COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
BUSINESS LITIGATION SESSION
CIVIL ACTION NO.

CITY OF BOSTON,

Plaintiff,

v.

MASSACHUSETTS GAMING COMMISSION,
STEPHEN P. CROSBY,
in his official capacity,
GAYLE CAMERON,
in her official capacity,
JAMES F. MCHUGH,
in his official capacity,
BRUCE STEBBINS,
in his official capacity, and
ENRIQUE ZUNIGA,
in his official capacity,

Defendants.

COMPLAINT

INTRODUCTION

1. The City of Boston (the "City" or "Boston") brings this action for certiorari and declaratory relief against the Massachusetts Gaming Commission and its five Commissioners (collectively, the "Commission") in connection with the Commission's award of a Category 1 gaming license to Wynn MA, LLC ("Wynn") in Region A for the development of a resort-casino.

2. Throughout the gaming licensing process, the Commission repeatedly violated and ignored the express terms of the Expanded Gaming Act (the "Gaming Act"

or the "Act") to advance Wynn's application.

3. Wynn has planned to develop a casino on a parcel of land located in Everett and in Boston known as the former Monsanto Chemical Site. Due to the location of the casino site, the City of Boston will bear the lion's share of the traffic, environmental, and public safety harms.

4. Wynn disputed that access to its site would be through Boston, promising the Commission that it would obtain access through adjacent property in Everett owned by the MTBA. Wynn, however, has failed to obtain access through Everett within 60 days of the award of the license – as required by law – leaving the sole access to the site through Boston.

5. The vast majority of casino patrons will be required to travel on Rutherford Avenue and through Sullivan Square in Charlestown. For many years, this area has been plagued by severe traffic congestion, which has adversely impacted the quality of life and safety of City residents.

6. Under the Gaming Act, Boston is a host community to Wynn's planned casino because the City provides the sole access to the site, and several of the casino's amenities are located in Boston. As a host community, the citizens of Boston had a statutory right to vote on whether to approve or reject Wynn's proposed casino.

7. Fearful that Boston voters would reject Wynn's proposal due to public safety and traffic concerns, the Commission improperly barred Boston's citizens from exercising their statutory right to vote.

8. During the gaming licensing process, Boston repeatedly asserted that it was a host community, which prompted the Commission to conduct a hearing to

determine Boston's legal status.

9. The Commission manipulated the outcome of the hearing by withholding documents from the City that had direct bearing on Boston's host community status, advocating on behalf of Wynn, and deliberating and predetermining the outcome outside the public hearing context, in violation of the Open Meeting Law and the Gaming Act.

10. As a result of the mock hearing, the Commission rejected Boston's assertion of host community status and declared Boston to be merely a surrounding community, with no right to vote.

11. During the hearing, the City challenged the validity of Wynn's application on the grounds that Wynn did not have a viable site for its casino and was legally unsuitable under the Gaming Act. Absent a viable casino site, Wynn's application could not proceed and the issue of Boston's status as a host community was moot.

12. The non-viability of the site stemmed from Wynn's contractual arrangement with the seller of the former Monsanto Chemical Site, a company known as FBT Everett LLC ("FBT Everett"). In 2012, Wynn entered into an option agreement with FBT Everett to purchase the former Monsanto Chemical Site, under which it agreed to pay FBT Everett $100,000 per month prior to the exercise of the option. In consideration for these substantial payments, which have totaled over $2 million to date, FBT Everett agreed to engage in real estate development work on the site on Wynn's behalf.

13. Well before the hearing, however, the Commission uncovered compelling evidence that one or more convicted felons had undisclosed financial and ownership interests in FBT Everett, and had attempted to defraud the Commission and the

Commonwealth by concealing their interests in the property.

14. Like all casino applicants, Wynn was required to present clear and convincing evidence of its suitability, as well as the suitability of all others with a financial interest in its proposed gaming establishment. The Gaming Act prohibits a casino license application from advancing if a convicted felon has a financial interest in the premises on which the casino will be located.

15. In light of the scheme to defraud the Commission and the Commonwealth, the option agreement between Wynn and FBT Everett for the casino site was an illegal contract, entered into by FBT Everett as a central feature of its illicit plan. The option agreement also violated public policy. As a result, it was void *ab initio*, and is invalid and unenforceable. Consequently, Wynn has no gaming establishment.

16. Given the overwhelming proof regarding the criminal ownership of the former Monsanto Chemical Site, the Commission was required to determine that FBT Everett was unsuitable, which, in turn, rendered Wynn unsuitable. Contrary to its statutory obligations, the Commission declined to disqualify FBT Everett and Wynn.

17. In so doing, the Commission jettisoned its role as an independent regulator entrusted with acting in a manner that would ensure public confidence in the integrity of the gaming licensing process. Federal and state law enforcement authorities, however, have initiated criminal proceedings against owners of FBT Everett and the former Monsanto Chemical Site, charging them with conspiring to defraud the Commission and the Commonwealth.

18. On November 6, 2014, the Commission formally awarded the Region A Category 1 license to Wynn. Under the Gaming Act, the Commission was required to

impose conditions on the license award that would ensure adequate mitigation of the adverse impacts of the operation of the casino, including total infrastructure improvements onsite and around the vicinity of the gaming establishment to account for traffic mitigation.

19. After concluding that Wynn's proposed traffic mitigation plan for Charlestown was plainly inadequate, the Commission nevertheless imposed nominal traffic mitigation conditions on Wynn that fall far short of the statutory requirement.

20. As to the impacted neighborhood of Charlestown, the City has expended considerable resources over many years to develop plans to transform the Sullivan Square area from a major traffic thoroughfare into a walkable, pedestrian-friendly neighborhood. The City's principal objectives are to diminish traffic congestion, eliminate gridlock, and improve public safety in this area.

21. The Commission's traffic mitigation conditions are wholly contrary to the City's planned use of its streets in Charlestown. The Commission was required to impose conditions that would *mitigate* traffic. This necessitated the imposition of conditions requiring Wynn to re-route casino traffic away from Rutherford Avenue and Sullivan Square. Instead, the Commission imposed conditions that will do nothing to prevent the exacerbation of existing congestion by introducing thousands of additional vehicles to the area. If the Commission was unable to devise a condition that would *mitigate* traffic, then it should not have awarded the license to Wynn.

22. As a result of the Commission's dereliction of its statutory obligations, it is directly responsible for creating a future intolerable traffic crisis that will threaten the safety of City residents and diminish the quality of life in this neighborhood if Wynn's

plans are allowed to proceed.

23. Due to the Commission's failure to fulfill its statutory mandate, the City is forced to seek judicial intervention to protect its citizens and their rights. In this action, the City brings claims for declaratory judgments under G.L. c. 231A, §§ 1 and 2 to invalidate the hearing on May 8, 2014 and revoke, vacate, and annul the Commission's predetermined decision on Boston's host community status (Counts 1-4). The City also seeks a declaratory judgment that, if Wynn's development is permitted to proceed, Boston is a host community to Wynn's proposed casino development (Count 5).

24. The City further seeks a declaratory judgment that the regulations promulgated by the Commission regarding the surrounding community arbitration process contravene the Gaming Act and thus are invalid and void (Count 6). Because the regulations are void, the City seeks a declaration that the Commission's act of stripping Boston of its statutory status as an impacted community – thereby eliminating a legal obstacle for its award of the license to Wynn – was unlawful and has no legal effect.

25. Finally, the City seeks the Court's judgment under G.L. c. 249, § 4, to annul the award of the Region A Category 1 license to Wynn (Count 7) and a declaratory judgment that the award of the Region A Category 1 license to Wynn is null and void (Count 8).

THE PARTIES

26. Plaintiff City of Boston is a municipal corporation located in the Commonwealth of Massachusetts.

27. Defendant Massachusetts Gaming Commission is an agency of the Commonwealth of Massachusetts established in 2011 by an Act Establishing Expanded

Gaming in the Commonwealth. Its offices are located at 101 Federal Street, Boston, Massachusetts.

28. Defendant Stephen P. Crosby is a resident of Massachusetts. He has been Chairman of the Commission since 2012.

29. Defendant Gayle Cameron is a resident of Massachusetts. She has been a member of the Commission since 2012.

30. Defendant James F. McHugh is a resident of Massachusetts. He has been a member of the Commission since 2012.

31. Defendant Bruce Stebbins is a resident of Massachusetts. He has been a member of the Commission since 2012.

32. Defendant Enrique Zuniga is a resident of Massachusetts. He has been a member of the Commission since 2012.

JURISDICTION AND VENUE

33. The Court has subject matter jurisdiction pursuant to G.L. c. 231A, §§ 1 and 2, G.L. c. 249, § 4, G.L. c. 212, § 4, and under Massachusetts common law.

34. The Court has personal jurisdiction over the Commission, which is an agency of the Commonwealth of Massachusetts.

35. Venue in Suffolk County is proper pursuant to G.L. c. 223, § 1 because the Commission's place of business is in Suffolk County, the City of Boston suffered harm caused by the defendants' conduct in Suffolk County, and events giving rise to this dispute occurred in Suffolk County.

STATEMENT OF FACTS

A. RELEVANT PROVISIONS OF THE GAMING ACT

36. In November 2011, the General Court of the Commonwealth of Massachusetts enacted, and the Governor signed into law, "An Act Establishing Expanded Gaming in the Commonwealth," Mass. St. 2011, c. 194 (codified in part at G.L. c. 23K, §§ 1 *et seq.*).

37. The Gaming Act provides for the formation of the Commission, which is empowered, *inter alia*, to approve and disapprove applications for gaming licenses, monitor the conduct of licensees, and conduct investigations regarding the issuance, suspension, or revocation of gaming licenses. G.L. c. 23K, § 3.

38. The Commission consists of five Commissioners, including the Chairman, who supervises and controls all the affairs of the Commission. G.L. c. 23K, § 3(a). Stephen P. Crosby is the current Chairman.

39. The declared mission of the Commission is "to create a fair, transparent, and participatory process for implementing the expanded gaming law."

1. The Casino License Application Process

40. The Act sets forth a statutory scheme governing applications for the issuance of Category 1 licenses. A Category 1 license "permits a licensee to operate a gaming establishment with table games and slot machines," commonly known as a casino. G.L. c. 23K, § 2.

41. The Act established three regions in Massachusetts. The Commission has authority to award up to one Category 1 license per region. Region A, the relevant region in this case, includes Suffolk, Middlesex, Essex, Norfolk, and Worcester Counties.

a. Phase 1

42. The Act and its regulations establish a two-phase application process for Category 1 licenses. 205 CMR 110.01. Phase 1, known as "Request for Applications Phase 1" ("RFA-1"), begins when the Commission receives an application for a gaming license. 205 CMR 110.01(2); G.L. c. 23K, § 12(a).

43. The Act also provides for the creation of the Bureau, a law enforcement agency within the Commission, which is tasked with conducting investigations into the qualifications and suitability of all applicants and qualifiers for gaming licenses, and making recommendations on applicants to the Commissioners. G.L. c. 23K, § 6(a); 205 CMR 105.01(5).

44. When the Commission receives an application for a gaming license, it must instruct the Bureau to commence an investigation into the suitability of the applicant and others, including "close associates" of the applicant, "anyone with a financial interest in a gaming establishment," "anyone with a financial interest in the business of the gaming licensee or applicant for a gaming licensee," as well as other "qualifiers." G.L. c. 23K, §§ 12(a) and 14; 205 CMR 115.03.

45. The Commission "shall require anyone with a financial interest in a gaming establishment, or with a financial interest in the business of the gaming licensee or applicant for a gaming license or who is a close associate of a gaming licensee or an applicant for a gaming license, to be qualified for licensure by meeting the criteria provided in sections 12 and 16 and to provide any other information that the commission may require." G.L. c. 23K, § 14(a).

46. In addition, the Commission is specifically empowered to "require a person who has a business association of any kind with a gaming licensee or applicant to

be qualified for licensure." G.L. c. 23K, § 4(11); 205 CMR 116.02(2).

b. Suitability Factors

47. When evaluating suitability, the Commission must consider, at a minimum, the following seven factors under G.L. c. 23K, § 12(a)(1)-(7):

> (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 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 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 section 16 . . . .

c. Suitability Disqualifiers

48. The Act also mandates denial of a gaming license application under G.L. c. 23K, § 16(a) if the applicant or any person who is connected to the applicant and is subject to a suitability determination:

> (1) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;
>
> (2) submitted a false or misleading application;
>
> (3) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license; or

(4) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.

49. Under G.L. c. 23K, § 12(b), the Bureau shall cease any further review and recommend that the Commission deny an application if, during its investigation, the Bureau determines that the applicant has failed to "establish the applicant's integrity or the integrity of any affiliate, close associate, financial source or any person required to be qualified by the commission."

50. "Only those applicants that are found by the commission to be qualified pursuant to a determination of suitability at the conclusion of RFA-1 [Phase 1] . . . shall be permitted to proceed to the second phase, RFA-2 [Phase 2]." 205 CMR 110.01(2).

d. <u>Phase 2</u>

51. The second phase, Phase 2, is known as "Request for Applications Phase 2" ("RFA-2"). 205 CMR 110.01(1). If the Bureau determines that an applicant is suitable to receive a gaming license, the Bureau shall recommend that the Commission commence a review of the applicant's entire application. G.L. c. 23K, § 12(c).

52. If the Commission also determines that an applicant and its qualifiers are suitable, the applicant then becomes eligible to submit a Phase 2 application, RFA-2. G.L. c. 23K, § 12(c); 205 CMR 115.00 through 118.00.

53. The RFA-2 focuses on the site, design, operation, and other attributes of the gaming facility. 205 CMR 118.00 and 119.00.

54. The RFA-2 requires the applicant to attest as to the truthfulness of the contents of the submission under the pains and penalties of perjury. 205 CMR 119.01.

55. The RFA-2 requires the applicant to provide "the location of the proposed

gaming establishment, including all amenities and significant structures." 205 CMR 119.01(40). When the applicant "does not presently possess an ownership interest in the location," the RFA-2 must include "an agreement, and description of its plan as to how it intends to own or acquire . . . the land where the gaming establishment is proposed to be constructed." 205 CMR. 119.01(41). This requirement embraces the established Massachusetts real estate development concept known as "site control."

56. The Gaming Act makes clear that "no applicant shall be eligible to receive a gaming license unless [it]. . . own[s] or acquire[s], within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed[.]" G.L. c. 23K, § 15(3).

2. <u>Host Community Status</u>

57. The Gaming Act defines host community as "a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment." G.L. c. 23K, § 2; 205 CMR 123.01.

58. The term "gaming establishment" is broadly defined as "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities." G.L. c. 23K, § 2.

59. The Gaming Act envisions that there may be more than one host community for an applicant's proposed casino. G.L. c. 23K, § 15(13). "[I]f a proposed gaming establishment is situated in two or more cities or towns each shall be a host community for purposes of G.L. c. 23K, and 205 CMR." 205 CMR 123.01.

60. An applicant is ineligible to receive a Category 1 gaming license unless it meets specific criteria, including providing the Commission with "a signed agreement

between the host community and the applicant setting forth the conditions to have a gaming establishment located within the host community." G.L. c. 23K, § 15(8).

61. The agreement, known as a "host community agreement," must include provisions setting forth a "community impact fee for the host community and all stipulations of responsibilities between the host community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment." G.L. c. 23K, § 15(8).

62. "[I]f a proposed gaming establishment is situated in 2 or more cities or towns, the applicant shall execute an agreement with each host community, or a joint agreement with both communities . . . ." G.L. c. 23K, § 15(13).

3. <u>Host Community Elections</u>

63. A Category 1 license cannot be granted unless each host community has voted in a public election in favor of the issuance of the license. G.L. c. 23K, § 15(13).

64. A certified and binding vote from each host community in favor of the license is a prerequisite to filing an RFA-2. G.L. c. 23K, § 15(13); 205 CMR 124.01.

65. After a host community agreement is executed, the applicant must file a written request for an election with the host community's governing body on whether the host community shall permit the operation of a gaming establishment at a specified site within the community. G.L. c. 23K, § 15(13); 205 CMR 124.02.

66. At the election, the question submitted to the voters must be worded as follows: "Shall the (city/town) of ___ permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at ___ [description of site] ___? YES __ NO __." If a majority of the voters answer the ballot question "yes," the host community shall be deemed to have voted in favor of the applicant's license.

G.L. c. 23K, § 15(13).

67. If there are two or more host communities, then the applicant must receive a certified and binding vote in favor of such a license from each host community. G.L. c. 23K, § 15(13); 205 CMR 124.02.

4. Surrounding Community Status

68. The Gaming Act defines "surrounding communities" 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." G.L. c. 23K, § 2.

69. No applicant shall be eligible to receive a gaming license unless it provides the Commission with signed surrounding community agreements with all surrounding communities. G.L. c. 23K, § 15(9).

B. WYNN'S PROPOSED CASINO IN EVERETT AND BOSTON

1. The Former Monsanto Chemical Site

70. In 2012, the City of Everett actively marketed and promoted the former Monsanto Chemical Site to casino operators as a possible site for a casino.

71. The former Monsanto Chemical Site is a heavily contaminated 37-acre parcel of land located in Everett and Boston. The only access to the property is a road known as Horizon Way, formerly called "Chemical Lane." It is located primarily in Boston, with a portion extending into Everett.

72. While marketing the property, the City of Everett knew that it was owned by FBT Everett.

73. FBT Everett was formed in 2009 to acquire the former Monsanto

Chemical Site, which it did for approximately $8 million. FBT Everett's initial owners were Gary DeCicco, a convicted felon, and Paul Lohnes, a longtime friend and former business partner of Commission Chairman Crosby.

74. Shortly after the enactment of the Gaming Act in 2011, DeCicco transferred some of his interest in FBT Everett to another convicted felon, Charles Lightbody. In addition, Dustin DeNunzio and Anthony Gattineri obtained ownership interests in FBT Everett.

2. <u>The Scheme to Defraud the Commission and the Commonwealth</u>

75. As described in Paragraph 48, the Act includes express provisions disqualifying casino applicants and others connected to an applicant if they have been convicted of a felony or other crime involving embezzlement, theft, fraud, or perjury.

76. Shortly after the enactment of the Gaming Act in 2011, the owners of FBT Everett engaged in a conspiracy to conceal Lightbody's financial interests in FBT Everett and the former Monsanto Chemical Site from the Commission and the Commonwealth, realizing that the disclosure of this information would preclude the use of the land as a site for a casino. In that regard, FBT Everett engaged in fraudulent conduct to create the false impression that only Lohnes, DeNunzio, and Gattineri were owners of, and had financial interests in, the former Monsanto Chemical Site. In fact, Lightbody and another unidentified individual referenced in a federal indictment as "John Doe" also had hidden financial interests.

77. The scheme to defraud is now the subject of a federal indictment and eleven state indictments. The federal indictment is pending in the United States District Court for the District of Massachusetts in a case entitled *United States v. Dustin J. DeNunzio, Anthony Gattineri, and Charles A. Lightbody*, Criminal No. 1:14-CR-10284-

NMG (the "Federal Indictment"). A true and accurate copy of the Federal Indictment is attached as Exhibit 1.[1] The state indictments are pending in the Suffolk Superior Court, and include charges against Gattineri, Lightbody, and DeNunzio (the "State Indictments"). True and accurate copies of the State Indictments are attached as Exhibit 2. The scheme to defraud also is described in detail in a report prepared by the Bureau on Wynn MA, LLC's suitability titled "Report of Suitability of Applicant Entities and Individual Qualifiers" (the "Bureau's Report"). A true and accurate copy of the redacted Bureau's Report dated December 6, 2013 is attached as Exhibit 3. The allegations in Paragraphs 78 to 105 are based on information set forth in the Federal Indictment, the State Indictments, and/or the Bureau's Report.

78. Lightbody openly discussed the scheme during a telephone call that he had with a Massachusetts state prisoner during the summer of 2012. This call and several others between Lightbody and the state prisoner were recorded by prison officials. Lightbody boasted that FBT Everett incorporated as a "blind LLC" precisely to conceal his ownership:

> Ah, yeah, well I put it in an LLC so my name don't show up because, um, between you and I, I think I told you my partner was like, you know, if you take your name off it and just put it in a blind LLC. I said listen, I have no problem with that . . .
>
> I said I'll take my name off. I have no problem and now actually it works out cause with these casinos, they see my name in there, they ain't gonna like it . . .
>
> So, I will never show up on it, which is a good thing.

79. In November of 2012, the City of Everett and Wynn planned to meet to discuss FBT Everett's property as a possible site for a casino.

[1] The exhibits cited in this complaint are included in the Appendix to Plaintiff City of Boston's Complaint (4 volumes), which is filed with this complaint.

80. The City of Everett's only contact at FBT Everett was Lightbody. The City of Everett knew that Lightbody had a financial interest in FBT Everett, and believed that Lightbody would benefit financially if the former Monsanto Chemical Site was sold to a casino developer.

81. Lightbody, who held an ownership interest in FBT Everett and a financial interest in the property, was informed about the upcoming meeting, and closely tracked the ensuing meetings and negotiations between Wynn, the City of Everett, and FBT Everett.

82. The initial meeting between the City of Everett and Wynn was the topic of a telephone call on November 13, 2012 between Lightbody and the Massachusetts state prisoner. Lightbody told the prisoner that "Steve Wynn is supposed be coming down tomorrow [November 14, 2012] at 10:30 to talk to the Mayor." They also discussed FBT Everett's prior negotiations with the Hard Rock Hotel and Casino, which had stalled. Lightbody said that he was pleased that Wynn was interested in the property. In response to the prisoner's statement that Lightbody's "earning potential might get bigger than what, what it was [with Hard Rock]," Lightbody stated, "That's what I'm hoping for, you know what I mean."

83. After the call, in November 2012, Wynn representatives met with the City of Everett at Everett City Hall and viewed a map of the former Monsanto Chemical Site.

84. Later that day, Wynn met with DeNunzio, an alleged owner of FBT Everett, at the site. At that meeting or shortly thereafter, Wynn also met with Lohnes, another alleged owner of FBT Everett.

85. After Wynn's initial meeting with the City of Everett, Wynn calculated a

possible purchase price for the former Monsanto Chemical Site. Stephen A. Wynn, the Chief Executive Officer of Wynn Resorts, Limited, then planned to visit the site on Wednesday, November 28, 2012.

86. On Monday, November 26, 2012, two days before Mr. Wynn's planned visit, Lightbody had another recorded telephone call with the prisoner. Lightbody told him that Mr. Wynn was coming to Everett on Wednesday, November 28, and that his visit would be "in the news." Lightbody further stated that Mr. Wynn was going to "meet with the Mayor . . . and my partners over at the site." On Wednesday, November 28, 2012, Mr. Wynn toured the property site.

87. On November 27, 2012, Wynn signed a Memorandum of Agreement ("MOA") with FBT Everett. The MOA included an option for Wynn to purchase the property for $75 million with additional payments of $100,000 per month until the closing, thereby enabling the owners of FBT Everett to immediately realize significant revenue.

88. On December 5, 2012, Lightbody had a recorded call with the state prisoner concerning Wynn's proposed casino. Lightbody stated, "We've got Steve Wynn in our corner." He later explained, "Wynn is supposed to start paying up $100,000 a month starting December 14 . . . and then we sign a purchase and sales with him, it's not binding yet. But it will be when they give us their first check for 75 million."

89. A few days later, on December 11, 2012, Lightbody had another recorded call with the prisoner regarding the deal between FBT Everett and Wynn. Lightbody explained that, as a convicted felon, his identity had to be concealed because Wynn could not obtain a gaming license if the Commission learned that he would profit from the deal:

> So my attorney, he calls my partners and myself and we have a little conference call and says, listen, do you know that this Commission, when there's a casino . . . not only them but whoever's selling the land cannot have a criminal record . . . So what they're saying is any proceeds that come from a sale of a casino, or a casino, cannot go to a felon . . . But the only good thing is, nobody knows who's involved, which makes it good.

The prisoner then instructed Lightbody, "You need to double-blind it. You need to triple blind it." Lightbody replied, "Well, that's what we're doing."

90. On December 19, 2012, Wynn, a Wynn affiliate, and FBT Everett entered into option agreements regarding the former Monsanto Chemical Site.

91. Under the Option Agreement, Wynn had the right to purchase a parcel comprised of approximately thirty acres of land in Everett at any time during the 24-month period following the execution of the agreement. The Option Agreement described the land as property bounded by Chemical Lane, now called Horizon Way. A true and accurate copy of the Option Agreement is attached as Exhibit 4.

92. The Option Agreement pertained to the site for Wynn's proposed casino. In consideration for the option, Wynn agreed to pay $100,000 per month to FBT Everett during the 24-month option period that commenced on December 19, 2012.

93. On December 20, 2012, the day after the parties signed the Option Agreement, Lightbody had another recorded call with the prisoner. Lightbody reported, "We signed the deal yesterday." According to the Bureau's Report, later that month, Lightbody submitted a mortgage application stating that he owned a 13.5% interest in the "Monsanto Property" that would be worth $10 million within one year due to "Wynn's purchase."

94. In December 2012, DeNunzio and Lightbody arranged to have documents prepared to falsely indicate that Lightbody had transferred his interest in FBT Everett to

Gattineri in exchange for a $1.7 million promissory note.

95. On January 10, 2013, Lightbody told the prisoner that Wynn would file its casino license application on January 14 and that Wynn would pay the $400,000 casino license application fee. On January 14, 2013, just as Lightbody had predicted, Wynn filed its RFA-1 and paid the application fee.

96. On or about January 28, 2013, DeNunzio fraudulently arranged for Lightbody and Gattineri to sign a Memorandum of Transfer and Promissory Note, which had been backdated to December 14, 2012.

3. <u>The Bureau's Discovery of the Scheme to Defraud</u>

97. After Wynn filed its RFA-1, the Bureau conducted an investigation of Wynn's suitability, which included interviewing the alleged owners of FBT Everett. As noted in its Report, the Bureau was "statutorily required" to investigate the sellers of the land on which Wynn proposed to construct its gaming establishment, as part of its investigation into Wynn's suitability.

98. Indeed, under G.L. c. 23K, § 6(a) and 205 CMR 105.01(5), the Bureau is required to "conduct investigations into the qualifications and suitability of all applicants, qualifiers and other persons required to be registered or investigated in connection" with a gaming license.

99. The Bureau obtained evidence of the tape-recorded calls between Lightbody and the state prisoner, and learned of Lightbody's undisclosed financial interest in the proposed casino site.

100. As part of its investigation, the Bureau interviewed DeNunzio, Gattineri, and Lightbody. The interviews focused on the key issue of the identities of the true owners of FBT Everett and those with a financial interest in the former Monsanto

Chemical Site.

101. DeNunzio, Gattineri, and Lightbody all misled the Bureau about Lightbody's and John Doe's financial interests in the former Monsanto Chemical Site. They all falsely told the Bureau that Lightbody had transferred his interest in the land to Gattineri in 2012, and that only DeNunzio, Gattineri, and Lohnes would benefit financially from the sale of the land to Wynn.

102. The Bureau further learned that on or about July 13, 2013, after it had interviewed DeNunzio, DeNunzio backdated the phony Memorandum of Transfer and Promissory Note from December 14, 2012 to August 15, 2012. The Bureau also discovered that later on or about July 13, 2013, DeNunzio met with Lightbody, who then signed the Memorandum of Transfer, falsely certifying that he had agreed to transfer his financial interest in FBT Everett to Gattineri as of August 15, 2012.

103. The Bureau further learned that on or about July 10, 2013, Gattineri signed a Memorandum of Transfer and Promissory Note, fraudulently certifying that he had agreed to purchase Lightbody's interest in FBT Everett in exchange for a $1.7 million promissory note on or about August 15, 2012.

104. By the end of July 2013, the Bureau had uncovered compelling evidence that Lightbody, and possibly John Doe, had concealed financial interests in FBT Everett and the former Monsanto Chemical Site. The evidence established that the purported owners of FBT Everett and Lightbody were attempting to perpetrate a fraud on the Commission and the Commonwealth, and that they had attempted to obstruct the Bureau's investigation.

105. The evidence included Lightbody's tape-recorded conversations, the

fabricated documents regarding Lightbody's financial interest, a host of false and misleading statements by the alleged owners of FBT Everett, as well as other evidence of fraud.

4. The Dispute Between Wynn and the City of Boston Regarding Boston's Status as a Host Community

106. As the Bureau was uncovering the scheme to defraud, a dispute developed between the City of Boston and Wynn regarding the City's status as to Wynn's proposed casino project. Boston informed Wynn that it was a host community because the only access to the proposed site is Horizon Way, which is in Boston. From Boston's standpoint, this meant that the citizens of Boston had a right to vote on whether or not Wynn could develop a casino at the proposed location.

107. Wynn argued that the City was merely a surrounding community, claiming that its proposed casino would be located entirely in Everett. In that regard, Wynn claimed that its proposed gaming establishment would use access and egress points located solely in Everett. Wynn refused to conduct discussions with the City unless it conceded that it was not a host community.

108. Wynn's plan required it to acquire property or the right to use property owned by several abutters in Everett, including the Massachusetts Bay Transportation Authority ("MBTA"). Wynn notified the City that it had abandoned its proposed use of Horizon Way, and intended to construct a new driveway on the MBTA's adjacent land.

109. By the end of the summer of 2013, the Commission was apprised of the impasse between the City and Wynn.

110. At that time, the Bureau had disclosed a veritable mountain of incriminating evidence to the Commission regarding the fraud that the landowners were

trying to perpetrate on the Commission and the Commonwealth.

111. The Bureau's disclosure to the Commission triggered the Commission's duty to take affirmative steps to ensure the integrity of the gaming licensing process. Both the Bureau and the Commission knew that owners of the land – who had a business relationship with Wynn that already had resulted in Wynn's payment of hundreds of thousands of dollars to them – were unsuitable under the Gaming Act. At this point, the Commission was required to halt all proceedings pertaining to Wynn's application while a criminal investigation ensued. And, importantly, the Commission was obligated to publicly disclose the attempted fraud, as envisioned by the Legislature, and in furtherance of the Commission's own declared mission "to create a fair, transparent, and participatory process for implementing the expanded gaming law."

112. The Commission decided to inform Wynn about the evidence, but withheld the information from the public, the other applicant, and the City of Boston.

113. Instead, the Commission convened a public hearing to address the issue of the City's status on September 4, 2013.

114. As a result of the Commission's non-disclosure of facts and evidence material to the public hearing, the City participated in the hearing with no knowledge of the criminal conduct surrounding the proposed site. Had the Commission properly disclosed the truth in a timely manner, the City would have been able to forcefully rely on that evidence. It also would have been clear to the public that the site could not be used under the Gaming Act.

115. At the hearing, Wynn maintained that its proposed development would be located entirely in Everett. It presented a site plan showing a sketch of a hypothetical

driveway on the MBTA's land in Everett, which purported to provide access to the proposed site.

116. When the Commission inquired about Wynn's proposed access, Wynn vacillated. Wynn first told the Commission that it was "in discussions with the abutter regarding that land." Wynn admitted that its "proposed access" was in question, acknowledging that "access is something that we continue to work on" and that "the geometry of that access continues to be a point of discussion."

5. The Hearing Regarding the Scheme to Defraud the Commission and the Commonwealth

117. By mid-December 2013, the Commission were finally forced to disclose the evidence of the fraud to the public, the other applicant, and the City of Boston because Wynn's suitability hearing was scheduled for December 16, 2013.

118. The Commission scheduled a public hearing on the criminal conduct surrounding Wynn's proposed casino site for December 13, 2013.

119. Although the Commission was faced with overwhelming evidence that the owners of the proposed site had engaged in a fraud, the Commission agreed to permit Wynn to proceed with its application using the former Monsanto Chemical Site.

120. Well before the hearing on December 13 – and outside the public's purview – the Commission and Wynn agreed to a so-called "cure" to the problem, which was presented at the hearing as a done deal. In fact, at the hearing, Wynn even thanked the Commission on the record for "helping us to craft a proposed curative action in the effort to continue to move our application forward." A true and accurate copy of the transcript of the hearing on December 13, 2013 is attached as Exhibit 5.

121. In direct contravention of the letter and spirit of the Gaming Act, the

Commission sought to convince the public that the glaring unsuitability of the sellers of the site for Wynn's casino had no impact on the suitability of Wynn or Wynn's ability to build its proposed casino on the tainted land.

122. The Commission imposed three so-called curative measures that needed to be met to permit Wynn's application to proceed with FBT Everett's land. Two conditions pertained to a document titled "Ninth Amendment to the Option Agreement" between Wynn and FBT Everett (the "Ninth Amendment") signed on November 26, 2013, almost three weeks before the hearing. A true and accurate copy of the Ninth Amendment is attached as Exhibit 6.

123. Yet, the Ninth Amendment itself contained language demonstrating that no cure was possible or permissible under the Gaming Act given FBT Everett's conduct.

124. Recital B in the Ninth Amendment stated that after the parties had signed the Option Agreement, the Bureau informed Wynn that "members of [FBT Everett] had failed to cooperate and/or provided unsatisfactory testimony to the MGC . . . ."

125. In Recital E, FBT Everett objected to the Bureau's conclusion about its conduct:

> Seller does not agree that Seller or its members have failed to cooperate and/or provided unsatisfactory testimony to the MGC nor does Seller or its members by entering into this Amendment admit any facts or liability regarding any allegation stated by the MGC or Purchaser regarding Seller or its members.

126. FBT Everett's lack of contrition and its outright false denial of wrongdoing regarding the Bureau's investigation provided additional bases for the Commission to immediately disqualify FBT Everett and exclude its property as a proposed casino site.

127. The *first* condition of the Commission's "cure" resulted in a tremendous financial windfall for Wynn. The Commission approved a $40 million reduction in the purchase price of the property from FBT Everett. This price cut, which purportedly punished FBT Everett, was intended to reflect the difference between the value of the property as a casino and its best non-casino use. FBT Everett also was required to use $10 million of the purchase price to pay for the environmental clean-up of the property.

128. The *second* condition was based on Wynn's proposal that FBT Everett's alleged owners sign the following Confirmation of Representation:

> Schedule 3 is a true and accurate list of (i) each person with a legal or beneficial ownership interest, direct or indirect, in Seller (a "Beneficiary"), (ii) the percentage interest in Seller of each such Beneficiary, and (iii) the address of each Beneficiary. Neither Seller nor any Beneficiary has made, or has any agreement, whether oral or written, to make, any payments to any other person or entity from the proceeds of the Agreement including, without limitation, any of the option payments made pursuant to Section 2.2 or any portion of the Purchase Price.

129. Schedule 3 listed the alleged owners as Lohnes, Gattineri, and The DeNunzio Group, LLC.

130. The *second* condition required the three alleged principals of FBT Everett identified on Schedule 3 sign the Confirmation of Representation, under oath, confirming that they were the only ones with an interest in the property and the only ones who would receive proceeds from the transaction.

131. Finally, the Commission added a *third* condition requiring that the Bureau refer the matter to law enforcement authorities and transfer its files to the United States Attorney, the Attorney General, and the District Attorney for Suffolk County.

132. Subject to the performance of the three conditions, the Commission voted in favor of permitting Wynn's application to proceed with FBT Everett's property.

133. The first two conditions had no basis in law, and the third was simply a recitation of the Commission's obligation under the Gaming Act.

134. The *first* condition, the reduction of the purchase price from $75 million to $35 million, was premised on woefully flawed assumptions.

135. Colliers International ("Colliers"), a commercial real estate company, prepared a valuation of this heavily-contaminated property using the assumptions that it was (1) environmentally clean, (2) free from any stigma associated with its contamination, and (3) available for development to its highest and best non-casino use.

136. These assumptions were factually erroneous. The price that Wynn agreed to pay for the property was based on its contaminated state. Similarly, the highest and best use of the property had to be based on the actual state and condition of the property – a toxic chemical waste site – not on a fictitious, environmentally pristine site. There also was no basis to assume that FBT Everett's expenditure of $10 million to remediate the land would yield an environmentally clean property. In fact, the Commission recently acknowledged that it would cost at least $30 million to remediate the land.

137. Colliers carefully qualified its valuation, pointing out that it was based on "Hypothetical Conditions" that "are contrary to what is known by the appraiser to exist," and "Extraordinary Assumptions," which "presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property."

138. The *second* condition could not possibly prevent Lightbody, DeCicco, and any other undisclosed person from profiting from the sale of the land to Wynn. It was predicated on the "truthfulness" of three individuals who had actively attempted to defraud the Commission and obstruct the Bureau's investigation. Having already

determined that FBT Everett's alleged owners were *untruthful* people who had committed unlawful acts, the requirement that they sign certifications under oath was meaningless. Moreover, the Commission's view on this point was so strong that it required that the matter be referred to federal, state, and local law enforcement authorities for criminal investigation. The second condition was nonsensical and cannot be reconciled with the third condition.

139. The cure also was invalid because the Bureau had uncovered overwhelming evidence that principals of FBT Everett had engaged in conduct that the Commonwealth has now charged in the State Indictments as violations of G.L. c. 23K, § 38, which makes it illegal to willfully resist, prevent, impede, interfere with or make any false, fictitious or fraudulent statement or representation to the Bureau or the Commission in the performance of their duties under the Gaming Act.

140. The Commission's cure, however, permitted the corrupt alleged property owners to triple their investment and earn more than a 200% profit on the sale of their land to Wynn.

141. The only valid and authorized action by the Commission was its referral of the matter to federal, state and local criminal authorities, pursuant to G.L. c. 23K, § 4(30).

6. <u>The Commission's Suitability Determination Regarding Wynn</u>

142. On December 16, 2013, the Commission held an adjudicatory hearing on Wynn's suitability.

143. On December 23, 2013, just days after the suitability hearing, Lohnes and DeNunzio each signed a Confirmation of Representation, under oath. However, the Confirmations of Representation had been amended "for clarity" to disclose that proceeds from the Option Agreement will flow to "consultant" James Russo. True and accurate

copies are attached as Exhibit 7 and Exhibit 8.

144. On September 8, 2014, the Commission, through the Bureau, revealed to the public for the first time that the Bureau had attempted to interview Russo. He refused to be interviewed, thereby obstructing the Bureau's continued investigation.

145. Unable to speak with Russo, the Bureau further reported that it had interviewed Lohnes and DeNunzio. Neither Lohnes nor DeNunzio could explain the purported consulting agreement between FBT Everett and Russo. According to Lohnes and DeNunzio, there is no written agreement between FBT Everett and Russo. They also did not know how much Russo was to be paid for his so-called consulting services. They claimed that Russo is to receive a 3% fee, but were unable to articulate whether that fee – which could exceed $1 million – will be calculated based on FBT Everett's profits or the gross sum paid for the property.

146. The Bureau also reported that Russo is a known business associate of Lightbody. These highly suspicious circumstances raise serious questions whether Lightbody is the ultimate recipient of Wynn's payments under the Option Agreement.

147. The third alleged owner of FBT Everett, Gattineri, refused to sign the Confirmation of Representation.

148. On December 27, 2013, the Commission – with only two of the three Confirmations of Representation in hand – nevertheless issued a favorable Phase 1 Suitability Decision regarding Wynn. The Commission's decision on Wynn's suitability was improper and premature because its most critical requirement had not been met. A true and accurate copy of the Commission's decision on Wynn's suitability dated December 27, 2013 is attached as Exhibit 9.

149. On April 11, 2014, *The Boston Globe* reported that Gattineri's business attorney had stated, "He's not signing [the Confirmation of Representation] under the advice of his criminal counsel."

150. On June 13, 2014, *The Boston Globe* reported that Gattineri was expected to sign the Confirmation of Representation, but only if the Commission approved his plan to pay a debt of over $1 million to Lightbody:

> Now, people briefed on the situation say Gattineri is expected to sign the pledge after all, *as long as the state gambling commission approves a plan for him to pay off a debt of more than $1 million to Charles Lightbody*, a felon and a former owner of the land. Lightbody claims he sold his interest two years ago, though state investigators are skeptical (emphasis supplied).

151. The following day, June 14, 2014, Gattineri signed a "Certificate," which differed substantially and materially from the Confirmation of Representation that the Commission required him to sign under oath. A true and accurate copy of the Certificate is attached as Exhibit 10.

152. Gattineri's "Certificate" merely states that he has "not mortgaged, pledged, or assigned [his] own interest in the Company, nor [has he] granted to any person or entity an option, warrant or other right to [his] interest in the Company or the economic interests represented thereby, in whole or part."

153. Gattineri still has not certified that Schedule 3 to the Ninth Amendment sets forth a true and accurate list of each person with a legal and beneficial ownership interest, direct or indirect, in FBT Everett, leaving open the possibility that Lightbody and other hidden owners exist. Gattineri also has failed to represent under oath that FBT Everett and its beneficiaries have not made or agreed to make any payments to any other person from the proceeds of the Option Agreement.

154. On September 8, 2014, Counsel for the Commission informed the public, for the first time, that she had reviewed a note in the amount of $1.9 million between Gattineri and Lightbody, dated June 12, 2014. She provided no details about the note, and none of the Commissioners asked her any questions concerning the circumstances under which the note was executed, or about its authenticity.

155. To the extent that the June 12, 2014 note is authentic, it indicates that Lohnes's and DeNunzio's December 23, 2013 certifications – which asserted under oath that, other than Lohnes, DeNunzio, and Gattineri, no person has a legal or beneficial ownership interest in FBT Everett or in the proceeds of the Option Agreement – were patently false.

156. As a result, the Commission's determination that Wynn is suitable is void because the Commission's second condition precedent was not met.

157. The Commission's strategic timing of its belated disclosure of these crucial details of FBT Everett's continued fraud – on the eve of its award of the Category 1 license in Region A – flouted the Gaming Act's paramount objective of "ensuring public confidence in the integrity of the gaming licensing process."

7. <u>The Commission's Failure to Determine FBT Everett's Suitability</u>

158. Before determining whether Wynn was suitable, the Commission was required to determine FBT Everett's suitability because FBT Everett has a "financial interest" in Wynn's gaming establishment and a "business association" with Wynn. G.L. c. 23K, §§ 4(11), 14(a).

159. FBT Everett owned the property comprising Wynn's proposed gaming establishment. FBT Everett and Wynn entered into at least two option agreements regarding the former Monsanto Chemical Site.

160. Wynn's monthly payments to FBT Everett totaled over $2 million, at a rate of $100,000 per month.

161. FBT Everett was not simply a one-time seller of land to Wynn; rather it was the functional equivalent of a joint venturer with Wynn. For two years following the signing of the Option Agreement, FBT Everett was contractually responsible for real estate development activities related to Wynn's planned gaming establishment in Everett and Boston.

162. Under the Option Agreement, FBT Everett and Wynn agreed that FBT Everett would perform the following work on Wynn's behalf:

(a) obtain a permanent easement agreement providing vehicular access to Mystic View Road, known as the Ring Road Access Easement;

(b) subdivide the former Monsanto Chemical Site in collaboration with Wynn, including pursuing and obtaining all subdivision approvals, use permits, site plans, rezoning and other necessary agreements;

(c) engage in environmental remediation of the former Monsanto Chemical Site; and

(d) submit to the Massachusetts Department of Environmental Protection a Phase III Identification, Evaluation and Selection of Comprehensive Remedial Action Alternatives, a Phase IV Implementation of the Selected Remedial Action Alternative Report, and a Phase V Completion Statement Report, all in collaboration with Wynn and Wynn's environmental consultants.

163. FBT Everett continued to own the gaming establishment for almost 60 days after the gaming license was awarded.

164. The Commission has ignored and abdicated its statutory obligation to find FBT Everett unsuitable to avoid disqualifying Wynn.

8. <u>Wynn's Phase 2 Application</u>

165. On December 31, 2013, Wynn filed its RFA-2. A true and accurate copy

of Wynn's RFA-2 (without attachments) is attached as Exhibit 11.

166. Before Wynn filed its RFA-2, the City of Everett had conclusively determined that a secondary access point to the former Monsanto Chemical Site, in addition to Horizon Way, was needed due to public safety concerns. On October 7, 2013, the Mayor of Everett sent a letter to the Massachusetts Department of Transportation ("MassDOT"), voicing this public safety concern in an effort to obtain the transfer of MassDOT's property to facilitate construction of a secondary access point to the former Monsanto Chemical Site. A true and accurate copy of this letter is attached as Exhibit 12.

167. The Mayor of Everett cited the expert opinions of the Chiefs of the Everett Police and Fire Departments, who warned that secondary access to the former Monsanto Chemical Site "is critical to providing adequate and necessary public safety" and the prevention of a "potentially catastrophic occurrence." A true and accurate copy of Chief Steven A. Mazzie's and Chief David Butler's letter to Everett, dated October 3, 2013, is attached as Exhibit 13.

168. Wynn's RFA-2 depicted access points to its proposed casino using parcels of MBTA property (the "MBTA Land Parcels") that it did not own or control. Wynn did not even have an agreement in place with the MBTA to acquire or control the MBTA Land Parcels in the future.

169. Wynn's Conceptual Site Plan and Site Circulation Plan in its RFA-2 depicted both the primary and secondary access points to the proposed casino site. Both the primary and secondary access points require significant takings of MBTA-owned land, and in the case of the secondary access, other public and/or privately-owned land in Everett as well. A true and accurate copy of Wynn's Conceptual Site Plan and Site

Circulation Plan are attached as Exhibit 14.

170. Wynn's "alternate" access plan, which was not included in the RFA-2 and instead had been filed two weeks earlier with the Secretary of Environmental and Energy Affairs (EEA) in its Draft Environmental Impact Report (DEIR), only contained one access point, which required the use of Horizon Way in Boston. A true and accurate copy of Wynn's "alternate" plan, filed December 16, 2013, is attached as Exhibit 15.

171. The Commission should have immediately rejected Wynn's RFA-2 application for several reasons. First, Gattineri had not signed the Confirmation of Representation, a condition precedent to Wynn's application proceeding with FBT Everett's land.

172. Second, Wynn violated 205 CMR 119.01(41) when it failed to submit, under the pains and penalties of perjury, an agreement granting Wynn the right to access its casino site by using land in Everett currently owned by the MBTA. Wynn also violated 205 CMR 119.01(41) because the Option Agreement was void *ab initio* both as an illegal contract and one that violates public policy.

173. Third, the RFA-2 clearly showed that Boston was a host community, and Wynn failed to obtain a vote by Boston's residents in favor of its application for a license and did not submit to the Commission a signed host community agreement with Boston. Wynn's application showed that the only access to and egress from its proposed gaming establishment is in Boston, and that its proposed gaming establishment extends into Boston, both of which independently render Boston a host community under G.L. c. 23K, § 2.

174. Wynn's RFA-2 also acknowledged that several "amenities" related to

Wynn's proposed gaming area are in Boston: "Wynn's strategy is not to compete with existing sports and entertainment venues in the region. The goal is to feed them. This is why Wynn has partnered with TD Garden, the Boston Symphony Orchestra and other iconic locations to serve as its de facto sporting and entertainment locations." Through these Boston-based amenities, Wynn claimed that it would provide "new and unique experiences to its customers."

175. In addition, Wynn planned to run "regular water shuttles connecting the Wynn Resort in Everett to major tourist centers of Boston, specifically the convention center, Faneuil Hall, the Aquarium and the North End."

176. Although the Commission had several legal bases to reject Wynn's RFA-2 application, it failed to do so, thereby permitting Wynn's defective application to advance.

C. THE COMMISSION'S PLAN TO DESIGNATE BOSTON A SURROUNDING COMMUNITY

177. After Wynn filed its RFA-2, Boston continued to maintain that it is a host community to Wynn's proposed casino, and served the Commission and Wynn with a declaration regarding its status. Thereafter, the Commission planned to designate Boston a surrounding community, irrespective of the facts and the law. That plan involved restricting the City's access to relevant documents in the Commission's possession and devising a process to "decide" Boston's status.

178. Evidence regarding the underlying land agreements between Wynn and FBT Everett as well as documents pertaining to Wynn's proposed access to its development were germane to the issue. Wynn refused to furnish this evidence, and the Commission ignored the City's many requests that it compel Wynn to produce the

evidence.

179. On January 8, 2014, Wynn notified Boston that it had designated the City as a surrounding community in its RFA-2.

180. The Commission scheduled a public hearing on the issue for March 20, 2014. On March 19 – as previously directed by the Commission – Boston filed its declaration of its host community status to Wynn's proposed casino.

181. At the public hearing on March 20, the City asserted that the Commission could not render a determination that Boston was a surrounding community because Boston had asserted its host community status, and the Commission lacked the statutory authority to rule on the issue.

182. The Commission then formulated an unfair process through which it would appear to consider the merits of the City's position, and scheduled an adjudicatory hearing to occur on April 4, 2014. Three days later, the Commission issued a revised notice, rescheduling the adjudicatory hearing and providing the City with just two weeks to prepare.

183. On March 25, 2014, the City sent a letter to the Commission in response to the two hearing notices, stating that (1) Boston's declaration of host community status was not a petition for an adjudicatory hearing; (2) there was a significant legal question whether the Commission had jurisdiction to decide Boston's host community status; and (3) the Commission's notices were invalid because they did not comply with the Gaming Act and applicable regulations. The City emphasized that the proposed adjudicatory hearing was devoid of due process as it eliminated the City's opportunity to obtain relevant discovery from the applicants and gave the Commission the unilateral right to

determine whether Boston could call witnesses and cross-examine other parties' witnesses. A true and accurate copy of the City's letter is attached as Exhibit 16.

184. In response, the Commission withdrew the notice and cancelled the adjudicatory hearing. It then devised an alternative process designed to deprive the City of any meaningful opportunity to address the host community issue and to limit the administrative record to prevent any effective legal challenge by the City.

185. On April 3, 2014, the Commission announced that, in lieu of an adjudicatory proceeding, it would conduct a public hearing to "determine the premises of the *gaming establishment*" for which Wynn sought approval in its RFA-2 application.

186. On April 17, 2014, the City sent a letter to the Commission, reiterating its objections to the Commission's proposed process and making the following points:

- The process for the public hearing was mutable, unfair, and devoid of procedural safeguards;
- The process was improperly structured to be legislative in nature, as opposed to adjudicatory;
- The Commission proposed no process for the City to obtain discovery from the applicants, and eliminated the City's opportunity to call witnesses, cross-examine witnesses, and create an appropriate evidentiary record;
- The Commission should investigate issues recently reported by *The Boston Globe* concerning alleged criminal involvement in the site underlying Wynn's application; and
- The hearing was premature – and likely moot – given the questions regarding the suitability of Wynn.

A true and accurate copy of this letter is attached as Exhibit 17.

D. THE MOCK HEARING ON MAY 8, 2014

187. On May 8, 2014, the Commission held a public hearing (the "Hearing") at

which it purported to hear arguments and make a preliminary decision as to Boston's host community status. A true and accurate copy of the transcript of the Hearing is attached as Exhibit 18.

188. By the Hearing's conclusion, there was evidence that the Commission had manipulated the outcome and deprived Boston of a meaningful hearing. The Commission:

- Knowingly withheld from the City relevant documents directly bearing on Boston's host community status;
- Advocated on behalf of Wynn during the Hearing; and
- Deliberated and predetermined its outcome outside the public hearing context, in violation of the Open Meeting Law and the Act.

1. Nondisclosure of Key Evidence

189. Underscoring the fundamental unfairness of the Hearing, the Commission withheld the specific agreements concerning the land underlying Wynn's casino proposal from the City and the public until *after* the hearing had concluded.

190. Wynn's Option Agreement, the Ninth Amendment, and all prior amendments with FBT Everett were critical evidence of Boston's host community status.

191. In the months preceding the hearing, the Commission repeatedly declined Boston's requests that it compel Wynn to produce evidence to the City, on the dubious and untenable ground that the documents contained trade secrets.

192. Only when it was too late for the City to evaluate and use the evidence at the Hearing did the Commission make the documents available to the City and the public. The Commission unexpectedly announced the reversal of its decision: "We've looked at it again. We've revised that determination."

193. As a result, the City was at a distinct disadvantage because its argument about its host community status with respect to Wynn's application was made without knowledge of the precise terms of the Option Agreement, the Ninth Amendment, and all prior amendments.

2. <u>The Outcome Was Predetermined</u>

194. The Commission planned to announce its oral decision at the conclusion of the Hearing, and to issue a formal written decision one week later on May 15, 2014.

195. Immediately after the parties completed their arguments and *before any public deliberations*, the Commission made a statement revealing that it had already decided to declare that Boston was a surrounding community. The Acting Chairman of the Commission stated:

> At the same time next week, we take up the question of whether to waive the requirement that the arbitration and negotiation clock starts ticking the moment we issue that decision.

196. This comment was particularly telling because it pertained to the Gaming Act's mandated procedure following the designation of a municipality as a surrounding community. Under G.L. c. 23K, § 17(a), surrounding communities have 30 days to negotiate an agreement with a casino applicant. If no agreement is reached by the deadline, the Commission's regulations require that the municipality and the applicant must arbitrate. On the other hand, there is no 30-day negotiation and arbitration period for *host* communities.

197. The Acting Chairman's comment about the commencement of the negotiation and arbitration period evidenced that the Commission already had decided that Boston was a surrounding community – *even though the Commissioners had yet to publicly deliberate the issue.* This slip of the tongue was evidence that the Commission

had predetermined its decision that Boston was a surrounding community.

198. The speed and brevity of the Commission's public deliberations that followed provided further evidence that the result had been predetermined. The Commission heard over four hours of adversarial presentations from the City, the applicants, and an advocacy group representing the interests of residents opposing the development of a casino in East Boston. One Commissioner acknowledged, "I heard some things for the first time that I hadn't thought about." Nonetheless, the Commission's rushed deliberation and vote took a mere 25 minutes.

199. There was minimal – if any – interaction between the Commissioners, and virtually no collective discussion of the complex and important issues. Rather, each Commissioner read into the record, from what appeared to be a prepared script, their reasons for voting against Boston. Indeed, as one Commissioner stated, "we had anticipated making this decision a week ago."

200. The Commissioners' conduct strongly indicated that they had deliberated beforehand, outside the public hearing context, contrary to the Open Meeting Law.

201. The Commissioners abandoned their statutory mandate to serve as disinterested regulators on behalf of the public. The proceeding was patently unfair.

202. On May 15, 2014, the biased Commission issued its written decision titled "Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC" (the "Decision"), to memorialize its oral decision rendered on May 8, 2014. A true and accurate copy of the Decision is attached as Exhibit 19.

E. THE COMMISSION'S "DE-DESIGNATION" OF BOSTON AS A SURROUNDING COMMUNITY

1. The Invalid Arbitration Process

203. The Gaming Act sets forth a process for the negotiation of surrounding community agreements. When the Commission determines that a city or town is a surrounding community, the applicant is required to negotiate a signed agreement with that community within 30 days. The Commission is prohibited from taking any action on an application before the execution of the surrounding community agreement. G.L. c. 23K, § 17(a).

204. Where an applicant and a surrounding community cannot reach an agreement in the 30-day period, "the Commission shall have established protocols and procedures for ensuring the conclusion of a negotiation of a fair and reasonable agreement between the applicant and the surrounding community[.]" G.L. c. 23K, § 17(a).

205. Although § 17(a) of the Gaming Act requires the Commission to promulgate regulations that allow for the *negotiation* of a fair and reasonable surrounding community agreement between the parties, the arbitration process created by the Commission is designed to force the parties to submit to a binding outcome after an *adversarial* proceeding – the exact opposite of a negotiated agreement. It is blatantly *unfair* and *unreasonable* to surrounding communities. The Commission's promulgation of 205 CMR 125.01(6) directly contravenes the Gaming Act.

2. Surrounding Community Negotiations

206. After the Commission issued its Decision, the City made diligent and good faith efforts to negotiate surrounding community agreements with both casino applicants

in Region A. The City reached a surrounding community agreement with one applicant, but was unable to do so with Wynn.

207. Wynn also withheld key information from Boston regarding its site plan, including crucial details about the access to its proposed casino. Without this information, it was impossible to assess traffic and public transportation impacts and to assess and negotiate mitigation payments.

3. De-Designation of Boston as a Surrounding Community

208. On July 10, 2014, Boston sent a letter to the Commission stating that it respectfully declined to arbitrate with Wynn. Boston's decision threatened to derail the Commission's plan to advance Wynn's application because, under the Act, the Commission could not award a gaming license to an applicant that had not signed a required surrounding community agreement.

209. The Commission expressed frustration with the predicament that it had created and hypocritically accused Boston of not following the rules, claiming that Boston had "abandon[ed]" the Charlestown section of the City.

210. The Commission quickly sought to remove this impediment to its plan to advance Wynn's application. On July 30, 2014, the Commission sent a letter to Boston that essentially threatened to de-designate Boston as a surrounding community unless it signed an agreement with Wynn. One week later, the Commission followed through on its threat and de-designated Boston of its surrounding community status, thereby paving the way for Wynn's application to proceed.

F. WYNN'S FAILURE TO ACQUIRE ACCESS TO THE PROPOSED SITE THROUGH EVERETT

211. As of August 2014, Wynn still had not acquired or secured access to the

MBTA Land Parcels, which meant that the only access to the casino site remained Horizon Way, in Boston.

212. In late August 2014, Wynn submitted an offer to the MBTA to purchase the MBTA Land Parcels for $6 million. The offer made no mention of Wynn's intent to use the land for access to its proposed casino. A true and accurate copy of Wynn's offer, dated August 26, 2014, is attached as Exhibit 20.

213. On September 3, 2014, the MBTA publicly disclosed Wynn's offer and issued a Notice of Proposal and Request for Response ("Notice and RFR") for the sale of the MBTA Land Parcels, setting the final response deadline as October 3, 2014. A true and accurate copy of the MBTA's Notice and RFR, dated September 3, 2014, is attached as Exhibit 21.

214. The October 3 response deadline for competing bidders meant that Wynn could not have possibly acquired the MBTA Land Parcels before the Commission was determined to award the Category 1 license for Region A in mid-September 2014. Moreover, the MBTA's Notice and RFR effectively gave Wynn a right of first refusal to the MBTA Land Parcels in violation of the public bidding requirements of G.L. c. 161A, § 5(b), thereby casting grave doubt upon the legality of the proposed land conveyance.

G. INCOMPLETE MEPA REVIEW

215. In addition to Wynn's inability to acquire the MBTA Land Parcels as represented under oath in its RFA-2, Wynn has yet to submit the environmental review documents required to obtain final certification pursuant to the Massachusetts Environmental Policy Act (G.L. c. 30, §§ 61 *et seq*.).

216. MEPA directs all state agencies to "review, evaluate, and determine the

impact on the natural environment of all works, projects or activities conducted by them." G.L. c. 30, § 61.

217. An agency may not take agency action and issue a permit for a project subject to MEPA review before completion of the MEPA review process and the preparation of findings as to the project's impact on the environment and the measures taken to avoid or mitigate any damage ("Section 61 findings"). G.L. c. 30, § 61; 301 CMR 11.12(3), (5).

218. On June 30, 2014, Wynn filed its Final Environmental Impact Report (FEIR) for its proposed casino pursuant to MEPA and its implementing regulations.

219. On August 15, 2014, after reviewing the FEIR, the Secretary of EEA determined that Wynn's project "does not adequately and properly comply with MEPA and its implementing regulations" and required Wynn to submit a Supplemental Final Environmental Impact Report (SFEIR) to address its traffic and transportation issues. A true and accurate copy of the EEA Certificate on Wynn's FEIR is attached as Exhibit 22.

220. On September 9, 2014, Wynn informed the Commission that it "expects to file the SFEIR on or about October 15, 2014."

221. On September 10, 2014, Wynn reiterated that it was "working closely with the MassDOT on an updated plan that will be filed in October 2014 as part of our Supplemental Final Environmental Impact Report."

222. As of the date of the award of the Category 1 license for Region A, the Commission had not yet filed its Section 61 findings because Wynn had yet to submit its SFEIR, rendering its MEPA review incomplete.

H. HEARING ON THE ISSUANCE OF THE GAMING LICENSE

223. From September 8 to September 17, 2014, the Commission conducted its Evaluation Presentations and Category 1 License Determination for Region A.

224. Before the Commission had concluded its evaluation, the City sent a letter to the Commission expressing its vehement objection to the Commission's plan to award a Category 1 license in Region A. The City again voiced its view that the Commission had improperly manipulated the gaming licensing process by ignoring and violating the mandates of the Gaming Act. The letter included a detailed chronology of key events related to the gaming licensing process. The letter further asserted that the Commission's stripping of the City's surrounding community status, solely to clear the way for Wynn's defective application, was unlawful and foreclosed the Commission from awarding the gaming license to Wynn. A true and accurate copy of the City's letter, dated September 11, 2014, is attached as Exhibit 23.

225. The Commission made presentations on its evaluation of various aspects of the pending applications, including the applicants' building and site designs and mitigation plans.

1. Building and Site Design

226. As of the date of the presentations, Wynn still had not secured the MBTA Land Parcels it needed to locate its access point to its site in Everett.

227. Moreover, during the Commission's evaluation presentation on Building and Site Design, it acknowledged that even if Wynn successfully acquired the MBTA Land Parcels to build its proposed "preferred" access driveway in Everett, Wynn's proposal still "requires a small parcel acquisition in Boston." A true and accurate copy of the Commission's building and site design presentation is attached as Exhibit 24.

228. Thus, according to the Commission, *both* of Wynn's site access proposals

– preferred and alternate – require the use of Boston land.

2. Mitigation

229. In its evaluation of Wynn's RFA-2 Application, the Commission was required to address the adequacy of Wynn's proposed mitigation of the "traffic and offsite impacts" that would result from the construction and operation of its proposed casino.

230. As acknowledged by the Commission, well before Wynn even proposed building a casino in close proximity to Charlestown, the City of Boston and its Transportation Department embarked on a study designed to mitigate the severe traffic congestion in that neighborhood. This study is described in detail in the December 2013 Sullivan Square Disposition Study (the "Study"), which is attached as Exhibit 25.

231. The Study was "to guide the upcoming revitalization of Sullivan Square" and its transformation into "a pedestrian-friendly neighborhood." According to the Study, "[t]ransitioning [Sullivan Square] from an intersection to drive through back to its rightful place in the urban fabric of Charlestown, Sullivan Square is primed for its reestablishment as a vital and walkable . . . neighborhood center." To achieve this vision, traffic flowing through Sullivan Square would be significantly reduced.

232. Wynn's plan to introduce thousands of casino-bound vehicles into the already overtaxed Sullivan Square and to construct thousands of new parking spaces for these vehicles is antithetical to and incompatible with Boston's plans for the area. Sullivan Square cannot be transformed into a pedestrian-friendly neighborhood if traffic is exponentially increased, rather than decreased.

233. Under § 10(c) of the Gaming Act, the Commission is required to ensure that "total infrastructure improvements onsite and around the vicinity of the gaming

establishment, including projects to account for traffic mitigation as determined by the commission, shall be completed before the gaming establishment shall be approved for opening by the commission." But there is no existing plan or framework to meet this statutory requirement with respect to Wynn's proposed casino.

234. In the Commission's own words, Wynn's "proposed mitigation at Sullivan Square is inadequate and incomplete, because the proposed improvements do not fully mitigate the additional traffic."

235. Thus, on September 10, 2014, the Commission proposed the following conditions, among others, on granting Wynn the Category 1 Region A license:

> (1) Wynn shall complete all mitigation, including traffic mitigation, required pursuant to the MEPA process for the Project and subsequent permitting including but not limited to the measures concerning impacts identified in the Secretary's certificate, the FEIR dated June 30, 2014, the future SFEIR and the Secretary's certificate for the SFEIR and shall be responsible for all costs associated with such mitigation;
>
> (2) If the MEPA process does not require mitigation measures for Main Street and Rutherford Avenue access into Sullivan Square Wynn shall nonetheless mitigate the traffic impacts of the Gaming Establishment on the Main Street and Rutherford Avenue access into Sullivan Square as may be reasonably required by the City of Boston based upon the data provided and used as basis for its issuance of any required permits. ("Boston Vehicle Traffic Data"). Wynn will complete all measures necessary for the mitigation of such traffic impacts and mitigation required by MEPA (together "Interim Mitigation Plan") and such measures will be in place prior to the Opening Date. Such measures shall include, without limitation, physical improvements and Transportation Demand Management ("TDM") measures;
>
> (3) Wynn, at its expense, will conduct a look back study by an independent third party to analyze any significant adverse impact experienced by the City of Boston caused by (a) Gaming Establishment related public safety costs in excess of Public Safety Mitigation Payment above; (b) Gaming Establishment related traffic impacts with the exception of those on Rutherford Avenue and in Sullivan Square that cannot be mitigated by the Traffic

> Infrastructure Payments above; (c) Gaming Establishment related water, sewer, or storm water impacts; (d) Gaming Establishment related construction noise in the City of Boston in excess of levels permitted by federal, state or applicable and lawful City of Boston laws or codes; or (e) Gaming Establishment related construction or traffic impacts on Ryan Park . . . .; and
>
> (4) If Wynn fails to obtain any permits required from the City of Boston for the traffic mitigation described in Section 3 and Section 4 in the City of Boston by July 1, 2015 the Commission may in the Commission's discretion revoke the License awarded to Wynn.

236. On September 12, 2014, Wynn submitted its response. Wynn flatly refused to accept these conditions as written. Wynn submitted a revised draft that substantially weakened many of the Commission's proposed conditions.

237. On September 15, 2014, the Commissioners criticized Wynn's response and its refusal to accept the Commission's proposed conditions.

238. Then, on September 17, 2014, rather than exercise its statutory power to compel Wynn to adhere to the conditions, or else forgo the license, the Commission kowtowed to the applicant and awarded the license to Wynn after substantially weakening or outright eliminating the original traffic mitigation conditions. The four original conditions set forth in Paragraph 235 became the following:

> (1) Wynn shall complete all mitigation, including traffic mitigation, required pursuant to the MEPA process for the Project and subsequent permitting including but not limited to the measures concerning impacts identified in the Secretary's certificate, the FEIR dated June 30, 2014, the future SFEIR and the Secretary's certificate for the SFEIR and shall be responsible for all costs associated with such mitigation;
>
> (2) [Condition Eliminated];
>
> (3) [Condition Eliminated]; and
>
> (4) Wynn will vigorously pursue all mitigation (including initiating legal proceedings, if necessary, to obtain necessary permits). Within ninety (90) days following the Effective Date, Wynn will

> submit to the Public Improvements Commission the application relating to Wynn's Sullivan Square mitigation.

239. As a result, the mitigation conditions imposed by the Commission failed to satisfy the statutory obligation to mitigate negative consequences arising out of the operation of a gaming establishment.

240. In the face of Wynn's failure to demonstrate site control under 205 CMR 119.01, its inability to avoid the use of Boston land for access to the gaming establishment whether or not it obtained the MBTA Land Parcels, the admitted uncertainty over the actual parameters of its proposed casino site, the lack of any viable mitigation plan, and the incompleteness of its MEPA review, the Commission nevertheless awarded the Category 1 license to Wynn.

241. On September 17, 2014, the Commission voted to enter into an agreement to award the Region A Category 1 license to Wynn pursuant to its revised set of license conditions. A true and accurate copy of the Agreement to Award the Category 1 License in Region A to Wynn MA, LLC, dated September 17, 2014, is attached as Exhibit 26. The award of the license was subject to the defeat of the ballot initiative seeking repeal of expanded gaming in the Commonwealth on November 4, 2014.

242. Wynn agreed to accept the award of the license, including the final license conditions.

I. THE FEDERAL AND STATE INDICTMENTS

243. Within two weeks of the Commission's vote to award the Region A gaming license to Wynn, federal and state criminal charges were brought against DeNunzio, Gattineri, and Lightbody arising out of their attempts to defraud the Commission and the Commonwealth.

244. On October 1, 2014, a federal grand jury in Boston returned a three-count indictment charging DeNunzio, Gattineri, and Lightbody with conspiracy, wire fraud, aiding and abetting, and criminal forfeiture. The Federal Indictment alleged that the criminal defendants conspired to conceal the "financial interests of LIGHTBODY, a convicted felon and known associate of the New England Family of La Cosa Nostra . . . in the Everett Parcel [the former Monsanto Chemical Site] and to obtain money from Wynn in exchange for the Everett Parcel on the basis of false representations and concealment of material facts concerning the financial interests in the Everett Parcel."

245. A critical aspect of the scheme to defraud, as alleged in the Federal Indictment, was the Option Agreement between Wynn and FBT Everett. Under the Option Agreement, Wynn agreed to pay FBT Everett $100,000 per month for the right to purchase the former Monsanto Chemical Site for $75 million if Wynn was awarded the Category 1 casino license. The Federal Indictment further alleges that Wynn has paid FBT Everett $100,000 per month from December 2012 through September 2014 pursuant to the Option Agreement.

246. On September 29, 2014, a state grand jury in Suffolk County returned eleven indictments pertaining the scheme to defraud. Gattineri, DeNunzio, and Lightbody are all charged with various counts of impeding the Bureau and the Commission by making false and misleading statements; conspiring to impede the Bureau and the Commission; and tampering with documents for use in an official proceeding of the Commission.

247. The Bureau and the Commission were well aware of the conduct and evidence alleged in the Federal and State Indictments before they voted to award the

Region A Category 1 gaming license to Wynn.

J. AWARD OF THE REGION A GAMING LICENSE TO WYNN

248. On November 4, 2014, voters in Massachusetts defeated the ballot initiative seeking repeal of expanded gaming in Massachusetts.

249. On November 6, 2014, the Commission formally awarded the Region A Category 1 license to Wynn, despite the fact that principals of FBT Everett had just been indicted on federal and state criminal charges, which underscored the illegality and invalidity of the Option Agreement. A true and accurate copy of the license award is attached as Exhibit 27.

250. As of November 6, 2014, Wynn had yet to file its SFEIR. Consequently, the Commission had not filed its Section 61 findings regarding Wynn's proposed casino with the Secretary of the EEA before awarding the Category 1 license to Wynn.

251. On December 29, 2014, Wynn and FBT Everett closed on the former Monsanto Chemical Site. A quitclaim deed for the site was registered with the Registry of Deeds for Middlesex County on January 2, 2015, indicating that the former Monsanto Chemical Site was transferred from FBT Everett to Wynn in exchange for consideration of $34 million. A true and accurate copy of the quitclaim deed is attached as Exhibit 28.

252. To date, over one year after Wynn's filing of its RFA-2, and 60 days since the award of the Region A Category 1 license to Wynn, Wynn still has not acquired land or obtained an easement from the MBTA with which to create an access point located in Everett. Under the Gaming Act, Wynn is ineligible for a gaming license. G.L. c. 23K, § 15(3).

253. To date, Wynn has yet to file its SFEIR with the Secretary of the EEA,

rendering the MEPA review process incomplete.

LEGAL CLAIMS

COUNT 1: DECLARATORY JUDGMENT

(Invalidation of the Hearing and Annulment of the Commission's Decision)

254. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 253 of this complaint.

255. This Court is authorized to issue binding declarations of the rights, duties, status, and other legal relations of parties under statutes and administrative regulations, including determinations of any question of construction or validity, in any case in which an actual controversy has arisen. G.L. c. 231A, §§ 1, 2.

256. This Court also is empowered to issue binding declarations under G.L. c. 231A, § 1 to enjoin and determine the legality of the administrative practices and procedures of any state agency alleged to be in violation of the laws of the Commonwealth of Massachusetts. G.L. c. 231A, § 2.

257. An actual controversy has arisen between the City of Boston and the Commission regarding the legality of the Hearing and the Commission's erroneous Decision that Boston is a surrounding community to Wynn's proposed casino.

A. THE MOCK HEARING ON MAY 8, 2014

258. By the summer of 2013, the Commission was well aware of the criminal ownership of Wynn's proposed site, and should have excluded the former Monsanto Chemical Site as the location of a proposed casino at that time.

259. Instead, almost a year later, the Commission scheduled the Hearing to determine whether Boston was a host community to Wynn's proposed casino.

260. The mock Hearing was invalid because the Commission (1) engaged in non-public communications with Wynn regarding the Hearing before it occurred; (2) counseled Wynn beforehand concerning its argument at the hearing; (3) withheld key evidence from the City; (4) acted as an advocate for Wynn during the Hearing; (5) deliberated about the issue in a manner inconsistent with the Open Meeting Law; and (6) predetermined the outcome.

B. THE FLAWED DECISION OF MAY 15, 2014

261. The Commission's written Decision that Boston is a surrounding community to Wynn's proposed casino is unsupported by substantial evidence; the evidence demonstrated that Boston is a host community to Wynn's proposed casino.

1. Wynn's Failure to Establish Site Control

262. The Commission erroneously failed to recognize that Wynn's proposed casino is located, in part, in Boston because the only access to and egress from Wynn's proposed casino is Horizon Way, which is located primarily in Boston. With its RFA-2 application, Wynn admitted that it had not yet been unable to obtain access to its proposed site through Everett. This remains the case today.

263. Additionally, Horizon Way is not zoned for use as a casino.

264. Under well-established Massachusetts law, "use of land in one zoning district for an access road to another zoning district is prohibited where the road would provide access to uses that would themselves be barred if they had been located in the first zoning district. In such a situation, the access is considered to be the same use as the parcel to which the parcel leads." *Beale v. Planning Bd. of Rockland,* 432 Mass 690, 694 (1996). At this time, Horizon Way cannot legally be used as an access road to Wynn's

proposed casino.

265. Wynn's gaming establishment was legally landlocked as of the filing of Wynn's RFA-2 and remains so today. Consequently, Wynn failed to establish site control.

266. The Commission, however, committed yet another legal error by declining to enforce the site control provisions of its regulations, 205 CMR 119.01(40) and (41), to Wynn's RFA-2. As a result, the Commission erroneously determined that Boston is a surrounding community.

2. Everett Approved a Gaming Establishment Located in Everett and in Boston

267. The Commission's Decision further ignored evidence that the description of the gaming establishment provided in Wynn's RFA-2 varied substantially from the proposed gaming establishment approved by the voters of Everett on June 23, 2013.

268. On April 19, 2013, Wynn and the City of Everett signed a host community agreement. At that time, the City of Everett knew that Lightbody had a financial interest in FBT Everett, and believed that he would benefit financially if FBT Everett sold the property to Wynn. A true and accurate copy of the host community agreement between Wynn and the City of Everett is attached as Exhibit 29.

269. The host community agreement stated that Wynn would apply for a Category 1 license to develop a casino on the former Monsanto Chemical Site.

270. On June 22, 2013, the City of Everett held a referendum on Wynn's proposed casino. The voters were presented with a ballot question, which clearly stated that the proposed "gaming establishment" would be "located on Horizon Way" on property known as the former "Monsanto Chemical Site." It read:

> Shall the City of Everett permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located on Horizon Way (off "Lower Broadway") in Everett, formerly known as the Monsanto Chemical Site? (emphasis supplied).

A true and accurate copy of the ballot question presented to the voters in Everett on June 22, 2013 is attached as Exhibit 30.

271. In addition to Horizon Way, approximately eight acres of the former Monsanto Chemical Site are located in Boston.

272. A majority of voters in Everett voted "Yes" to the ballot question, thereby approving the location of the "gaming establishment" in both Everett and Boston.

273. The Decision is legally erroneous because the Commission ignored undisputed evidence of the location of the voter-approved gaming establishment, which renders Boston a host community.

3. The Commission's Erroneous Definition of "Gaming Establishment"

274. The Commission applied a flawed legal standard to determine what constitutes the premises of Wynn's proposed gaming establishment. Rather than apply the clear and unambiguous language of the Gaming Act, the Commission instead created a result-determinative four-part analysis that conflicts with the statute.

275. G.L. c. 23K, § 2 defines "gaming establishment" as "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities."

276. Under that definition, however, Boston is a host community to Wynn's proposed casino. There was uncontroverted evidence that Wynn's proposed casino has

amenities in Boston, and that its access and egress point is located in Boston.

277. Instead of applying G.L. c. 23K, § 2 as written, the Commission concocted four additional "mandatory" requirements for a structure to qualify as part of the gaming establishment: (1) it must be a non-gaming structure; (2) related to the gaming area; (3) under the common ownership and control of the gaming applicant; and (4) the Commission must have a regulatory interest in including it as part of the gaming establishment. This four-part test is quite obviously legally incorrect because, among other reasons, it excludes casinos – which are *gaming* structures – from the definition of "gaming establishment."

278. The Commission's contrived analysis was devised to exclude the access point from the definition of a gaming establishment and render Boston a surrounding community.

279. The entire Decision is invalid because it rests on the Commission's flawed analytical framework.

280. The Commission's actions were arbitrary and capricious, constituted an abuse of its discretion, and were not in accordance with the law.

281. The Commission's Decision and its Hearing have resulted in manifest injustice to Boston and its citizens, depriving them of their rights under the Gaming Act, including the right to vote.

282. Pursuant to G.L. c. 231A, §§ 1 and 2, it is appropriate for this Court to issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and the laws of the Commonwealth.

283. This Court should issue a declaratory judgment that the Commission's Hearing was unlawful, and the resulting Decision is null, void, and without legal effect.

COUNT 2: DECLARATORY JUDGMENT

(Annulment of the Decision Based on Wynn's Illegal and Unenforceable Land Agreement with FBT Everett)

284. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 283 of this complaint.

285. The Gaming Act required Wynn to identify the location of its proposed gaming establishments in its application. G.L. c. 23K, § 9(15). In addition, Massachusetts regulations concerning RFA-2 applications required Wynn to hold a valid option agreement to acquire the land on which it proposed to locate its gaming establishment. 205 CMR 119.01(40), (41).

286. A condition precedent to designating a municipality as a host or a surrounding community is the inclusion of a valid and enforceable option agreement identifying the proposed gaming establishment in an applicant's RFA-2.

287. This condition precedent has not and cannot be met.

288. Additionally, under Massachusetts law, contracts that are illegal and those that are contrary to public policy are void and unenforceable. A contract made in violation of a statute violates public policy and is void and unenforceable.

289. Wynn's Option Agreement with FBT Everett was made in violation of the Gaming Act, is contrary to public policy, and consequently is void and unenforceable. The Option Agreement also is illegal because it is the essential vehicle used in a criminal conspiracy committed by the alleged principals of FBT Everett and Lightbody to defraud the Commission and the Commonwealth, as alleged in the Federal and State Indictments.

290. An actual controversy has arisen between the City of Boston and the Commission concerning Boston's status as a host community, because the parties dispute whether the fraud underlying the Option Agreement between Wynn and FBT Everett renders it void, invalid, and unenforceable.

291. The "paramount public policy objective" of the Gaming Act, as declared by the Legislature in § 1(1) of the Gaming Act, is to ensure "public confidence in the integrity of the gaming licensing process and in the strict oversight of the gaming establishments through a rigorous regulatory scheme." The Gaming Act mandates that the Commission determine the suitability of applicants and other related parties. Suitability determinations are required to ensure the integrity, honesty, good character, and reputation of applicants and others involved with the applicants.

292. FBT Everett, Lohnes, DeNunzio, Gattineri, and Lightbody attempted to defraud the Commission and the Commonwealth and to obstruct the Bureau's investigation, in violation of the Gaming Act. Their fraud was designed to conceal the fact that at least one convicted felon, Lightbody, had an ownership interest in the proposed site for Wynn's casino. The disclosure of Lightbody's status would have precluded Wynn from filing an application proposing the development of a casino on that site.

293. Enforcing the Option Agreement, which is illegal and contrary to public policy, would (1) allow those who have committed unlawful acts to defraud the Commission and the Commonwealth to earn substantial illicit profits; (2) cause further financial harm to the City of Boston and other nearby communities who are victims of the conduct of the parties to the agreement; (3) violate the public policy of the Gaming

Act; and (4) undermine the Act's paramount policy objective.

294. The Commission has ignored the facts, conducted an improper proceeding, and rendered a Decision that is legally and factually defective.

295. This Court should declare that the Commission's Decision that Boston is a surrounding community to Wynn's proposed casino is unlawful and void because the Option Agreement between FBT Everett and Wynn is illegal, contrary to public policy, void, and unenforceable, and as a result, there is no viable proposed gaming establishment to which Boston could be a surrounding community.

COUNT 3: DECLARATORY JUDGMENT

(Annulment of the Decision Based on the Commission's *Ultra Vires* Reformulation of Wynn's Land Agreement)

296. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 295 of this complaint.

297. An actual controversy has arisen between the City of Boston and the Commission concerning Boston's status as a host community, because the parties dispute the validity of the Commission's *ultra vires* efforts to salvage Wynn's land transaction, cleanse Wynn's application of the taint resulting from the ownership of the site of the proposed gaming establishment by a convicted felon and others who have committed unlawful acts, and avoid disqualifying Wynn as unsuitable.

298. The Commission acted *ultra vires* by actively participating in the amendment of the Option Agreement between FBT Everett and Wynn, and then approving the amended land transaction as a purported means to negate the taint caused by FBT Everett, Lightbody, Lohnes, Gattineri, and DeNunzio.

299. The Bureau's investigation, as reported in the Bureau's Report and at the

Commission's hearing on December 13, 2013, uncovered conclusive evidence that FBT Everett and its principals attempted to defraud the Commission and obstruct the Bureau's investigation.

300. Under G.L c. 23K, § 38, it is illegal to willfully resist, prevent, impede, interfere with or make any false, fictitious or fraudulent statement or representation to employees of the Bureau or the Commission in the performance of their duties under the Gaming Act. Credible evidence adduced to the Commission and set forth in the allegations of the Federal and State Indictments indicate that Gattineri, DeNunzio, Lightbody, and others likely violated and conspired to violate G.L. c. 23K, § 38 by concealing the true identity of FBT Everett's owners, making false statements to the Bureau, and creating false and backdated documents after the commencement of the Bureau's investigation.

301. Section 14(a) of the Gaming Act requires the Commission to determine the suitability of FBT Everett. Upon learning about the unlawful scheme to defraud the Commission and obstruct the Bureau's investigation, the Commission should have immediately determined that FBT Everett was unsuitable, thereby rendering Wynn unsuitable.

302. The Commission abdicated its role as a regulator and acted as a partisan by collaborating with Wynn to devise a so-called "cure" for a problem that should have been fatal to Wynn's application.

303. First, the Commission approved a reduction of the purchase price of the land that still allowed the alleged owners of FBT Everett to reap an unwarranted and enormous 200% profit. This price reduction was based on a faulty assumption that the

grossly contaminated property was "environmentally clean" and could reach its "highest and best use" without the investment of millions of dollars in environmental remediation and decontamination.

304. Second, the Commission insisted that the three alleged owners of FBT Everett – the very individuals who had sought to defraud the Commission and obstruct the Bureau's investigation – sign notarized declarations under oath that they, and only they, will receive the proceeds of any sale. One of those individuals, DeNunzio, admitted that he fabricated backdated documents. Another, Gattineri, exercised his Fifth Amendment privilege and declined to testify before the Bureau. For several months, Gattineri refused to sign the notarized declaration upon advice of his criminal attorney. Then, on June 14, 2014, Gattineri signed a "Certificate" that differed significantly from those of Lohnes and DeNunzio and, in any case, did not satisfy the Commission's requirements.

305. The Commission was required to disqualify FBT Everett and Wynn, exclude the FBT Everett land from use as the site for a gaming establishment under the Gaming Act, and submit the matter to state and federal law enforcement authorities.

306. The Commission instead ignored its statutory mandate under the Gaming Act.

307. The Commission's so-called "cure," had no basis in law, was contrary to public policy, and violated the Gaming Act, including G.L. c. 23K, §§ 4, 12, 14, and 16.

308. The Commission had no basis or authority to determine that Boston was a surrounding community to a fatally flawed proposal submitted by an unsuitable applicant, which should have been disqualified under the Gaming Act. Accordingly, this Court

should declare that the Commission's Decision that Boston is a surrounding community to Wynn's proposed casino is unlawful and void.

COUNT 4: DECLARATORY JUDGMENT

(Annulment of the Commission's Decision Based on Its Failure to Find FBT Everett and Wynn Unsuitable)

309. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 308 of this complaint.

310. An actual controversy has arisen between the City of Boston and the Commission concerning Boston's status as a host community, because the parties dispute whether the Gaming Act obligated the Commission to disqualify Wynn based on the unsuitability of FBT Everett.

311. Under the Gaming Act, the Commission is mandated to require "anyone with a financial interest in a gaming establishment" to be "qualified for licensure by meeting the criteria provided in sections 12 and 16 and provide any other information that the commission may require." G.L. c. 23K, § 14(a).

312. FBT Everett has had a financial interest in the "gaming establishment" proposed by Wynn because it owns the land on which Wynn proposes to develop a casino and had been receiving monthly payments from Wynn of $100,000, presumably from December 2012 through December 2014. In addition, FBT Everett has a significant "business association" with Wynn under G.L. c. 23K, § 4(11), as evidenced by the requirements in the Option Agreement that FBT Everett (1) engage in real estate development work on Wynn's behalf and (2) use $10 million of the purchase price paid to FBT Everett to remediate the former Monsanto Chemical Site.

313. As a result of FBT Everett's ongoing business relationship with Wynn and

its financial interest in the gaming establishment, FBT Everett was a "qualifier" for the Wynn application. Thus, as the Bureau recognized in its Report, it was "statutorily required to" investigate the alleged owners of FBT Everett.

314. The Commission recognized this clear mandate when evaluating the suitability of former Region A Gaming License Applicant Sterling Suffolk, and its related qualifier Caesars Entertainment Corporation ("Caesars"). The Commission determined that Caesars was unsuitable based on a trademark licensing agreement between one of Caesars's subsidiaries and a subsidiary of a hotel group.

315. In that case, the trademark licensing agreement was unrelated to the proposed Region A gaming establishment, and the hotel group would have had no role in the operation of Sterling Suffolk's proposed casino. Despite this, the Bureau was deeply concerned about unsubstantiated rumors of alleged criminal activities of an owner of the hotel group, who had not been charged with any crime.

316. As a result, the Bureau advised the Commission that, based on G.L. c. 23K, §§ 12, 13, 14 and 16, (1) Caesars was a qualifier of Sterling Suffolk, (2) Caesars had not met its burden by clear and convincing evidence to establish its suitability, and (3) Sterling Suffolk, consequently, had failed to demonstrate the suitability of all qualifiers, preventing a recommendation of suitability if Caesars remained a part of Sterling Suffolk's application.

317. When it came to Wynn, however, the Commission applied a radically different standard. In Wynn's case, (1) the Option Agreement is directly related to the proposed Region A gaming establishment; (2) FBT Everett had a financial interest in Wynn's gaming establishment; (3) FBT Everett had an ongoing business relationship

with Wynn concerning its proposed casino; (4) there was compelling proof that FBT Everett and its alleged principals had engaged in a scheme to defraud the Commission and the Commonwealth; and (5) at least one undisclosed owner of FBT Everett was a convicted felon. In direct contradiction to the legal analysis that it applied to Sterling Suffolk and Caesars, the Commission declined to determine that FBT Everett was a qualifier, let alone that Wynn had not met its burden to establish FBT Everett's suitability by clear and convincing evidence.

318. The Commission shirked its statutory duty to render a suitability determination as to FBT Everett pursuant to G.L. c. 23K, § 14(a) to avoid disqualifying Wynn. The Commission failed to find FBT Everett and its alleged principals unsuitable under G.L. c. 23K, § 12(b), and failed to disqualify Wynn as required by G.L. 23K, § 16(a).

319. The Commission had no basis or authority to rule that Boston is a surrounding community to Wynn's proposed gaming establishment because Wynn was not a suitable applicant.

320. Accordingly, this Court should declare that the Commission's Decision that Boston is a surrounding community to Wynn's proposed casino is unlawful and void.

COUNT 5: DECLARATORY JUDGMENT

(Boston's Status as a Host Community to Wynn's Proposed Casino)

321. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 320 of this complaint.

322. An actual controversy has arisen between the City of Boston and the Commission regarding the City's status as a host community under G.L. c. 23K, § 2 as to Wynn's proposed casino in Everett and in Boston.

323. Assuming *arguendo* that Wynn has a valid gaming establishment, Boston is a host community because (1) Boston provides the *only* existing access to and egress from Wynn's proposed casino; (2) the voters in Everett approved the development of a casino on property located in Boston; and (3) many of the proposed casino's "amenities" are located in Boston. Wynn's proposed "gaming establishment" is located, in part, in Boston, rendering Boston a host community under G.L. c. 23K, § 2.

324. Wynn, however, has refused to negotiate a host community agreement with the City of Boston.

325. As an applicant for a Category 1 license, Wynn was ineligible to receive a gaming license without entering into a signed host community agreement with all host communities. G.L. c. 23K, § 15(8).

326. Wynn's gaming establishment is situated in more than one city, which required Wynn to execute an agreement with each host community, or a joint agreement with both communities. G.L. c. 23K, § 15(13).

327. The Commission also had no authority to grant a Category 1 license to Wynn because Boston, a host community, had not voted in a public election in favor of the issuance of the license. G.L. c. 23K, § 15(13).

328. The citizens of Boston – whose quality of life will be directly impacted by the development of a casino by Wynn – have been denied their right to vote on whether Boston should permit the operation of a gaming establishment licensed by the Commission to be located in Boston and Everett.

329. The Commission's public hearing to determine the "gaming establishment" of Wynn's application was improper and abridged the City's citizens' due

process rights.

330. Under G.L. c. 231A, § 2, the Legislature has specifically empowered this Court to make determinations of the status of a person or entity under a statute, such as Boston's status as a host community under the Gaming Act. Conversely, the Legislature did not specifically empower the Commission to determine a municipality's host community status under the Gaming Act.

331. Pursuant to G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the status and rights of the City of Boston with respect to Wynn's proposed casino under G.L. c. 23K, § 2.

332. This Court should issue a declaratory judgment that Boston is a host community to Wynn's casino development.

COUNT 6: DECLARATORY JUDGMENT

(Declaration that the Regulations Regarding Arbitration of a Surrounding Community Agreement Are Invalid)

333. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 332 of this complaint.

334. The Commission's regulations regarding arbitration of a surrounding community agreement, 205 CMR 125.01(6) *et seq.*, are invalid.

335. Contrary to the Gaming Act's requirement that it promulgate regulations to ensure "the conclusion of a *negotiation* of a fair and reasonable agreement between the applicant and the surrounding community," the Commission designed an unfair and unlawful adversarial *arbitration* process. The Commission's regulations directly conflict with the Gaming Act, and their promulgation exceeded the Commission's statutory authority and was *ultra vires*.

336. The regulations also are invalid because they are inherently unfair and deprive the citizens of adversely-impacted municipalities of their procedural due process rights. The duration of the arbitration process is unrealistically compressed; there is no mechanism for discovery; and the arbitrator is required to select one of two best and final offers (BAFOs) without modification.

337. Section 125.01(6)(b) provides that "[i]n the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure."

338. The parties are required to select an arbitrator and submit their BAFOs for a surrounding community agreement within five days of the expiration of the 30-day period. The arbitrator is required to "conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community," all within 20 days. 205 CMR 125.01(6)(c)(7).

339. The arbitrations conducted to date pursuant to these regulations have closely resembled judicial bench trials. The parties presented opening statements, conducted direct and cross-examinations of witnesses, offered exhibits into evidence, and delivered closing arguments. Arbitration panels have made factual findings and legal conclusions, and issued binding awards in which there has been a winner and a loser. The Commission's regulations provide that "the arbitrator(s) shall select the best and final offer of one of the parties." As a result, the arbitrator is prohibited from exercising his or her discretion to modify either of the parties' BAFO to arrive at a fair or reasonable result.

340. The Commission's binding arbitration process is inherently unfair to surrounding communities. The timeframe for completing the arbitration process is arbitrarily truncated. This is particularly unfair to large cities, such as Boston, because the adverse impacts of each casino proposal are unique and extremely complex. For example, mitigation of traffic issues caused by the injection of thousands of additional vehicles onto already congested major Boston roads and throughways – such as Route 99, Rutherford Avenue, and Sullivan Square in Charlestown – require many months, if not years, of study by experts.

341. Moreover, there are no provisions in the Commission's regulations or its "Handbook for Binding Arbitration Between an Applicant for a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement" (the "Arbitration Handbook") that permit discovery during the arbitration process.

342. As a result, an applicant can withhold crucial information from the surrounding community and prevent it from properly calculating a fair and reasonable mitigation payment for its BAFO submission. The impact of limited discovery on casino applicants is minimal because they have unrestricted access to public information about the municipality or community to formulate their BAFOs.

343. The Arbitration Handbook also instructs the arbitrator to consider the "known impacts" of the proposed project on the surrounding community as a factor when making his or her decision. This is yet another unfair feature of the arbitration process as it is virtually impossible for a community to prove the impacts of a casino that is not yet built.

344. In fact, in this case, Wynn's plans for its proposed casino continue to

evolve and expand. Wynn has announced that it intends to increase the number of its hotel rooms by over 20%, which inevitably will exacerbate traffic and transportation impacts. To this date, Wynn has been unable to file its SFEIR on these very impacts, six months after the Secretary of the EEA requested it to do so.

345. Because the rules and regulations governing the arbitration process (1) prevent the communities from accessing information about the applicant's project and (2) are inherently skewed toward the casino applicant, it is far more likely that an arbitrator will choose the casino applicant's BAFO – which can be artificially low but amply proven – rather than the community's BAFO, which is likely based on predictions of future impacts made on incomplete information about the applicant's plans.

346. The one-sided and unfair arbitration process established by the Commission has benefited Wynn and harmed the surrounding communities of Somerville and Chelsea. The dissenting arbitrator in Somerville's arbitration emphasized this manifest unfairness, stating that the outcome was "not the carefully balanced and equitable treatment of surrounding community impacts that the Gaming Act and the Commission contemplate."

347. Finally, the Commission retains power to modify the arbitral award, in contravention of the Gaming Act's requirement that the Commission ensure that disputes over surrounding community agreements are resolved by *negotiation* between the parties.

348. Accordingly, this Court should declare that the Commission's regulations regarding arbitration of a surrounding community agreement are invalid and that, as a result, the Commission's de-designation of Boston as a surrounding community is void and must be vacated.

349. As a result, under G.L. c. 23K, § 15(9), this Court should also declare that the Commission's award of the Category 1 license to Wynn was invalid, and that the license itself, as a result, is invalid.

COUNT 7: CERTIORARI

(Annulment of the License Award to Wynn)

350. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 349 of this complaint.

351. G.L. c. 249, § 4 authorizes a party to bring a civil action in this Court in the nature of certiorari to correct errors in the Commission's proceedings that contravene the common law, and which are not otherwise reviewable by motion or appeal.

352. There were numerous errors in the Commission's proceedings that contravened the common law and the Gaming Act, and which are not reviewable by motion or appeal. Those errors occurred in the award of the Region A Category 1 license to Wynn. Boston has no other reasonably adequate remedy to correct the Commission's errors.

353. The hearing in September 2014 on the award of the license was a quasi-judicial proceeding.

354. The award of the license to Wynn contravened the common law and violated the Gaming Act for the following reasons:

(a) the Commission was required to reject Wynn's RFA-2 because Wynn failed to establish site control for its proposed casino, as described in Paragraphs 262 to 266;

(b) the Commission was required to reject Wynn's RFA-2 because it described a gaming establishment materially different than the one approved by the voters of Everett, as described in Paragraphs 267 to 273;

(c) Boston is a host community to Wynn's proposed site, which required the Commission to reject Wynn's RFA-2 because Wynn had failed to execute a host community agreement with Boston and secure a favorable vote by the citizens of Boston, as described in Paragraphs 57 to 67 and 173 to 175;

(d) Wynn had no viable gaming establishment because the Option Agreement with FBT Everett is illegal, violative of public policy, void, and unenforceable, as described in Paragraphs 288 to 295;

(e) the Commission acted *ultra vires* by reformulating Wynn's land agreement instead of excluding the former Monsanto Chemical Site as a site for Wynn's casino, as described in Paragraphs 297 to 308;

(f) the Commission erroneously failed to find FBT Everett and Wynn unsuitable, as described in Paragraphs 310 to 320;

(g) the Commission improperly de-designated Boston as a surrounding community to circumvent the statutory requirement that Wynn execute a surrounding community agreement with the City as a mandatory condition precedent to the award of the license, as described in Paragraphs 334 to 348;

(h) the Commission failed to require Wynn to conduct any meaningful mitigation of traffic impacts in Boston in violation of G.L. c. 23K, § 10(c), as described in Paragraphs 229 to 239; and

(i) the Commission unlawfully took agency action when it awarded the license to Wynn prior to filing Section 61 findings in contravention to MEPA, as described in Paragraphs 215 to 222.

355. Accordingly, this Court should annul the award of the Region A Category 1 license to Wynn, and similarly annul the license to Wynn.

COUNT 8: DECLARATORY JUDGMENT

(Annulment of the License Award to Wynn)

356. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 355 of this complaint.

357. An actual controversy has arisen between the City of Boston and the Commission regarding the validity of the award of the Category 1 license for Region A to Wynn.

358. The City of Boston seeks a declaration that the award of the license to Wynn is null and void for the following reasons:

(a) the Commission was required to reject Wynn's RFA-2 because Wynn failed to establish site control for its proposed casino, as described in Paragraphs 262 to 266;

(b) the Commission was required to reject Wynn's RFA-2 because it described a gaming establishment materially different than the one approved by the voters of Everett, as described in Paragraphs 267 to 273;

(c) Boston is a host community to Wynn's proposed site, which required the Commission to reject Wynn's RFA-2 because Wynn had failed to execute a host community agreement with Boston and secure a favorable vote by the citizens of Boston, as described in Paragraphs 57 to 67 and 173 to 175;

(d) Wynn had no viable gaming establishment because the Option Agreement with FBT Everett is illegal, violative of public policy, void, and unenforceable, as described in Paragraphs 288 to 295;

(e) the Commission acted *ultra vires* by reformulating Wynn's land agreement instead of excluding the former Monsanto Chemical Site as a site for Wynn's casino, as described in Paragraphs 297 to 308;

(f) the Commission erroneously failed to find FBT Everett and Wynn unsuitable, as described in Paragraphs 310 to 320;

(g) the Commission improperly de-designated Boston as a surrounding community to circumvent the statutory requirement that Wynn execute a surrounding community agreement with the City as a mandatory condition precedent to the award of the license, as described in Paragraphs 334 to 348;

(h) the Commission failed to require Wynn to conduct any

meaningful mitigation of traffic impacts in Boston in violation of G.L. c. 23K, § 10(c), as described in Paragraphs 229 to 239; and

(i) the Commission unlawfully took agency action when it awarded the license to Wynn prior to filing Section 61 findings in contravention to MEPA, as described in Paragraphs 215 to 222.

359. Pursuant to G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the status and rights of the City of Boston with respect to Wynn's proposed casino under G.L. c. 23K, § 2.

360. This Court should issue a declaratory judgment that that the award of the Region A Category 1 license to Wynn is null and void, and that the license itself is similarly null and void.

PRAYERS FOR RELIEF

WHEREFORE, the City of Boston respectfully requests that the Court:

1. As to Counts 1-4, enter a declaratory judgment that the Commission's Hearing was unlawful and the resulting Decision is null, void, and without legal effect;

2. As to Count 5, enter a declaratory judgment that the City of Boston is a host community as to Wynn's proposed casino in Everett and Boston;

3. As to Count 6, enter a declaratory judgment that the Commission's regulations regarding the arbitration of surrounding community agreements are invalid and void;

4. As to Count 7, enter a judgment annulling the Commission's award of the Region A Category 1 license to Wynn was null and void;

5. As to Count 8, enter a declaratory judgment that the Commission's award of the Region A Category 1 license to Wynn was null and void; and

6. Grant the City of Boston such other relief that the Court deems to be just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff City of Boston demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

CITY OF BOSTON

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