

**REMARKS OF SHEFSKY & FROELICH LTD.
BEFORE THE MASSACHUSETTS GAMING COMMISSION**

SEPTEMBER 11, 2012

Introduction:

Thank you for inviting us to speak with you today, we appreciate the opportunity to discuss:

- our engagement with the City of Springfield (the “City”);
- explain to you the process the City expects to engage in to select one or more casino developers with whom to negotiate a host community agreement and to present to the City’s voters for approval; and
- dispel any appearance of any conflicts of interest relating to our Firm’s representation of the City.

Our Engagement:

- As this Commission has previously recognized, the Massachusetts Gaming Act (“MA Act”) grants to host communities significant authority.
- Specifically, Section 15(8) of the MA Act requires that an applicant “*provide to the Commission a signed agreement between the host community and the applicant setting forth the conditions to have a gaming establishment located within the host community.*” Each host community is free to determine with whom it will negotiate a host community agreement and each host community agreement must be approved by the affirmative vote of the voters of each host community.
- The Commission has, on several occasions, held various public meetings and forums in an effort to educate host communities and to prepare such communities for the coming of the casino industry. At each of these meetings and forums, the Commission has sent a very clear message – host communities must be proactive. The casino developers are experts in their field, so it is important for the host communities to “*level the playing field*” by engaging experts of their own. That is exactly what Springfield has done.
- In June 2012, the City of Springfield issued a Request for Proposals (“RFP”) for advisors to assist the City in matters relating to negotiating a host community agreement. We, along with others, responded to the RFP and we were ultimately selected by the City to serve as its outside advisor.
- We were selected by the City because of our expertise in the gaming industry generally, and, in particular, because of our expertise in assisting cities in NEW gaming jurisdictions. In particular, we have recently represented the following entities in connection with host community agreements:

- ***Taunton, MA.*** Most recently, we represented the City of Taunton, MA in negotiating its Intergovernmental Agreement with the Mashpee Wampanoag Tribe.
- ***Detroit, MI.*** When the voters of the State of Michigan approved three land-based casinos to be located in the City of Detroit, we were hired to assist the City in selecting the three casino developers. The Michigan Gaming Act, similar to the MA Act, required that the three casino developers in Detroit enter into an agreement with the City of Detroit prior to applying for the gaming license. In Detroit we advised the City on constructing a two phase RFP selection process for the City to use to select its three casino developers and then, negotiated, on behalf of the City, the three host community agreements.
- ***Chicago and Rockford, IL.*** In Illinois, we have been engaged to represent the Cities of Chicago and Rockford in anticipation of the passage of the Illinois Gaming Expansion Bill. Again, similar to Michigan and Massachusetts, the gaming bill anticipates that the casino developer will enter into a host community agreement with the host community prior to applying to the Illinois Gaming Board for licensure. We have advised these cities on an RFP process for selecting casino managers and developers.
- In addition to representing the above cities, we have also represented several states including Colorado, Louisiana and Michigan on gaming matters and have represented casino developers, suppliers and vendors and financiers of casino projects. As such we have an in-depth understanding of *all aspects* of the casino industry and believe we can provide valuable insight to the City of Springfield.

The Springfield Process:

- When engaged by the City, we met with Mayor Sarno and his team and discussed various alternatives for selecting casino developers and strategies for negotiating a host community agreement(s). Upon the conclusion of these discussions, the City determined that it would conduct an RFP process to select one or more casino developers with whom to enter into a host community agreement.
- In particular we discussed the alternative of negotiating host community agreements with all casino developers. The City’s administration determined that such approach presented a number of issues, however, including:
 - Voter Confusion – e.g., Would the City have to schedule multiple votes on multiple ballot questions or would all be voted on at once? Would voters understand which host community agreement and casino developer they were being asked to vote on?
 - Lack of Competition – if all proposers had the opportunity to negotiate a host community agreement would casino developers be incented to put their “best foot” forward so that the City would receive the “best” proposal?

- Use of Scarce Resources and Time Concerns – if the City submitted several host community agreements, the City would be spending time and resources negotiating with a casino developer for a casino project that may not be the “best” proposal for the City; and the Commission would also be spending its time and resources reviewing applications from multiple applicants when only one will be licensed.
- Based on our prior experiences, we believe the RFP process is a favorable approach.
- As previously mentioned, our Firm, in fact the same team as was selected by the City of Springfield, was engaged by the City of Detroit to advise Detroit under the Michigan gaming act. That act is remarkably similar to the MA Act in that it required the license applicants to enter into host community agreements with Detroit as a condition for licensure.
- The Detroit process was structured as a two phase RFP. Eleven proposers responded to phase 1; from those eleven proposers, seven were selected to proceed to phase 2; from those seven remaining proposers, four were selected for further consideration with three finalists eventually named by Mayor Dennis Archer. We then negotiated host community agreements with those finalists who submitted those agreements to the Michigan gaming commission along with their license applications. All three casinos were approved and opened for business, first in temporary locations and then in permanent locations.
- From start to finish, that selection process took less than five months and culminated in Detroit having three of the most successful casinos in the country, generating over \$1.4 B of gaming revenue in 2011.
- Similarly, with respect to the proposed gaming expansion in Illinois, host community agreements are required. We currently represent both the City of Chicago and Rockford on gaming matters and have advised them that a two phase RFP process likely results in the best outcome for those cities.
- The idea behind a two phase process is simple: the first phase is a pre-qualification phase designed to attract as many qualified casino companies as possible. The goal in first phase is three-fold:
 - (1) to attract those companies that have the experience, development capabilities and financial ability to develop and operate a first class gaming establishment;
 - (2) to determine those companies that are *serious* about locating in Springfield; and
 - (3) to create a competition among interested bidders resulting in the proposers bringing their best ideas to the table.

- The first phase is intended to be a relatively quick process as the information being solicited can be readily assembled by the proposers. This first phase is important because many companies will contact a host community and express an interest in locating there; *however*, until they submit a response to phase 1 a city cannot be sure that a gaming company is serious about its intentions.
- Indeed, in addition to the four casino companies that have publicly announced an interest in locating in Springfield, we have received calls from other casino developers expressing an interest in Springfield too, and we have encouraged these developers to respond to the City's RFP. Additionally, we will send copies of the City's RFP to a full list of casino developers to ensure maximum participation.
- The second phase is more intense, comprehensive and lengthy and is designed to get the developers to sharpen their pencils and put forward their best proposals. From start to finish, the tentative timetable announced by Springfield is over three months shorter than the timetable in Detroit. We believe the City's timetable, however, is realistic because Region B is entitled to one casino license, not three.
- It has been suggested that Springfield defer its process until the gaming commission conducts its financial and probity review of license applicants. We believe the City's process, however, helps the Commission. Having worked with gaming clients in many jurisdictions, we know that the extensive vetting process of gaming commissions can take 6 to 9 months per applicant and is very costly. Had that approach been taken in Michigan, the Michigan gaming commission would have investigated eleven (11) bidders even though only three (3) bidders were selected by the City. By having the City of Detroit first select those developers that shared Detroit's vision for casino resort developments, the Michigan gaming commission only had to investigate three applicants.
- We believe that by the City selecting its "best" casino developer(s) to then apply to the Commission, the entire process of opening a casino in Western Massachusetts can be accelerated by as much as six months which is beneficial to the City and the Commonwealth in terms of obtaining jobs and revenues. Alternatively, so that the City and Commission work in tandem, the City could require as part of Phase 2 of its RFP process that proposers file the with the Commission the Commission's Phase 1 application.
- Of course, by having the host community make its selection first, there is always a risk that the gaming commission will find the applicant unsuitable resulting in a delay before a casino can get up and running. Springfield believes that the risk of a significant delay is minimal for two reasons:
 - First, the four bidders who have announced their interest in Springfield are all world class casino companies licensed in multiple jurisdictions.
 - Second, Mayor Sarno has indicated that the City may enter into host community agreements with more than one bidder, or if not, the next best bidder would be

available to enter into a host community agreement with the City resulting in minimal, if any, delay.

Conflicts of Interest:

- As has been reported in the local newspapers, our Firm has represented several casino developers including MGM and Penn National Gaming (“PENN”) – both of which are vying for a casino in Springfield. For the record, we have been transparent about our past representations of these gaming companies and others. When we responded to the City’s RFP, we noted in our response that, in Illinois, we represent MGM on routine regulatory matters before the Illinois Gaming Board relating to its 50% ownership interest in a casino located in Elgin, Illinois.
- At that time, PENN was not seeking to locate a casino in Springfield. When newspaper reports announced that PENN was interested in locating a casino in Springfield, we also advised the City that similar to MGM, we represent PENN on routine regulatory matters before the Illinois Gaming Board relating to its ownership interests in casinos located in the State of Illinois.
- We’d like to take a moment to explain our representation of MGM and PENN. The newspapers have reported that our Firm is registered as a lobbyist for PENN and MGM. This is true; *however*, the actual representation is not actual “lobbyist” work. We are not on a paid retainer from MGM or PENN as many newspapers have reported. In Illinois, for any client that we represent on matters before the Illinois Gaming Board, we are required to register as a lobbyist for that casino company. The actual work we perform for MGM and PENN is related solely to representing them on routine regulatory matters before the Illinois Gaming Board – e.g., assistance in licensing of key employees, obtaining approval of the casino’s financing structure and documents, and other compliance matters before the Illinois Gaming Board.
- In connection with such Illinois regulatory matters, in 2011, each represented less than ½ of one percent of the Firm’s revenues.
- Also, the work performed for these two entities is done by our partner, Attorney Paul Jenson. It is not performed by members of the Springfield team (being Cezar Froelich, Michael Schaller and Kim Copp).
- Furthermore, we have taken several steps as required by our ethics laws to ensure that Mr. Jenson is “*walled off*” from anything having to do with our representation of the City of Springfield and, likewise, we have been “*walled off*” from any matters relating to these companies in Illinois. What this means is that there are no communications between Mr. Jenson and members of the Springfield team regarding gaming matters in the Commonwealth and, further, Mr. Jenson does not have access to any files relating to gaming matters in the Commonwealth. This is a very common practice in law firms when any sort of conflict or appearance of a conflict arises.

- To further dispel any conflict or appearance of a conflict between Mr. Jenson's representation of MGM and PENN and the Springfield team's representation of the City, members of the Springfield team will not receive any compensation from the Firm based upon revenues of the Firm generated by Mr. Jenson's representation of MGM and PENN.
- Finally, in accordance with Massachusetts ethics laws we have filed with the City of Springfield, a DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST form as required by Massachusetts General Laws chapter 268A, §23(b)(3). This disclosure form is a public document and is filed to dispel any appearance of a conflict of interest. We have also requested an opinion from the Massachusetts Ethics Commission. We are confident that they will determine there is no conflict.
- Therefore, having reviewed the applicable standards and codes of conduct of Illinois and Massachusetts, we have concluded that no conflict of interest exists. All members of the Springfield team can perform their duties to the City objectively and fairly.

In closing, we believe that the City of Springfield is doing it "right." It is being proactive. It is engaging consultants to put it on a "level playing field" with the casino developers. The RFP process created for the City's selection of one or more casino developers with whom to negotiate a host community agreement is a "*tried and true*" process that has been successful in many other gaming jurisdictions and we expect that it will be successful in Springfield. In our experience this process has produced superior proposals for the host community and the state.

The City will conduct a fair and open process and will work with the Commission in doing so.