

INDIANA GAMING COMMISSION
REGULAR MEETING
11:00 a.m., October 7, 1994
Indiana Government Center North, N190
Indianapolis, Indiana 46204
Speaker Telephone Conference Call

MINUTES

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

Call to order and roll call

Chair Alan Klineman placed the conference call at approximately 11:00 a.m. It took approximately 10 to 15 minutes for commissioners to join the call due to technical difficulties; they identified themselves, as they joined the conference call. An audience of approximately 15 to 20 was present, including members of the media. Chair Klineman asked if all in the room could hear clearly, and invited anyone to sit as close as necessary to the speaker phone if at any time there was difficulty hearing. All aspects of the call were heard from start to disconnect by all present. All commissioners were available except Dr. David E. Ross. The commissioners identified themselves when speaking, particularly when voice recognition was not readily apparent.

Approval of the minutes of the August 31, 1994, meeting

The minutes were approved unanimously on motion by Ann Bochnowski, second by Thomas Milcarek.

Report of the Executive Director

John Thar reported that the commission is awaiting a ruling from the Indiana Supreme Court on the appeal of the Porter County Superior Court decision; there is no indication of when it will be issued or what it will be.

Staff has met twice with the Indiana Department of Natural Resources to coordinate their permitting process with our licensing process.

September 30, 1994, was the deadline given Riverboat Owner License applicants in Ohio, Switzerland, and Dearborn counties, for submitting proposed amendments and for making payment of an assessed \$55,000 investigation fee. All applicants met the deadline date, with the exception of those actions shown on the agenda.

The commission moved to new offices on Wednesday, October 5,

1994. The phone and fax numbers remain unchanged. The address is new and was included in the packet of information sent out regarding the meeting.

Ann Bochnowski asked if applicants would be required to pay the full cost of any investigations made on them, should the cost exceed the \$50,000 application fee already tendered. John Thar said yes. The final amount cannot be determined until the investigations are completed. We have ceased investigations on the three applicants who asked to withdraw, as noted in that portion of the agenda.

New Business

I. Requests to withdraw applications:

Chair Alan Klineman asked John Thar to present the resolutions to withdraw. John Thar presented Resolution 1994-31, a request by Switzerland Riverboat Gaming Corporation to withdraw its application for a Riverboat Owner License. John Thar said the letter requesting the withdrawal is attached to the resolution. He read Section 2, granting the request. Resolution 1994-31 was adopted unanimously, on motion by Gene Hensley, second by Ann Bochnowski.

John Thar presented Resolution 1994-32, a request by Lawrenceburg Riverboat Gaming Corporation to withdraw its application for a Riverboat Owner License. He explained that the same company, in essence, that made the request in Resolution 1994-31 was making this request. The letter requesting the withdrawal is attached to the resolution. The Indiana Gaming Commission adopted Resolution 1994-32 by unanimous vote thereby granting the request to withdraw, motion made by Donald Vowels, second by Robert Sundwick.

John Thar presented Resolution 1994-33, a request by Golden Nugget to withdraw its application for a Riverboat Owner License. He stated that the letter of request attached to the resolution explains the reason for the request. He read Section 2 of the resolution. Resolution 1994-33 was adopted granting the request to withdraw by unanimous vote, motion made by Robert Sundwick, second by Gene Hensley.

II. Requests to amend Part II of the Indiana Riverboat Owner's License Application:

1. Swiss Par-A-Dice (Switzerland County). Chair Alan Klineman asked Chief Counsel Kay Fleming to present the resolution. She did so, reading Section 3 and adding a sentence not in the packet originally distributed to the commissioners: "The request to amend the local investor list and methodology will be acted on at a later date upon the request of the

applicant." Chair Alan Klineman said that this sentence was added as the letter from Attorney Douglas R. Brown, which is attached to the resolution, left open the possibility that Swiss-Par-A-Dice was considering another item. Further, the commission does not want to implicitly amend the local investor list and methodology. If Douglas Brown renews that request at a later date, we will act on it. Gene Hensley had the same concern, that is how the commission could perform due diligence activities, if the local investors were not identified. Chair Klineman agreed, hence the insertion. Donald Vowels questioned the meaning of a sentence in the letter [Ref the letter, page 3: "We respectfully request that Part II of Swiss Par-A-Dice's Indiana Riverboat Owner's License Application, be amended as described in this letter and the attached materials, *and that this letter constitutes an amendment of any other part II Exhibits not specifically referenced herein* {italics added}]. Chair Klineman suggested that the letter intends that the items specifically amended in the letter of request be amended throughout the application, wherever they are referenced. He is not going into any new topics. Donald Vowels requested that the commission accept only specifically what he is amending. That is stated openly, said Chair Klineman, and Douglas Brown is present and hears the request. Resolution 1994-34 was adopted, accepting the specific amendment requested in the accompanying letter, on motion by Robert Sundwick, second by Donald Vowels. The vote was unanimous.

2. Boyd Gaming Corporation (Dearborn County) Chief Counsel Kay Fleming presented Resolution 1994-35. She explained that Boyd Gaming Corporation seeks to amend the local investor methodology. The list of local investors is not submitted with the request, but will be available in the investigative phase. She read Section 2. Donald Vowels sees this as a result of the discussion at the Gary hearings. Upon question by Ann Bochnowski, Gene Hensley explained the distinction between full-recourse and non-recourse notes; with non-recourse notes the investor has no obligation to pay for shares in the company and no liability. The amendment is to full-recourse notes, which means local investors both pay for the stock and have full liability, should the company fail. Gene Hensley notes they are requiring a 25% investment plus a full-recourse note, which is acceptable. The commission adopted Resolution 1994-35 unanimously, accepting the requested amendment, on motion by Gene Hensley, second by Robert Sundwick.

3. Pinnacle Gaming Development Corporation (Switzerland County) Chief Counsel Kay Fleming presented Resolution 1994-36. The applicant is seeking extensive amendments, changes in ownership interest, management, management agreement projections and community contributions. The changes are specifically set forth in the letter, which is attached to the resolution. The staff recommends acceptance. She read Section 3. Alan Klineman

explained that the positive staff recommendation means that acceptance will not slow down the investigative process. Donald Vowels asked if we would have a different attitude towards amendments tendered further down the road, when a majority of the investigation had taken place. Chair Klineman assured him that we are not dealing with moving targets. Donald Vowels is concerned that we are setting precedent, and if we approve this the approval is based on timing in reference to the investigative process. Robert Sundwick asked if the changes were the result of any discussion at the Gary hearings. John Thar said no, they reflect a change in the ownership of the corporate entity. HFS is increasing its equity, and the applicant is spending more money up front and will construct a larger hotel. The investigation is about ready to begin on Pinnacle, so the amendments are timely. The commission adopted Resolution 1994-35 unanimously, accepting the proposed amendment, on motion of Ann Bochnowski, second by Gene Hensley.

III. Consideration of the failure of Mystic Rose Entertainment, Inc. to timely file the \$55,000 investigative fee. John Thar presented Resolution 1994-37 with some background information. First, he referred to page 2 of the resolution and the word "denied", which may be changed on vote of the commission. John Thar stated that about 3:00 PM on September 30, 1994, the date the \$55,000 investigative fee was due, Judy Greene telephoned Roger Schmelzer, the local attorney for Mystic Rose, and advised him that neither a check nor a letter of withdrawal had been received from that applicant and that the deadline was 4:45 PM that afternoon. He advised her that a transaction among the principals that was to have been executed two to three months earlier had yet to be executed and he did not know the status of the situation. He had no authority from his client to either withdraw the application or submit a \$55,000 check. He advised that he was awaiting advice from his client. Judy Greene placed a second call to Roger Schmelzer about fifteen minutes after the first one and advised him that if the \$55,000 was not received by 4:45 PM on that date, the staff would be recommending that Mystic Rose be treated as if it had withdrawn. Later that afternoon, John Thar had a couple of conversations with Detective Sergeant Steve Banks, Indiana State Police Gaming Division, concerning the cancellation of a trip to Las Vegas planned for Monday, October 3rd, for the investigation of Mystic Rose. The commission did not receive either a check or a letter of withdrawal by the deadline. At approximately 5:15 to 5:30 p.m., John Thar placed a call to Mr. Schmelzer's office and was advised that he had gone for the day. John Thar left a message that we were treating Mystic Rose as a withdrawn applicant and that he had canceled the investigation trip to Las Vegas. On October 3, 1994, John Thar and Roger Schmelzer had a conversation in which each confirmed what had transpired September 30. He advised Mr. Schmelzer that he was to contact Keith Hine of Mystic Rose, who, he believes, has about a 5% ownership interest in the company. Mr. Schmelzer

was aware that Mr. Hine would call and what question he would ask. John Thar called Mr. Hine on the afternoon of October 3rd and advised him that the staff would be recommending that Mystic Rose be treated as a withdrawal, and further advised him that the team trip scheduled for October 3rd was canceled due to the non payment. Mr. Hine indicated that he was upset because he had put a lot of money, time and effort into the project. He was upset that the main principals did not advise him of the September 30th due date until four days before the money was due, and this did not give him enough time to get the money or put together another deal. John Thar advised him that this was a problem within their company and not a commission matter. Mr. Hine said that he had put a lot into the project and did not want to see it end. John Thar said that the staff would stick to its recommendation but that Hine could submit something in writing to the commission, if he so desired. Mr. Hine asked what he should put in his request. John Thar said he could not advise Hine what should be in it, but if he put anything in it, it should give evidence of a completed deal and he should tender a check for \$55,000 prior to the October 7, 1994, meeting. Mr. Hine indicated that a lawsuit might occur between the investors in this project. This is what transpired on the deadline date and the Monday following.

Deputy Director Floyd Hannon said that he had sent a letter to Roger Schmelzer notifying him that this issue would be placed on the agenda for this meeting and set a deadline of 4:45 p.m. October 6, 1994, for any submission. Hannon received a letter, which references another letter staff sent dated September 20, 1994, to Marvin Caito of Mystic Rose in which staff set out approximately 50 areas either with discrepancies or lacking information in Part II of the Riverboat Owner License application and the Personal Disclosure Form I.

Alan Klineman pointed out that the issue was not just a matter of a failed payment but of deficiencies in the application and the personal disclosure forms. The September 20 letter set a deadline of October 7 for a response. Floyd Hannon read a letter received from Roger Schmelzer, dated October 6, 1994, requesting an extension of the deadline to October 14 for both the payment of the \$55,000 and the submission of the additional information; the letter further advised that discussions are underway to secure a new investor and produce a strong applicant. Ann Bochnowski asked what it would do to the investigation process, if we granted the extension. It would slow it down replied John Thar. A discussion followed: Chair Alan Klineman noted that we have applicants who got their applications completed on time. He considers the letter an admission that Mystic Rose is looking for another partner. Ann Bochnowski was concerned with enhancing competition. Robert Sundwick was concerned with fairness to other applicants. He questioned whether Mystic Rose had demonstrated business capability thus far, or more realistically, neglect. Gene Hensley would like to

see as much competition as possible, but he was concerned that the company is floundering without a sense of direction. Does the request have anything to do with the local selection process? Is it an impairment in the selection process? John Thar said the amendment has nothing to do with the local selection process. From the perspective of staff, there has been no activity on the application since the April deadline for Part II. We have an applicant with no contractual arrangement with a gaming partner. Donald Vowels said that the \$55,000 could have been put up to safeguard possible future changes. As Donald Vowels sees it, deadlines are deadlines, if the commission accepts this request other applicants might well sue the pants off the commission. Ann Bochnowski hates to rule anyone out if they will have a strong application in a week. Bob Sundwick said their failure to put in the money indicates that they are a poor applicant. Gene Hensley said that he would defer to staff recommendation on this one, as it appears this applicant has had trouble fulfilling the application process all the way through; it is time to make a decision. Resolution 1994-37, denying the Riverboat Owner's License Application submitted by Mystic Rose Entertainment, Inc. due to failure to pay the investigation fee was adopted unanimously on motion by Donald Vowels, second by Thomas Milcarek.

IV. Action to adopt Rules for final publication

Chief Counsel Kay Fleming presented Resolution 1994-38 adopting the final publication of Article 1, Rules 1 and 6; Article 2, Rules 1, 2, 3, 4, and 5; Article 6 and Article 7. This resolution incorporates the changes recommended in the public hearing process and the prereview made by the Attorney General's Office. She explained that, if adopted, the final publication of these rules will occur in the November 1, 1994, Indiana Register. The resolution adopts the recommended changes and adopts the rules pending completion of the promulgation process. They then will be reviewed finally by the Attorney General's Office and the Governor's Office; they will then be filed with the Secretary of State and become final 35 days thereafter. Chair Alan Klineman noted that the rules have the effect of law; they are the way we fill in the statute. Gene Hensley referred to page 37 (Supplier's License), where we omitted requesting a FIN or Social Security Number, and asked why. Chief Counsel Fleming replied that if we asked for the numbers here they would be put on the license itself and become public. The commission will get the numbers through the investigation process, but no one will have public access to them. Resolution 1994-38 was adopted unanimously on motion by Gene Hensley, second by Robert Sundwick.

Other Business

Chair Alan Klineman asked if the staff or any commissioners had anything further.

Gene Hensley asked if the staff felt that applicants are dropping out due to the local endorsement process. John Thar replied that when one of the applicants dropped out in Evansville, it was a corporate philosophy on their part that if the city did not pick them as first they were not sure that they wanted to do business with that city, perhaps the chemistry was not right. So, one applicant dropped out, but not because the applicant did not like the process. Other applicants dropped out who might not be considered strong. By contrast, Golden Nugget would be considered a strong applicant, and we have only their letter of request to explain their decision. We do not see a pattern. These appear to be strictly business decisions.

Chair Alan Klineman said that our actions show that we are fair and this is the impression we have demonstrated from the beginning. Other commissioners concurred.

Next Meeting

John Thar recommended deferring setting a meeting date. Should the Indiana Supreme Court rule quickly, we might want to set a date prior to the second Friday in November. He said that Dr. Ross will not be available until October 20, 1994, which means that that is the earliest possible date for a decision on a Gary license. Ann Bochnowski asked, assuming the Supreme Court rules favorably, what is the timeline. Chair Klineman said that we would not go back to Gary, but would get together to conclude the Gary hearings in Indianapolis, as soon as the commissioners' schedules are free. Staff has been indicating to the Gary applicants that we would be able to get together no later than 30 days after the ruling. All seven must be together to grant a license. All agreed that we are willing to meet on a Saturday.

Meeting adjourned on motion by Robert Sundwick, second by Gene Hensley at approximately 12:15 p.m.