

January 9, 2014

VIA UPS OVERNIGHT

Massachusetts Gaming Commission
Attn: Chairman Stephen Crosby
84 State Street, 10th Floor
Boston, MA 02109

Massachusetts Gaming Commission
Attn: John Ziemba, Ombudsman
84 State Street, 10th Floor
Boston, MA 02109

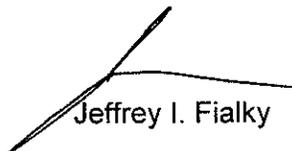
RE: Blue Tarp reDevelopment, LLC

Gentlemen:

Enclosed for submission to the Massachusetts Gaming Commission in connection with the above-referenced matter, please find the Petition of the City of Northampton for Designation as a Surrounding Community, the Appendix thereto, the Memorandum of Law and Fact in support thereof, and an Affidavit attesting to the service of the foregoing.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact us.

Very truly yours,



Jeffrey I. Fialky

JIF/spas
40346-0003
1056463

cc: Per enclosed Affidavit of Service

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

In the Matter of:

BLUE TARP REDEVELOPMENT, LLC

**PETITION OF THE CITY OF
NORTHAMPTON FOR
DESIGNATION AS A
SURROUNDING COMMUNITY**

Now comes the City of Northampton (the “City”), by and through its undersigned counsel, and, pursuant to Mass. Gen. Laws ch. 23K, § 17(a) and 205 C.M.R. 125.01(2), respectfully requests designation as a surrounding community of the proposed Category 1 gaming establishment to be constructed and operated by Blue Tarp reDevelopment, LLC and its affiliates (“MGM”) in Springfield, Massachusetts. In support thereof, the City respectfully represents as follows:

1. On or about December 30, 2013, MGM submitted to the Massachusetts Gaming Commission (the “Commission”) an RFA-2 application for a gaming license to develop and operate a Category 1 gaming establishment in Springfield, Massachusetts (the “MGM Application”).
2. The MGM Application fails to designate the City as a surrounding community pursuant to 205 C.M.R. 125.01(1)(a)(1). Further, the City has not executed a surrounding community agreement with MGM pursuant to 205 C.M.R. 125.01(1)(b). By letter dated November 15, 2013 from Michael C. Mathis, Vice President of Global Gaming Development for MGM Resorts International (a true copy of said letter is included in the Appendix at 1), and in subsequent informal communications between representatives of the City and MGM, MGM repeatedly indicated that it would neither voluntarily designate the City as a surrounding community in its RFA-2 Application nor would it voluntarily enter into a surrounding community agreement with the City. Therefore, the City respectfully requests designation by the Commission as a surrounding community pursuant to 205 C.M.R. 125.01(1)(c) and 125.01(2).

3. As further set forth in its Memorandum of Law and Fact submitted herewith, the City submits that it is proximate to the site of the proposed gaming establishment and the host community, and that the City will be significantly and adversely impacted by the development and operation of MGM's facility.
4. Pursuant to 205 C.M.R. 125.01(1)(c), the undersigned counsel to the City has authority to execute and file this Petition on behalf of the City pursuant to the Certification of Mayor David J. Narkewicz, the City's chief executive officer, a true copy of which Certification is included in the Appendix at 4.
5. In further support hereof, the City respectfully submits its Memorandum of Law and Fact and Appendix filed herewith and incorporated herein by reference.

WHEREFORE, the City of Northampton respectfully requests the following relief:

1. That the Commission designate the City of Northampton as a surrounding community to MGM's proposed gaming establishment in Springfield, Massachusetts;
2. That the Commission join and consolidate any hearing and/or community presentation on this Petition with any hearing and/or community presentation that may result from the City's Application for Community Disbursement filed with the Commission on December 27, 2013; and
3. Such other and further relief as the Commission deems just and proper.

(remainder of page intentionally blank)

Respectfully submitted,
City of Northampton,
By and through counsel,

January 9, 2014



JEFFREY I. FIALKY, ESQ. BBO #567062
SPENCER A. STONE, ESQ. BBO #674548
BACON WILSON, P.C.
33 State Street
Springfield, MA 01103
Tel: (413) 781-0560
Fax (413) 739-7740
Jfialky@baconwilson.com

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

In the Matter of:

BLUE TARP REDEVELOPMENT, LLC

**MEMORANDUM OF LAW AND FACT IN SUPPORT OF THE PETITION OF THE
CITY OF NORTHAMPTON FOR DESIGNATION AS A SURROUNDING
COMMUNITY**

I. INTRODUCTION

By this Action, the City of Northampton (the “City” or “Northampton”) petitions the Massachusetts Gaming Commission (the “Commission”) for designation as a surrounding community to the gaming establishment proposed by Blue Tarp reDevelopment, LLC and its affiliates (collectively “MGM”) to be situated in Springfield, Massachusetts.

Northampton is the premier cultural and visitation destination in the Pioneer Valley, attracting residents, students, visitors, and tourists for its varied offerings from retail stores to renowned restaurants and high quality entertainment and music venues. The City is the “place to be,” and its unique character and charm drive an economic engine that makes the City an oasis in the context of a beautiful but mid-income City, and a generally economically challenged region.

Unlike many other communities throughout the Commonwealth that have petitioned for ‘Surrounding Community’ status, Northampton does not claim to be burdened by impacts on its infrastructure (e.g., traffic impacts). Unfortunately, the City instead anticipates a grave and substantial impact on its finances and local businesses due to the erosion of its status as the sole destination market in the Pioneer Valley, which forms the core and fabric of Northampton’s economy.

The MGM development ultimately may well provide tangible economic benefits to the City of Springfield and serve as a development catalyst for Springfield—all very positive outcomes for a City that has been economically challenged for decades. Unfortunately, it will be a zero-sum result in that the clear, albeit unintended, result of Springfield’s gain will be

Northampton's loss, and the loss of livelihoods of an entire city built around a fragile cultural economy of locally owned restaurants, retail, entertainment, and lodging establishments. Moreover, Northampton will not derive any benefit from the MGM development. The MGM development proposal, consistent with longstanding casino industry practices, seeks to provide entertainment amenities as a disincentive for casino patrons to visit other entertainment and retail venues, much less other destination communities.

The City of Northampton continues to rely heavily on significant consumer spending from the general region, particularly from the communities located to the south of the City, for goods and services related to entertainment and recreation. The MGM development is intended to cannibalize those consumers. As those dollars of consumer demand leave Northampton, this will directly impact the employment and economic activity of the City's businesses, which will, in turn, affect City tax collections and future property development.¹

MGM has suggested that the City is not entitled to 'Surrounding Community' status by arguing that it is not sufficiently proximate to the site of the proposed MGM development.² However, in this instance, considering mileage alone is not reflective of the fact that the MGM development will compete directly for Northampton's customers, and ignores the legislative intent of the Expanded Gaming Act—to protect small businesses and local communities.³

¹ See Camoin Associates, Inc., *Economic & Fiscal Impact Analysis of the Proposed MGM Casino on the City of Northampton*, December 2013 (hereinafter "Camoin Report") at 6; (included in Appendix at 5, 15).

² See Letter from Michael C. Mathis, Vice President of Global Gaming Development, MGM Resorts, November 15, 2013 (hereinafter "MGM Letter") (included in Appendix at 1) ("[W]e believe Northampton and Springfield are not proximate enough to significantly and adversely impact one another . . .").

³ See Mass. Gen. Laws ch. 23K, § 1 ("The General Court finds and declares that: . . . (6) promoting local small businesses and the tourism industry, including the development of new and existing small business and tourism amenities such as lodging, dining, retail and cultural and social facilities, is fundamental to the policy objectives of this chapter; (7) recognizing the importance of the commonwealth's unique cultural and social resources and integrating them into new development opportunities shall be a key component of a decision to the award of any gaming license under this chapter; (8) applicants for gaming licenses and gaming licensees shall demonstrate . . . a dedication to community mitigation, and shall recognize that the privilege of licensure bears a responsibility to identify, address and minimize any potential negative consequences of their business operations . . .").

Nevertheless, as further set forth in below, Northampton submits that it is indeed sufficiently proximate to the site of the proposed gaming establishment and the host community of Springfield to be designated as a surrounding community.

While the foreseen economic and fiscal impact on Northampton is both innately and anecdotally evident both to the City as well as those businesses that would be impacted, MGM continues to patently reject such expected impacts.⁴ Accordingly, the City retained the services of Camoin Associates, Inc. (“Camoin”), a nationwide expert specializing in economic and fiscal impact studies, to determine and report on any expected financial impacts. The result of Camoin’s analysis, *Economic & Fiscal Impact Analysis of the Proposed MGM Casino on the City of Northampton*, December 2013 (the “Camoin Report”), is included in the Appendix at 5. You will find that despite MGM’s assertions to the contrary, the Camoin Report clearly evidences the significant and adverse impacts that the MGM operation would have on Northampton.

Indeed, the Camoin Report details that the total impact on Northampton will range from between **\$4.4 million to \$8.8 million per year in lost sales, 90 to 180 lost jobs, and \$1.6 million to \$3.2 million in lost earnings each year.** Considering the various revenue sources associated with the downtown business district and tourism spending, the City would be expected to **lose between \$137,000 and \$274,000 annually** (\$3,700,000 to \$7,400,000 over a 20 year period) in direct revenues to the City.⁵ Moreover, recognizing Northampton’s role as a prime development location and the imminent loss of development dollars from Northampton to Springfield, all as further explained below, the City would be expected to **lose nearly an additional \$640,000 in tax revenue relative to lost future development.**⁶

⁴ See MGM Letter (Appendix at 1).

⁵ Camoin Report at i-ii (Appendix at 7-8).

⁶ *Id.*, at ii (Appendix at 8).

II. BACKGROUND

The City of Northampton is unparalleled as a destination city in Western Massachusetts. It is a thriving, economically vibrant, urban setting that is a major center of activity for residents, students, visitors, and tourists. The downtown retail shops, restaurants, hotels and entertainment venues drive a significant amount of local activity that also supports the City's revenues and its ability to provide high-quality services.⁷ Northampton is characteristically unique relative to other communities throughout the Commonwealth. Situated in the middle of the Pioneer Valley (the portion of the Connecticut River Valley running through the three Western Massachusetts counties of Hampden, Hampshire, and Franklin and which includes the host community of Springfield), Northampton is unique in its artistic, entertainment, retail, and culinary offerings and is undisputedly celebrated across the region and the Commonwealth as the Valley's cultural center.

Initially founded in 1654⁸ and incorporated as a city by the legislature in 1883,⁹ Northampton's cultural tradition dates back at least as far as the nineteenth century, drawing visitors such as Timothy Dwight, the Marquis de Lafayette, Henry James, Ralph Waldo Emerson and Jenny Lind, who proclaimed the City to be the "paradise of America." Indeed, artists like Thomas Cole believed Northampton to be the epitome of the "'picturesque'—the ideal middle landscape between the sordid city and wild nature."¹⁰

Northampton has been singled out for countless awards and distinctions including AARP Magazine's Great Cities for a Simple Life, 2009; American Style Magazine's Top 25 Arts Destinations, 2000-2009; New York Times' Number One Best Place for Retirees, 2007; Money

⁷ *Id.*, at 9 (Appendix at 18).

⁸ Brief History, Historic Northampton Museum & Education Center, <http://www.historic-northampton.org/highlights/brief.html> (included in Appendix at 32).

⁹ 1883 Mass. Acts, ch. 250.

¹⁰ Brief History, Historic Northampton Museum & Education Center, *supra* at footnote 8.

Magazine's Top 100 Best Places to Live, 2005; and National Geographic Adventure Magazine's Top Adventure Town in Massachusetts, 2007, to name a few.¹¹

As a City surrounded by what are known as the "Five Colleges": Smith College, Hampshire College, the University of Massachusetts, Amherst College, and Mount Holyoke, Northampton has a rich history of intellectual vibrancy and cultural activity. Walking down Main Street on an average weekend reveals a city unique in its artistic flair, appealing to regional tourists, students, student families, and locals, all of whom fuel Northampton's economic engine.

Today, Northampton's retail and service industry forms the backbone of its economy. As described in greater detail in the Camoin Report, Northampton enjoys approximately \$462,320,111 in annual retail sales, with \$80,650,400, or seventeen percent (17%), of those sales attributable to non-Northampton residents.¹² More telling is the fact that an even higher percentage of sales is attributable to non-Northampton residents in those retail sectors more closely associated with the tourism and leisure industry. For example, thirty-four percent (34%) of department store sales and forty-two percent (42%) of full-service restaurant sales in Northampton are attributable to non-Northampton residents.¹³ With its downtown area having approximately twenty-five (25) retailers, thirty-nine (39) restaurants and bars, a number of entertainment venues, and two (2) downtown hotels (with more under construction),¹⁴ Northampton presently generates more income from such sources, per capita, than the average city or town in Massachusetts, and significantly more than the host community of Springfield.¹⁵

¹¹ Northampton Awards, City of Northampton Massachusetts, <http://www.northamptonma.gov/154/Northampton-Awards> (included in Appendix at 34).

¹² Camoin Report at 10 (Appendix at 19).

¹³ *Id.*

¹⁴ *Id.*, at 9 (Appendix at 18).

¹⁵ According the U.S. Census Bureau, in 2007, Northampton had retail sales per capita of \$16,430 compared to the statewide average of \$13,553 per capita and the Springfield average of \$10,052 per capita. Also in 2007, Northampton averaged \$2,862 per capita in accommodation and food service sales compared to the statewide average of \$2,278 per capita and the Springfield average of \$1,453 per capita. (The figures regarding accommodation and food service sales were calculated by utilizing the U.S. Census Bureau figures for total sales in 2007 and dividing by the 2010 population). State & County QuickFacts, United States Census Bureau, *available at* <http://quickfacts.census.gov/qfd/index.html>.

In fact, in 2006 the Retailer's Association of Massachusetts named Northampton the "Best Downtown Shopping District."¹⁶ Northampton's entertainment venues attract world renowned performing artists, which have included James Taylor, Elvis Costello, Alice Cooper, Emmylou Harris, Jimmy Fallon, Weird Al Yankovic, and Ben Folds, to name a few, and bring approximately 500,000 visitors to the City annually.¹⁷

The City also owns several venues itself, including the Academy of Music, which hosts theatrical, film, music, and dance performances, and the approximately 150-acre Look Park, attracting visitors from across the region, and which includes indoor and outdoor event spaces, a zoo, a miniature golf course, a water park, concessions, and other amenities and attractions. In addition, the retail environment in Northampton continues to flourish, with many small retailers catering to, and competing for, tourist and student dollars.

While Northampton's cultural history spans many decades, its economy nonetheless remains delicate and subject to changing market factors.¹⁸ Indeed, the economic downturn of recent years was felt in Northampton's downtown district, which saw a precipitous decline in customer patronage especially during 2008-2009.¹⁹ Likely serving as both a real-life test-case, and forewarning of what could result from a few percentage point decline in patronage, the 2008-2009 downtown led to store and restaurant closings, the volume of which had not been seen in decades.²⁰

It is precisely this further anticipated decline, attributable to the MGM operation that is the basis of the City's Petition in this regard. Indeed, while the City's economy has steadily improved over the past couple of years, and as further detailed below, the financial impact from the MGM development will severely impact the City's innately fragile economic model.

Accordingly, the future of Northampton's economic fabric is at risk given the economic and fiscal impact it will endure as a result of the MGM development. These impacts are not

¹⁶ Northampton Awards, City of Northampton Massachusetts, *supra* at footnote 11.

¹⁷ Camoin Report at 9 (Appendix at 18).

¹⁸ *Id.*, at 10 (Appendix at 19).

¹⁹ Chad Cain, Daily Hampshire Gazette, page 1A (May 22, 2008).

²⁰ Chad Cain, Daily Hampshire Gazette, page 1A (January 24, 2008).

imagined, as MGM would aver, but rather have been empirically and categorically determined by Camoin, as discussed below.

III. ARGUMENT

Consumer discretionary spending is the driving force behind Northampton's economy. As noted above, approximately seventeen percent (17%) of the City's total retail sales come from out-of-town visitors to the City.²¹ If the MGM project is approved and developed, some of that entertainment and recreation discretionary spending basket will instead be spent at the gaming establishment, significantly and negatively impacting the City's small businesses, which will in turn have a significant and adverse impact on the city's employment rate, tax collections, and future property development.²²

Recognizing the potential harms to municipalities in proximity to a gaming establishment, the legislature included in the Expanded Gaming Act provisions to protect those municipalities and to mitigate the negative impacts. In order to be entitled to those protections a community must first be affirmatively designated as a surrounding community.²³ A municipality may be designated by one of three methods: (1) designation in the applicant's RFA-2 application, (2) by entering into a surrounding community agreement with the applicant, or (3) designation by the Commission upon written petition of the community.²⁴ Because MGM has failed and refused to designate Northampton as a surrounding community in its RFA-2 application or to enter into an agreement with the City, Northampton now seeks designation as a surrounding community by the Commission.

²¹ Camoin Report at 10 (Appendix at 19).

²² *Id.*, at 6 (Appendix at 15).

²³ *See, e.g.*, Mass. Gen. Laws ch. 23K, § 15(9) (applicant for gaming license must provide to the Commission signed agreements with "surrounding communities"); Mass. Gen. Laws ch. 23K, § 61(b) (monies from Community Mitigation Fund available to host community and "surrounding communities").

²⁴ 205 C.M.R. 125.01(1).

In determining whether a particular community will be deemed a surrounding community for purposes of Mass. Gen. Laws ch. 23K and 205 C.M.R. 125.01, the legislature has advised the Commission to consider factors such as likely impact from the operation or development of the gaming establishment and proximity to the host community.²⁵ In making its determination, the regulations provide that the Commission will evaluate five factors: (1) proximity to the host community and the gaming establishment, (2) significant adverse impacts on the transportation infrastructure, (3) significant adverse effects from the development of the gaming establishment, (4) significant adverse effects from the operation of the gaming establishment, and (5) significant and adverse effects resulting from any other relevant impacts.²⁶ Once any one factor is met, the municipality has satisfied its burden to be designated as a surrounding community.²⁷

In considering whether a community will be adversely affected by the operation of the proposed gaming establishment under the fourth criterion noted above, the Commission takes into account, among other things, “any negative impact on local, retail, entertainment, and service establishments in the community.”²⁸ It is this consideration that primarily concerns the City, and for which it should be designated as a surrounding community. Unlike many other municipalities throughout Massachusetts, and Western Massachusetts in particular, designated or petitioning for designation as a “surrounding community,” the City of Northampton will be uniquely and adversely impacted not by traffic or infrastructure, but more significantly, by the disruption to its core economy.

Because MGM and its representatives have failed and refused to designate the City of Northampton as a surrounding community pursuant to 205 C.M.R. 125.01(1)(a)(1), the City now seeks designation by the Commission under 205 C.M.R. 125.01(1)(c) and (2)(a) to permit the City to enter into an agreement with MGM to mitigate the impacts of the proposed gaming establishment under 205 C.M.R. 125.01(6).

²⁵ Mass. Gen. Laws ch. 23K, § 2 (definition of “Surrounding communities”).

²⁶ 205 C.M.R. 125.01(2)(b).

²⁷ See Transcript, Public Meeting No. 91 (Nov. 21, 2013), Mass. Gaming Comm., at 22:6-11.

²⁸ 205 C.M.R. 125.01(2)(b)(4).

A. The operation of the MGM gaming establishment will cause substantial and net adverse impact resulting in lost sales, jobs, earnings, and tax revenue.

1. The MGM Development will impact Northampton's existing customer base.

As noted above, the Commission shall evaluate the impacts of the operation of a gaming establishment including “any negative impact on local, retail, entertainment, and service establishments in the community.”²⁹ Known for its food service establishments, which range from fine dining to counter service, entertainment venues, indoor and outdoor sporting activities and trails, galleries, retail shops, and a variety of lodging accommodations, Northampton is the cultural and consumer epicenter of the Pioneer Valley. In fact, Northampton currently has a new hotel in the permitting process which seeks to offer over one hundred rooms and an accompanying four thousand (4,000) square-foot restaurant.³⁰

The scale of MGM's plans for its proposed gaming establishment demonstrates that the project would be far more than a casino. Rather, MGM Springfield would be a “resort casino,” complete with all the amenities and leisure activities that complement gaming, including entertainment, dining, and shopping, which together would create an attractive “destination” environment that would directly compete with other centers of activity in the Pioneer Valley, namely Northampton.³¹

Indeed, MGM plans to develop a resort that encompasses much more than gaming. According to the Host Community Agreement,³² this investment would include:

²⁹ *Id.*

³⁰ Fred Contrada, *New Hotel-Office-Restaurant Complex Envisioned For Northampton*, The Republican (Nov. 13, 2013), *available at* http://www.masslive.com/news/index.ssf/2013/11/new_hotel-office-restaurant_complex_envisioned_for_northampton_clarion_site.html (included in Appendix at 36).

³¹ Camoin Report at 11 (Appendix at 20).

³² Host Community Agreement by and between City of Springfield, Massachusetts and Blue Tarp reDevelopment, LLC, May 14, 2013, *available at* http://www3.springfield-ma.gov/planning/fileadmin/Planning_files/1a_Host_Community_Agreement_-_Dated.pdf (hereinafter “Host Community Agreement”).

- 125,000 square feet of gaming area (3,000 slot and video stations and 75 tables);
- 250-room four-star hotel;
- 7,000-square-foot spa with rooftop outdoor swimming pool and 8,000-square-foot rooftop garden;
- 45,000-square-foot conference facility;
- 54 apartment units;
- 125,000 square feet of office;
- An entertainment hub including 8-screen cinema, 18-lane bowling, a minimum of 7 restaurants, and approximately 27,000 square feet of retail space;
- A physical connection to the MassMutual Center, which will partner with MGM on entertainment; and
- Parking for buses and 3,600 personal vehicles.³³

These services to be provided by MGM will compete directly with Northampton's business owners for the limited dollars available for consumer discretionary spending in the region.³⁴

In addition to any entertainment contained within the Casino and associated facilities, the Casino has entered into agreements to market, co-sponsor, and underwrite 12 major events per year at the MassMutual Center, Symphony Hall, and City Stage venues in Springfield. The added clout of the casino, together with its likely favorable ticket pricing in attracting attendees into these events, creates additional competition for the City of Northampton as a destination and will increase the cost to Northampton venues in attracting performers and concertgoers.³⁵

³³ See Exhibit G to Host Community Agreement, *available at* http://www3.springfield-ma.gov/planning/fileadmin/Planning_files/1b_Exhibits_-_2.pdf.

³⁴ Camoin Report at 5 (Appendix at 14).

³⁵ *Id.* It should also be noted that many concert promoters include "radius clauses" in their agreements with performers, which prevent artists from performing within a certain radius of a concert for a period of time. If similar clauses are included in any agreements with performers at the MGM facility and related venues, it would negatively impact the ability of Northampton venues to attract the caliber of performers they have enjoyed in the past. See Jim DeRogatis, *Illinois Attorney General Investigating Lollapalooza for Anti-Trust*, WBEZ Chicago Public Media, *available at* <http://www.wbez.org/jderogatis/2010/06/breaking-illinois-attorney-general-investigating-lollapalooza-for-anti-trust/27523>.

2. The MGM Development will result in \$4.4 Million to \$8.8 Million in lost sales, 90 to 180 lost jobs, and \$1.6 to \$3.2 Million in lost earnings in Northampton.

As discussed in greater detail in the Camoin Report, while Northampton services customers throughout the Pioneer Valley (the “Northampton Trade Area”) and beyond, the City nonetheless draws most of its customer base from south of the City.³⁶ The MGM development will draw from a far larger market area (the “Casino Trade Area”), and Camoin estimates that approximately 4.04% of all recreational and entertainment spending within the Casino Trade Area will be spent at the MGM facility.³⁷ However, since the Northampton Trade Area is wholly subsumed within the Casino Trade Area, recreational spending in Northampton will suffer immensely as a direct result of the MGM development. This will result in 4.04% to 8.08% of food/beverage, lodging and retail sales being transferred from the Northampton Trade Area to the gaming establishment, an amount equal to over \$40 million to \$80 million per year.³⁸

The impact on Northampton will be especially significant given Northampton’s role in the Northampton Trade Area.³⁹ As well, by redirecting spending in the Northampton Trade Area to the casino, it will reduce the amount of spending that Northampton Trade Area residents would otherwise spend in the City.⁴⁰

All told, on a range of “low case” to “high case” estimates, Northampton can be expected to lose between \$4.4 million to \$8.8 million annually in sales,⁴¹ severely impacting the small businesses in the City already surviving on wafer-thin margins. Moreover, the impact would

³⁶ Camoin Report at 5 (Appendix at 14).

³⁷ *Id.*, at 14 (Appendix at 23).

³⁸ *Id.*

³⁹ *Id.*, at 15-16 (Appendix at 24-25).

⁴⁰ *Id.*, at 5 (Appendix at 14).

⁴¹ *Id.*, at 15-16 (Appendix at 24-25).

correlate directly to individuals and would result in a loss of between 90 to 180 jobs, and thus a loss of between \$1.6 million to \$3.2 million in earnings annually.

3. The City of Northampton will lose between \$137,000 and \$274,000 in lost tax and other revenue annually (\$3,700,000 to \$7,400,000 over a 20 year period).

In addition to the economic impacts Northampton will face as a result of lost sales, jobs, and earnings as described above, the City treasury will likewise suffer a direct loss of tax and parking revenue. As the Camoin Report details, Northampton's vibrant economy fuels much needed City tax revenues. Sources of revenue include meals taxes from the 103 restaurant, bar, and food retailers throughout the City, as well room occupancy taxes from the City's lodging establishments. Given the large amount of recreational spending in the City, Northampton also relies upon fees associated with parking in the City's municipal parking lots, as well as metered locations. As the Camoin Report shows, these revenues will all decrease proportionately as a result of the MGM development.

Moreover, the City is expected to lose property tax revenues as a result of the MGM development. Northampton assesses the values of real property on an income generation model.⁴² As such, there is a direct correlation between business sales and the rent charged by property owners to commercial tenants. Accordingly, with the decreased sales forecasted, and further described above, there would be a decrease in property taxes, especially for the "mixed use" units located in the City's downtown, anticipated to be the hardest hit by decreased sales resulting from the MGM development.⁴³

In sum, the City will directly lose between \$137,000 and \$274,000 in tax and other revenue annually, and \$3,700,000 to \$7,400,000 over a 20 year period, as a result of the MGM project.

⁴² *Id.*, at 19 (Appendix at 28).

⁴³ *Id.*

4. The City will lose nearly \$640,000 in tax revenue as a result in the redirection of future investment and development dollars.

As the Camoin report confirms, Northampton is currently considered a prime location for real estate development in light of a low tax rate, significant number of annual visitors, and a thriving retail environment.⁴⁴ By way of example, there is currently \$21 million of development underway with respect to two large hotel development projects in Northampton.⁴⁵

As MGM and Springfield develop casino amenities such as retail stores, hotels, restaurants, and other hospitality services, investments that otherwise would have been made in Northampton would instead be diverted to Springfield.⁴⁶ Again, while this end result would undeniably be a good thing for Springfield, it would unfortunately be at Northampton's expense.

As the Camoin Report explains, while not every future development in Northampton would be impacted as Springfield evolves into a more popular tourist destination, the actual impact would nonetheless be substantial. It is forecasted that Northampton would thus lose as much as an additional \$323,190 annually in property tax revenue and \$316,596 annually in associated occupancy tax revenue as a result of this loss of future development in Northampton.⁴⁷

5. Northampton will not experience any positive impact; patrons from outside the Pioneer Valley attracted to the MGM facility will not benefit Northampton.

Clearly MGM anticipates attracting current residents of the Pioneer Valley as casino patrons. Moreover, while MGM would undoubtedly expect to attract patrons from outside the

⁴⁴ *Id.*, at ii (Appendix at 8).

⁴⁵ *Id.*

⁴⁶ *Id.*, at 21 (Appendix at 30).

⁴⁷ *Id.*

region, the proposed Springfield resort casino cannot be expected to have any positive impact on Northampton's economy.

MGM avers that Northampton will benefit to some extent from its development, noting that it intends to:

“promote Northampton and its wonderful and dynamic downtown area to [MGM's] multiple day visitors, and intend to provide the Northampton Visitor's Guide to our concierge and customer service employees to promote to [MGM's] guests.”⁴⁸

This representation of negligible cross-promotion directly contravenes the amenities-rich MGM development proposal, and the track record of the industry itself—providing a *de facto* disincentive for casinos patrons to frequent entertainment amenities outside the casino facility, much less in other communities.

Indeed, the proposed MGM development model is to provide restaurant, entertainment and lodging amenities to meet all of its customers' needs within the gaming establishment and adjacent facilities so that they do not need to leave the casino. For this reason, the proposed non-gaming investments in the City of Springfield are not merely negotiated bonuses for Springfield—the Casino has a vested interest in the creation of a successful destination area which suggests a high likelihood of competition for Northampton.⁴⁹

“The tourist . . . does not generally spend much in the communities surrounding a resort-style casino.”⁵⁰ This business paradigm is readily acknowledged in the industry; Steve Wynn, stated in an address to Bridgeport, Connecticut businesspersons in 1990: “There is no reason on earth for any of you to expect for more than a second that just because there are people here,

⁴⁸ MGM Letter at 2 (Appendix at 2).

⁴⁹ Camoin Report at 11 (Appendix at 20).

⁵⁰ Economic Impact of Casino Development, Memorandum from Heather Brome, Policy Analyst, New England Public Policy Center, Federal Reserve Bank of Boston 3 (Sept. 14, 2006), available at <http://www.bostonfed.org/economic/neppc/memos/2006/brome091406.pdf>.

they're going to run into your restaurants and stores just because we build this building [casino] here.”⁵¹

Lastly, by MGM's own logic, it cannot contend that Northampton will materially benefit from its Springfield development, having already determined that “Northampton and Springfield are not proximate enough to significantly and adversely impact one another.”⁵² Despite its assertions to the contrary, MGM cannot argue on one hand that Springfield and Northampton are proximate enough for the casino to *benefit* Northampton, while at the same time arguing that they are not proximate enough to *adversely impact* each other.

6. The policy objectives of Chapter 23K support designation as a surrounding community.

“[P]romoting local small businesses and the tourism industry, including the development of new and existing small business and tourism amenities such as lodging, dining, retail and cultural and social facilities, is fundamental to the policy objectives of [Chapter 23K].”⁵³ Additionally, the legislature established that a key component in awarding a gaming license is the recognition of the importance of unique cultural and social resources.⁵⁴ As an established cultural, social, and economic center for decades, the public policy considerations set forth in Chapter 23K seem to speak directly of protecting Northampton's interests and weigh decidedly in favor of designating Northampton as a surrounding community.

Thus, while the City recognizes that the MGM project certainly could result in material and positive impacts for Springfield, this unfortunately will come at the expense of the City of Northampton. Individuals who have spent decades shopping or having dinner in Northampton followed by a musical performance, for example, may now instead spend their discretionary

⁵¹ Quoted in Economic Impact of Casino Development, *supra* at note 50 (modification in original).

⁵² MGM Letter at 2 (Appendix at 2).

⁵³ Mass. Gen. Laws ch. § 1(6); *see also* Transcript, Public Meeting No. 91 (Nov. 21, 2013), Mass. Gaming Comm., at 119-21 (recognizing the importance of defining small business).

⁵⁴ *See* Mass. Gen. Laws ch. 23K, § 1(7).

dollars at the MGM casino. The legislature contemplated the likely impact of casinos on small business retail, when the Senate defeated an amendment that would have banned casinos from operating retail businesses because “we’re not interested in trying to kill the goose that lays that golden egg [W]e want to make sure these entities remain viable, that they are going to produce revenue for the commonwealth.”⁵⁵

B. Northampton is in sufficient proximity of the proposed gaming establishment.

1. Northampton is geographically proximate to the proposed MGM development.

Northampton is located geographically proximate to the proposed gaming establishment and the host community of Springfield, particularly when taking into account the unique nature of the Pioneer Valley economy and population. At an approximately 18 mile drive from the site of proposed gaming establishment, a majority of the customers to Northampton come from the south (i.e., the Greater Springfield area) due to the ease of access (I-91 corridor), population centers, and overall market proximity.⁵⁶ With its main downtown parking area just one mile from the Route 91 exit, it can take less than twenty minutes from getting in one’s car at the proposed casino site to parking in the Northampton downtown parking lots.

Proximity and economic impact are related where the casino, in drawing spending to the City of Springfield, will siphon off a portion of that spending from the Northampton Trade Area. By redirecting spending in the Northampton Trade Area to the casino, it will reduce the amount of spending that Northampton Trade Area residents would otherwise spend in the City.⁵⁷

⁵⁵ Dan Ring, *Massachusetts Senate Launches Debate on Casinos, Defeats Proposals for Major Changes to Bill*, *The Republican* (Sept. 26, 2011) available at http://www.masslive.com/news/index.ssf/2011/09/massachusetts_senate_launches_1.html (included in Appendix at 38) (quoting State Senator Stephen M. Brewer).

⁵⁶ Camoin Report at 5 (Appendix at 14).

⁵⁷ *Id.*

Mileage from the proposed gaming establishment *alone*, while instructive, cannot be the dispositive factor in determining proximity, particularly in Western Massachusetts where the population is less concentrated than in the eastern part of the Commonwealth.

The Commission itself has stated that each community will be evaluated independently. While the Commission has made reference to the one (1), two (2), and five (5) mile distances that were proposed in certain amendments to the proposed Expanded Gaming Act legislation, the Commission is reminded that amendments were likewise proposed that considered communities within a twenty (20) mile radius as potential surrounding communities.⁵⁸ Moreover, in considering the concept of ‘geographic proximity,’ the Commission did not rule out the possibility that a community could be designated as a surrounding community, even with extreme geographic distances between the municipality and the gaming establishment:

“If a Community is one mile away from a gaming facility, it is likely to experience impacts. If a community is 50 miles away from a gaming facility, it is less likely to experience impacts. However, even within those extremes, arguments are possible that communities may or may not experience some impacts. For example, venue operators very far from Connecticut casinos have indicated their business is impacted.”⁵⁹

The Pioneer Valley counties of Hampden, Hampshire, and Franklin take up 23.6% of the land area in Massachusetts but account for just 10.6% of the population.⁶⁰ Individuals in Western Massachusetts are accustomed to traveling longer distances for recreational, shopping,

⁵⁸ Amendment No. 144, Filed: Sept. 2011 2:47 PM FOR H. 3702 (Mr. Murphy of Burlington moves to amend House Bill 3702 in line 1031, paragraph (8) of section 15, by adding at the end thereof the following: “A surrounding community is a municipality within a twenty geographic mile radius from the casino.”).

⁵⁹ Massachusetts Gaming Commission, *Framework for Addressing Policy Questions*, Update Date December 6, 2012, Question 1 Analysis, available at <http://massgaming.com/wp-content/uploads/Commissioner-Packet-Policy-Questions-12.12.2012.pdf>.

⁶⁰ As of the 2010 Census, the total state population was 6,547,629 in an area of 7,800.06 square miles; the counties of Hampden, Hampshire, and Franklin had a combined population of 693,302 in an area of 1,843.72 square miles. State & County QuickFacts, United States Census Bureau, available at <http://quickfacts.census.gov/qfd/index.html>.

and employment purposes than those in Eastern Massachusetts. This must be taken into account in determining proximity for purposes of designation as a surrounding community.

Northampton is located within the same New England City and Town Area as the host community of Springfield, as determined by the White House Office of Management and Budget.⁶¹ Particularly relevant is the definition of such an Area: “a geographic entity associated with at least one core of 10,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.”⁶²

Notwithstanding the above, the Commission has made it clear that ultimately the determinative factor for designation as a surrounding community is *impact* and *not proximity*. Indeed, at the Commission’s November 21, 2013 meeting, Chairman Crosby clarified: “[w]hat the Legislature and we are concerned about is impacts . . . [a]nd maybe proximity can be sort of advisory to impacts but it is impacts not proximity which are really determinative here.”⁶³

While communities in closer proximity to the proposed casino site may face other impacts, positive and negative, Northampton is unique in that it will suffer economically because Northampton will have to compete for the same market participant consumers that have caused the City to flourish in the past years. With the development and operation of the proposed MGM gaming establishment, it is unlikely that Northampton will be able to preserve the character of its downtown and its income base absent sufficient funds and procedures in place to mitigate the effects of the MGM project.

⁶¹ Office of Mgmt. & Budget, Executive Office of the President, OMB Bull. No. 13-01, Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas (2013).

⁶² 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas, 75 Fed. Reg. 37246 (June 28, 2010) (defining Core Based Statistical Areas, including New England City and Town Areas).

⁶³ Transcript, Public Meeting No. 91 (Nov. 21, 2013), Mass. Gaming Comm., at 15:24-16:4.

2. Northampton is in the proximate economic market of the MGM development, and shares a common tourism and transportation infrastructure with Springfield.

The Camoin Report makes clear Springfield is located within the Northampton Trade Area and shares a customer base with Northampton.⁶⁴ As noted above, a majority of the customers to Northampton come from the south due to ease of access, population centers, and overall market proximity.⁶⁵ Therefore, the proximity of Northampton to Springfield will play a large role in how the casino impacts spending.⁶⁶

In addition, Northampton and Springfield share a common transportation and tourism infrastructure. Both are served by the Pioneer Valley Transit Authority as their primary mass-transportation provider.⁶⁷ Further, they are both represented in the Pioneer Valley Planning Commission,⁶⁸ which, among other responsibilities, is tasked with “[b]ringing a regional and inter-regional perspective to the region’s transportation, housing, economic development, historic preservation, pollution control, and resource management and protection planning . . . [and] [f]ostering cooperative efforts among municipalities to achieve better land development, public service, and financial efficiency.”⁶⁹ In addition, the Greater Springfield Convention and Visitors Bureau, Inc. promotes tourism in the region which includes both Northampton and

⁶⁴ Camoin Report at 4 (Appendix at 13).

⁶⁵ *Id.*, at 5 (Appendix at 14).

⁶⁶ *Id.*

⁶⁷ “The Pioneer Valley Transit Authority” includes “[t]he cities of Chicopee, Holyoke, Northampton, Springfield, Westfield, and the towns of Agawam, East Longmeadow, Easthampton, Hadley, Longmeadow, Ludlow, South Hadley, West Springfield, Wilbraham and Amherst.” Mass. Gen. Laws. ch. 161B, § 2.

⁶⁸ Member Communities, Pioneer Valley Planning Commission, http://www.pvpc.org/member_communities/#.

⁶⁹ Vision and Mission, Pioneer Valley Planning Commission, <http://www.pvpc.org/about/visionandmission.shtml>.

Springfield.⁷⁰ This demonstrates that Northampton and Springfield share common economic ties and that their infrastructure and tourism industry are inextricably linked.

Furthermore, the legislative history of the bill itself is instructive in determining the economic market area of a casino. The early versions of the gaming bill in the Massachusetts Senate all included the provision that “[n]o gaming establishment shall be located within forty (40) miles of any other gaming establishment in the commonwealth.”⁷¹ The purpose of this provision was to “maximize the benefits,” or to put it more plainly—to maximize profits.⁷² If a forty-mile radius is the minimum distance required to protect the gaming developers from an over-saturated market, then Northampton’s economic market should be held to a similar proximity, and, at eighteen (18) miles away, should be deemed proximate to the Springfield market.

(remainder of page intentionally blank)

⁷⁰ “The Greater Springfield Convention & Visitors Bureau (GSCVB) was founded in 1985 to promote Massachusetts’ Pioneer Valley as a year-round destination for conventions, meetings, group tour and leisure travel. The Pioneer Valley is defined as the region encompassing Hampden, Hampshire and Franklin counties.” About Us, Greater Springfield Convention & Visitors Bureau, <http://www.valleyvisitor.com/about-us.html>.

⁷¹ 2011 Bill Text MA S.B. 155, § 17(i); 2011 Bill Text MA S.B. 170, § 17(i); 2009 Bill Text MA S.B. 2524, § 17(i); 2009 Bill Text MA S.B. 2530, § 17(i).

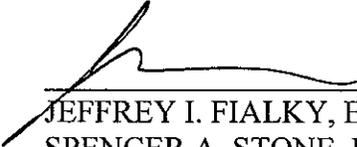
⁷² See Dan Ring, *Massachusetts Senate Launches Debate on Casinos, Defeats Proposals for Major Changes to Bill*, supra at footnote 55.

IV. CONCLUSION

For the forgoing reasons, the City of Northampton submits that Commission should designate the City as a surrounding community to the proposed MGM gaming establishment.

January 9, 2014

Respectfully submitted,
City of Northampton,
By and through counsel,



JEFFREY I. FIALKY, ESQ. BBO #567062
SPENCER A. STONE, ESQ. BBO #674548
BACON WILSON, P.C.
33 State Street
Springfield, MA 01103
Tel: (413) 781-0560
Fax (413) 739-7740
Jfialky@baconwilson.com

AFFIDAVIT OF SERVICE

I, Jeffrey I. Fialky, of the law firm of Bacon Wilson, P.C., do hereby certify under penalty of perjury that on January 9, 2014, I caused copies of the foregoing Petition of the City of Northampton for Designation as a Surrounding Community, the Memorandum of Law in Fact in support thereof, and the Appendix thereto to be served upon the parties and in the manner listed below:

MASSACHUSETTS GAMING COMMISSION

Attn: Chairman Stephen Crosby

84 State Street, 10th Floor

Boston, MA 02109

(via UPS overnight shipping)

MASSACHUSETTS GAMING COMMISSION

Attn: John Ziemba, Ombudsman

84 State Street, 10th Floor

Boston, MA 02109

(via UPS overnight shipping)

BLUE TARP REDEVELOPMENT, LLC

100 Franklin Street

9th Floor

Boston, MA 02110

(via first class mail, postage prepaid)

BLUE TARP REDEVELOPMENT, LLC

c/o Corporation Service Company-MA, its Registered Agent

84 State Street

Boston, MA 02109

(via first class mail, postage prepaid)

MICHAEL MATHIS

Vice President, Global Gaming Development

MGM Resorts International

1414 Main Street

Suite 1140

Springfield, MA 01144

mmathis@mgmresorts.com

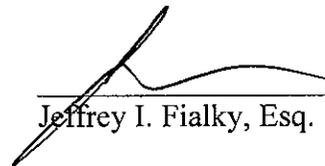
(via first class mail, postage prepaid, and email)

JED M. NOSAL, ESQ.
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
JNosal@brownrudnick.com
(via first class mail, postage prepaid)

SETH STRATTON, ESQ.
Law Offices of Frank Fitzgerald
46 Center Square
East Longmeadow, MA, 01028
sns@fitzgeraldatlaw.com
(via first class mail, postage prepaid, and email)

MAYOR DAVID J. NARKEWICZ
210 Main Street, Room 12
Northampton, MA 01060
(via first class mail, postage prepaid)

ALAN SEEWALD, CITY SOLICITOR
Seewald, Jankowski & Spencer, P.C.
5 Pleasant Street
Amherst, MA 01002-1501
(via first class mail, postage prepaid)



Jeffrey I. Fialky, Esq.