and that there was no need for a new vote.

Commissioner O'Brien asked if the full text of the Host Community Agreement was available at election sites. Chief Delaney stated that as part of the RFA2 process, the city mailed the Host Community Agreement to every household in the community. Commissioner O'Brien asked to receive a copy of the mailing, if possible.

Commissioner O'Brien noted that this was a live issue, as the decision in March was for a non-gaming proposal. General Counsel Grossman stated that the property was determined to not be part of the gaming establishment in March, but that was prior to the new proposal which included gaming elements.

Commissioner Skinner asked if the map detailed in Exhibit A of the Host Community Agreement depicted the proposed development site. Mr. Starr stated that the pedestrian bridge would fall into that plan but clarified that the buildings and structures proposed were to the right of the street on the schematic.

Chair Judd-Stein referred to the language in the Host Community Agreement pertaining to Wynn acquiring lands in and around what was depicted in Exhibit A, and asked if the Commission should consider the proposed development. Mr. Starr confirmed and stated that the land was proximate to the site, and it would be a reasonable interpretation that "in and around the area" would include a parcel across the street.

Commissioner O'Brien asked if Wynn had completed the purchase of the land where the East of Broadway development was proposed at the time of the Host Community Agreement in 2013. Mr. Starr stated that Wynn had the option to buy the land where EBH was located in 2013, but not the development project. General Counsel Grossman added that the Commission had amended boundaries of gaming establishments previously, with the distinction that the proposed development was not connected to the boundary of the existing gaming establishment.

Attorney Mina Makarios, the Commission's outside counsel from Anderson and Krieger, stated that the Host Community Agreement stated what needed to occur between the City and EBH, but did not satisfy all of the requirements such as additional permitting. He advised that the Commissioners should focus on the statutory analysis, rather than the Host Community Agreement.

Chief Delaney stated that representatives from the City of Everett could also provide their opinions if the Commissioners desired. Commissioner Skinner stated she wanted a clearer understanding of the process prior to hearing from the city. Chief Delaney stated that after this meeting's discussion, the Commission could review and determine whether they required additional information. General Counsel Grossman stated that the interpretation of Chapter 23K, § 15 subsection 13 meant the decision was within the Commission's authority, but noted other stakeholder's perspectives may be beneficial.

Chair Judd-Stein inquired whether the Commission could give deference to the city on this issue. General Counsel Grossman stated that the Commission could give deference to the city, but that the court would look to the Commission's decision. Commissioner Skinner stated that the city's input would be valuable to the Commission's determination. Commissioner Maynard agreed

with Commissioner Skinner and stated that the directly elected officials from the community should offer their views on the proposed expansion.

Commissioner O'Brien stated that while the expansion was licensee specific, other municipalities could potentially be impacted by this decision in the future and expressed an interest in input from those communities as well. Commissioner Hill expressed appreciation for Commissioner O'Brien's concerns and asked to hear from the Everett officials.

Chief Delaney introduced the Everett Mayor's Chief of Staff, Ms. Erin Deveney, and outside counsel for the City of Everett attorney Jonathan Silverstein. Ms. Deveney noted that the Mayor had submitted a letter of support for the proposed expansion. She stated that the Lower Broadway District Urban Renewal Plan included visions for the parcels of land that were underutilized, and that the proposal envisioned better and higher uses of the land for the surrounding community.

Ms. Deveney noted that the city sent a mailer in June 2013 to all residents, which included a letter explaining the process, and a full copy of the Host Community Agreement. She stated that due to the steps taken in 2013, the city did not believe that an additional ballot question was required to amend the space, and that the city was in support of the proposed project.

Mr. Silverstein stated that as a matter of election law, any interpretation of the statute should ensure the will of the voters be furthered and prevent voter confusion. He stated that Chapter 23K, § 15 subsection 13 required the Host Community Agreement be executed prior to the vote and stated that a new Host Community Agreement must be drafted if there was a negative vote. Mr. Silverstein stated that it was implicit in the statute that the voters were not simply voting on a project, but the Host Community Agreement as well.

Mr. Silverstein stated that while the proposed project was across the street, it was still within the Broadway Urban Renewal District. He stated that when voters approved the project, they had knowledge and access to the Host Community Agreement. He stated that he did not think a reasonable person who had voted in favor of a casino on the west side of Broadway would not also vote to build on the east side of Broadway. He summated by stating that the city's view was that no new ballot question was required as the voters could understand that the project would expand based upon the language in the Host Community Agreement.

Commissioner O'Brien inquired what the standard would be to determine what an objective voter would believe to be outside of the boundary of expansion as it was described on the ballot question. Mr. Silverstein stated that it cannot be reduced to an extreme, but that land across the street connected by a pedestrian bridge would not be outside the boundary of expansion. He noted that the pedestrian bridge had been contemplated on day one and asked for by the city officials. He stated that leading up to the vote, there were well-attended public information sessions where this project was discussed in context of the Lower Broadway Master Plan Area.

Commissioner O'Brien asked why the ballot question did not refer to the Lower Broadway Master Plan Area and instead referred to the 'Monsanto chemical site.' Mr. Silverstein explained that the Monsanto chemical site was a colloquial reference that Everett citizens were more likely to recognize. He stated that it was a general reference to the property that the citizens would know the locations of, but not the bounds. Chief Delaney noted that the properties across the street, where the proposed project was to be developed, were developed by other businesses in 2013.

Commissioner Maynard inquired whether the average voter who had voted on the site in 2013 would be expected to identify the property across the street as being part of the vote. Mr. Silverstein stated that it was unclear if the answer would be yes, but that the voter would be able to define the area where the Monsanto chemical site was. He stated that he could not imagine that a voter would care what side of the street the project was on.

Commissioner Hill sought clarification as to whether the property across the street was included in the Monsanto chemical site referenced in the ballot question. Attorney Silverstein confirmed that the property across the street was not part of the Monsanto site.

Chair Judd-Stein stated that it was assumed that the voters had read the Host Community Agreement, and asked if the weight of that was enough to overcome the description of the land. Mr. Makarious stated that the Host Community Agreement referenced the land in or around the area depicted in Exhibit A, and that the language was ambiguous as to whether it included areas adjacent to the project site.

Chair Judd-Stein inquired whether voters would anticipate the expansion of the Encore Boston Harbor. Mr. Makarious stated that it could be anticipated, looking solely at the Host Community Agreement, but it was dependent upon whether the license was bound to the narrow site as it was described.

General Counsel Grossman stated that the vote was to decide whether the electorate voted in favor of the applicant's license, and that it could be interpreted as implicitly including the Host Community Agreement and location of the site. He stated that the vote was in favor of the license, and that the particulars were for the Commission to determine; by means of licensure, conditions, and a binding agreement between the licensee and the city.

Chair Judd-Stein asked if the license included terms from the Host Community Agreement. General Counsel Grossman stated that the Host Community Agreement terms were incorporated by reference. He stated an alternative interpretation would be that the description of the site, as included, was the only place the gaming establishment could be placed.

Commissioner Skinner surmised that the question was less about what the parties intended with the Host Community Agreement, but about what the voters had actually approved. Ms. Deveney stated that the Mayor of Everett had always presented the initial development of the current EBH

site as a catalyst for further development of the land in the Lower Broadway Area. She stated that the goal and vision was to transform those parcels of land with the opportunity that the proposal brings to the community.

Mr. Starr stated that it was a reasonable interpretation of the ballot question that the voters approved both the location of the establishment and the Host Community Agreement. He stated that the Host Community Agreement reflects a meeting of the minds between the applicant and the city's executive branch, with the possibility of further development.

Chair Judd-Stein stated that the Commission would need time to reflect on the information presented, and that a vote would be required prior to discussing the approval of the proposed project.

Commissioner O'Brien expressed an interest in seeing the boundaries of the Monsanto chemical site overlaid with Exhibit A, further information and perspectives from other municipalities that could potentially be in this situation, and case law discussing the determination of voter intent.

Commissioner Skinner agreed with Commissioner O'Brien and stated she would like time to reflect on the information presented in this meeting. Commissioner Hill agreed with Commissioners O'Brien and Skinner. He stated that while more information was required, he wanted this issue to be resolved quickly. Commissioner Maynard agreed.

Chair Judd-Stein asked if there had been opposition or support from the citizens of Everett to the proposed expansion. Ms. Deveney stated that the community was aware of the opportunity for this development due to discussions of the Lower Broadway Urban Renewal Plan in public meetings. She stated that there had been no opposition to the proposal to expand gaming operations. She stated that she did not believe residents would object to the proposed pedestrian bridge.

Mr. Silverstein stated that there had been public hearings, with little public participation, except for the initial opposition to a larger entertainment venue. Chair Judd-Stein asked if in 2013 there was a suggestion that the expansion would not include an expansion of gaming. Mr. Silverstein stated that at the time of the initial proposal, the expansion of gaming across the street was not included.

Commissioner O'Brien asked for a copy of the mailer that was sent to residents in 2013 with the Host Community Agreement attached. Chief Delaney stated he had emailed the mailer to the Commission earlier this morning.

Mr. Makarious clarified that there were two relevant terms in the Host Community Agreement, "property in and around the project site," and property identified as "new property." He noted that the property in and around Exhibit A that had options to purchase, and that the new project site was new property that had been acquired later.

Chief Delaney added that the Monsanto chemical site was not the only property that EBH had built on, and that Wynn LLC acquired other properties as well. Chair Judd-Stein asked if the land across the street had been acquired at the same time. Commissioner O'Brien noted that at least one of the sites across the street had not provided Wynn with a purchase option in 2013.

Mr. Starr stated that it was Wynn's perspective that the land should be considered in and around the area depicted in Exhibit A. He stated that the "new property" designation arises when development goes beyond the project site.

Mr. Silverstein stated that Wynn had actively looked at assembling land in the area, but had yet to acquire it in 2013, which is why the language included the term "will acquire". He stated that the city's perspective was that the project site was whatever could be developed as part of the initial project per the Host Community Agreement, which could have included the land across the street. He stated that the project site could have included the land, had they assembled the land prior to the filing of their phase-two application. He explained that the land was not assembled at the time, and therefore it should be considered "new property."

Commissioner Skinner asked if the new property referenced was outside of the area referred to as the project site plan. Mr. Starr stated that there was a temporal aspect, if the substantial new construction were not part of the site as of the date Wynn commenced operations in June of 2019 it would be new property. He stated that any new construction away from the project site at the time of gaming operation was new property.

Mr. Silverstein stated that under the Host Community Agreement, the parties recognized that the project may change, including any increase to the project site, and that post-opening, there may be new property. Chair Judd-Stein stated that the focus would be to get the information requested by the Commissioners and reflect on the information presented. She noted that she would like the legal analysis memorialized in writing.

4. [Other Business](#) (2:45:08)

Hearing no other business, Chair Judd-Stein requested a motion to adjourn.

Commissioner O'Brien moved to adjourn. Commissioner Skinner seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated November 10, 2022
2. [Commissioner's Packet](#) from the November 16, 2022, meeting (posted on massgaming.com)