

INDIANA GAMING COMMISSION

REGULAR MEETING

9:00 a.m., August 31, 1994

Genesis Convention Center

Gary, Indiana

MINUTES

PRESENT: Commission members Alan Klineman, Chair; Ann Marie Bochnowski, Vice-Chair; Gilmer Gene Hensley, Secretary; David E. Ross, Jr.; Robert Sundwick; Donald Raymond Vowels; Thomas F. Milcarek; Staff members John J. Thar, Executive Director; Floyd Hannon, Kay Fleming, Judy Greene, Pam Ayres; and an audience.

Call to order and roll call

Chairman Alan Klineman called the meeting to order at 9:25 a.m. All Commission members were present. He indicated that at the conclusion of the business meeting the oral presentations of the Gary applicants would begin, and remarks would be heard from Gary Mayor Thomas Barnes.

Approval of the minutes of July 8, 1994 meeting

Upon motion by Robert Sundwick and second by Ann Bochnowski, the minutes of the July 8, 1994 Commission meeting were unanimously approved as distributed.

Report of the Executive Director

Executive Director Jack Thar gave a brief report. Oral arguments held before the State Supreme Court were yesterday, August 30, 1994. The Supreme Court noted that a decision would be forthcoming as soon as possible. He noted that optimistically the Supreme Court may rule by the end of September.

Executive Director Thar concluded his report.

Old business

Deadline date for Part I of the Indiana Riverboat Owner License Application, Harrison and Crawford Counties

Chairman Klineman noted that it would be appropriate to postpone the setting of a deadline date for Part I of the Indiana Riverboat Owner License Application for Harrison and Crawford Counties since the Indiana Supreme Court has not as yet ruled on the constitutionality of the Gaming Statute.

One request from Crawford County that a deadline be set has been received by the Commission. Chairman Klineman wanted to reassure those from Harrison and Crawford Counties that as soon as the Commission feels from a legal or constitutional standpoint it can

set a legitimate deadline, it will do so. All of those who are interested can file their applications. Hearing no objection, Chairman Klineman tabled the setting of the deadline.

New business

Report on behalf of the State Election Board regarding election cost for May 1994 referendum in Jefferson County

Indiana Gaming Commission Chief Counsel Kay Fleming reported that as previously reported, Jefferson County defeated the May 3, 1994 referendum. She read **Resolution 1994-20, A Resolution Establishing the Pro Rata Cost of the May 3, 1994 Referendum to be paid by Applicants for a Riverboat Owner's License in Jefferson County** (see attached), beginning with Section 1--Definitions, and including Section 2--Scope, and Section 3--Procedure Utilized for Payment of Estimated Election Costs.

Under Section 4--Procedure and Order for Payment of Pro Rata Share of Election Costs, and Refund of Excess Payment of Election Costs in Jefferson County, Ms. Fleming noted that both Madison Landing Associates, Inc. and Jefferson-Madison Limited Liability Company applied for a Riverboat Owner's License to be located in Jefferson County, Indiana. The estimated election costs were Fifteen Thousand Dollars (\$15,000). Jefferson-Madison Limited Liability Company paid the estimated cost of the special election. The actual cost to Jefferson County of the special election was Five Thousand Nine Hundred Eighty-seven Dollars and Eighty-nine Cents (\$5,987.89).

As a result of there being two applicants, the pro rata share of the actual election costs for each applicant was Two Thousand Nine Hundred Ninety-three Dollars and Ninety-four Cents (\$2,993.94).

Pursuant to Resolution 1993-3, Madison Landing Associates, Inc. is to issue a cashier's or a certified check made payable to Jefferson-Madison Limited Liability Company in the amount of Two Thousand Nine Hundred Ninety-three Dollars and Ninety-four Cents (\$2,993.94) mailed to its Las Vegas address. Ms. Fleming reported that the check must be received no later than noon (Indianapolis time) on Friday, September 16, 1994.

The Jefferson County Auditor is authorized to refund the amount of Nine Thousand Twelve Dollars and Eleven Cents (\$9,012.11), as an excess payment of estimated election costs to Jefferson-Madison Limited Liability Company at its Las Vegas address.

Ms. Fleming noted that Section 5--Notification of the Commission, specifies that Jefferson-Madison Limited Liability Company is to notify the Commission by noon on Thursday, September 22, 1994, that

it has or has not received the funds from Madison Landing Associates, Inc.

Upon motion by Gene Hensley, second by Thomas Milcarek, that **Resolution 1994-20** be adopted as read by Chief Counsel Fleming, the resolution was unanimously approved.

Request to withdraw applications:

1. Jumer's of Evansville
2. River City Casino, LLC

Chairman Klineman reported that the Commission has received two requests to withdraw applications.

Executive Director Thar explained that Jumer's of Evansville and River City Casino, LLC have requested that the Commission approve their application withdrawals; they no longer wish to participate. Mr. Thar read **Resolution 1994-21, A Resolution Concerning the Request of Jumer's of Evansville to Withdraw its Application for a Riverboat Owner's License** (see attached), from Section 2--Request to Withdraw, and forward. **Resolution 1994-22, A Resolution Concerning the Request of River City Casino, LLC to Withdraw its Application for a Riverboat Owner's License** (see attached) is an identical resolution identifying River City. If both requests are not granted, Mr. Thar explained that the staff will change the language to reflect denial. He indicated that the Indiana Gaming Commission has letters of request from both applicants (also attached).

Chairman Klineman reiterated the Indiana Gaming Commission's promise to give all applicants the same consideration even if they do not receive the local city endorsement.

Director Thar pointed out that Evansville still has four applicants. Upon a question by the Commission regarding investigative costs, Mr. Thar explained that first the total investigative costs for each applicant will have to be determined. Even though neither Jumer's nor River City has tendered additional \$55,000 fees, they still have been investigated. Their obligation to remit funds in excess of the initial \$50,000 survives their request to withdraw. The initial \$50,000 fees are non-refundable.

Upon motion by Gene Hensley, second by Ann Bochnowski, Resolution

1994-21 was unanimously approved. Additionally, Resolution 1994-22 was unanimously approved upon motion by Gene Hensley, second by Tom Milcarek.

Requests to amend Parts I and II of the Indiana Riverboat Owner's License Application:

1. Aztar Indiana Gaming Corporation
2. Boomtown Belle II, L.P.
3. SES Boat, L.P.
4. Gamma International, Ltd.
5. Switzerland Riverboat Gaming Corporation

Executive Director Thar read Resolution 1994-23, A Resolution Concerning the Request of Aztar Indiana Gaming Corporation to Substantively Amend Part I and Part II of its Indiana Riverboat Owner's License Application by Amending the Proposed Economic Development Proposal (see attached), beginning with the primary purpose of the substantive changes proposed by the amendment to incorporate a Project Agreement resulting from the selection of Aztar Indiana Gaming Corporation as the City of Evansville, Vanderburgh County, exclusively endorsed applicant and to incorporate economic data resulting from the Project Agreement into the application. (Copy of their letter is attached.)

Mr. Thar indicated that the Indiana Gaming Commission staff recommends that Resolution 1994-23 be accepted.

The Commission questioned whether or not the acceptance of the resolution would adversely affect the investigation of the applicant. Director Thar pointed out that at this time, it will not. The Commission might want to reconsider when cut-off dates are set for future requests. Chairman Klineman cautioned that a smooth investigative process should not be jeopardized; it must be understood by the applicants that they must bring these amendment requests before the Commission as soon as possible so that no delay will be created.

Executive Director Thar read from Section 3. Action on the Request for Amendment.

Upon motion by Gene Hensley, second by Dr. David Ross, the Resolution was unanimously accepted.

Executive Director Thar suggested that Resolution 1994-24, A Resolution Concerning the Request of Boomtown Belle II, L.P. to Substantively Amend Part I and Part II of its Indiana Riverboat Owner's License Application by Amending the Proposal to Reflect the Execution of an Option Agreement (see attached) and Resolution

1994-25, A Resolution Concerning the Request of SES Boat, L.P. to Substantively Amend Part I and Part II of its Indiana Riverboat Owner's License Application by Amending the Proposal to Reflect the Execution of an Option Agreement (also attached) be reviewed simultaneously. Correspondence from each applicant (see attached) explained that they both have a temporary site from which they would like to operate while their permanent site is being readied. On May 16, 1994, subsequent to filing Parts I and II of the gaming Application, SES Gaming and Boomtown, Inc. formed a partnership and entered into an Option Agreement to lease approximately 35 acres from the Lighthouse Point Yacht Club, Inc., F/K/A Anchor Land Development, Inc., at Lighthouse Point Yacht Club near Aurora in Dearborn County, Indiana. With the obtaining of the lease option, they will be able to construct a temporary support facility and operate two temporary gaming vessels (Boomtown Belle II and SES Boat) approximately nine to twelve months prior to the completion of their proposed permanent site at Lawrenceburg/Aurora/Dearborn County, Indiana, where the proposed temporary site operations would then be transferred. They both submitted Supplements to Part II of their Applications detailing these additional disclosures relating to the proposed temporary site.

Executive Director Thar indicated that the Indiana Gaming Commission staff recommends that both Resolution 1994-24 and Resolution 1994-25 be accepted.

Resolution 1994-24 was unanimously accepted upon motion by Donald Vowels, second by Gene Hensley. Upon motion by Dr. David Ross, second by Bob Sundwick, Resolution 1994-25 was unanimously accepted.

Gamma International, Ltd. has requested Commission consideration to substantively amend Part I and Part II of its Indiana Riverboat Owner's License Application by amending the applicant entity. Director Thar explained that Gamma's request to amend is very complicated. It became clear from Part II of Gamma's application, that Gamma was to be a 25% owner of another applicant. Gamma thought it had changed the entity by noting the change in Part II, but it had not. During a meeting with attorneys and Gamma representatives, it was determined that they needed to pay an additional \$50,000 to get this accomplished because the new entity was a new applicant. Because the deadline date has passed for Ohio County, it became necessary to bring this issue before the Commission. Part II of their filed application indicated the applicant was a partnership and it had to be changed. They now request that it be changed to Rising Sun Riverboat Casino and Resort, L.L.C. They tendered to the Commission a \$50,000 check which was returned to the custody of their attorneys, until such time as the request is approved. They also tendered an outline

of the proposed changes.

If Resolution 1994-26, A Resolution Concerning the Request of Gamma International, Ltd. to Substantively Amend Parts I and II of its Indiana Riverboat Owner's License Application by Amending the Proposed Economic Development Proposal is accepted by the Commission, the applicant has until the close of business September 19, 1994, to do so. Executive Director Thar indicated this is not really a substantive change of their Part II as Part II is already designed that way. Whether or not the Commission will allow them to change their business entity after the deadline date requires a new application fee, so that their application now conforms to their original intention. What has really happened is that there was a misunderstanding between attorneys and their clients. The applicants, therefore, are being punished. The applicants believed that what they had done before the deadline date was correct. Mr. Thar indicated that for that reason only, it is the recommendation of the Indiana Gaming Commission staff to allow this change.

Commissioner Ann Bochnowski asked for a clarification of the change of the business entity. Director Thar pointed out that Gamma was the applicant, but when they submitted Part II, Gamma was not the applicant; Gamma was a 25% owner of a new applicant, described in Part II as a partnership, with a change in the percentage ownership interest held by Patrick F. Daly and Edward W. Ross. They believed that showing the change in Part II was all that was necessary to accomplish the change. Now that they realize what they submitted in Part II makes no sense in view of who the applicant is, they are attempting to make a clarification through the requested Commission action.

Gene Hensley asked if this has any ramifications for any other requests to change after the cutoff date. Director Thar pointed out that this has not happened before. This applicant thought they had changed their application by the deadline, but in fact had not.

Upon motion by Bob Sundwick, second by Ann Bochnowski, Resolution 1994-26 that the request be accepted was unanimously approved.

Executive Director Thar explained that on August 26, 1994, Switzerland Riverboat Gaming Corporation submitted a proposed amendment to its Riverboat Owner's License Application and a letter (see attached) explaining the substantive changes set forth Switzerland Riverboat Gaming Corporation's commitment to Switzerland County upon receiving an endorsement from Switzerland County and to amend its application to reflect the construction of a hotel in Switzerland County. The Gaming Commission staff recommends that Resolution 1994-27, A Resolution Concerning the

Request of Switzerland Riverboat Gaming Corporation to Substantively Amend Part I and Part II of its Indiana Riverboat Owner's License Application by Amending the Proposed Economic Development Proposal be accepted.

Resolution 1994-27 was unanimously accepted upon motion by Donald Vowels, second by Dr. David Ross.

Consideration of the adoption of the following forms:

1. Supplier's License Application
2. Occupational License, Level 2 Application
3. Occupational License, Level 3 Application

Chairman Klineman indicated that the Commission has received many requests for applications for supplier and occupational licenses.

Executive Director Thar reported on the drafts for Supplier Licenses and for both Level 2 and 3 Occupational Licenses that were originally circulated on July 8. Nothing has been changed since then.

Upon motion by Ann Bochnowski, second by Gene Hensley, Resolution 1994-28, A Resolution Adopting and Prescribing the Supplier's License Application Form for the Indiana Gaming Commission (see attached) was unanimously approved.

Resolution 1994-29, A Resolution Adopting and Prescribing the Occupational License, Level 2 Application Form for the Indiana Gaming Commission (see attached) was unanimously approved upon motion by Gene Hensley, second by Ann Bochnowski.

Upon motion by Dr. David Ross, second by Gene Hensley, Resolution 1994-30, A Resolution Adopting and Prescribing the Occupational License, Level 3 Application Form for the Indiana Gaming Commission (see attached) was unanimously approved.

Other business

No other business was reported.

Next meeting

Executive Director Thar reported that the next meeting of the Indiana Gaming Commission (subject to cancellation) will be October 7, 1994, at 11:00 a.m. in the Auditorium of the Conference Center of the Indiana Government Center South. Time changes the last week of October.

The Commission adjourned at 10:04 a.m. on motion by Ann Bochnowski, second by Gene Hensley.