

**IOWA RACING AND GAMING COMMISSION
MINUTES
AUGUST 25, 2011**

The Iowa Racing & Gaming Commission (IRGC) met on Thursday, August 25, 2011 at Riverside Casino & Golf Resort (RCGR), Riverside, Iowa. Commission members present were Toni Urban, Chair; Jeff Lamberti, Vice Chair; and members Carl Heinrich, Greg Seyfer and Andrea Rivera.

Chair Urban called the meeting to order at 8:30 AM and called on Tim Putney, President of the Washington County Riverboat Foundation, who welcomed the Commission to Riverside. He described the facility as eastern Iowa's premier resort destination and the center of east central Iowa's entertainment/tourism industry. Mr. Putney stated that the non-profit received a check for \$370,000 for the month of July, which represents a record. They are awarding approximately \$3.2 million per year with approximately 10% of the grants being awarded to non-profit organizations outside of Washington County. Mr. Putney thanked the Commission for their insight and leadership in granting a license to Washington County. He stated that they have proven it was a good choice; and that it has been beneficial for their part of the state, as well as the entire state.

Mr. Putney introduced Dan Kehl, Chief Executive Officer of RCGR. Mr. Kehl stated it was a pleasure to welcome everyone back to RCGR for the annual golf event; and that he looks forward to seeing everyone at the Grand Falls facility next month.

Chair Urban stated that some of the proudest moments for the Commission are hearing about the funds that the non-profits receive for distribution through grants. She stated she wished there was more publicity surrounding the distributions as they have had such a tremendous impact on the state.

Chair Urban moved to the approval of the agenda, and called on Jack Ketterer, Administrator of the IRGC, for amendments to the agenda. Mr. Ketterer advised that agenda items 5G and 6E(9) have been withdrawn. He further noted that the Iowa Greyhound Association and Horseshoe Casino/Bluffs Run Greyhound Park had reached an agreement on the issues, but would be addressing the Commission to clarify where the situation stands and seek the Commission's approval.

Chair Urban requested a motion to approve the agenda as amended. Commissioner Lamberti so moved. Commissioner Seyfer seconded the motion, which carried unanimously.

Chair Urban moved to the approval of the minutes from the July 21st Commission meeting. Commissioner Rivera moved to approve the minutes from the July 21st

Commission meeting as submitted. Commissioner Lamberti seconded the motion, which carried unanimously.

Chair Urban called on Mr. Ketterer for announcements. Mr. Ketterer introduced the following Commission staff in attendance: Scott Ditch and Sue Hansen, Gaming Representatives at RCGR, and Kathy Howard, the Commission's Gaming Representative at Catfish Bend Casino in Burlington.

Mr. Ketterer provided the following information regarding upcoming Commission meetings:

- September 22, 2011 - Grand Falls Casino Resort, Larchwood, IA (Submissions due by September 8, 2011)
- November 10, 2011 – Stoney Creek Inn, Johnston, IA (Submissions due by October 27, 2011)
- December – No Meeting
- January 12, 2012 – Stoney Creek Inn, Johnston, IA (Submissions due by December 29, 2011)

Mr. Ketterer stated that the trip to Grand Falls is well worth it as it is a beautiful facility and has a similar footprint to RCGR. He advised that the renewal of the pari-mutuel and racetrack enclosure licenses would be taken up at the November Commission meeting.

Chair Urban called on Isle of Capri Casino (IOC) for a review of the compiled financial audit for the four Iowa properties - IOC Bettendorf, Lady Luck Marquette, Rhythm City and IOC Waterloo. Sally Rogers, Director of Finance at IOC Bettendorf, advised that the properties did very well in Fiscal Year 11 despite the economy. She stated that year-over-year the properties reinvested \$41 million in the facilities.

Chair Urban moved to the ongoing negotiations between IOC Davenport d/b/a Rhythm City and MSEG, the City of Davenport's preferred operator, regarding the sale of Rhythm City. Michael Fries, Vice President for Legal Affairs, noted that the Commission had previously been advised that the parties had signed a Letter of Intent that allowed 60 days for due diligence. He stated that IOC has complied with every request for documentation and continues to work with MSEG. Mr. Fries noted that the exclusivity clause contained in the Letter of Intent has expired; IOC is just waiting to hear back from MSEG.

Chair Urban requested continuing updates on the negotiations.

Chair Urban moved to the contract approval portion of the agenda and called on Diamond Jo. Todd Moyer, General Manager, presented the following contracts for Commission approval:

- All Star Vacations – Event Merchandise (Giveaways)
- Imagine This – Event Merchandise (Giveaways)

- MTM Sales Corp. – Event Merchandise (Giveaways)

Hearing no comments or questions concerning the contracts, Chair Urban requested a motion. Commissioner Rivera moved to approve the contracts as submitted by Diamond Jo. Commissioner Heinrich seconded the motion, which carried unanimously. (See Order No. 11-86)

Chair Urban called on Catfish Bend Casino (CBC). Jerry Baum, Chief Operating Officer, presented the following contracts for Commission approval:

- Atronic – Slot Machine Purchases
- Great River Entertainment, LLC – Operating Agreement Amendment
- Multi Media Games – Slot Machine Lease/Purchase
- Huckleberry Entertainment, LLC – Purchase of Complimentaries
- Golden Eagle Distributing – Purchase of Beer

Hearing no comments or questions concerning the contracts, Chair Urban requested a motion. Commissioner Lamberti moved to approve the contracts as submitted by CBC. Commissioner Rivera seconded the motion, which carried unanimously. (See Order No. 11-87)

Chair Urban called on Wild Rose Emmetsburg (WRE). Amy Reubel, General Manager, presented the following contracts for Commission approval:

- Ainsworth – Equipment Purchase
- Jensvold Motor Company – Customer Giveaways & Promotions
- Konami – Equipment Purchase

Hearing no comments or questions concerning the contracts, Chair Urban requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by WRE. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 11-88)

Chair Urban called on Ameristar Casino. Jane Bell, Director of Government Affairs, presented a contract with ATCI, Inc. d/b/a Applied Information Systems (AIS) for IT Network Design.

Hearing no comments or questions concerning the contract, Chair Urban requested a motion. Commissioner Rivera moved to approve the contract as submitted by Ameristar. Commissioner Heinrich seconded the motion, which carried unanimously. (See Order No. 11-89)

Chair Urban called on Harrah's. Janae Sternberg, Director of Finance, presented a contract with Otis Elevator Company for elevator maintenance and repair.

Hearing no comments or questions concerning the contract, Chair Urban requested a motion. Commissioner Rivera moved to approve the contract as submitted by Harrah's. Commissioner Heinrich seconded the motion, which carried unanimously. (See Order No. 11-90)

Chair Urban called on RCGR. Dan Franz, General Manager, presented the following contracts for Commission approval:

- Acushnet Company – Wholesale to Retail Golf Pro Shop
- American Video and Security – Replacement of Surveillance Equipment
- Carousel Motors – Vehicle Purchases
- Hawkeye Foodservice Distribution – Food Purchases
- Loffredo Fresh Produce Co., Inc. – Food and Produce Purchases
- U.S. Bank Gaming Services/Ultron Processing Services/ U.S. Bancorp. – ATM Agreement
- Walnut Run, LLC – Golf Villa Rental Agreement

Hearing no comments or questions concerning the contracts, Chair Urban requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by RCGR. Commissioner Rivera seconded the motion, which carried unanimously. (See Order No. 11-91)

Chair Urban called on Prairie Meadows Racetrack & Casino (PMR&C). Gary Palmer, General Manager, and Tom Flynn, Legal Counsel, were available for questions. The first item for PMR&C was an Agreement for Sharing of Gaming Revenue with the City of Des Moines. Chair Urban asked how this agreement was different from the previous agreements. Mr. Palmer stated that it was similar on the "top" side, but makes allowances for regulatory changes that could impact their revenue (e.g. smoking ban, tax increase), which would automatically trigger a renegotiation of the agreements with the city and county.

Hearing no further comments or questions concerning the Agreement, Chair Urban requested a motion. Commissioner Seyfer moved to approve the Agreement for Sharing of Gaming Revenue between PMR&C and the City of Des Moines as presented. Commissioner Heinrich seconded the motion, which carried unanimously. (See Order No. 11-92)

Chair Urban moved to the discussion regarding PMR&C's simulcast contracts, noting that the horsemen's organizations had indicated at one point that PMR&C was not maximizing the revenue from these contracts; that a substantial amount of money was being left on the table. She requested an update on the matter.

Mr. Palmer stated that the track continues to work with the horsemen and negotiate with the different tracks. He stated that in 2010, PMR&C took in an additional \$73,000 in simulcasting revenue. In 2011 to date, they have taken in an additional \$81,000. Mr.

Palmer noted that the simulcasting revenue is increasing due to communication and the track and horsemen working together.

Chair Urban noted that PMR&C previously had an individual on staff that managed simulcasting. She asked who was performing those duties. Mr. Palmer advised that the position falls under the supervision of Derron Heldt, Director of Racing. The individual who actually works with the various tracks and horsemen in negotiating the contracts is Marty Pohlmeier.

Commissioner Urban expressed her interest in receiving additional updates in the future.

Chair Urban moved to the discussion regarding capital improvements. Mr. Palmer stated that PMR&C had submitted documentation showing what they expected to spend on capital improvements for the time frame of 2011 through 2016. He noted that the figures do not include the hotel expansion, parking ramp, or “fish bowl” connecting the hotel and casino.

Chair Urban advised Mr. Palmer that the information received was what was received several months ago. She stated that she was looking for a more detailed report showing when they expect to have to replace windows, the roof, HVAC, etc. She noted that she is concerned about these types of capital improvements as the building is 20 years old, and feels management needs to start thinking about these types of issues. She requested a more detailed report regarding capital improvements.

Chair Urban moved to the recap of the thoroughbred season. Mr. Palmer noted there were weather issues in other areas of the United States that impacted the off-track simulcast, which was down 5% . On-track simulcast revenue was up 4%. Field size was 7.7, up from 7.6 last year. Mr. Palmer advised that a horse, trained by Bob Baffert, which participated in the Iowa Festival, went on to win the \$750,000 West Virginia Derby in its next start. He used that as an example to show the quality of horses that are coming to PMR&C. Mr. Palmer stated that PMR&C is very happy with the participation and quality of horsemen coming to the track.

Mr. Palmer advised that the quarter horse meet has just gotten underway. They have 625 horses on the backside; the stalls are fuller than in the past. The average field size is 8.8. He stated that for the first three days, on track handle was up 1% while off-track handle was up 12%.

Chair Urban moved to the contracts submitted by PMR&C. Mr. Palmer submitted the following contracts for Commission approval:

- Bankers Trust Company – ATM Services
- Des Moines Asphalt & Paving – Asphalt Paving Contractor
- Farmers Supply Store – Equipment, Parts, Supplies & Service
- Freightliner of Des Moines – Truck & Trolley Equipment, Parts and Service

- Global Payments – Casino Guest Check Cashing Services
- Global Payments – Casino Guest Credit Card Services
- Metro Waste Authority – Waste Disposal
- Midwest Ambulance Service of Iowa – Ambulance and Emergency Medical Services
- Waldinger Corporation – Mechanical and Electrical Contractor
- Waste Management – Waste Disposal
- Wood Roofing and Sheet Metal – Roofing Contractor

Hearing no comments or questions concerning the contracts, Chair Urban requested a motion. Commissioner Rivera moved to approve the contracts as submitted by PMR&C. Commissioner Lamberti seconded the motion, which carried unanimously. (See Order No. 11-93)

Chair Urban called on the Iowa Greyhound Association and Horseshoe Casino/Bluffs Run Greyhound Park. Jim Quilty and Lorraine May, legal counsels for the parties respectively, were present to address the Commission. Mr. Quilty advised that the parties have agreed to withdraw the request for withholding the 2% from stakes races. He stated that they have agreed upon the unpaid purse amounts from 2008, 2009, and 2010, and that Ms. May had set forth those amounts in her letter dated August 24th. Mr. Quilty indicated they are seeking the Commission's approval of those disbursements per the purse agreement for 2008, 2009 and 2010. He noted there are a few ancillary issues that the parties still need to resolve.

Ms. May also requested the Commission's approval of the unpaid purse amounts per the purse agreements from 2008, 2009 and 2010.

Hearing no comments or questions, Chair Urban requested a motion. Commissioner Heinrich moved to approve the disbursement of unpaid purses for 2008, 2009 and 2010 as set forth in Ms. May's letter of August 24th per the purse agreement. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 11-94)

Chair Urban moved to the hearing for Terrible's Lakeside (Lakeside) for a violation of Iowa Code Section 99F.4(18) (Surveillance). Mr. Ketterer advised that IRGC and Lakeside have agreed on a Stipulated Agreement to resolve this issue. He stated that the incident occurred in May of this year when an explosion damaged an electrical switch gear and a large transformer, which left Lakeside without any back-up power for the facility. Temporary land-based generators were set up to provide primary power to the facility; these were replaced with permanent land-based generators. The transfer from the back-up power source to the temporary power source and then to the permanent power source required that all systems be shut down on two occasions. During the first conversion on June 1st, the surveillance department intentionally shut down the recording of the casino floor in anticipation of a planned power outage. Due to certain aspects of the conversion occurring ahead of schedule, the shutdown of surveillance occurred earlier

than anticipated by management. As a result, twenty-two patrons and several employees were still on the gaming floor at the time. IRGC staff became aware of the situation and checked with the Division of Criminal Investigation (DCI) to determine if permission had been received to shut down the facility's surveillance. DCI informed IRGC staff that it was not approved, nor were they aware that it had occurred.

Mr. Ketterer advised that the facts of the situation are not in dispute. He stated there is no precedent for this type of violation in Iowa; staff contacted three other gaming jurisdictions to see how they would handle this situation. They responded with administrative penalties ranging from \$10,000 to \$30,000. Mr. Ketterer stated that the Stipulated Agreement indicates the administrative penalty is not to exceed \$25,000. He advised that Lakeside wishes to present some mitigating factors. Mr. Ketterer advised that following the conclusion of Lakeside's comments, staff recommends the Commission approve the Stipulated Agreement and establish the administrative penalty, taking into account the mitigating factors.

Jerry Crawford, legal counsel for Lakeside, concurred with Mr. Ketterer's comment that there is no disagreement as to the facts of the case. He stated that surveillance was shut down for approximately 20 minutes on June 1st while there were still patrons on the gaming floor. Mr. Crawford advised that the area experienced a severe storm on May 25th and the hotel took a lightning hit. At 3:00 AM, the land-based generators exploded. The area had also experienced a significant amount of rainfall and the lake level was very high. Mr. Crawford stated that no one is sure what caused the explosion. The facility utilized the backup generators from the boat for a week until temporary generators could be brought in.

Mr. Crawford advised that in addition to the above, Lakeside was utilizing a new surveillance system that had been on the property for five months, and had never been shut down or rebooted; and had a new surveillance director that had been on the job for less than three months. He stated that upon arrival of the temporary generators on site, a meeting was held to discuss a timeline, with everyone understanding that an entire shutdown of the surveillance system would take sixty minutes, starting with non-casino related assets. Mr. Crawford advised that the shut down is a multi-step process that can not be stopped once it has been started. He noted that everyone was aware that forty minutes into the shutdown the casino floor had to be cleared; however, twenty minutes into what was anticipated to be a sixty minute shut down process, the surveillance shutdown was complete; and 22 people were still on the floor. Mr. Crawford advised that when it is anticipated that it will take sixty minutes to shut something down and you know that you will have surveillance back up and no one will be on the gaming floor while you are down, you don't notify anyone that you are going to be without surveillance with no one on the floor. He stated that the permanent power source came back on line and there was no incident the second time around. Mr. Crawford advised that there was zero intent on the part of anyone to violate any rule or regulation of the State of Iowa; there was no way for anyone to know that this was going to occur. He noted that Lakeside had lost an \$800,000 power source, six figures of which were not

covered by insurance. He asked that the Commission impose the lowest penalty based on the above facts.

Commissioner Heinrich asked how the communication with all involved parties was handled prior to the shut down. Bob Thursby, General Manager, advised that he had no specific e-mail or written notification to DCI; IRGC was notified as they were prepared for machine testing at the end of the process. He accepted responsibility for not discussing the planned shut down with the DCI prior to the process occurring.

Commissioner Rivera, noting that Mr. Crawford indicated the facility had never gone through the process of shutting down the surveillance system, asked if that had been done again since the incident occurred. Mr. Crawford answered in the affirmative; noting there were no incidents the second time. He advised that occurred when the facility switched over to the permanent power source.

Commissioner Rivera asked if they had gone through the process just one additional time. Mr. Thursby answered in the affirmative. He stated that they reviewed the original plan with the DCI and IRGC, and all of the specific timing and procedure issues were resolved. Mr. Thursby advised that normally surveillance would never be shut down.

Commissioner Rivera asked why a portion of the loss was not covered by insurance. Mr. Crawford it was due to the deductible on the policy, \$100,000.

Commissioner Seyfer stated that the most troubling aspect of the situation for him was that the DCI was not informed.

Hearing no further comments concerning the Stipulated Agreement or licensee's comment, Chair Urban requested a motion. Commissioner Seyfer moved to approve the Stipulated Agreement, with an administrative penalty of \$15,000. Commissioner Rivera seconded the motion, which carried unanimously. (See Order No. 11-95)

Mr. Ketterer stated that if this situation and set of circumstances would have happened and the DCI and IRGC would have been informed, it is his opinion that the matter would not be in front of the Commission. He stated that he understands about a new surveillance system and new surveillance director. Mr. Ketterer stated that the most serious aspect of the situation is the surveillance as it allows the DCI and IRGC to recreate the facts surrounding a situation. He noted there is seldom any dispute as to the facts in a case because of the surveillance tapes. Mr. Ketterer stated that he concurred with Commissioner Seyfer that the failure to notify the DCI was the most troubling aspect.

Commissioner Heinrich stated that he appreciated Mr. Thursby accepting responsibility for the situation; and that he agreed with the fine due to the circumstances.

Chair Urban moved to Public Comment. Wil Reisinger, President of Clarke County Development Corporation (CCDC), distributed a handout to the Commission. He noted that the Commission had encouraged CCDC and Affinity to work out their differences at the last meeting. He advised that they had met one time without any results. He expressed his doubt that the parties could find common ground, let alone a solution, at this rate. Mr. Reisinger stated that CCDC has very little or no communication or input with regard to site planning or development, and only learned through a third party about the planned truck stop and Subway shop – neither of which were included in previous discussions. He again requested that the Commission require Affinity to enter into meaningful negotiations with CCDC and establish a deadline of November 10th. Mr. Reisinger informed the Commission that the handout also included a comparison of the various casino sizes and the amount received by the non-profit, and a letter from CCDC member and Councilman, James D. Kimball, MD.

Chair Urban called for any comments and/or suggestions. Commissioner Heinrich asked if there was any particular reason why negotiations were not taking place. Mr. Reisinger advised that they had one meeting with Mr. Crawford, who then went on vacation, and CCDC hasn't heard from him again.

Chair Urban asked about previous negotiations. Mr. Reisinger stated that whenever CCDC asks the Commission to intervene, Affinity will comply. He stated that CCDC has had meaningful negotiations from their side and given Affinity what they want; however, Affinity doesn't give anything back.

Chair Urban asked Mr. Crawford if he had anything to add. Mr. Crawford advised that the attorney for CCDC and he had exchanged written proposals with regard to a meeting date and time. Due to various scheduling conflicts they could not agree on a meeting time; however, they are now scheduled to meet at 10:00 AM tomorrow morning. He stated that the addition of the new travel center is a big value-added component on the site. Mr. Crawford stated that it would be unfair for him to get into the facts surrounding the current tenant. He stated there is nothing with regard to the Subway or travel center that will prevent future expansion.

Chair Urban advised that the parties will be placed on the November agenda, with the hope that they will have met once or twice prior to that time.

Commissioner Rivera asked Mr. Crawford to supply the Commission with copies of the correspondence between himself and Mr. Gross regarding the intent to meet so that the Commission can see the comments made by both sides. Mr. Crawford answered in the affirmative, but stated that he was not sure the parties would want to put the contents of negotiations out for public content. Commissioner Rivera stated she was not requesting information regarding negotiations. She advised that she requested the documentation as Mr. Reisinger has indicated that Affinity is not willing to meet.

Commissioner Heinrich also encouraged the parties to continue negotiating; but the Commission does not need the details. He stated that it is important to have a strong relationship between the non-profit and the operator. Mr. Crawford indicated there was room for improvement.

Mr. Reisinger advised that he was willing to provide copies of correspondence with regard to meetings as well.

Chair Urban moved to Administrative Business. Mr. Ketterer stated that he felt the Commission would like to hear an update with regard to the poker study the Commission is required to file with the Legislature by December 1st. He advised that Brian Ohorilko, Director of Gaming, has coordinated and directed the compilation of the study, along with various staff members.

Mr. Ohorilko noted that the bill states the Commission is to prepare and submit a report to the General Assembly by December 1st regarding the creation of the framework for the state regulation of internet poker. The study is not to include any specific recommendations regarding legalization of the market. At this time, a committee has been created, which includes IRGC staff members and various regulatory professionals with extensive gaming backgrounds. Mr. Ohorilko stated that the majority of research has been conducted at this time, but believes additional information will continue to be received and incorporated into the study due to the evolving nature of the internet poker industry. He stated that meetings have been held with groups that have expressed interest or which the Commission feels are specialized in certain areas of gaming regulation. Those include federal jurisdictions that have legalized internet gambling, independent testing labs, casinos, potential hub operators, poker players, poker player alliances, poker room managers, Iowa Lottery, and an age verification provider, etc. Mr. Ohorilko stated that some writing has been completed, mostly outlining goals, research, methodology, limitations and discussing some of the literature and interviews that have been reviewed and/or conducted in researching the report. The study will contain information on various regulatory areas: age verification, security, player information, ways to determine the randomness of the card distribution, compulsive gambling detection, and various licensing structures. The goal is to point out the pros and cons; and identify the facts. Mr. Ohorilko stated that the next month and half will be the most challenging in trying to pull together all of the information; the intent is to have a rough draft completed by the end of September. By that time, the Commission should have received a report from the Director of Public Health regarding the societal impact of internet poker, which was also required by the bill. That information should be received no later than October 1st and will then be incorporated into the report.

Chair Urban moved to the regulatory fees for Fiscal Year 2012. Mr. Ketterer stated that the Code requires the Commission to collect regulatory fees, which are comprised of the Commission's appropriation from the legislature, and the DCI's cost of agents, and direct and indirect costs at each facility. In the past, appropriations were taken out of the General Fund and regulatory fees were submitted to the General Fund by the licensees.

Last year, the DCI, and this year, the Commission's appropriations were moved to a revolving fund, meaning that the fees are paid directly to the Commission and DCI. He noted that one of the issues affecting the regulatory fees this year was the late adjournment of the Legislature and the fact that the Governor has thirty days to sign bills. Mr. Ketterer noted that typically the Commission has the fees by the end of June and can begin collecting them on July 1st, the start of the fiscal year. This year the Commission did not have any mechanism to charge regulatory fees to the licensees, and none have been collected to date due to the late adjournment of the Legislature. Mr. Ketterer stated that the Commission has had their fees for a couple of weeks; however, there is a little more involved in determining the DCI costs, and those were just received on Tuesday of this week. He advised that the proposed fees were immediately sent to the general managers and Commission members for review. Mr. Ketterer requested that the Commission approve the fees as submitted. He advised the licensees that, if after further review, they felt adjustments needed to be made they should contact the Des Moines office. Any adjustments will be addressed at the September Commission meeting. Mr. Ketterer advised that both funds are required to cash flow, so the Commission has incorporated a policy of billing five weeks of regulatory fees up front on July 1st, and then regulatory fees will cease on May 24th for this fiscal year. At that point there won't be any more regulatory fees until the first week of Fiscal Year 2013. Mr. Ketterer again recommended that the Commission approve the regulatory fees as proposed with the understanding that any adjustments can be dealt with at the September meeting.

As there was no discussion concerning the regulatory fees for Fiscal Year 2012, Chair Urban requested a motion. Commissioner Seyfer moved to approve the regulatory fees for Fiscal Year 2012 as submitted. Commissioner Heinrich seconded the motion, which carried unanimously. (See Order No. 11-96)

As there was no further business to come before the Commission, Chair Urban requested a motion to adjourn. Commissioner Rivera so moved. Commissioner Seyfer seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

JULIE D. HERRICK