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August 25, 2011

Norman Khumalo  
Town Administrator  
Hopkinton Town Hall  
18 Main Street  
Hopkinton, MA 01748

**RE: 2011 Gaming Legislation**

Dear Norman:

We have reviewed the current draft of the Commonwealth's gaming legislation, and offer the following comments:

#### **Location of Casinos**

Unlike prior versions of the legislation, the Bill does not define a minimum distance between casinos. Instead, the Bill requires the casinos to be in three distinct regions (i.e. Region A, B, and C<sup>1</sup>) and that in issuing a license, "[t]he commission shall take into consideration the physical distance in selecting the locations of the gaming establishments as they relate to each other and how they maximize benefits to the commonwealth." Section 19(d), p. 60. The Bill also provides for one slot parlor, which may be located anywhere in the Commonwealth, but presumably will be located at an existing racetrack facility.

Assuming that all the casino development proposals are known, the effect of the Bill is that a casino will be located in either Boston, Charlton or Milford, and that applicants seeking approval in one of these locations will be in competition with each other.

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<sup>1</sup> (1) Region A: Suffolk, Middlesex, Essex, Norfolk and Worcester Counties; (2) Region B: Hampshire, Hampden, Franklin and Berkshire Counties; and (3) Region C: Bristol, Plymouth, Nantucket, Dukes and Barnstable Counties.

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### **Negotiation Fee**

The Bill proposes that, in order “[t]o provide for certain costs associated with the implementation of expanded gaming in the commonwealth,” the Commonwealth will provide \$5 million for the negotiation and execution of an agreement with a federally recognized Indian tribe to bring a casino to Region C. Section 2A, p. 2. There is no comparable provision funding negotiations with non-Indian casino developers or for casinos to be located in other Regions.

### **Definition of “Surrounding Communities”**

I previously commented that the definition of “Surrounding Communities” ought to be constructed using objectively measurable criteria so that there would be no doubt that Hopkinton would qualify. In the new Bill, the definition of “surrounding communities” has been tweaked slightly to include “municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.” (Section 1, p. 17). However, the Bill still leaves the determination of whether a community qualifies as a “surrounding community” to the Gaming Control Board (Section 4(33), p. 30), and the factors that are to be considered in making that determination (“population, infrastructure, distance from the gaming establishment, and political boundaries”) are unchanged from the prior legislation.

This Bill thus still omits any measurable standards for determining whether or not Hopkinton would be included. It is true that Hopkinton has major highways (Rt. I-495 and Rt. I-90) and smaller ones (Rt. 85 and Rt. 16) that lead to the proposed casino site in Milford. However, this fact is not necessarily dispositive in determining whether Hopkinton qualifies as a surrounding community.

The Bill provides only one sure way for a community to achieve status as a “surrounding community”: Any community that enters into a Memorandum of Understanding with an applicant prior to the submission of the application “shall be considered” a surrounding community. Section 17(a), p. 54.

### **“Advisory Services and Technical Assistance”**

In a prior draft of the legislation, provision was made for “technical assistance” to negotiating communities. This language has been deleted. Only the more general language in the listing of Commission powers is retained (it may “provide and pay for advisory services and technical assistance as may be necessary

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in [the Boards] judgment to carry out the purpose of this chapter and fix the compensation of person providing such services or assistance.” Section 4(7), p. 27).

There is no definition of either “advisory services” or “technical assistance” and, perhaps more importantly, there is no requirement that host and surrounding communities be given any advisory services or technical assistance.

### Studies and Reports

The Board is obligated to require all applicants to submit applications which include “completed studies and reports... which shall include, (i) economic to the region and the commonwealth; (ii) local and regional social, environmental, traffic and infrastructure impacts; (iii) impact on the local and regional economy, including on cultural institutions and on small businesses in the host and surrounding communities; (iv) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and (v) the estimated municipal and state tax revenue to be generated by the gaming establishment.” Section 9(13), p. 38.

It should be made clear that the existence of these studies and reports will not be deemed to obviate the need for corresponding studies and reports prepared for communities. Reports prepared by applicants often paint substantially rosier pictures than those prepared for communities.

### “Mitigation”

The Bill uses the term “mitigation” a total of 24 times without providing a definition. The term seems to be used in at least three distinct ways:

- Reduction in physical or environmental impacts from the proposed casino. See, e.g., “traffic mitigation” (Section 10(c), p. 40; Section 11(a), p. 42);
- Offset of community costs incurred in connection with the proposed casino. See, e.g., Section 15(7), p. 49, Section 61(b), p. 115 (governing expenditures from Community Mitigation Fund<sup>2</sup>);

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<sup>2</sup> The Bill suggests that expenditures from the Community Mitigation Fund can be used to address “the impact on local resources as a result of new housing construction and potential necessary changes to affordable housing laws, increased education costs and curriculum changes due to population changes in the region, development and maintenance of

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- Efforts to address adverse impacts (other than compulsive gambling), without further specification.

The Bill would be clearer if distinct terms and corresponding definitions were used.

Beyond that, we should be aware that, try as we might, we will be unable to know and mitigate all potential impacts at the time of initial licensing. Therefore, there needs to be a mechanism in place to identify and mitigate impacts as they arise. The proposed Bill does not provide such a mechanism.

### Community Mitigation Plan

The Bill requires that each application for a gaming license “identify the infrastructure costs of the host and surrounding communities incurred in direct relation to the construction and operation of a gaming establishment and commit to a community mitigation plan for those communities.” Section 15(7), p. 49. It should be made clear that these plans are not binding on communities. Specifically, they should not limit what communities can do to protect themselves and mitigate impacts pursuant to their agreement with the applicant.

The new Bill provides that each applicant must “provide to the commission signed agreements between the surrounding communities and the applicant setting forth the conditions to have a gaming establishment located in proximity to the surrounding communities and documentation of public outreach to those surrounding communities; provided, however, that the agreement shall include a community impact fee for each surrounding community and all stipulations of responsibilities between each surrounding community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.” Section 15(9), p. 49. It appears, therefore, that an applicant may not proceed unless and until such an agreement is in place. The applicant has only 30 days to complete such an agreement, commencing at the time that the community is determined to be a surrounding community. Section 17(a), p. 53.

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infrastructure related to increased population and utilization in the region and public safety impacts resulting from the facility...” Section 68(b), p. 119

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### **"Integration...into the Surrounding Community"**

The new Bill provides that the public hearing "shall provide the commission the opportunity to address questions and concerns relative to the proposal of a gaming applicant to build a gaming establishment, including the scope and quality of the gaming area and amenities, the integration of the gaming establishment into the surrounding community and the extent of required mitigation plans." Section 17(d), p.54. It appears that the term "surrounding community" is being used in this instance to mean something other than what is provided in the definition in Section 1, p. 17.

### **Promoting Local Business**

The Bill includes a presumption that promoting local business in surrounding communities is desirable and a legitimate objective of an applicant's proposal. Section 18(2), p.55. However, a surrounding community might very well decide that one good way to mitigate adverse impacts is to insulate itself from the casino and discourage cross-marketing. Indeed, it might wish to include prohibitions or restrictions of such strategies in the impact mitigation agreement.

### **Gaming Police Advisory Committee**

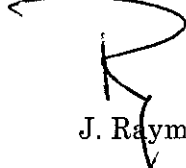
The specification of this Committee's membership (Section 68(a), p.118) does not specifically mention representatives from host and surrounding communities. A specific number of seats should be set aside for these representatives.

### **Subcommittee on Community Mitigation**

This Subcommittee does not include members from surrounding communities. Section 68(a), p.118. It should.

There is much work to do. Please contact me to discuss how we should best proceed.

Sincerely,



J. Raymond Miyares