

Memorandum of the Regular Meeting of the
Indiana Horse Racing Commission

June 22, 2023

Harrah's Hoosier Park Racing & Casino
4500 Dan Patch Circle,
Anderson, IN 46013

Commission members present: Philip C. Borst, Chairman; William McCarty, member; Bill Estes, member; George Pillow, member; and Gus Levensgood, member.

Commission Staff members present: Deena Pitman, IHRC Executive Director; David Rothenberg, IHRC General Counsel; Dale Lee Pennycuff, IHRC Staff Attorney; Matt Eggiman, IHRC Deputy General Counsel; Jessica Barnes, IHRC Breed Development Director; Wendi Samuelson-Dull, IHRC Chief Financial Officer; Dr. Kerry Peterson, IHRC Equine Medical Director; Tom Linkmeyer, IHRC Assistant Executive Director; Eric Smith, Senior Steward, Horseshoe Indianapolis.

Speakers from the audience: Sebastian Smelko, Attorney, Ice Miller representing VICI; John Payne, President & CEO of VICI Properties Inc.; David Kieske, Executive Vice President, Treasurer & CFO of VICI Properties Inc.; Samantha Gallagher, Executive Vice President, Secretary & General Counsel of VICI Properties Inc.; Elena Keil, Vice President, Associate General Counsel of VICI Properties Inc.; Brian Elmore, Executive Director of IHBPA; Tony Renz, Executive Director of ISA; Rick Moore, VP and GM of Racing Harrah's Hoosier Park; Eric Halstrom, Vice President and General Manager of Racing at Horseshoe Indianapolis;

I. Call to Order

Chairman Borst called the meeting to order at approximately 10:36 a.m. A quorum was present.

II. Approval of the meeting memorandum and executive session memorandum from the March 21st, 2023, Commission meeting.

Chairman Borst asked for a motion for approval of the meeting memorandum and executive session memorandum from the March 21, 2023, Commission Meeting. The roll call vote was unanimous 5-0 for approval. See IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

III. Agenda

Note: All items on the agenda were transcribed by a court reporter from Stewart Richardson. Transcripts are available at www.in.gov/hrc.

1. Presentation by VICI regarding calling of option.

Mr. Rothenberg introduced Mr. Sebastian Smelko of Ice Miller, representing VICI. Mr. Smelko presented a short overview introduction to the VICI call option and what VICI anticipated would be the result of the option. John Payne of VICI presented a history of VICI and its position in the REIT market today. David Kieske explained a triple net lease. Samantha Gallagher presented a history for the call option itself and how it came to

be. Elena Keil outlined the effects of the purchase by VICI. Chairman Borst, Commissioner Levensgood, and Commissioner McCarty commented on the presentation and asked brief questions, stating that there would be follow-up questions in the future.

Roger Young commented from the audience stating that it is not possible yet to comment on the merits of the proposal yet, since the details are not known. He did state, however, that on behalf of the Indiana Standardbred Association, they feel that the standard for approving the purchase is a high bar.

Brian Elmore introduced Joe Davis, president of the HBPA, Katy Duran, first vice-president of the HBPA, and Jeffrey Stemerick, attorney at Taft Stettinius, representing the HBPA. Mr. Elmore stated that the HBPA is opposed to any REIT operating racetracks.

Tony Renz stated that the Indiana Standardbred Association is opposed to any REIT coming into Indiana equine whatsoever.

Dwayne Rhule commented that this is a complex issue, and he looks forward to commenting in the future.

No vote was necessary on this informational update. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

2. Consideration of the Settlement Agreement between the Indiana Horse Racing Commission Staff and Thomas Amoss.

Mr. Pennycuff introduced the Agreement which resulted in a 15-day suspension, a 45-day deferral, and a fine of \$5,000.

Chairman Borst asked the Commission if there was a motion and a second regarding approval of the Settlement Agreement. Commissioner McCarty moved to entertain the motion. Commissioner Estes seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

3. Consideration of the Administrative Law Judge's Recommended Order in the matter of Dr. Cynthia Loomis v. IHRC Staff, Administrative Cause No. HRC-2211-002419.

Mr. Eggiman introduced the ruling which resulted in a suspension of 60 days and a \$5,000 fine.

Chairman Borst asked the Commission if there was a motion and a second regarding adoption of the ruling. Commissioner Pillow moved to entertain the motion. Commissioner Estes seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. See IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

4. Consideration of the Administrative Law Judge's Order Dismissing the matter of Dr. Cynthia Loomis v. IHRC Staff, Administrative Cause No. HRC-2301-000115.

Mr. Eggiman introduced the ruling which resulted in no penalty.

Chairman Borst asked the Commission if there was a motion and a second regarding adoption of the ruling. Commissioner Estes moved to entertain the motion. Commissioner Pillow seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. See IHRC Transcript 6/22/23 at <https://www.in.gov/hrc/>

5. Ratification of Executive Director's Interim Approval of Pointsbet's ADW Racing Application and Website.

Mr. Pennycuff outlined Pointbet's plan which includes to add changes to their new website, PointsBet.com.

Chairman Borst asked the Commission if there was a motion and a second regarding approval of this material change to the PointBets ADW application and website. Commissioner Estes moved to entertain the motion. Commissioner McCarty seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. See IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

6. Ratification of Executive Director's Approval of Horseshoe Indianapolis Additional Capital Substitution Request.

Eric Halstrom presented the need for a new gator which Horseshoe is asking to be allowed to purchase in lieu of a new drone, after not finding a drone that meets their satisfaction.

Chairman Borst asked the Commission if there was a motion and a second regarding ratification of the Executive Director's approval of this purchase. Commissioner

Levengood moved to entertain the motion. Commissioner Estes seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

7. Ratification of Executive Director's Approval of Hoosier Park Additional Funding request for apron upgrade.

Rick Moore highlighted improvements that will be made to the apron area at Hoosier Park. Mr. Moore emphasized that this was a collaborative project, working with Tony Renz and John DeLong from the ISA. The area will be turned into a park with many accommodations for the public.

Mr. Renz outlined the details and the excitement at the track of the horsemen and the casino. Commissioner McCarty inquired on the timetable for completion and Mr. Moore stated their goal was August 11th. The total price will be approximately \$372,000.

Chairman Borst asked the Commission if there was a motion and a second regarding ratification of the Executive Director's approval of this apron upgrade. Commissioner Levengood moved to entertain the motion. Commissioner Pillow seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

8. Consideration and approval for purchase from RCFAC funds to update Harrah's Hoosier Park AV Broadcast Production Switcher from on-air simulcast shows and productions.

Mr. Moore outlined the need to replace this outdated equipment. Commissioner Levengood stated that he is very familiar with this type of equipment and noted that the track needs to make sure the new equipment is compatible with the present cameras.

Chairman Borst asked the Commission if there was a motion and a second regarding the approval of this purchase. Commissioner McCarty moved to entertain the motion. Commissioner Estes seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

9. Review of Commission Rulings from March 14, 2023, through June 9, 2023.

Executive Director Pitman commented that the number of rulings this year is approximately the same as last year at this time. Chairman Borst asked if there were any questions from the Commissioners. There were none.

No vote was necessary on this informational update. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

10. HISA/HIWU Voluntary Agreement Status Update with a report from Commission Equine Medical Director, Dr. Kerry Peterson regarding the implementation of the anti-doping program.

Mr. Eggiman set the stage for Dr. Kerry Peterson's presentation by giving a general overview of HISA/HIWU and how the process has brought the commission to where it is in regard to that agreement.

Dr. Peterson presented the current procedures and metrics that have resulted from operating under HISA/HIWU so far this year. Dr. Peterson highlighted test barn operations and adjustments that have had to be made to streamline processes. In response to a training question from Commissioner Levengood, Dr. Peterson stated that there is ongoing virtual training online after which a trainee receives a virtual certificate of completion.

Senor Steward Eric Smith explained the process of how "specials" are selected for testing and the requirements under HIWU.

Commissioner McCarty had questions concerning financing which were fielded by Executive Director Pitman and Mr. Eggiman.

No vote was necessary on this informational update. *See* IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

11. Delegation of authority to the Executive Director to approve rule readoptions.

Mr. Pennycuff requested the commission to delegate the authority to Executive Director Pitman to approve rule readoptions under 71 IAC 2-2-1.

Chairman Borst asked the Commission if there was a motion and a second regarding delegation. Commissioner Levengood moved to entertain the motion. Commissioner McCarty seconded. Chairman Borst then asked if there were any questions. With no

response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. See IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

12. Delegation of authority to the Executive Director to approve any 2023 racing matters prior to the next Commission meeting.

Mr. Pennycuff requested the Commission to delegate authority to the Executive Director to approve any 2023 racing matters which cannot be delayed prior to the next Commission meeting under 71 IAC 2-2-1.

Chairman Borst asked the Commission if there was a motion and a second regarding delegation. Commissioner Estes moved to entertain the motion. Commissioner McCarty seconded. Chairman Borst then asked if there were any questions. With no response, Commissioner Borst requested a vote. The roll call vote was unanimous 5-0 for approval. See IHRC Transcript 6/22/2023 at <https://www.in.gov/hrc/>

13. Seasonal race meet updates from tracks.

Mr. Moore stated that everything is going well regarding handles at Hoosier Park. Additionally, Mr. Moore thanked Mr. DeLong and Mr. Renz as well as Jessica Barnes for working together and making this season's start a great one.

Eric Halstrom stated that their handle is up 42 percent over last year at this time, last year being a record setting year. Both thoroughbreds and quarter horse starters are up this year, by 7.9 and 9.4 respectively. Mr. Halstrom also reminded everyone that the Indiana Derby is on July 8th. Commissioner Levengood asked if the track records physical public attendance. Mr. Halstrom responded that no, they do not, but he feels that track attendance is up.

There was no other new business.

V. Adjournment

The meeting was adjourned at approximately 12:33 p.m.