



BOARD OF SELECTMEN
TOWN OF TEWKSBURY
TOWN HALL
1009 MAIN ST
TEWKSBURY, MASSACHUSETTS 01876

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MEETING MINUTES
AUGUST 1, 2013

Douglas Sears, Vice Chair; called the meeting to order at 6:07 p.m. Present for the Board of Selectmen meeting were Board Members, David Gay and Todd Johnson. Richard Montuori, Town Manager was also present. Chairperson Scott Wilson, James Wentworth, Clerk and Attorney Charles Zaroulis, Town Counsel was not present.

Special Town Meeting Warrant

The entire article was presented to the Board of Selectmen follows:

Middlesex, ss:

To any of the Constables of the Town of Tewksbury, in said County:

In the name of the Commonwealth of the Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Tewksbury, qualified to vote in Town affairs, to meet and assemble at Tewksbury Memorial High School, 320 Pleasant Street, in said Tewksbury on Tuesday, August 20, 2013, at 7:00 P.M. to act on the following article:

ARTICLE 1

To see if the Town will vote to amend the Tewksbury Zoning Bylaw and the Zoning Map by adding the following Section 8700 to the Zoning Bylaw and adding the overlay map described below to the Town's Zoning Map:

8700. AMES POND OVERLAY DISTRICT

8701. Purpose. The purpose of this Overlay District is to provide for the controlled development and utilization of those portions of land located within the Town of Tewksbury adjacent to Ames Pond.

8702. Scope of Authority. The Ames Pond Overlay District is an overlay district that is superimposed on properties adjacent to Ames Pond that are in the Office Research (OR) District. All uses permitted in the underlying Office Research (OR) District shall be allowed in the Ames Pond Overlay District as further described in Appendix A: Table of Use Regulations subject to said existing by right and by Special Permit. The following additional uses shall also be allowed in the Ames Pond Overlay District upon the issuance of a Special Permit from the Planning Board: Gaming Establishments with a Category 2 License as limited under Massachusetts General Law, Chapter 23K, as of the date of passage of the Ames Pond Overlay District, which includes a gaming area and any

other nongaming structure related to the gaming area and, notwithstanding any other provision of these Bylaws, may include, but shall not be limited to, hotels, restaurants or other amenities.

8703. Relationship to Existing Zoning. The underlying zoning shall remain an integral part of the Tewksbury Zoning Bylaw and is not modified, repealed nor amended by this section. The property owners in this overlay district shall possess all current zoning rights including by-right uses for the underlying districts and be subject to the requirements applicable in the underlying zones when utilizing the uses allowed in the underlying district. In the event that an owner desires to use the owner's property for development as here defined, the regulations of this overlay district shall apply and by filing an application for development subject to such regulations, the owner accepts and is bound by such regulations. Where this overlay district's provisions are silent on a zoning rule, the requirements of the underlying zoning shall apply. In addition, projects allowed under the underlying zoning are not eligible to apply under this overlay district unless they meet all of the requirements of this overlay district.

8710. Location.

8711. The Ames Pond Overlay District shall be defined as follows:

That portion of the Town of Tewksbury located in the Office Research (OR) District that is north or east of Ames Pond and that is south of Interstate 495. Only those lots that are adjacent to the shoreline of Ames Pond shall be included in the Ames Pond Overlay District. More specifically, the Town of Tewksbury Zoning 2013 Map, on file at the office of the Town Clerk, is hereby amended to include the Ames Pond Overlay District.

8720. Dimensional Regulations.

8721. Dimensional Regulations. Except as provided herein, all dimensional regulations in the Ames Pond Overlay District shall be in accordance with the provisions of Section 4000, Dimensional Regulations and Appendix B. The Planning Board may grant an Ames Pond Special Permit (AP-SP) for developments within the Ames Pond Overlay District upon finding that the following, Section 8721, (a) through (e), provide substantial benefit to the overall proposal.

- (a) **Minimum Area.** The parcel or set of contiguous parcels for which the AP-SP is requested shall not be less than twenty-five (25) acres prior to any dedication of any portion of said parcel or set of contiguous parcels for purposes of, by way of example only, public or private ways, and common or open space areas. All of said twenty-five (25) acre parcel shall be located exclusively in the Town of Tewksbury and shall be located entirely within the Ames Pond Overlay District.
- (b) **Maximum Lot Coverage.** The total lot coverage by structures and impervious surfaces shall not exceed thirty (30%) percent of the total area of the parcel.
- (c) **Minimum Frontage.** The minimum frontage shall be 70 feet for the parcel or set of contiguous parcels.
- (d) **Building and Parking Setbacks.** No accessory use or structure shall be located within 50 feet of any boundary of the Ames Pond Overlay District, provided further, however, that no accessory use or structure shall be located within 100 feet of any

abutting residential district. Except with respect to abutting residential districts, the setback may be reduced to zero (0) feet by Special Permit to accommodate an approved water-dependent use.

- (e) **Maximum Building Height.** Structures may be allowed in excess of 35 feet or two and one-half stories in the Ames Pond Overlay District. In no event shall a special permit be issued for structures in excess of 60 feet or 5 stories.

8730. General Regulations

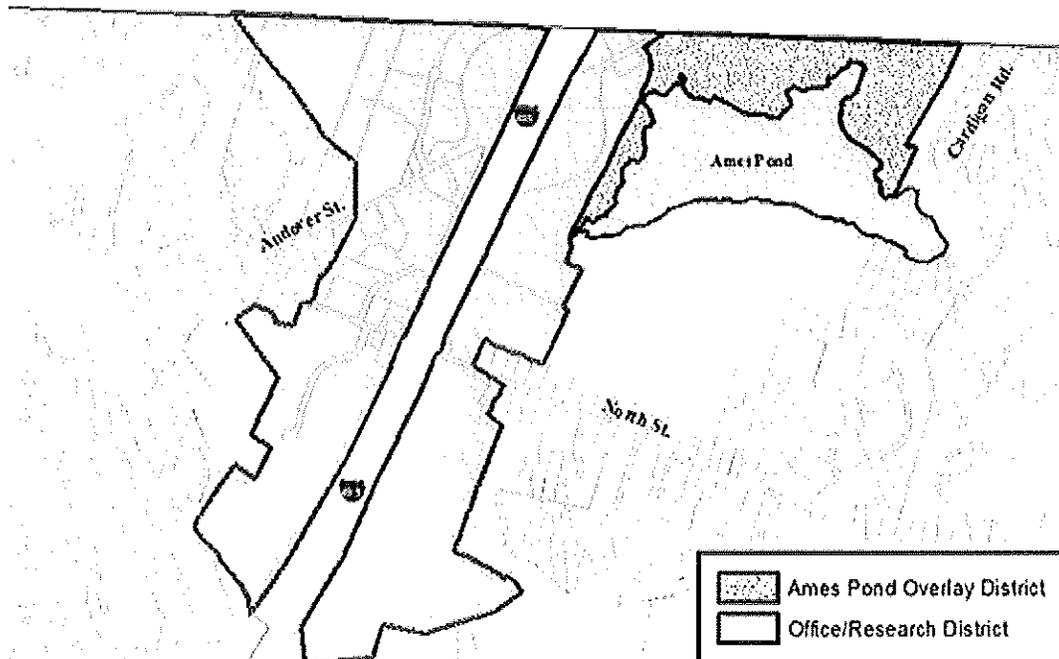
8731. Parking and Loading Requirements. Parking and loading requirements shall be in accordance with the provisions of Section 5100 and Appendix C.

8732. Signs. Sign requirements shall be in accordance with the provisions of Section 5200.

8733. Environmental Performance Standards. Environmental Performance Standards shall be in accordance with the provisions of Section 5300.

8740. Landscaping, Screening and Buffer Requirements

8741. All landscaping, screening and buffer Requirements in the Ames Pond Overlay District shall be in accordance with the provisions of Section 5400, Landscaping, Screening and Buffer Requirements.



Board of Selectmen

Executive Summary: Penn National Gaming, Inc. proposes to develop, through a subsidiary, a Massachusetts General Law, Chapter 23K, Category 2 gaming establishment on Ames Pond Drive. This article would allow such use by creating a new Ames Pond Overlay District that is superimposed on properties adjacent to Ames Pond that are in the Office Research (OR) District in which such use is permitted. In addition, it establishes dimensional limitations, including a 100 foot setback from any abutting residential district, a maximum coverage ratio of 30%, a maximum building height of 60 feet, a minimum frontage requirement of 70 feet, and a minimum 25 acre lot size.

Mr. Johnson asked the Town Manager if the Planning Board has met with developer and taken public comment and if they have determined this is the preferred method of zoning change. Mr. Montuori confirmed the planning board has not taken a position on this article and continues to work on their decision. He is requesting the Board of Selectmen to approve the article so it can be moved forward to be placed on the warrant. A public hearing will take place on it August 12 with the Selectmen and the Finance Committee will have a public hearing on August 6 at 7 p.m.

The Selectmen noted this is a zoning change and the planning board has affectively presented it to be moved to the warrant.

MOTION: Mr. Johnson made the motion to authorize the Special Town Meeting Warrant as presented; seconded by Mr. Gay and the motion carried 3-0.

Election warrant (Ballot Question)

Mr. Montuori stated the election will take place on September 21. A yes vote will allow Penn National to file an application with the Commonwealth for a slots only, no table games, facility.

The question to be voted on will read as follows:

QUESTION:

“Shall the Town of Tewksbury permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at 300 Ames Pond Drive, in the Town of Tewksbury? Yes _____ No _____”

A YES VOTE by a majority of votes cast on this ballot question would allow Western Mass Gaming Ventures, LLC to file an application with the Massachusetts Gaming Commission for the development and operation of a gaming establishment, category 2 license, not more than 1,250 slot machines and no table games, at the location specified, and in accordance with the signed host community agreement as summarized below.

A NO VOTE would prevent Western Mass Gaming Ventures, LLC from filing such application with the Massachusetts Gaming Commission.

**CONCISE SUMMARY OF HOST COMMUNITY AGREEMENT
ENTERED INTO BETWEEN THE TOWN OF TEWKSBURY ("TOWN")
AND WESTERN MASS GAMING VENTURES, LLC ("MASS GAMING")
PUBLISHED IN ACCORDANCE WITH M.G.L. c. 23K, § 15(13)**

SUMMARY OF TERMS

Pursuant to the Host Community Agreement, Mass Gaming has agreed to:

- (i) Annual payments after opening of \$1 million in mitigation payments (which will increase by 2.5% annually beginning in year four of operations) and \$120,000 contributions to fund Tewksbury's capital expenditures and other beneficial projects and initiatives. Combined with the estimated annual property taxes of approximately \$3 million, the annual payments to the Town are expected to exceed \$4 million per year.
- (ii) Work to maximize opportunities for local residents and area businesses during the construction and operation phases of the facility, including employment, purchasing goods and services from local businesses, utilizing local contractors, and using significant local union labor through the creation of a roster of local residents who are members of various construction and other applicable unions. The project is expected to create approximately 1,000 direct and indirect construction related jobs and 500 permanent jobs upon opening.
- (iii) Commissioning a Traffic Impact Study and Infrastructure Capacity Assessment and funding infrastructure improvements identified in each, including road, sewer and water improvements, among others.
- (iv) Fully reimbursing the Town of Tewksbury for all incremental costs to determine the impacts of the project and the Special Town Meetings and elections, including consultants and temporary staff.
- (v) Implementing a responsible gaming plan in Tewksbury, including active participation in the Massachusetts Partnership for Responsible Gambling, promoting responsible gaming in daily operations, and supporting public awareness of responsible gaming, among others.
- (vi) Donating annually to non-profit entities that serve Tewksbury citizens. Penn National Gaming provided over \$12.7 million in total contributions in 2012 to non-profit organizations in jurisdictions where it operates.
- (vii) Reimbursing the Town of Tewksbury for expenses related to a town election in which the citizens will decide whether to host a slots only facility.

SUMMARY OF AGREEMENT

Section 1. The Town agrees to the proposed location of Mass Gaming's gaming establishment at 300 Ames Pond Drive, Tewksbury, Massachusetts for the construction of a proposed gaming establishment having no more than 1,250 machines. If there is a material change in the size of the gaming establishment following the second anniversary of its opening for business to the general public, or if Mass Gaming is permitted to install table games or additional machines, the Town and Mass Gaming will negotiate in good faith impact fees that correspond to tangible and

incremental impacts on the Town of Tewksbury in direct relation to such gaming expansion at the Premises.

- Section 2. The Town agrees to carry out the procedures to provide notice of the Agreement and to place the required ballot question for electorate approval of the gaming establishment on a public election ballot referendum. Mass Gaming is required to reimburse the Town for its expenses related to the election.
- Section 3. Mass Gaming agrees to pay the Town's reasonable and direct costs of determining the impacts of the gaming establishment, negotiating this Agreement and any related agreements, and participating in proceedings and other activities related to the gaming establishment project.
- Section 4. Mass Gaming agrees to pay the Town's standard permit and license fees for development, construction and utility plans, as well as the Town's actual, reasonable costs incurred in connection with the review and inspection of the permit and license applications for such activities. Mass Gaming's obligation extends to the costs of temporary staff and consultants needed by the Town to conduct such reviews and inspections.
- Section 5. If Mass Gaming is awarded a final Category 2 gaming license, Mass Gaming will work in good faith with the Town to employ residents of the Town during the construction and operation of the proposed gaming establishment, and to purchase goods and services from local vendors provided that the cost and quality of those goods and services is competitive with competitors and the vendors satisfy any suitability requirements imposed by state law or the Massachusetts Gaming Commission. Mass Gaming will hold at least one event for Tewksbury residents at a venue to be approved by the Town, at which Mass Gaming will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with construction of the project.
- Section 6. Mass Gaming agrees to utilize significant union labor in the construction of the gaming establishment. The Section further outlines the procedures Mass Gaming will follow to enhance opportunities for local union chapters and local residents who are members of the various construction unions. Mass Gaming also agrees to supply periodic compliance reports to the Town.
- Section 7. Mass Gaming agrees to provide the Town with copies of revenue reports required to be delivered to the Massachusetts Gaming Commission.
- Section 8. If Mass Gaming is awarded a final Category 2 gaming license, within thirty (30) days after Mass Gaming's opening of the gaming establishment to the public, Mass Gaming will pay the Town an annual mitigation fee in the sum of \$1,000,000. Beginning in year four of Mass Gaming's operations the amount of the Annual Mitigation Payment will be increased by 2.5% per annum; however, the Annual Mitigation Payment payable commencing in year 21 and each year thereafter shall not exceed an amount equal to one percent (1%) of gross gaming revenue of the previous fiscal year.
- Section 9. Commencing in its first year of operations, Mass Gaming agrees to make an annual payment of \$120,000 to fund the Town's capital expenditures and other beneficial projects and initiatives.
- Section 10. Mass Gaming agrees to pay for or reimburse the Town for infrastructure improvements (such as roads, water and sewer) directly related to the construction and operation of the gaming establishment. Mass Gaming shall commission a traffic and infrastructure impact study to be conducted by a professional selected

by Mass Gaming and approved by the Town, and an Infrastructure Capacity Assessment to determine if existing and expected future water and sewer system capacities will service the needs of Mass Gaming and the Town's reasonable build-out analysis for the targeted distribution/collection area(s).

- Section 11. Mass Gaming plans to invest, provided it obtains an acceptable Category 2 gaming license to operate a gaming facility at the Premises, approximately Two Hundred Million Dollars (\$200,000,000.00) in the development of the facilities at the Premises.
- Section 12. Mass Gaming will work toward responsible gaming goals in Tewksbury by: (1) educating its employees and providing information to patrons about the odds of games and how to make responsible gaming decisions; (2) promoting responsible gaming in daily operations; and (3) supporting public awareness of responsible gaming. Mass Gaming will join and actively participate in the Massachusetts Partnership for Responsible Gambling for the express purpose of assisting the Town, or its designee, to address issues of treatment for compulsive behavior, especially problem gaming in Tewksbury.
- Section 13. Mass Gaming shall be solely responsible for selection of contractors for the construction of any infrastructure improvements undertaken directly by it.
- Sections 14 through 15 and 20 through 36. These Sections incorporate general contract language governing selection of contractors, term, the payment of Town professional fees by Mass Gaming, notices, no third party beneficiaries, assignment, transfer or collateral use, relationship of the parties, force majeure, integration clause, default, amendments, dispute resolution, governing law, counterparts, severability, compliance with laws by Mass Gaming, and the conditions precedent to Mass Gaming's obligations under the Agreement, and limitation of liability.
- Section 16. Commencing with the first year of operations of the gaming establishment, Mass Gaming agrees to make during each year of operations monetary donations to non-profit entities that serve Tewksbury citizens, with the recipients and amounts of such donations within Mass Gaming's discretion. Mass Gaming will report annually to the Town on its charitable contributions.
- Sections 17 and 18. Mass Gaming agrees that, if in its discretion it utilizes the police, firefighting or ambulance services of the Town of Tewksbury, Mass Gaming will pay the Town for those services pursuant to mutually agreed arrangements.
- Section 19. The Town assumes the obligation to: (i) exercise reasonable efforts to petition the Massachusetts Gaming Commission for monies made available under the Massachusetts Gaming Act, including those monies in the Community Mitigation Fund and the Transportation Infrastructure Development Fund; (ii) not impose any taxes, fees, assessments or costs to Mass Gaming or the Premises, or cause or permit any inordinate impositions against a gaming facility, and that are not generally applicable to other businesses located in the Town; (iii) to use reasonable efforts to help expedite all necessary permits, approvals, consents, and entitlements necessary or desired by Mass Gaming in connection with the development and operation of the Premises; and (iv) to use reasonable efforts to provide assistance to Mass Gaming in resolving any issues or disputes arising with surrounding communities in any way related to gaming or the Premises (or the use thereof).

Section 37. Section 37 requires certain payments under the Agreement to be made to separate accounts for the specific purposes that such payments are made under the Agreement.

This summary has been approved, pursuant to M.G.L. c. 23K, § 15(13), by Charles Zaroulis, Esquire, Town Counsel, Town of Tewksbury.

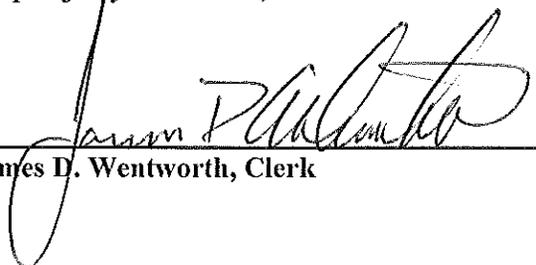
Mr. Johnson asked for voting hours to be reflected from 8 a.m. to 8 p.m. as requested by a resident at a previous meeting.

MOTION: Mr. Johnson made the motion to authorize the posting of the ballot question as presented for the September 21, 2013 election between the hours of 8 a.m. to 8 p.m.; seconded by Mr. Gay and the motion carried 3-0

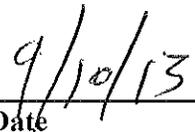
Adjournment

MOTION: Mr. Johnson made the motion for the Board to adjourn at 6:14 p.m.; Mr. Gay seconded, and the motion carried 3 to 0.

Respectfully submitted,



James D. Wentworth, Clerk



Date