

**INDIANA GAMING COMMISSION
REGULAR MEETING
VIA
TELEPHONE CONFERENCE CALL**

**10:30 a.m., March 20, 1996
Hearing Room of
Indiana Gaming Commission
N190, 100 North Senate Avenue
Indianapolis, IN 46204**

PRESENT: Commission members (in person) Alan I. Klineman, Chair; Ann M. Bochnowski, Vice-chair; Thomas F. Milcarek; (available by telephone hookup) David E. Ross, Jr., M.D., Robert W. Swan; Donald R. Vowels; and Robert W. Sundwick ; Staff members (in person) Jack Thar, Floyd Hannon, Kay Fleming, Janine Hooley, Cindy Dean, Jill Copenhaver, Pam Ayres and applicant representatives, members of the press and other interested parties.

Call to Order, Roll Call, and Announcements

Chairman Alan Klineman called the meeting to order at approximately 10:36 a.m., indicating that a quorum was present. He announced that due to adverse weather conditions the regular Indiana Gaming Commission (IGC) meeting is being held via telephone hookup because a quorum would not have existed otherwise. The deliberation process for the issuance of a certificate of suitability for Michigan City will not be held as anticipated because all commissioners should be present; therefore, it will be set for the week of April 15, starting at 11:00 a.m. Mr. Klineman asked the commissioners to check their calendars for availability. The Michigan City deliberation process will then follow the regular IGC business meeting scheduled for that day. The day and time will be announced later.

The Indiana Gaming Commission will be going through the whole, previously announced agenda at today's meeting. Chairman Klineman requested that if there is any commissioner who is not physically present and who feels uncomfortable with any agenda item, he should so indicate, and that item will be rolled over to the next meeting.

Approval of the Minutes

On motion by Tom Milcarek, second by Ann Bochnowski, the minutes of the February 12, 1996, and the March 7, 1996, meetings were unanimously approved.

Report of the Executive Director

Executive Director Jack Thar gave updates on the following certificate of suitability holders:

Gary

The staff and developers are beginning preparation for the opening of the riverboats, with present estimates being the end of May or the early part of June. The primary unknown at this point in time is the thawing of the Mackinac Straits. This is key to the vessels arriving in Gary. Presently, it is believed that the thawing is at least ten days to two weeks behind what is considered to be normal. Staff is meeting with the City of Gary and the two developers tomorrow to work out issues of bond and insurance in preparation for the opening.

Evansville

The numbers for Casino Aztar for the month of February will be released tomorrow. It is anticipated that the figures will be higher and that February will be the best month to date.

Rising Sun

The Army Corps of Engineers has lifted the suspension of the Rising Sun permitting process, thus placing it back on track. The vessel, formerly the Hilton Flamingo, is now docked in a fleeting area near Utica, Indiana, which is just east of Jeffersonville. Rising Sun Riverboat Casino & Resort is in the process of requesting from the Army Corps of Engineers the ability to dock the boat closer to Rising Sun, if not on their property. The Corps had originally denied that request but have recently indicated they will give it serious reconsideration.

The Indiana Gaming Commission staff has approved the testing of the electronic gaming devices on the vessel which will begin this Friday, March 22, 1996.

An issue has arisen with the United States Coast Guard concerning the ownership of the vessel. Mr. Thar indicated that a further explanation will be given at the conclusion of his remarks.

Lawrenceburg

The Indiana Gaming Company, L.P. offering of first mortgage notes was approved by the Commission on Wednesday, March 13, 1996, subject to a review of certain documents. This is an agenda item.

Recently, newspaper articles have reported that subpoenas have been issued from the Marion County Grand Jury concerning an investigation, captioned State of Indiana vs. Original Investigation - Official Corruption. Argosy, the 57% general partner of Indiana Gaming Company, L.P., has issued a press release stating that it

has received a subpoena requesting records and that it does not believe that it has committed any wrongdoing. People from Argosy are present and available to answer any questions.

Hammond

Lake Michigan Charters has advised that it has changed its name to Empress Casino Hammond Corporation. They are projecting an opening by July 4, with the major unknown at this point being the issuance of the Army Corps of Engineers' permit.

Mr. Thar gave an overview of recent events regarding the Rising Sun Riverboat Casino & Resort, LLC. It is a limited liability company made up of certain entities. Two of those being individuals of Canadian citizenship. According to the investigations the vessel was going to be owned by the certificate holder or licensee. The Coast Guard has indicated that since these Canadian individuals will hold above a certain percentage, they cannot, pursuant to federal law, own the riverboat within the structure of the Rising Sun Riverboat Casino & Resort. Consequently, they have restructured a new corporation for the purpose of owning the riverboat. It is made up of the exact same people, in the exact same percentages as owned by the present certificate of suitability holder, but it is outside the chain of ownership of the certificate of suitability entity.

This particular chain consists of a new corporation which will most likely be called Grand Victoria II. Their sole purpose will be to own the vessel known as Grand Victoria II. The stockholders will be the same people who presently own the certificate of suitability. Since this is the corporation, the Coast Guard will accept the structure because they will not go up the chain to see who owns the stock as long as Canadian ownership is under 25%. Under the proposed structure, it will be 20%.

The Indiana Gaming Commission staff does not believe that this particular change in ownership requires IGC approval and has so advised Rising Sun. It falls outside of the ownership structure for the certificate of suitability holder and as a consequence, there is no need to re-check how that ownership is going to be aligned. The people who will be the owners have already been investigated. The vessel will be a straight lease based upon mortgage dollars, not upon performance; there is also no need for the owners of the vessel to be licensed as a supplier.

The other aspect the Commission staff brought up with the company is that when it was owned by the certificate of suitability/licensee, it was an asset to the licensee, which will now be held by a different company. They have structured the transaction in a way that the licensee will get the benefits of the ownership and will not be paying any more for the vessel than if they had mortgaged it directly.

Rising Sun Riverboat Casino & Resort legal counsel Lisa Murray reported that the money that

will be borrowed for the boat will be \$37,000,000. Mr. Thar added that when the vessel was purchased it also included the electronic gaming devices. The purchase price exceeded \$37,000,000. The fair market value of the boat alone without the electronic gaming devices and the other fixtures on the boat is \$37,000,000. The other fixtures on the boat will continue to be owned by the certificate of suitability holder.

Hearing no objections, Chair Alan Klineman concurred that the decision of the IGC staff is correct and that no further action at the Commission level is necessary. It is revenue and expense neutral and its sole purpose is to satisfy the Coast Guard's interpretation of the law.

Mr. Thar concluded his report.

Old Business

Continued Explanation of Proposed Acquisition of Trump Taj Mahal Associates by Trump Hotels and Casino Resorts, Inc. (commonly referred to as the "Merger") in Relation to Trump Indiana, Inc.

Mr. Donald Tabbert, counsel for Trump Hotels and Casino Resorts, announced that it has submitted extensive material, as requested at the previous Indiana Gaming Commission meeting at LaPorte, and this information has been disseminated and distributed to each commissioner. Trump officials have also reviewed the transcript of that meeting. He stated that he had nothing to add at this time but he and Bob Pickus are present for any questions the Commission might have.

General Counsel for Trump Hotels and Casino Resorts Bob Pickus indicated that the debt portion of the merger as originally described to the commissioners has been reduced by approximately \$70 M and in response to favorable market conditions at this time, it is anticipated that another \$100 M of equity will be raised in connection with this merger transaction. Trump Hotels and Casino Resorts views this de-leveraging of the entire structure as very favorable. If this goes through, the debt portion will then be \$1.1 B. He added that that debt will be replacing existing debt in generally the same amount; consequently, it is not new debt per se. It is the debt that is going to be used for re-financing the existing mortgages. He assured the Commission that the Trump project will still be a stand-alone project and will have adequate funding to meet all requirements specified in their certificate of suitability.

Commissioner Ann Bochnowski asked for a clarification regarding the Indiana corporation's debt liability if the parent company cannot service the debt. Mr. Pickus answered that the new debt he had described is solely related to Atlantic City. He reassured the Commission that Indiana under no circumstances can be held responsible for any portion of that debt, nor can the parent company. That debt is secured by first mortgages on the two Atlantic City properties, the Taj Mahal and The Plaza. The bonds are issued by a separate Atlantic City holding funding company and they are recourse only to those two assets, those two properties. If there should be

a total collapse in Atlantic City and those bonds not be able to be paid, those bond holders could only look toward those two assets and could not look up to the parent company (the publicly-traded company) or in any way over to Indiana.

Chairman Alan Klineman explained that a resolution has been prepared that basically approves or denies the merger. There is a caveat that appears in Section 3 of the resolution that states that the

Adoption of this resolution and the approval of the acquisition of the Trump Taj Mahal Casino Resort by Trump Hotels and Casino Resorts, Inc. does not in any way constitute a waiver of the Commission's authority and ability to approve or disapprove any future changes in the ownership of the Certificate of Suitability, Riverboat Owner's License, or assets incident thereto which may occur in the event of the purchase or sale of stock or in the event of a default.

He added that the Indiana Gaming Commission will not be approving the transfer of the license either implicitly or explicitly.

ACTION: Resolution 1996-14, A Resolution Concerning the Proposed Acquisition of Trump Taj Mahal Associates by Trump Hotels Casino and Resorts, Inc. in Relation to Trump Indiana, Inc., was unanimously adopted inserting the word "approved" on motion by Bob Sundwick, second by Bob Swan.

Report on the Issuance of First Mortgage Notes Due 2004 by Argosy Gaming Company

Mr. Tom Long, President and CEO of Argosy Gaming Company, explained Argosy's present position. On Friday of last week the Marion County, Indiana, prosecutor issued certain subpoenas to all of the partners to provide various documentation to them. In view of that action, Argosy consulted with their underwriters, counsel, etc. Argosy feels it is now necessary to postpone their offering until such time as they have an opportunity to determine the nature and extent of the inquiries. They have therefore notified their underwriters and investors that they are postponing and would now request that they be allowed to move forward with it when the time is appropriate in the near future. He stated they are fully complying with the prosecutor's request and regretted that the prosecutor did not come forward to talk with them personally before the subpoenas were issued. Mr. Long stated he would have been available to cooperate fully on a one-to-one basis. Moving forward in the chosen manner has caused a great disruption in the whole transaction. He would have appreciated being forewarned of their intent. Notwithstanding, Argosy will fully cooperate and provide the requested information. Mr. Long did not learn of the prosecutor's intent until late Friday afternoon.

Chairman Alan Klineman indicated that the Indiana Gaming Commission is in receipt of a letter outlining Argosy's stated request. He read from the letter:

Although we are confident that no member of Indiana Gaming Company, L.P., or

Argosy Gaming Company has committed any violation of law or participated in any unethical conduct, the associated media attention to this matter created an unfortunate level of uncertainty with potential bond holders. Therefore, we feel that in all fairness to the bond holders, we should terminate our private placement at this time.

But they are requesting that the Indiana Gaming Commission move forward and clear the matter to the extent that potential bond holders would be made available again so that the transaction could go forward. Chairman Klineman added that in the local press the prosecutor has found no evidence of any action on the part of any members of the Indiana Gaming Commission or its staff in connection with the licensing investigation presently being conducted. This Commission has always acted under the law and completely ethically. The seven members of the Commission work very hard for the citizens of Indiana and are above question.

Chairman Alan Klineman introduced **Resolution 1996-15, A Resolution Concerning the Issuance of First Mortgage Notes Due 2004 by Argosy Gaming Company**. He indicated that on Monday of this week he personally reviewed an opinion letter made available by Barnes and Thornburg that satisfies him as to their legal opinion that this requested transaction does not violate the Indiana Riverboat Gaming Act and in particular, the section concerning the hypothecation or pledge of the license. He is satisfied with the letter presented. He was also to have received from Winston and Strawn a revised cash disbursement agreement showing that invoices would be attached before draws were made against it. Mr. Klineman announced that as of this time he has not received the said agreement. He had spoken with Joseph Walsh, Winston and Strawn, on Monday, who indicated it would be sent. Mr. Tom Long reassured that the disbursement agreement will be sent to the Commission. Mr. Klineman indicated his pleasure that Argosy will have an independent accounting firm review the draws on a periodic basis, but he also wants to have some invoices to look over. Chairman Klineman reiterated that when applicants and Certificate of Suitability holders make requests, they need to have the official, backup documentation.

Mr. Klineman added that there has also been an issue about the other partner providing the Argosy portion. During the course of the teleconference meeting on Wednesday, March 13, Argosy spokespersons noted that 42 1/2% would be provided for by an associate or subsidiary of Conseco. For the record, Mr. Klineman will call it Conseco. Argosy people had indicated that there has never been a question about when monies were due; Argosy would in fact make the request of Conseco, and Conseco would in a business-type of operation provide those funds. Mr. Klineman suggested that it could be operated through some type of cash disbursements program.

Argosy attorney Peter Rusthoven introduced Larry Inlow, Conseco Vice President and General Counsel, who addressed the issue. Mr. Inlow stated that Conseco has responsibility for the share holders and the policy holders of their subsidiary companies to properly administer the funds of those companies. Conseco has many commitments for all types of liabilities including \$15 B worth or thereabouts of policy under liabilities under insurance policies. They have the

responsibility to invest those funds; they view the partnership agreement with a subsidiary of Argosy to be one of those commitments. When and as funds are called by the general partner pursuant to that partnership agreement, Conseco will fund those monies through one or more of its subsidiaries. But it is not appropriate for them to do some sort of set aside of funds in advance. They don't think that would be consistent with their obligations to the policy holders and in essence, the share holders that Conseco represents and to who those monies really belong. Conseco fully intends to fund its commitment pursuant to the terms of the partnership agreement but views itself to be in a different position than Argosy, vis-a-vis what they are doing with this first mortgage bond offering and how they have to deal with those funds in the context of getting the first mortgage bond deal done is not applicable to how Conseco has to deal with the funds for the people they represent.

Chairman Alan Klineman indicated his knowledge that Conseco obviously does not have an obligation as Argosy does as a result of a bond issue. There is no question that Conseco has been filling the obligations as requested by Argosy during the time period that construction has in fact been taking place and funds have been expended. Mr. Klineman also did not indicate to anyone that Conseco would put cash into some sort of a disbursement account. He did ask Mr. Inlow as a representative of Conseco to consider a letter of credit or something similar so that the Indiana Gaming Commission could in fact then say that the Lawrenceburg project is fully funded. It all arises around the questions that have been floating around about Lawrenceburg. Apparently there is this question that appears to remain in the public's mind, so he again requested that Conseco consider working something out to enable the Commission in turn to say that there is no question about the full funding of the Lawrenceburg project. He personally would appreciate it if that could be checked out.

Mr. Inlow stated that he could not commit Conseco to a letter of credit at this time. He is not certain how a letter of credit from a bank will be better from the Commission's viewpoint than the assurances from Conseco and insurance subsidiaries that have some \$17 M of investment portfolio under management.

Chairman Klineman again asked for something that shows the Commission that the Lawrenceburg project is fully funded. Because of the problem the prosecutor has caused, the Commission will have more time for review.

Reading from **Resolution 1996-15**, Chairman Klineman quoted the following:

The Commission has been advised that Argosy Gaming Company plans to, in the immediate future, issue up to Two Hundred Fifty Million Dollars of First Mortgage Notes under terms that are the same except for the amount, due date, and interest rate as the terms outlined in the Preliminary Offering Memorandum subject to completion, dated March 7, 1996.

To reiterate what had previously transpired, Mr. Klineman indicated that in the original \$200 M

transaction, there was an oversale so they went to \$235,000,000. Now it is \$250,000,000. He further read:

The request for the approval of the issuance of First Mortgage Notes which are to be issued in the immediate future, but no later than _____ under terms that are the same except for the amount, due date, and interest rate as the terms outlined in the Preliminary Offering Memorandum subject to completion, dated March 7, 1996, is hereby:

APPROVED OR DENIED

subject to a review and approval of the terms of the respective Preliminary Offering Memorandum and associated documents by the Commission staff.

Mr. Long indicated that June 1, 1996 could be inserted in the first blank.

Commission Chairman Mr. Klineman stated that there is also a caveat in this resolution that:

Adoption of this resolution and the approval of the issuance of First Mortgage Notes by Argosy Gaming Company does not in any way constitute a waiver of the Commission's authority and ability to approve or disapprove any future changes in the ownership of the Certificate of Suitability, Riverboat Owner's License, or assets incident thereto which may occur in the event of a default.

Executive Director Jack Thar asked the Commission how open-ended they want the interest rate to be. He asked Mr. Long what type of interest rate Argosy can get during the next sixty days.

David Soloman from Bear Stears' high-yield department indicated that at the current time it is not possible to comment on what the interest rate could be until the information with respect to the subpoena has been digested by the potential investors. It is fair to say that in the high-yield market coupons for financing for transactions of this type range from 11 to 12 percent to as much as 14%. That is the ball-park range today; it could be different two weeks from now or it could be the same. It is impossible over that time period to say what could happen either from a market perspective or how the investors evaluate the information that they have now received about the grand jury subpoena. It is a possibility that the bond market could charge a half point more because of the subpoenas.

Peter Rusthoven indicated that he will be willing to discuss privately how high Argosy is willing to go. He anticipates getting a very good interest rate.

Commissioner Ann Bochnowski stated that the Commission in other words would leave open its option to approve the interest rate. The chairman indicated that if the resolution is approved, it

is approved subject to further review and approval by the staff. It will be up to Commission staff, after discussing the situation with Argosy and reviewing the overall picture, to contact the commissioners, outside of a meeting setting, to gain their input before giving any official approval.

ACTION: Resolution 1996-15, A Resolution Concerning the Issuance of First Mortgage Notes Due 2004 by Argosy Gaming Company, was unanimously approved on motion by Bob Swan, second by Dr. David Ross.

New Business

Rules and Forms

Chief Counsel Kay Fleming announced that there are no forms to be approved at this time. She presented **Resolution 1996-16, A Resolution Adopting, as Final Rules, 68 IAC 1-10; 68 IAC 8-1; 68 IAC 14-2 and IAC 14-6**. These rules covering General Provisions - Floor Plans; Public Safety - Excursions, Routes and Public Safety; Gaming Equipment - Live Gaming Device Table Requirements and Blackjack Tables were published in Volume 19 of the *Indiana Register*, pages 699 through 705, on January 1, 1996. A public hearing was held and a copy of the transcript and written comments were provided to the commissioners and upon adoption as final rules, they will be acted under by the Commission and will be forwarded for review to the Attorney General's office, the Governor's office and then on to the Secretary of State's office.

ACTION: Resolution 1996-16, A Resolution Adopting, as Final Rules, 68 IAC 1-10; 68 IAC 8-1; 68 IAC 14-2 and IAC 14-6, was unanimously adopted on motion by Tom Milcarek, and second by Ann Bochnowski.

Ms. Fleming also indicated that there will be additional draft rules available to the public on April 9 and requested comment back by April 23, 1996.

Temporary Supplier Licenses

Deputy Director Floyd Hannon introduced **Resolution 1996-17, A Resolution Granting the Executive Director the Authority to Grant Temporary Supplier's Licenses**, which gives authority to grant a temporary supplier's license to the executive director pending approval by the Indiana Gaming Commission. This is necessary because over the next 60-90 days there will be a lot of boat openings and, as a result, the need for supplier license approvals. Mr. Hannon read the following:

Recognizing the need to issue temporary supplier's licenses prior to the business meetings scheduled during the spring and summer months, and in an effort not to delay the opening of the riverboats, the Commission hereby authorizes the Executive Director to issue temporary supplier's licenses to suppliers deemed

necessary to provide products to these riverboats prior to the opening date of the respective riverboat upon a determination by the Executive Director that the preliminary investigation has been completed and does not reveal information that would deem a company unsuitable for licensure. Each issuance of a temporary supplier's license by the Executive Director shall be reported to the Commission at the next scheduled business meeting. The Commission may affirm the action of the Executive Director, may revoke the temporary supplier's license, or may direct the Executive Director to take additional or different action with respect to a temporary supplier's license. The temporary supplier's license will remain valid until the date that the permanent supplier's license is issued or until the temporary supplier's license is revoked pursuant to 68 IAC 2-2.

Chairman Klineman indicated that this procedure has a precedence whereby the Commission gives the Executive Director the authority so long as certain criteria are met and Mr. Thar would then report back to the Commission. This makes a lot of sense because of the short time frame for the opening of several riverboats.

ACTION: Resolution 1996-17, A Resolution Granting the Executive Director the Authority to Grant Temporary Supplier's Licenses, was unanimously approved on motion by Ann Bochnowski, second by Don Vowels.

Election Costs for Clark and Floyd Counties for Referenda Held in November 1995

Executive Director Jack Thar stated that in essence in Floyd and Clark Counties there was only one group that was considered and who paid the election costs. In each instance, the estimated cost paid by the company was more than the amount that it cost to have the election.

With regard to Floyd County, \$15,000 was paid in; the election cost was \$12,924.80. This resolution authorizes Floyd County to refund \$2,075.20 to the sole applicant.

In Clark County, the estimated cost was \$61,915.00; the actual cost was \$59,339.36, a difference of \$2,575.64. This resolution authorizes Clark County to refund this amount to the sole applicant in this county.

ACTION: Resolution 1996-18, A Resolution Establishing the Pro Rata Cost of the November 7, 1995 Referendum to be Paid by Applicants for a Riverboat Owner's License in Clark and Floyd Counties, was unanimously adopted on motion by Bob Swan, second by Don Vowels.

Report of the Waiver of the \$10.00 Fee for a Replacement Badge for Occupational Licensees Who Receive a Lateral Transfer or a Promotion

Executive Director Jack Thar reported that per IGC rules when a person needs a new badge, he

has to pay \$10.00. This was intended to cover any situation where a person loses his badge. Aztar provides all of the materials for the badge. However, it was never taken into consideration that if a person is promoted or changes positions, a new badge would be needed and the replacement cost assessed. IGC staff does not feel it is appropriate to continually charge them an additional \$10.00 each time they change positions. Staff has agreed, with Commission approval, to waive this fee under this condition. Under no circumstance will it be waived when the badge is lost or misplaced.

Hearing no objections, Chairman Alan Klineman indicated that IGC staff is so authorized to waive the \$10.00 fee under the conditions set forth.

Request for Withdrawal of Riverboat Owner's License of Swiss Par-A-Dice, L.P.

Executive Director Jack Thar reported that the Indiana Gaming Commission staff received a letter on March 13, 1996, from Mr. Nick Stein, that Swiss Par-A-Dice, L.P. is seeking to withdraw its application for a riverboat owner's license to be docked in Switzerland County. In a subsequent phone call to Deputy Director Floyd Hannon, Mr. Stein indicated his appreciation that the Commission allowed him to stay in the process for as long as it did. He realized that there was some hardship created.

Chairman Klineman outlined **Resolution 1996-19, A Resolution Concerning the Request of Swiss Par-A-Dice, L.P. to Withdraw its Application for a Riverboat Owner's License**. The word "granted" or "denied" should be inserted in the appropriate blank.

ACTION: Resolution 1996-19, A Resolution Concerning the Request of Swiss Par-A-Dice, L.P. to Withdraw its Application for a Riverboat Owner's License, was unanimously adopted with the word "granted" added upon motion by Bob Swan, second by Tom Milcarek.

Appointment of Administrative Law Judge

Executive Director Jack Thar outlined a proposal for Commissioner Donald R. Vowels to be appointed an administrative law judge for any appeals that arise from Commission action with respect to denials, revocations, or non-renewals of individuals who have applied for an occupational license to work for Aztar Indiana Gaming Corporation. The appointment will remain in effect until he is no longer a member of the Commission, the Commission takes further action with respect to the appointment, or he would be disqualified from serving as an administrative law judge pursuant to IC 4-21.5.

Hearing no objection, Mr. Vowels was appointed as an administrative law judge for any appeals as specified above. The action statement has signature lines for Chairman Klineman and Vice-chair Ann M. Bochnowski.

Explanation of the Issuance of First Mortgage Notes Due 2003 by Showboat Marina

Partnership; Report of the Change of Ownership and Corporate Structure

Mark Miller from Showboat Inc., representing the Showboat Marina Partnership - East Chicago Project, introduced Steve Hackman, an attorney from Ice-Miller who has been working with him on the offering; Steven Personelli, who is the managing director of their leading underwriters, and who will be available to answer any Commission questions.

Mr. Miller stated that representatives of Showboat are present to update the Commission on what has transpired since the issuance of their certificate of suitability in January, and to request Commission approval for their financing plan which is substantially the same as their financing plan which was presented in their application and in their hearing in January. However, there are a couple of variations; one of which they feel is a very positive variation and the other they view as a technical change to enhance their financing.

Showboat Marina Partnership has been pushing very hard with the issuance of the certificate in January. Their vessel is now under construction in Jacksonville, Florida, and is a sister vessel to The Empress III, which was also built there, and the Trump vessel, also built there. It is under contract, being about 2 1/2 months along. It is expected to be delivered to Lake Michigan by the end of this year. In fact, it is under contract to be delivered there and there are approximately \$3,000,000 in liquidated damages if it is not on Lake Michigan before the Saint Lawrence Seaway freezes over. They are confident that the vessel will be the biggest and the best in the marketplace and will be on Lake Michigan by the end of this year.

Their breakwater is also well along. In December 1995 they received their Army Corps of Engineers' permit. All of the engineering design and testing work that flowed from those suggested changes during the Army Corps permitting process have now been completed. Showboat is about to begin quarrying rock for the breakwater and expects to begin construction on or about June 1 or thereabouts. This is the earliest date they can start construction in the lake.

The land side development is moving along in the design phase. They hope to begin driving piles for the garage and for the pavilion around the first of May.

Mr. Miller indicated that the budget for the project has increased from \$170,000,000 to \$195,000,000. There are basically three reasons for this. The first is that they have determined that they would like to increase the size of the garage from 500 spaces to 1000 spaces. They view this as a positive enhancement to the project. The second is that in designing their vessel and working with their contractor, they made several enhancements which greatly improve the vessel's comfort and accessibility. They have added escalators. None of the vessels in the Chicago-land marketplace currently have or will have escalators. They have also raised the ceiling heights from 11 feet to 12 1/1 feet. They have put atriums in the entry ways to make it feel larger and more comfortable. These have increased the budget of the vessel around four or five million dollars. The third is that there were some significant price changes in the breakwater that flowed from the Army Corps permitting process. These are now fully priced as part of the

re-design effort and have resulted in another four to five million dollar increase in the budget. Showboat Inc. has agreed to increase its equity contribution from \$35,000,000 to \$40,000,000 and the bond offering as it is contemplated now has increased from 120 to 140. Mr. Miller stated that they are before the Commission today to gain approval for this financing. They are far along with their financing plan and ready to bring their financing to a close and to get their money in the bank. It is \$140,000,000 in first mortgage notes; they are seven-year notes. They expect to get net proceeds from this offering of approximately \$134,500,000.

As part of this financing, Mr. Miller indicated, their underwriters have made several requests. The first is that Showboat Inc. provides some additional credit enhancement to the bond offering. Showboat Inc. has agreed to do that; they are now supporting this credit with a \$30,000,000 unconditional completion guarantee, in addition to the \$40,000,000 of equity they are putting into the deal. They are also providing a cash flow enhancement to the project for the first three years of its operation. Showboat is guaranteeing that if cash flow is defined as EBIDA, and if EBIDA falls below \$35,000,000 in any one of those years, Showboat will make up the difference in the form of an additional equity contribution to a limit of \$15,000,000 in any single year and a total of \$30,000,000. Showboat Inc. has agreed to provide a very significant credit enhancement to this in order to make sure their financing comes in on the best possible terms for this project.

In Showboat's view, the second change is somewhat of a technical change. Mr. Miller reported that it has been suggested they make an organizational change to their partnership structure to create a financing vehicle that is more readily understandable or recognizable to the investment community. Mr. Miller emphasized that this organizational change in no way changes the ownership structure of the entity. Showboat will continue to own 55%; Waterfront, 45%. There are no new owners entering this entity; there are no existing owners exiting this entity. There are no fundamental changes to the economic terms between the partners. It is purely to create a financing structure underneath the existing partnership structure where they can present to the investment community a structure which they understand and in which they have dealt with for many years, and in which they are comfortable. They are doing that to make sure that they can achieve this financing in terms which are consistent with what they had in their application.

Mr. Miller reported that the new partnership structure is the following:

Underneath the existing Showboat Marina partnership, they would like to create a substantially wholly-owned subsidiary partnership called Showboat Marina Casino Partnership. They would like to transfer all of the operating assets (the casino, the boat, all of the physical assets) to this as well as the Certificate of Suitability that was issued by the IGC. It would then become the operating subsidiary for this project. It, along with a newly-created Showboat Marina Finance Corporation, would be the issuers of this debt. Showboat Marina Finance Corporation is being created solely for the reason that some large institutional investors are not permitted to invest in partnerships. Consequently, they are creating a corporation as a joint issuer of these bonds to allow them to expand the

universe of potential investors. Other than that, it has no function; it has no assets or employees, etc. The creation of Showboat Marina Partnership is primarily just to create a structure where the bond holders will be comfortable. They will understand the structure; they will understand how the cash will flow out of the operating subsidiary. They are creating a very standard structure for how cash can flow out of the operating subsidiary up to the parent partnership. Mr. Miller stated this is a management fee which will be 2% of revenue, 5% of EBIDA, limited to the fact that they must always maintain a 1 1/2 times interest coverage test. Again, Mr. Miller indicated, this is a structure in which the investment community is very comfortable and with which they are very familiar.

The second way the money can flow out of the operating partnership to the parent partnership is simply a dividend basket where 50% of net income can be divided up assuming that it meets the two times interest coverage, debt incurrence test. Again, Mr. Miller stated, both of these are funding mechanisms with which the investment community is very familiar. Once the money flows up to the parent partnership, it will be divided as it has always been intended to be divided under the partnership agreement between Showboat and Waterfront.

Mr. Miller indicated they are very excited about this project. They have the successful financing in hand. He reported they are present today to request the Commission's approval so they can proceed and close the financing and get the money in the bank.

Commissioner Ann Bochnowski asked the anticipated closing date, assuming the Commission approves the request.

Mr. Miller responded that the deal would be priced tomorrow (March 21) and they anticipate closing it probably a week from tomorrow. The price talk is 13 1/4 to 13 3/4, which is consistent with the terms they had anticipated in their application.

In response to a question by Chairman Klineman, Mr. Miller explained that Showboat is putting \$40,000,000 cash into escrow when the bond deal closes. All of their money (the anticipated funding for the project) will be in escrow the day they close. They have \$15,000,000 to \$16,000,000 in lease financing for which they have commitments and agreements are still being reviewed. Should the budget exceed \$195,000,000, Showboat has agreed unconditionally that it will put in the additional money up to \$30,000,000. The only exclusionary condition on this would be if there is a war, an act of God, or any kind of standard force majeure clause. Mr. Miller indicated that it is a very iron-tight \$30,000,000 completion guarantee. As of December 31, 1995, Showboat had approximately \$106,000,000 in the bank on their balance sheet. They also have a debt capacity for approximately another \$80,000,000, plus they have a \$25,000,000 line of credit. They would use either cash off their balance sheet or Showboat's debt capacity to fund the additional money. One of the reasons Showboat is willing to put the money up is that they are very far along in the project in terms of the construction budget. Their boat is under

contract. They have a budget of \$46,000,000 for their vessel; they are under contract with Atlantic Marines, which has now built this vessel three times in very quick succession. They have a contract with them for \$36.6 M; they have a \$7,000,000 interior theme allowance, which Mr. Miller believes is about 2 1/2 times what anyone else has spent; their breakwater is under contract and is designed and pretty much ready to go. They do not feel there is a lot of risk in this construction budget, certainly not as much risk as two years ago when they started the project. They feel that they have everything fairly well nailed down. Within their \$195,000,000 they still have almost a \$12,000,000 contingency. Showboat is comfortable that this project will be built for an amount in or around \$195,000,000.

Executive Director Jack Thar added that IGC staff are very comfortable with this transaction. Staff members have had discussions with Showboat representatives for well over a month and view it as a straightforward bond issue from the entity which will rise or fall on its own, without it carrying any weight from anyone else. Staff understand the reason for the organizational structure and feel it does not give the Commission any problems because the ownership remains identical, the same people and the same percentages, for the three entities that they want to develop. He reported that Alan Klineman was involved in the early discussions with Showboat. IGC staff does not see any problem with the request.

Commissioner Bochnowski thanked the Showboat representatives for giving the Commission the material ahead of time.

Mr. Thar indicated that all the IGC need do is approve, aside from the financing, that the Certificate of Suitability can now be held by Showboat Marina Casino Partnership (as indicated in the resolution). The Commission is also asked to approve the creation of the Showboat Marina Investment Partnership as one of the partners to the new partnership that owns the Certificate of Suitability, as well as Showboat Marina Finance Corporation, which was described as being a corporation solely organized for the purpose of increasing the market for the bond issue. There are three items that are for the Commission's consideration and were included in the black folder distributed to the commissioners as the new organizational structure which is denoted in red and blue.

Chairman Klineman read a caveat that

Adoption of this resolution and the approval of the issuance of First Mortgage Notes by Showboat Marina Casino Partnership and Showboat Marina Finance Corporation does not in any way constitute a waiver of the Commission's authority and ability to approve or disapprove any future changes in the ownership of the Certificate of Suitability, Riverboat Owner's License, or assets incident thereto which may occur in the event of a default.

ACTION: Resolution 1996-20, A Resolution Concerning the Issuance of First Mortgage Notes Due 2003 by Showboat Marina Casino Partnership and Showboat Marina Finance

Corporation and Approval of Transfer of Ownership of the Certificate of Suitability, was unanimously approved on motion by Dr. David Ross, second by Bob Sundwick.

(For the benefit of those commissioners present via telephone hookup, Chairman Klineman recognized Switzerland County Council President Mike Jones and a significant contingent from Switzerland County who had braved the adverse weather conditions to be in attendance.)

Discussion of the Bird Trap in the City of Hammond

Chairman Klineman indicated that there is a great concern about the Hammond bird trap issue. The piece of land adjacent to the Hammond riverboat area is a migratory bird sanctuary that many want to have preserved. (Mr. Thar added that relevant information is contained in a grey folder that was previously distributed to commissioners and includes a map to which they should refer.)

Lake Michigan Charters General Counsel Mike Hanson, introduced Jim Bennett, from the City of Hammond and the mayor's liaison, and David Arthur Johnson, his counsel, and Phil Bayt, from Ice Miller, their attorney. As an update, Mr. Hanson indicated that on Monday of this week the Milwaukee Clipper left the marina. It has been taken temporarily to the Calumet River in Illinois pending a new home this summer somewhere in Lake Michigan.

In September of 1993, when Lake Michigan Charters first entered into a Letter of Intent with the City of Hammond, the city stated they wanted to preserve and maintain the relevant area as lake front and wanted them as the endorsed candidate to agree to be a funding mechanism, if necessary, for the purchase of this property, provided eight acres are maintained as a bird trap and eight acres, as green space. This has been the idea from the very beginning. It is the same idea that is consistent today. In addition at that time, Mr. Hanson reported, the city requested they fund a study of the whole Robertsdale area; subsequently, that study, in which the residents also participated, stated that the area should be preserved and made available to the public and accomplished without damaging the national habitat.

Mr. Hanson indicated that when Lake Michigan Charters entered into the Certificate of Suitability with the IGC in January 1996, following their successful venture with the Commission in November, the Certificate then provided that eight acres of the 17 acres would be donated to the City of Hammond with covenants to use it as green space and that an additional eight acres would also have a conservation easement. This would be donated to the Hammond Park's Foundation to be used as the bird sanctuary.

Since that time period, Mr. Hanson reported, Jim Bennett, principally on behalf of the city, has participated in some discussions and has met with the interested parties in the Hammond area. No acquisition or sale of this property has as yet occurred. They have participated with the NIPSCO people in making sure that everyone's interests in respect to this property are being taken care of. Mr. Hanson asked the commissioners to look at a map showing relevant acreage

and the legal description of the property. It is being staked this week so that everyone will have an understanding of exactly where the bird trap will be located, where the green space will be located, along with the beach.

(Executive Director Thar asked Mr. Hanson if Lake Michigan Charters and spokesmen from the City of Hammond would be speaking with one voice. Both Mr. Hanson and Mr. Jim Bennett indicated they were.)

City of Hammond spokesperson Jim Bennett indicated that city representatives have met with various local groups and continue to meet with them to get a definition on green space. The bird sanctuary area will be enclosed. There is agreement that there will probably be one entrance that will be restricted. Details are being worked out among these groups, one of which is the Save The Migrant Bird Trap group.

Commissioner Ann Bochnowski indicated some confusion existed about whether or not there were 16 acres or less that were to be used as the bird trap. During the application process, she thought the whole 16 acres was to be used. It was confusingly presented. She is happy that the city is working with the "Migrant Bird Trap" people, who really understand migrant birds' needs. She doesn't think that the area should give something up that is valuable because they are bringing something new in.

Mr. Bennett reassured the Commission that the city has brought in experts to ensure that the area will remain protected, but there will still be community use of the area. The green space will not be fenced off and non-accessible to the public. There will not be any structures on any part of the 16 acres, other than some picnic-shelter improvements. Nothing will be in the area on the map that is colored blue. Mr. Bennett indicated the green area to the left (the west side toward Chicago) for the shelters. Because structures obstruct the view of the birds in flight, these structures will be low.

The city will be working with the migratory bird group and the J. F. New Company (engineering and environmental group from Walkerton, IN, that has vast experience in working with wetland areas). Mr. Bennett reported that any action will have to be approved by the Department of Natural Resources. Ms. Bochnowski cautioned that when pathways are inserted in the area, one will not only find people but predators as well. Mr. Bennett added that the city has made great progress with the migrant bird trap group. They are currently working on the definition of the green space. The city is delivering a copy today to that organization. Hopefully, all will be in agreement by the end of the week and they can proceed forward.

In attempting to work out a satisfactory solution, Mr. Bennett reported that a Dr. Brack, who is a birder and has worked with the migratory bird group, has been retained by NIPSCO as their representative. The city has worked very closely with Dr. Brack.

No representatives from the migratory bird group were present. Chairman Klineman offered the

Commission's encouragement to work out a satisfactory solution.

Other Business

No other business.

Next Meeting

The next meeting of the Indiana Gaming Commission will be Wednesday, April 17 at 11:00 a.m. in Indianapolis, place to be announced. Chairman Klineman indicated there will be a regular business meeting followed by the deliberation process for Michigan City. He stated that commissioners will be receiving information about the Harrison, Crawford and Switzerland County hearing dates. The thought is to take up Harrison County separately and then Crawford and Switzerland. Staff will be looking at some time in May for the former.

Adjourn Business Meeting to Continue Public Hearings

Upon motion by Ann Bochnowski, second by Tom Milcarek, the meeting was adjourned at 12:21 p.m.

Respectfully submitted,




Pamela S. Ayres
Executive Secretary
to the Executive Director

THE INDIANA GAMING COMMISSION:



Alan I. Klineman, Chair

ATTEST:



Donald R. Vowels, Secretary