

5/20 (9)

Lili Early

From: Steve Ledoux
Sent: Thursday, May 09, 2013 11:27 AM
To: Manager Department
Subject: Fwd: Acton - Massachusetts Gaming Commission - Consent Requested
Attachments: Acton - BOS - MGC Letter re Consent (May 9, 2013) (A0194835).pdf; ATT00001..htm

For 5/20 agenda

Sent from my iPhone. Please pardon brevity or typos.

Begin forwarded message:

From: "Stephen D. Anderson" <SAnderson@AndersonKreiger.com>
To: "Steve Ledoux" <sledoux@acton-ma.gov>, "Christine Joyce" <cjoyce@acton-ma.gov>
Cc: "William L. Lahey" <wlahey@AndersonKreiger.com>, "Mina Makarious" <mmakarious@AndersonKreiger.com>
Subject: Acton - Massachusetts Gaming Commission - Consent Requested

Dear Steve:

As we discussed yesterday, I have attached a letter requesting consent from you and the Board of Selectmen with respect to A&K's representation of the Massachusetts Gaming Commission on certain matters. Because an applicant to the Gaming Commission has identified a potential site for a Category 2 gaming establishment in Boxborough, it is necessary for us to seek this consent at this time. If possible, please add this to the agenda for the Selectmen's meeting. Assuming you and the Selectmen approve it, please email a fully executed copy to me after the Board meeting, and please file a fully executed copy with the Town Clerk for her records under Chapter 268A.

As you requested, if the Town wants to seek legal advice in connection with the proposed Boxborough gaming establishment or the Town's potential status as a surrounding community, you may want to contact Attorney Jeff Roelofs at 978.462.7600 or email: jlr@roelofslaw.com<<mailto:jlr@roelofslaw.com>>.

If you have any questions, please let me know. (I am away on Monday so I am unable to attend the Selectmen's meeting that night in the event the Board has questions.)

Thanks.

Steve

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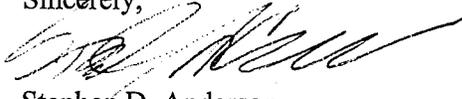
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Thank you very much for your attention to this matter.

Sincerely,



Stephen D. Anderson

ACKNOWLEDGEMENT

The Board of Selectmen and the Town Manager confirm that the scope of Stephen D. Anderson's and Anderson & Kreiger's official responsibility in representing the Town of Acton has not, does not and will not include any matters within the jurisdiction of the Massachusetts Gaming Commission. To the extent permissible under the State Ethics Act, the Board of Selectmen and the Town Manager consent to Anderson & Kreiger's representation of the Massachusetts Gaming Commission with respect to all matters under the Commission's jurisdiction (including without limitation any future potential gaming establishment in Boxborough, MA, the development and implementation of surrounding community regulations and other gaming-related matters) and they confirm that the Town of Acton currently has no direct and substantial interest in those matters given the May 13, 2013 vote of the Boxborough Board of Selectmen. To the extent permissible under the State Ethics Act, the Board of Selectmen and the Town Manager further consent that Mr. Anderson (and any other Anderson & Kreiger attorney who may be considered to be a municipal employee of Acton for State Ethics purposes) may participate in any matters for the Massachusetts Gaming Commission in which the Town of Acton does not have a direct and substantial interest.

SO AGREED: ACTON BOARD OF SELECTMEN	SO AGREED: ACTON TOWN MANAGER
_____ Janet Adachi, Chair	_____ Steven Ledoux Dated: May 20, 2013
_____ Mike Gowing, Vice-Chair	
_____ Katie Green, Clerk	
_____ David Clough	
_____ John Sonner	
Dated: May 20, 2013	

ANDERSON & KREIGER LLP

STEPHEN D. ANDERSON
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May 16, 2013

BY EMAIL

Board of Selectmen
c/o Steve Ledoux, Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Re: Massachusetts Gaming Commission: Proposed PPE Casino Resorts/Cordish Companies' Category 2 Gaming Establishment, Boxborough, MA (Updated)

Dear Steve and Members of the Board:

To avoid any potential conflict of interest, I am writing to ask the Board of Selectmen to confirm that the scope of Anderson & Kreiger's ("A&K's") and my representation of the Town of Acton has not, does not and will not include any matters within the jurisdiction of the Massachusetts Gaming Commission concerning a potential gaming establishment that may be licensed in Boxborough, MA, including without limitation licensing and surrounding community matters with respect thereto. As explained below, this question arises because A&K represents the Massachusetts Gaming Commission on certain matters and we recently learned that PPE Casino Resorts/Cordish Companies ("PPE") had proposed a Category 2 Gaming Establishment in Boxborough, a town which abuts Acton. Published reports indicate that, on May 13, 2013, the Boxborough Board of Selectmen voted not to negotiate with PPE regarding its proposed Gaming Establishment, effectively terminating that proposal. Nonetheless, to avoid any future concern, I think it appropriate to seek the consent outlined below.

Background

In 2011 the Massachusetts Legislature passed, and the Governor signed, a bill allowing the development of certain gaming establishments in Massachusetts (Chapter 194 of 2011; "An Act Establishing Expanded Gaming in the Commonwealth," or the "Gaming Act."). The Gaming Act created a new Massachusetts Gaming Commission ("Gaming Commission") to regulate the expanded gaming industry, and assume some of the regulatory functions previously assigned to other state agencies (such as the State Racing Commission). The Gaming Act defines two types

of communities with respect to gaming establishments, host communities¹ and surrounding communities.²

In 2012, Anderson & Kreiger responded to a Request for Proposals issued by the newly-formed Commission seeking legal services related to the start-up of that agency. In light of our considerable experience advising public sector clients regarding operational matters (open government and ethics requirements, the development of regulations, etc.) the Commission engaged A&K in April 2012 to assist it in various governance matters to enable the Gaming Commission to fulfill the tasks assigned to it by the Gaming Act. Among other things, a team of A&K lawyers (including me prior to May 8, 2013) helped the Gaming Commission and its in-house legal staff draft proposed Phase 2 regulations (which include provisions concerning host communities and surrounding communities), the public comment period for which has recently closed. See <http://massgaming.com/licensing-regulations/phase-2-regulations/>.

To the best of my knowledge, no gaming establishment is proposed to be located the Town of Acton, and the Town is not a potential host community for such a facility.

On May 8, 2013, I learned that PPE Casino Resorts/Cordish Companies (“PPE”), a casino developer, intended to apply for a “Category 2” gaming license (slots only) for a parcel off of I-495 in Boxborough.³ PPE had previously filed a Phase 1 Application with the Commission seeking qualification as an applicant for a gaming license, but had not designated a proposed location. The Gaming Commission’s review of Phase 1 applications is underway.⁴

On May 13, 2013 the Boxborough Board of Selectmen voted not to enter into negotiations with PPE regarding its proposed Category 2 Gaming Establishment.⁵ Absent changed circumstances, the Boxborough Selectmen’s vote means that PPE will be unable to negotiate a host community agreement with the Town of Boxborough (a necessary prerequisite for a gaming establishment) and thus will be unable to proceed with a Category 2 gaming establishment in Boxborough. In other words, the Selectmen’s vote effectively terminates PPE’s proposal at this time.

¹ “Host community” is defined as a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.

² “Surrounding communities” is defined as municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.

³ According to its website, the Gaming Commission will issue a single slots-parlor license, and it is anticipated that the slots-parlor license will be awarded by Fall 2013. For an explanation of the Commission’s expected timeline see: <http://massgaming.com/licensing-regulations/timeline/>.

⁴ For more information on the Phase 1 process, see: <http://massgaming.com/licensing-regulations/applications/>.

⁵ The minutes of the Boxborough Selectmen’s meeting are not yet posted on line. For meeting information, see http://mobile.boston.com/art/21/yourtown/news/boxborough/2013/05/boxborough_selectmen_shoot_dow?single=1&p=2.

Scope of and Limitations on Representation

Given the Boxborough Selectmen's vote on May 13, 2013, at this time under the State Ethics Act there is no particular matter pending with respect to PPE's Category 2 gaming establishment in Boxborough. However, in the unlikely event that the Boxborough Board of Selectmen were to vote to reconsider its position and enter host community negotiations with PPE, the Town of Acton would be considered to have a "direct and substantial interest" under the State Ethics Act in (a) the Gaming Commission's development of regulations defining which towns will be deemed "surrounding communities" to PPE's proposed gaming establishment in Boxborough and determining the scope of the rights that such surrounding communities would have to negotiate for and obtain mitigation benefits with respect thereto, and (b) any future licensing process for a proposed gaming establishment in Boxborough.

Given these circumstances, A&K has taken and will take the following actions to avoid any potential conflict under the State Ethics Act regarding PPE's Category 2 gaming establishment in Boxborough:

1. On the morning of May 8, 2013, upon learning of PPE's designation of Boxborough as a potential location for a gaming establishment, I immediately recused myself from any further participation regarding the Gaming Commission's draft "surrounding community" regulations, and from any participation concerning PPE's proposed Category 2 gaming establishment in Boxborough. I reported this recusal to the General Counsel of the Gaming Commission and to Acton's Town Manager. I have continued to recuse myself from these matters at all times since.
2. Going forward, in the unlikely event that the Boxborough Board of Selectmen were to vote to reconsider its position and to enter host community negotiations with PPE, then:
 - a. As Acton's Town Counsel, I would be disqualified from participating for the Gaming Commission in any further process to promulgate the surrounding community regulations⁶ or in any licensing matters with respect to PPE's revived Boxborough facility, or from receiving income derived by the firm for that work, because I am not allowed to act as attorney or agent for, or receive compensation from, another party (including a state agency) in connection with a particular matter in which the Town of Acton has a direct and substantial interest (see G.L. c. 268A, § 17(a) and (c)).
 - b. Should the Board of Selectmen decide to retain counsel with respect to any matters concerning the Gaming Commission, including without limitation the

⁶ On the Gaming Commission's Agenda for its May 16, 2013 meeting is an item for the Gaming Commission to vote on its Phase 2 regulations which vote, if passed, would finalize the surrounding community regulations. See <http://massgaming.com/wp-content/uploads/Notice-of-Meeting-and-Agenda-5.16.13.pdf> (item 7). Accordingly, the surrounding community regulations may become final without any further request from the Gaming Commission for A&K involvement in any event.

development or implementation of the surrounding community regulations and a revived PPE proposal for a gaming establishment in Boxborough, I would be disqualified from representing the Town of Acton on those matters (because I am a special state employee of the Gaming Commission); and the Board would need to find and retain special counsel to assist the Town with those matters.

- c. Under c. 268A, § 18(d), partners of a municipal employee are prohibited from knowingly acting as agent or attorney for anyone other than the Town, in connection with any particular matter in which the Town is a party or has a direct and substantial interest, and in which the municipal employee participates or has participated as a municipal employee, or which is the subject of his official responsibility. In other words, my partners could not act as attorneys for the Gaming Commission in any matter in which the Town of Acton has a direct and substantial interest, and in which I either am participating or have participated in my role as Town Counsel, or which I have under my official responsibility as Town Counsel.

As to item 2(c) (affecting my partners), even if the PPE proposal is revived, neither I nor any other A&K attorney has ever participated for the Town of Acton in any matters concerning the Gaming Commission or PPE's proposed gaming establishment in Boxborough. As to the scope of my official responsibility as Town Counsel, the Town's Board/Committee handbook confirms that "Town Counsel provides legal services to all Town departments, boards and committees upon request of the Town Manager and the Board of Selectmen." The Town Manager and the Board of Selectmen have never requested that as Town Counsel I (or A&K) advise or represent the Town in connection with any gaming-related issues.

To permit my partners (and me - subject to items 1 and 2(a) above) to continue to represent the Gaming Commission as appropriate, I respectfully ask that the Board of Selectmen and the Town Manager confirm that I have never (and A&K has never) participated for the Town of Acton in any matters concerning the Gaming Commission or PPE's proposed gaming establishment in Boxborough and that such matters are not within the scope of my (or the firm's) official responsibility for the Town. As such, I ask that the Board of Selectmen and Town Manager consent to my partners' and A&K's continuing representation of the Gaming Commission in the development and implementation of the Phase 2 regulations (including without limitation regulations concerning surrounding communities) and licensing of gaming establishments under the Gaming Act. In addition, to the extent permissible under the State Ethics Act, I ask that the Board of Selectmen and Town Manager consent to my continued representation of the Gaming Commission on all matters in which the Town does not have a direct and substantial interest under the State Ethics Act. The simplest way to confirm that would be to countersign this letter in the space provided below; you may also respond separately in writing if you prefer.