

**IOWA RACING & GAMING COMMISSION  
MINUTES  
JULY 16, 2009**

The Iowa Racing & Gaming Commission (IRGC) met on Thursday, July 16, 2009 at The Meadows Event Center, Prairie Meadows Racetrack & Casino (PMR&C) in Altoona, Iowa. Commission members present were Greg Seyfer, Chair, and members Kate Cutler, Andrea Harrison, Paul Hayes and Toni Urban.

Chair Seyfer called the meeting to order at 8:30 AM, and recognized Gary Palmer, General Manager of PMR&C, who welcomed everyone to PMR&C and Altoona. Chair Seyfer thanked Mr. Palmer for hosting the meeting, and providing the transportation for the Commission's tour of a horse farm the previous evening.

Chair Seyfer moved to the approval of the agenda. Commissioner Urban moved to approve the agenda as submitted. Commissioner Cutler seconded the motion, which carried unanimously.

Chair Seyfer moved to the approval of the minutes from the June 4, 2009 Commission meeting. Commissioner Hayes moved to approve the minutes as submitted. Commissioner Cutler seconded the motion, which carried unanimously.

Chair Seyfer moved to Announcements. Jack Ketterer, Administrator of IRGC, advised those in attendance that the sign up sheet for Public Comment was located by the entrance and that anyone wishing to address the Commission should sign up if they had not already done so. Chair Seyfer advised that comments should be limited to three minutes per speaker.

Mr. Ketterer recognized the following Commission employees in attendance: Jesse Goldstein and Tammy Storey, Gaming Representatives at PMR&C, and Andrew Pulford, who is the auditor in the Des Moines office.

Mr. Ketterer provided the following information on future Commission meetings:

- August 27, 2009 – Riverside Casino & Golf Resort, Riverside, IA (Submissions due by August 13, 2009)
- October 8, 2009 – Diamond Jo, Dubuque, IA (Submissions due by September 24, 2009)
- November 12, 2009 – Stoney Creek Inn, Johnston, IA (Submissions due by October 28, 2009)
- January 14, 2010 – Stoney Creek Inn, Johnston, IA (Submissions due by December 30, 2009)

Chair Seyfer moved to the Rules before the Commission for final adoption. Mr. Ketterer advised that these rules were approved for Notice of Intended Action by the Commission

at its April meeting. He stated they were unchanged and that no other public input was received other than some concern expressed about a portion of the language that was condensed in the criteria for the renewal and racing dates portion for horse racing. Mr. Ketterer advised that the original language was restored. He recommended that approval be given for the final adoption of the proposed rules.

Hearing no comments or questions concerning the rules, Chair Seyfer requested a motion. Commissioner Cutler moved to approve the final adoption of the rules as submitted. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 09-70)

Chair Seyfer moved to the presentation by Harrah's regarding the financial restructuring of Harrah's Entertainment, Inc. Bo Guidry, General Manager of Harrah's and Horseshoe Casino/Bluffs Run Greyhound Park, thanked the Commission for the opportunity to provide the update. He introduced Michael Cohen, Vice President and Associate General Counsel, and Brad Belhouse, Vice President of Corporate Finance, who gave a brief power point presentation, which set forth the following points:

- There have been significant changes in the economy since the sale closed in January 2008, which required quick action to align cost structure with revenue levels while some opportunities presented themselves in the credit market. The economic downturn caused Harrah's to experience revenue declines in all of their markets starting in late 2008. The financial market crisis caused capital projects to be slowed down or cancelled, and made external refinancing almost impossible.
- Harrah's was able to reduce net debt by \$3.4 billion, reduce annual interest expense by approximately \$100 million, both of which provided greater room under their financial covenants, and extend the maturity dates. This was accomplished through two debt exchange offers which were completed in December 2008 and April 2009. The debt holders received increased security and will receive premium market value.

Harrah's was also able to refinance approximately \$1.4 billion of their \$9.2 billion credit facility by issuing \$1.375 billion of new senior, first priority secured notes. The proceeds were used to permanently repay bank debt, extend the maturity profile by two years and increase Harrah's ability to execute their business plan. In exchange for the pay down, Harrah's received a "carve-out" on the notes as they apply to the covenant test, allowing them to build room under those covenants. This also provided additional financial flexibility and reduced ongoing financial risk. Harrah's has approximately \$700 million of debt left to repay over the next three years.

- The above transactions positioned Harrah's to sustain the economic downturn while providing ample liquidity to meet near term obligations. The strengthened

balance sheet and financial flexibility will allow Harrah's to successfully operate under a variety of economic scenarios.

Commissioner Hayes asked if the financial covenant was negotiated as part of the overall restructuring in the last eight months. Mr. Cohen advised that the financial covenant, the senior secured debt over EBITDA, was in the original financial package of \$4.75 billion, which was amended in June with the ability to take some of the debt out of that ratio so that it wouldn't count against EBITDA.

Commissioner Hayes asked what type of covenants Harrah's, or any company, could expect to see today if they were to re-negotiate. Mr. Cohen indicated they would be much more traumatic than the ones Harrah's has in place from two years ago. He indicated that it would be almost impossible to get that type of financing today. Commissioner Hayes asked if the ratio would be more like 2:1, etc. Mr. Cohen stated that he was not sure what the ratio would be today. Commissioner Hayes asked if there was a reluctance to lend capital. Mr. Cohen answered in the affirmative.

Commissioner Cutler asked what contingency plans Harrah's has in place should they get close to violating the financial covenants – staff reductions, selling property, etc. Mr. Cohen indicated anything and everything would be considered. He stated that Harrah's is hopeful that their EBITDA will not decrease another 27% from today considering the decline over the past eighteen months, but would attempt to take advantage of the financial markets again, and consider any other options necessary to keep their financial covenants.

Hearing no further comments or questions for Mr. Cohen and Mr. Belhouse, Chair Seyfer called on Terrible's Lakeside Casino. Terrence Zoney, President of Herbst Gaming, Inc. (HGI), introduced Bob Thursby, General Manager of Terrible's Lakeside in Osceola; Craig Travers, Regional Manager; and David Ross, Chief Operating Officer over Gaming. He stated that he would be covering two subjects – Herbst Gaming, Inc.'s bankruptcy plan and a proposed hotel project at the Osceola property. Sean McGuinness, legal counsel for the senior lending group, provided the following information:

The bankruptcy plan was filed in March 2009 in Reno, Nevada. A pre-packaged bankruptcy plan was negotiated between the lenders and HGI which called for the equity of the casino gaming operations going to the senior lenders, who would then have to seek licensure in the various gaming jurisdictions. The other component was the slot route operated by HGI, which would have been operated under a separate business unit with the Herbst family retaining 90% interest and the senior lenders getting 10%. That has changed, and now 100% of HGI will go to the senior lending group; this change required the restatement of the lock-up agreement which the lending group had with HGI relating to some of the financial covenants and financial obligations. Disclosure statements also had to be amended and a plan of reorganization filed with the bankruptcy court. Mr. McGuinness advised he, as well as the attorney for HGI, have had ongoing conversations

with Mr. Ketterer to keep him apprised of the status, as well as ensuring that the Commission receives copies of any documents filed with regard to the bankruptcy.

Mr. McGuinness advised the Commission that the senior lending group will convert some of the debt into equity, which will create some additional debt for HGI in the process. He stressed that the lender group understands that they are not licensed and are not in a position to direct operations of gaming at any of the HGI properties. Mr. McGuinness stated that the senior lending group does not anticipate any significant changes at the Osceola property; they are happy with how it is being managed and operated.

The senior lending group is planning to maintain HGI as a public company for gaming purposes. Under the reorganization plan, the senior lending group would be issuing securities and reorganizing HGI; then registering and voluntarily filing some of the securities with the SEC under the 1934 Security and Exchange Act.

At that point, there would be a lending institution, investment buyers, and institutional investors who would normally take a passive role in operations and the 5% mandatory thresholds for licensure in Iowa. Once the debt is converted to equity, it will be determined which institutions/individuals meet the threshold or who would qualify for a waiver of a license. Mr. McGuinness stated the lending group is in the process of electing a Board of Directors for the post-bankruptcy reorganized HGI. Once those individuals are selected, he will be working with Mr. Ketterer, staff and the Division of Criminal Investigation (DCI) as these individuals will have to file license applications. Mr. McGuinness advised that it is likely the sub-gaming management group of the reorganized HGI would receive a small amount of equity, and therefore, be equity owners.

Mr. McGuinness moved to the timeline, noting the length of time necessary to get a license and undergo the DCI background investigation. He stated there is a meeting scheduled for late July in Reno to go over the latest disclosure statements. The next big benchmark to occur would be in October or November when the Bankruptcy Court would affirm the reorganization; that does not mean the senior lending group moves in as the owner at that time. The Court will affirm the reorganization plan subject to the senior lending group and any other necessary individuals getting licensed within one year from the affirmation of the reorganization plan. Mr. McGuinness stated that as the officers and directors are determined over the next few weeks, the determination of who needs to be licensed will be made in order to get the applications on file when the reorganization is affirmed later this year so the licensing process can get started immediately. Mr. McGuinness stated the plan is to move forward as expeditiously as possible.

Mr. Zoney stated that despite going through bankruptcy, HGI would like to give the Commission a brief overview of the proposed addition of a 150-room Comfort Inn & Suites hotel at the Osceola property. He noted there is currently a 60-room non-branded all suite hotel on the property, which has an occupancy rate between 88-92%. Mr. Zoney

stated the hotel has 21,900 available room nights and turns away 14,000 night requests annually. HGI is in the process of conducting a feasibility study and obtaining an appraisal. The proposed project consists of remodeling the current 60 rooms into a junior suite concept and adding an additional 90 new rooms under the Comfort Suites brand. Mr. Zoney stated the project will cost approximately \$9 million - \$7.7 in new construction and \$820,000 for the remodel of the existing rooms. He indicated HGI is working on getting the necessary approvals from their lenders, who are enthusiastic about the project from information received to date.

Mr. Zoney stated that the additional rooms will help increase gaming at the property as well as being a good addition to the community as the casino is located across the street from the winery, and Osceola is continuing to make investments in that area of the community. They feel there is an opportunity to draw in non-gaming customers as well.

Mr. Zoney stated the construction would provide jobs, utilize Iowa contractors, and once completed the additional hotel rooms would generate 15-20 full-time employment positions.

The new hotel rooms would "T" off of the existing hotel rooms, allowing them to utilize the existing front desk, lobby area and meeting space. Mr. Zoney stated that HGI feels the Comfort Inn brand is the right fit for the property and will enhance the ability to draw travelers off the interstate. He stated that despite the reorganization, HGI feels this is the right time to reinvest in the Osceola property and grow it as they are able.

Commissioner Urban asked about the timeline of the project. Mr. Zoney stated that if everything falls into place they hope to get some early work done yet this fall, which would allow construction to proceed through the winter, but feels a spring start is more likely. He indicated construction would take about a year, so a projected opening would be the first quarter of 2011.

Commissioner Harrison asked how many additional jobs the project would create. Mr. Zoney stated that the hotel alone would create 15-20 jobs, depending on scheduling, part-time, etc, and there would be spillover into food and beverage operations and possibly some on the gaming floor. There would be construction jobs during that phase of the project.

Commissioner Cutler stated that she felt this was a good project and complimented HGI in moving forward. Mr. Zoney stated that HGI could not let the restructuring process stop progress. He indicated there is a good team at the Osceola property, and HGI has continued to invest in and upgrade the quality of the Osceola property from when it was originally built.

Chair Seyfer moved to Public Comment and reminded those individuals addressing the Commission to limit their comments to three minutes. The following individuals addressed the Commission:

Mike Hobart, Mayor of Sioux City, stated that he hoped to convince the Commission to not issue a gaming license to Lyon County. He stated that one of the first corporate leaders he met was Kees Eder, General Manager of Argosy - Sioux City. Over time, he learned that Argosy is a great corporate leader and partner in the Siouxland for the citizens and taxpayers of Sioux City. He also learned the importance of Argosy to the financial health of Sioux City and Woodbury County. Funds from Argosy provide tax relief, economic development, and charitable giving of approximately \$100,000 annually over an above their tax obligation to local non-profit organizations in addition to the funds given to their non-profit, the Missouri River Historical Development (MHRD). He noted that Argosy also provides good paying jobs, spurs the economy by virtue of their purchasing of local goods and services necessary for operations and the attraction of tourism dollars. Mr. Hobart noted that Sioux City is located on the borders of Nebraska and South Dakota, creating a unique competitive disadvantage causing them to rely heavily on the state for help through tax programs, with commercial ventures, targeted tax and jobs programs. One of the biggest things Sioux City gains from the state is the tax revenue generated by the gaming industry. Mr. Hobart stated that a casino in Lyon County would hurt Sioux City by cutting off one of the legs that helps to support the community financially. Noting that South Dakota already has gaming, he expressed his opinion that South Dakota could easily retaliate against Iowa should a gaming facility open in Lyon County by building a casino in Sioux Falls; that South Dakota is not going to stand still for all of their gaming revenues crossing the state border. Mr. Hobart stated that while he is not real familiar with the referendum aspect of South Dakota law, it is his understanding that even if the Legislature does not provide for a licensed casino in South Dakota, the residents have the ability to do so by referendum.

Mr. Hobart, noting the economic downturn in northwestern Iowa and Casino Omaha's recent suspension of operations, stated his belief that the gaming industry is saturated on the western side of the state. He stated that a Lyon County casino would siphon off between \$300,000 and \$700,000 annually.

Mr. Hobart concluded his remarks by asking the Commission to not create an imbalance on the western side of the state. He stated that Sioux City is used to competing with South Dakota, who does not like to lose. Mr. Hobart requested that the Commission not grant a license to Lyon County given the fact that they have other options.

Chair Seyfer reminded everyone to limit their comments to three minutes.

Ron French, Vice President of MHRD, stated that he has been a board member since its inception. He asked the Commission to take into consideration the fact that casinos built on the edge of the state normally draw construction companies/employees from a 50-mile radius from the project, putting this project right in the heart of Sioux Falls, South Dakota, which would prevent the state from seeing an impact on construction jobs like it would if the project were built in Des Moines or Osceola. Mr. French referenced the HVAC, masonry, carpentry, and other skilled jobs that are required for this type of project and pointed out that there likely is no local talent available to do those jobs. He

noted that Sioux City is outside the 50-mile radius, making it hard for companies in that area to be competitive in fulfilling any of the construction jobs or providing goods and services during the construction phase.

Debi Durham, President of the Siouxland Chamber of Commerce and Siouxland Initiative – a private regional economic development organization, expressed opposition to additional state-licensed gaming licenses as those licenses will tip the scale toward market saturation creating negative economic consequences to existing gaming operators. She advised that her long tenure in the area of economic development has taught her that Iowa's economy constantly ebbs and flows, and while Iowa is somewhat insulated from the extremes being experienced in other areas of the country, the state has been impacted and there is no strong indication there will be relief anytime soon. She pointed out that the current facilities, once thought to be immune from recessionary pressures, have succumbed. Ms. Durham stated that Argosy has been a valued investor in the area's economic development, and continually looks for ways to invest in the region's quality of life initiatives. She noted there has been an attempt to downplay the adverse impact of an expansion of gaming into Lyon County on Argosy and MRHD. Noting the difficulty being experienced by city, county and state governments in balancing budgets, a further reduction in revenue would lead to a decrease in services or higher taxes. Ms. Durham also raised the issue of Sioux Falls and South Dakota's response to a casino opening in Lyon County. She requested that the Commission refrain from granting additional licenses at this difficult time with the caveat that should the Commission decide to grant additional licenses that the tax rate on current licenses be reduced until such time as it can be determined there is no impact or that the market can support such an expansion.

Mark Monson, President of MRHD, commenced his remarks by asking the definitions of saturation and cannibalization. He wondered if saturation means everyone is suffering from too much of something or if there is a way to determine what the saturation level is. With cannibalization, he likened it to the Pac Man game with little aliens coming in from South Dakota, video gaming, keno and pull tabs in Nebraska, and a Native American casino to the south of Sioux City. Mr. Monson expressed his belief that a license in Lyon County would be tantamount to inviting South Dakota to take another look at state-licensed gaming. Further, a license in Lyon County would make it difficult for Argosy to undertake any expansion in Sioux City; he stated that he would like to see Argosy go land-based. He asked the Commission to consider the matter very carefully. Mr. Monson stated that Argosy and MRHD would be pleased to host a meeting in Sioux City.

Karen Mitchell, Executive Director of the Franklin County Development Association, stated that the project submitted to the Commission in 2004 met all of the criteria set forth at that time – generous to education and community groups, created jobs in the area and showed profitability even if all of the licenses had been granted. She stated that Franklin County is asking the Commission to grant licenses to the previous applicants that have been waiting patiently for this opportunity. Ms. Mitchell stated that Franklin County needs this opportunity now more than ever due to two plant closings and severe contractions in other manufacturing industries. She stated that the country and Iowa will

come out of this economic downturn and the challenge facing economic developers will be to find jobs for area residents.

Ms. Mitchell stated that competition is good; it causes everyone to tune up their operation, services and provides people with choices. She referenced the tremendous growth in the financial and insurance industries, the wind industry, the entertainment industry, walking trails, etc. She stated that Franklin County bears no ill will toward the operations in Northwood or Waterloo, and is happy those operations have been able to do what they have for their respective communities. Ms. Mitchell stated that they hope all of the licenses can be granted as they know the importance of the jobs and revenue to the local economy. She stated that Iowa can not risk more Iowans leaving the state for jobs. Ms. Mitchell stated that the Franklin County facility can be competitive if given the opportunity to do so.

Gayle Burnett, representing Franklin County and the development group, set forth the following reasons why Franklin County should be granted a license. She noted that on May 21, Elizabeth Buck, Director of the Iowa Workforce Development (IWD) was a guest on Iowa Journal. During the interview, Ms. Buck referenced the high unemployment rate in the Mason City area; the surrounding counties have unemployment rates exceeding 11% while the state unemployment rate is 5.2% and the national average is 8.2%. Ms. Buck also noted that Mason City has experienced a high number of plant closures, as well as significant layoffs at Winnebago. Twenty percent of the jobs listed on IWD's website are in the health field. Ms. Burnett noted that the Mercy Medical Center in northern Iowa has also reduced their work force. Relocation for other job opportunities is often not an option for men. Ms. Burnett stated that the above numbers support the need for additional jobs not only in Franklin County, but all of northern Iowa. She stated that a casino at the proposed site on I-35 provides easy accessibility for potential employees. The proposed site at the Dows interchange has seen an increase in the number of travelers, including cross-country truck traffic. From 2002 – 2007, truck travel increased from 3,428 per day to 4,283 per day, or an increase in excess of 300,000 trucks per year. This increased traffic does not take into account any other vehicles, many who are potential tourists from other areas of the state. Ms. Burnett stated that the increased traffic flow makes this interchange an ideal location for a potential casino. There is a welcome center with many offerings and the State recently completed one of the nicest rest areas in the State. There is also a new truck stop travel center located next door to the proposed casino site, providing additional amenities to attract additional customers. Ms. Burnett stated that in addition to the benefits for Franklin County, the development group would also be receiving funds that would support financial causes such as education. She stated that the budget constraints faced by the schools are staggering. Ms. Burnett stated that educational causes are very high on the primary list of the development group. Additionally, rural Iowans believe they deserve a chance at economic development opportunities and needs the additional taxes that would be generated by a casino, and in Franklin County's case, the development of the Dows interchange. The additional funds would add to the State's support of education,

contribute to the economy of Iowa, its growth, and the best services a concerned government can offer.

Mollie Teckenberg, Provost of Development at Ellsworth Community College, stated that skills and knowledge not only drive economic growth but also increase wages. There is also evidence of a positive relationship between education levels and income levels. Ms. Teckenberg stated that the revenue received by Ellsworth Community College from the proposed casino would increase and improve the quality of life of the students by providing the tools needed to acquire the necessary skills and knowledge. She stated that during this economic hardship one way to rejuvenate the economy was to invest in community colleges where 90% of the students remain in Iowa.

Jeff Gallagher, President of the Lyon County Riverboat Foundation, advised that the voter turnout for the referendum was only a few hundred votes short of the most recent presidential election, and the 62% approval shows a clear mandate by Lyon County residents to go forward with the proposed project. He stated that the Lyon County project provides an opportunity for a new casino to not only penetrate the sizeable Sioux Falls, South Dakota market, but also southwestern Minnesota. The project would have a significant effect on tourism and provides the best opportunity to significantly increase Iowa's revenue from an out-of-state source. Mr. Gallagher stated that the market strength of this proposed project is to the north and west, and is located at the intersection of Interstates 90 and 29. He stated that Lyon County would be a land-based resort; and financial numbers from last year indicate that land-based facilities have been more successful in terms of revenue for the state. It has been projected that a Lyon County facility would generate between \$58-\$59 million for the state, or an increase in gaming taxes collected by the state in excess of \$12 million. Mr. Gallagher stated that the projected gaming revenue for Lyon County would be higher than eight of the current casino facilities. He asked the Commission for the opportunity to submit an application. He stated that he is confident the Commission would find a significant investment being made in the structure of the project, a unique ownership structure and that the project would generate new revenue for the State of Iowa in a currently underserved market.

John Pavone, representing Tama County, noted that the world of the gaming industry is changing, and will continue to change. On behalf of the voters of Tama County, Mr. Pavone asked for the opportunity to tell their story. He stated that should the Commission allow the licensing process to proceed, it is their belief their world will continue to change and the Commission's focus will be different from what it is today. Mr. Pavone stated that Tama County does appreciate the difficult challenge facing the Commission.

Terry Lutz, Mayor of Ft. Dodge, advised that Webster County is "all in" for gaming and noted that the county and city have been working closely to define and create the future. Three years ago they instituted a strategic plan called Vision 2030, and through considerable public involvement, local citizens developed several initiatives they expect community leaders to implement. The plan serves as a blueprint for the future, and a key

instrument in the plan is to create more entertainment and recreational venues. The following individuals are community and county leaders for Webster County that are here to share the opportunities that they see for their community, region and the State of Iowa that a casino will create. Mr. Lutz stated the proposed casino is just one of the many pieces being crafted for the future.

Don Woodruff, Chairman of the Development Corporation of Ft. Dodge and Webster County, encouraged the Commission to allow additional gaming licenses, and specifically one in Ft. Dodge. He noted that since the 1980 recession, with the help of good leadership, and the state and private sector, the renewable fuels industry has emerged along with other industries and the economy throughout rural Iowa has improved, leading to the need for additional employees. A recent survey of area employers and employees indicated a need for improvements in recreation, housing and entertainment in order to provide area citizens with the quality of life that metro areas are enjoying. These investments will also make the community a more attractive place to live. Mr. Woodruff advised that \$39 million has been invested in a water and sewer expansion project, \$9 million in an aquatic center that is currently under construction, and a recent increase in the sales tax to help pay for over \$40 million in street repairs. He stated that the infrastructure is in place to support a casino as well as any ancillary businesses that come because of the casino.

Phil Condon, a Webster County Supervisor, noted there are now three ethanol plants in Webster County. When the first ethanol plant opened, Webster County averaged 39 million bushels of corn per year; it now averages between 55-65 million bushels. It is estimated that between 800 and 1,000 trucks are in and out of the three plants, providing a huge economic lift to the area. Mr. Condon stated that Webster County, the City of Fort Dodge and the State of Iowa have worked together and invested one-half billion into making this area another regional hub for economic development.

Randy Kuhlman, Chief Executive Officer of the Fort Dodge Community Foundation and United Way, stated that their mission is to develop charitable resources to support community programs, services and initiatives to improve the quality of life for the citizens with the ultimate goal of investing those resources in a way that will better the community so that Fort Dodge and Webster County will become a place where people want to live, work and raise their families. Mr. Kuhlman advised that over the past 12 months, the organization has contributed over \$1 million of financial support to 42 different non-profit organizations and community betterment projects in a six-county region, but barely scratched the surface of the needs. He stated that a casino would provide the community and region with significant charitable support. Mr. Kuhlman commented on the charitable dollars given by the gaming facilities in Dubuque and Council Bluffs, noting the significant community projects, riverfront development and other amenities that attract tourism to the community. He also indicated that the facilities have the ability to change the culture, pride and vitality within a community, which is critical to the long-term success for Fort Dodge and the State of Iowa.

Susan Ahlers Leman, an active volunteer in the non-profit community, stated that she has resided in Fort Dodge for 15 years, having returned after graduating from law school. She advised that it was her intent to leave Iowa upon graduating from law school. She returned for a job, and now serves as a wealth advisor. Ms. Leman stated that she and her husband returned to the area for careers, but stayed because of the quality of life offered within the community. As time progresses, she has seen the non-profit world collaborating and partnering with the city, county and for-profit entities which have improved the quality of life, recreation, art and cultural opportunities in the area. She reiterated that the goal is to have people desire to live, work and raise their families in the community, as well as visit it. Ms. Leman stated that the organizations she works with donated over \$1 million last year, and are eager and committed to donating more this year. She advised that two community theater groups have started, as well as a number of musical groups. The Young Professionals group is committed to bringing in more young families. Ms. Leman stated that the non-profit community has proven itself to be a committed partner to improving the quality of life, working to attract and retain families, as well as making Fort Dodge a vacation destination for many. She stated that she is proud of the strides made within the community, and believes that a casino would not only benefit Fort Dodge, but the region and the State of Iowa.

Dennis Plautz, Director of Business Affairs and Community Growth for Fort Dodge, reiterated that the community has changed its direction and future in recent years, but believes there is a significant amount of lost revenue to the State of Iowa that a Fort Dodge casino would capture as a result of a number of opportunities currently provided by the community and those that will be available in the near future, which will provide new sources of revenue not reflected in any of the recent studies. Mr. Plautz stated that the opportunities are the result of visitor attractions, tourists from within Iowa and surrounding states, and transient visitors. He stated that one of the primary considerations should be that US Highway 20 is now slated for completion in 2015, and will connect Illinois to Nebraska, and I-35 to I-29 and will create a stay over destination for travelers using that corridor. Mr. Plautz noted that Fort Dodge already hosts several state-wide, regional and international events. He advised that the Iowa Department of Natural Resources recently completed the Des Moines River Valley River Trail linking Fort Dodge and launched the beginning of a unique kayaking water trail system, which will also draw additional visitors to the area. Mr. Plautz also mentioned two state parks in the area which draw visitors to the area.

Mark Crimmins, President of Heart of Iowa – the non-profit organization for the gaming license, advised that the group is still in tact, have maintained their 501c(3) status and made donations to the domestic abuse shelter in Fort Dodge every year from the original seed money. As the President of the Board of Trustees of the Iowa Central Community College, he advised that the college has been very proactive in partnerships with business and industry, with the State, and IWD, and stands ready to become involved in training opportunities associated with a casino in the area. As a resident of the community, Mr. Crimmins stated that if given the opportunity, Fort Dodge would put together a

tremendous proposal. He stated that he has watched businesses start with nothing and be successful. He asked the Commission to let the communities tell their stories.

Mayor Lutz concluded the public comments regarding a Fort Dodge facility by indicating that the community respects the past gaming Commission's decision. They have closely watched the other casinos as they came out of the ground and the revenues that have been generated for the State of Iowa. He stated that Fort Dodge has waited very patiently for this day, and acknowledged that the Commission has legitimate concerns about whether Iowa should have additional gaming facilities. Mayor Lutz stated that Fort Dodge is very sensitive to those concerns and share many of the Commission's views, and understands the pressure from the existing casinos to not allow additional licenses. He pointed out that the recent studies completed showed a net increase in gaming revenues if additional licenses were issued, and that Iowa needs the additional revenues. Mayor Lutz stated that the Commission's decision is made more difficult as the projections set forth in the studies can not be exactly correct; that this is not a black and white decision. Mayor Lutz concluded his remarks by asking the Commission to open the licensing process and allow additional gaming licenses. He stated that Fort Dodge and Webster County are confident that if given the opportunity to compete for a license, and work through the issues, they will submit a proposal that the State of Iowa can be proud to support.

Dale Uehling, Mayor of Ottumwa, advised the Commission that Ottumwa and Wapello County are still very interested in a casino license. He stated that they are a prime candidate and fit the criteria. He informed the Commission that a Job Corps is starting construction this month, will employ 140 people and will be located at the industrial airport located north of Ottumwa. The Ridgeview Event Center, a \$22 million project which received \$7.5 million from Vision Iowa, is partially completed. Mr. Uehling stated that it is his understanding that part of the goal of gambling is economic development, and the residents of Ottumwa believe that a casino would help them from the poverty standpoint. He stated that Ottumwa residents and government officials did not agree with all of the statements made at the June Commission meeting and would be submitting a written statement. Mr. Uehling pointed out that the new Honey Creek State Park is only 45 minutes from Ottumwa. He stated that a casino and the new park would make a good combination for southern Iowa. He advised that the State has completed the 4-lane expressway between Des Moines-Ottumwa-Burlington, and Highway 34 is also a 4-lane road passing through Ottumwa. Mr. Uehling stated that should the Commission decide to issue additional licenses Ottumwa should be considered as they are the hub of southeast Iowa and northern Missouri. He stated that the gaming studies underestimated the potential income from Missouri as they are already traveling to Ottumwa.

Chair Seyfer called on Wes Ehrecke, Executive Director of the Iowa Gaming Association, who distributed copies of the American Gaming Association's State of the States Report. It is a comprehensive report that sets forth the economic impact in the various states of commercial gaming, racetracks, tourism and the results of a survey on how people view gambling. Eighty percent indicated they still feel gambling is an acceptable form of entertainment. Mr. Ehrecke also reported that August 3-7 is

Responsible Gaming Education Week, which is used to heighten the awareness of problem gaming. The theme this year is “Know the Code”.

Following a short break, Chair Seyfer moved to the discussion and decision on the granting of additional gaming licenses. He advised that after the July 2005 Commission meeting, the Commission members decided not to place a moratorium on license applications but would wait and see how the four new licensees performed once they were in operation and how they impacted existing facilities. In 2008, the Commission elected to start discussions on whether there should be consideration of new license applications, and elected to have two studies done, which have now been completed and are available on the Commission’s website. The studies were focused primarily on the five counties that have passed referendums. Chair Seyfer stated that each Commissioner would address the topic of additional licenses, and after everyone has spoken, the Commission will determine how they are going to proceed. He called on Commissioner Hayes.

Commissioner Hayes pointed out that five counties by public referenda have approved having a licensed casino in their community/county. He noted that the Commission engaged two well-qualified consultants to address a number of concerns, including the likely impact of new licenses on the State, the counties that have passed referendums and existing license holders. The studies indicated there is some marginal benefit to adding new casinos, but that as a state, Iowa is reaching the saturation point. Commissioner Hayes stated that any licensing process would be much more complicated than in the past; that it would not be as simple as pointing out all of the wonderful economic benefits to those counties that are seeking a license. He pointed out that the studies showed that any new casino will have a negative impact on current licensees, and in some cases, a devastating impact. Commissioner Hayes stated that it was not his wish to grant any new licenses that will put another license holder out of business or have a serious negative impact in those counties that already have casinos. He stated that any applicant would need to address how they will minimize the impact of their operation on current license holders and the communities in which those casinos are located. He indicated that another study was not going to be the way to address that concern. Commissioner Hayes stated that he could not say how any potential licensee should address this concern, but encouraged them to be creative in their approach. He indicated that the amount of additional state tax revenues that would be generated and the proposed amenities which would make the property an asset to the community and state beyond adding casino gambling are two criteria that will be important to him when reviewing any applications. Commissioner Hayes concluded his remarks by stating that he believes it is time for the Commission to accept new license applications from any interested applicants.

Chair Seyfer called on Commissioner Urban. Commissioner Urban noted that the studies used the words “equilibrium” and “saturation”. She pointed out that Iowa has 17 licensed casinos, and there are other states like Illinois where the Legislature has mandated that there would be no more than 10 casinos in the entire state. Commissioner Urban reviewed some of the scenarios set forth by the interested parties:

- Ottumwa: Has waited for a long time for the possibility of applying for a license. The studies indicate that 15% of the revenues generated at a casino in Ottumwa would come from Terrible's Lakeside in Osceola, which is currently in bankruptcy. No one wants to see a casino in Iowa close. She pointed out that the Marquette study showed that a casino and mid-size hotel complex in Ottumwa would garner approximately 70% of their revenues from other casinos, including Prairie Meadows and Catfish Bend, causing tremendous concern for her. She also expressed concern as to whether Ottumwa has the necessary employee base to fill the positions within the casino and hotel or if they would have to be brought in from elsewhere, and whether it would have any impact on the unemployment level in the area. She noted the area would benefit from the construction phase, but that would be short-term.
- Franklin County: Has no large metropolitan area or city that is going to bring individuals to the proposed facility. A Franklin County facility would be drawing from current licensees: Prairie Meadows, Diamond Jo Worth, and Waterloo. There are currently two casinos on I-35 – Diamond Jo Worth and Prairie Meadows, which is just 5 miles off the interstate.
- Tama County: Concerns about cannibalization. Feels their intention is to draw from the Meskwaki Casino, which is doing very well, but feels they have already lost a substantial amount of business to Waterloo and possibly Prairie Meadows. She does not feel that there is as much business in the area as might be believed.
- Fort Dodge/Webster County: Is the largest city that might potentially apply for a license. Meets many of the criteria, but Emmetsburg is approximately 35 miles north of Fort Dodge. The studies show that 50% of the revenue at a Fort Dodge facility would come from other casinos. The Innovation study indicated that the gaming revenue at Emmetsburg would fall between 15-21% if a casino were located in Fort Dodge.
- Lyon County: Would have less of an impact on existing casinos than other potential applicants, but would affect Sioux City and Emmetsburg.

Commissioner Urban stated her belief that the Commission would be very protective of the facilities already in operation. She reiterated that if the application process is opened up, the applicants would have to be very innovative and creative; bring forward ideas that will break some of the handicaps the Commission sees to granting additional licenses.

Chair Seyfer called on Commissioner Cutler. Commissioner Cutler stated that she is the only remaining Commissioner from the previous licensing process. She stated that the information, site visits and the people they talked to were influential in moving the Commissioners from one thought to the next. She stated that the applicants need to keep the Commissioner's comments in their thoughts as they complete the application and

decide how they are going to present their project. Commissioner Cutler stated that she is in favor of opening the process up in order to review what appears to be five applications, possibly more. She assured the proposed applicants that the Commission would have a process that is clear, understandable, fair and transparent. Everyone will have an equal opportunity to have access to the Commissioners and staff. Commissioner Cutler stated that the members understand the hopes and dreams of the proposed applicants and the concerns of the existing casinos. She stated that the "heart and soul" of the communities will also play a part in the process.

Chair Seyfer called on Commissioner Harrison. Commissioner Harrison stated that she appreciated the earlier comments by the other Commissioners, and did not have more to offer. She stated the Commission would do their best to support the State of Iowa and its citizens. She indicated it is important to her that the Commission have a sense of balance between the communities and citizens of Iowa as well as to those individuals who are potential victims of gambling addiction. Commissioner Harrison indicated the Commission would take into consideration the creativeness of the communities applying for a license, and would entertain the idea of opening up the licensing process.

Chair Seyfer noted that everyone had heard the previous comments. He reiterated Commissioner Harrison's comment that the Commission represents the entire State of Iowa. He pointed out that all of them have received hundreds of letters and e-mails and indicated that he has not received any correspondence from anyone outside of the counties that have passed a referendum asking for a new casino. Chair Seyfer stated his belief that Touchplay taught the Commission that the State of Iowa does not want gambling in every location. The studies have been done, and are very clear on where we are now and where it looks like things are going to be going forward. Chair Seyfer stated that the consensus of the Commission is to accept new applications, but personally feels it is an uphill battle for anyone who opts to apply for a license now. The studies and information available to the Commission show that times are tough. He referred to the presentations earlier by Harrah's and Terrible's, and questioned whether there is financing available for the proposed projects. Chair Seyfer reiterated Commissioner Cutler's comments regarding the application process; that it will be fair, open and that they will listen to anyone who comes forward with an application.

Chair Seyfer advised that the Commission would accept applications until October 1, 2009. The Commission requested that staff provide them with the application form for review and comment prior to it being provided to the applicants. Chair Seyfer requested that prior to the filing of any application, a representative(s) of the applicant meet with staff and the Chair to discuss the application and any questions or concerns that may be there prior to the application being filed. Following the initial meeting with the Chair and staff, representatives of each applicant should then contact the other Commissioners to get a feel for any questions or concerns they may have.

Chair Seyfer called on Riverboat Development Authority/IOC Davenport, Inc. (RDA) regarding their request for approval of an amended operator's contract. Mary Ellen

Chamberlin, President and Chief Executive Officer of RDA, advised that the current Operator's Contract with the casino was due to expire, which led to the discussions leading to this amendment. The matter before the Commission is the adoption of the contract as amended to extend the length for a period of ten years. Ms. Chamberlin stated that this is the same contract the RDA had with The President Casino, which was then amended and transferred when the physical assets of The President Casino were sold to the Isle of Capri. At that time, negotiations were held to determine whether RDA would allow the Isle to utilize their gambling license. She stated that the basic pieces of the agreement are as follows:

- Over the years, RDA has received several non-cash benefits from the casino, such as phone service, IT service and other administrative costs that have allowed them to keep their cash disbursements to the community at approximately 96% of income. A portion of the amendment makes that type of support from the casino official in addition to the cash benefits received from the adjusted gross receipts.
- RDA currently receives 4.1% of adjusted gross receipts and has a \$2 million per year base guarantee. Changes were made in how the weekly payment and minimum base are calculated. She indicated that in the 10 years RDA has operated with Rhythm City, they have never dropped to the minimum payment.
- Currently RDA has no way to vary from the \$2 million base guarantee. Noting the changes within the industry and increased competition – many of which are outside the control of the casino or RDA, Ms. Chamberlin stated the parties have agreed to four points under which the \$2 million may be waived or re-negotiated. These include an additional casino being built in or near Scott County, which would bring the area to four boats, the smoking ban being extended to casinos, or a decision by the city, city regulation or other decision affecting Rhythm City's ability to do business.

Mr. Ketterer asked Mo Hyder, General Manager of Rhythm City, if Jumer's Casino in Illinois was having any impact on Rhythm City and IOC Bettendorf. Mr. Hyder indicated that it is difficult to determine an impact on Rhythm City as the facility was closed for 21 days in 2008 due to flooding. In normalizing the figures, he indicated that revenues at Rhythm City were flat or down, but feels Jumer's effect has been minimal. With regard to IOC Bettendorf, Mr. Hyder indicated there are several factors affecting that property: the bridge closures in the Quad Cities and economic issues as the unemployment rate has slowly been increasing. Mr. Hyder noted that while the State of Iowa in general has been insulated from the economic situation, the area is seeing a little bit of an effect in the Quad Cities area. He stated that Jumer's continues to do well; they have a nice facility and have done a good job of expanding the market. He indicated over the past several months the market has grown between 16-18%.

Ms. Chamberlin asked the Commission to adopt RDA's contract extension with the amendments previously outlined.

Chair Seyfer called for any comments or questions. Hearing none, he requested a motion. Commissioner Cutler moved to approve RDA's Amended Operator's Contract

with IOC Davenport, Inc. as presented. Commissioner Harrison seconded the motion, which carried unanimously. (See Order No. 09-71)

Chair Seyfer moved to the contract approval portion of the agenda and called on Harrah's. Jeanne Magdefrau, Vice President of Finance, presented the following contracts for Commission approval:

- Staples – Acquired Corporate Express, RTA #4230 – Supplies
- Thomas Dredging and Excavating – Dredging around the Boat

Hearing no comments or questions concerning the contracts, Chair Seyfer requested a motion. Commissioner Cutler moved to approve the contracts as submitted by Harrah's. Commissioner Harrison seconded the motion, which carried unanimously. (See Order No. 09-72)

Chair Seyfer called on The Isle Casino Hotel Waterloo (The Isle). Bari Richter, General Manager, presented a contract with Halverson Trane for a one-year maintenance agreement on the HVAC system.

Hearing no comments or questions concerning the contract, Chair Seyfer requested a motion. Commissioner Harrison moved to approve the contract as submitted by The Isle. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 09-73)

Chair Seyfer called on Ameristar Casino. Jane Bell, Director of Government and Community Affairs, presented the following contracts for Commission approval:

- Constellation New Energy – Gas Utility
- Doll Limited Partnership – Off-site Storage
- McMullen Ford – Vehicle Maintenance and Repair
- Waste Connections of NE d/b/a Papillion Sanitation – Refuse Removal

Commissioner Urban asked for an explanation of the Iowa Vendor-Out of State Address under Section 3 of the Request for Transaction Approval form. Ms. Bell stated that the payment is sent to an out-of-state address but that the vendor does have an in-state business address.

Hearing no further comments or questions, Chair Seyfer requested a motion. Commissioner Harrison moved to approve the contracts as submitted by Ameristar. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 09-74)

Chair Seyfer called on Diamond Jo Dubuque (DJ). Todd Moyer, General Manager, presented a contract with the City of Dubuque for a Public Parking Facility Private Parking Agreement.

Hearing no comments or questions concerning the contract, Chair Seyfer requested a motion. Commissioner Harrison moved to approve the contract as submitted by DJ. Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-75)

Chair Seyfer asked Mr. Moyer how things were going in Dubuque. Mr. Moyer advised that everything was going very well; the response to the new facility has been fantastic. He indicated DJ is happy to be the host city for the October Commission meeting.

Chair Seyfer called on Riverside Casino. Joe Massa, General Manager, presented the following contracts for Commission approval:

- CCA Creative Artists Agency – Concert Entertainment Booking Agency
- King Food Service – Food Purchases
- Prodigy Promos – Promotional Give Away

Commissioner Urban questioned the contract with Prodigy Promotions for \$200,000 for promotional items, noting that one of the items mentioned was t-shirts. She questioned whether there were vendors in Iowa that could provide the same service. Mr. Massa answered in the affirmative, stating that all of the items had been bid. He noted that all of the bids had been included on the RTA form, and that the Iowa companies were not the lowest bids. Mr. Massa stated that Riverside has spent just under \$100,000 with the company to date. Commissioner Urban noted there are promotional companies in Des Moines and Newton, as well as other locations. Mr. Massa stated that Riverside does reach out to them for bids.

Hearing no further comments or questions concerning the contracts, Chair Seyfer requested a motion. Commissioner Urban moved to approve the contracts as submitted by Riverside. Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-76)

Chair Seyfer called on Rhythm City (RC). Mr. Hyder presented the following contracts for Commission approval:

- Financial District Properties WF, LLC – 3 Year Lease for Office Space for Riverboat Development Authority
- White Roofing – Roofing Construction and Electrical Work

Hearing no comments or questions concerning the contracts, Chair Seyfer requested a motion. Commissioner Hayes moved to approve the contracts as submitted by RC. Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-77)

Ms. Chamberlin stated that she started with the casinos twenty years ago, and had the privilege of serving with two of the giant entrepreneurs that helped found the industry, both of whom have passed away since she last attended a meeting of the Commission. She requested that the record reflect that both John Connelly and Bernie Goldstein meant a great deal in developing the riverboat gaming industry in Iowa, and everyone should be sad at their passing.

Chair Seyfer called on Horseshoe Casino/Bluffs Run Greyhound Park (HC/BRGP). Ms. Magdefrau presented the following contracts for Commission approval:

- Express Jet – Charter Flight Company
- Sleep Inn – Purchase of Hotel Rooms
- Staples – Acquired Corporate Express, RTA #4173 – Supplies

Mr. Ketterer asked Ms. Magdefrau about the status of the Hilton Garden Inn hotel. Ms. Magdefrau stated that a meeting has been set with the owner for Monday, with a new opening date of October 15, 2009. She stated she would let him know after the meeting. Mr. Ketterer asked how many rooms the hotel would have. Ms. Magdefrau stated there would be 253 rooms.

Hearing no further comments or questions, Chair Seyfer requested a motion. Commissioner Harrison moved to approve the contracts as submitted by HC/BRGP. Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-78)

Chair Seyfer called on Dubuque Greyhound Park at Mystique Casino (DGP @ Mystique). Roger Hoeger, Assistant General Manager, presented a contract with the Community Foundation of Greater Dubuque.

Commissioner Hayes asked if the purpose of this contract is to create a substantial endowment. Mr. Hoeger answered in the affirmative. Commissioner Hayes commended the facility for taking this step.

Hearing no further comments or questions, Chair Seyfer requested a motion. Commissioner Urban moved to approve the contract as submitted by DGP @ Mystique. Commissioner Hayes seconded the motion, which carried unanimously. (See Order no. 09-79)

Chair Seyfer moved to the approval of the distribution of the Dog Racing Promotion Fund. Mr. Ketterer advised that the only applicant was the Iowa Greyhound Association and that they have provided an accounting of how the funds were disbursed last year. He stated that Jim Quilty, legal counsel, was present to answer any questions.

Hearing no comments or questions for Mr. Quilty, Chair Seyfer requested a motion. Commissioner Urban moved to approve the Iowa Greyhound Association as the recipient

of the Dog Racing Promotion Fund. Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-80)

Chair Seyfer called on Prairie Meadows Racetrack & Casino (PMR&C) regarding their request for approval of the harness meet 45-day plan. Derron Heldt, Director of Racing, advised that there was a typographical error on the Schedule and Wagering Format page; it should reflect a 16-day harness meet.

Hearing no comments or questions for Mr. Heldt, Chair Seyfer requested a motion to approve that included the following staff recommendations:

- The immediate written notification of any change in racing official positions.
- The completion of necessary DCI backgrounds.
- Continuation of all import/export simulcast contracts being reviewed and approved by IRGC staff.
- Prior notification of any schedule changes: race days, post times, or the number of races.

Commissioner Harrison so moved. Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-81)

Chair Seyfer moved to the report from the Horse Racing Committee. Mr. Palmer stated that since the presentation at the June meeting, the committee has retained Dr. Margaret Ray and Doug Reed to assist in studying the metrics for horse racing in the future as well as a marketing study for horse racing. Dr. Ray and Mr. Reed will be at the facility for a meeting on July 27<sup>th</sup>.

Commissioner Hayes asked about the timeline for the metrics. Mr. Palmer stated PMR&C would like to have it completed by October 1<sup>st</sup>.

Hearing no further comments or questions for Mr. Palmer on the Horse Racing Committee, Chair Seyfer moved to the update from the Hotel Committee. Gerry Neugent, PMR&C Board Member and Chair of the Facilities Committee, noted that he had presented the Committee's process for building the hotel, which included a target date of June 30<sup>th</sup> for making recommendations to the full board. He stated that the RFP has been sent out, interviews conducted, and that the committee has a recommendation to present at the Board meeting next week to select a developer. Mr. Neugent stated they are in the process of finalizing the lease and a relationship with the construction company. He estimated that PMR&C is within two weeks of the timeline projected.

Hearing no comments or questions for Mr. Neugent, Chair Seyfer moved to PMR&C's request for approval of the ancillary agreement with the Iowa Harness Horsemen's Association (IHHA). As there were no comments or questions concerning the agreement, Chair Seyfer requested a motion. Commissioner Hayes moved to approve the Ancillary Agreement between the IHHA and PMR&C for the 2009 Standardbred Meet at PMR&C.

Commissioner Cutler seconded the motion, which carried unanimously. (See Order No. 09-82)

Chair Seyfer called on the IHHA. Royal Roland, President, requested the Commission's permission to combine this item with the following agenda item – comments from the Iowa Horsemen's Benevolent & Protective Association, Inc. by Leroy Gessman, President. Chair Seyfer concurred.

Mr. Gessman commenced his comments by introducing Butch Hammer of the Iowa Quarter Horse Racing Association (IQHRA), and Sharon Vail, President of the Iowa Thoroughbred Breeders and Owners Association. He advised that since the last Commission meeting, the four horsemen's groups have been meeting weekly in an attempt to put together a joint racing plan for 2010 and beyond that would be an alternative to the one proposed by PMR&C. Mr. Gessman stated that they are close to an agreement on a plan; that there has been a lot of give and take between the groups. He stated that they believe their proposed plan meets the intent of the law, makes all three breeds very viable in the future, supports the breeding industry and improves racing from where it is today. Mr. Gessman advised that the groups have made some adjustments that would provide a cost savings to PMR&C. He stated it is the goal to have the plan finalized and present it to the Commission at the August 27<sup>th</sup> meeting in Riverside. Mr. Gessman stated that the plan presented to the Commission is not the plan printed by Dan Johnson in The Des Moines Register.

Mr. Gessman stated that there are issues in the simulcasting area and account wagering that would require some changes in the law. He noted that nationally there is more money available; that more individuals are using their computers to make wagers and not actually going to the tracks. Mr. Gessman stated that the groups would like to explore that avenue in order to capture more of that revenue.

Commissioner Cutler asked if any of the members of the horsemen's groups were on the horse racing committee. Mr. Gessman advised that Butch Bain is the horsemen's representative on the Board, and is on board for the IQHRA.

Mr. Ketterer asked if discussions are continuing with PMR&C with regard to the racing plan. Mr. Gessman advised that there have been no discussions with PMR&C management, but there have been discussions with some members of the horse racing committee.

Mr. Roland stated that the horsemen's groups would appreciate the Commission's assistance in motivating PMR&C to consider the alternative plan prior to the Commission meeting.

Commissioner Urban thanked Doug and Sharon Vail for the tour of the River Ridge Ranch Wednesday evening; that it was very informative and a good learning opportunity.

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

- Brewer Meats, Inc. – Meat Supplier
- Durkan Patterned Carpet – Specialty Carpet for Casino
- Home Boy Enterprises, Ltd. – Concrete Contractor
- Poindexter Flooring, Inc. – Contractor – Flooring Installation

Hearing no comments or questions concerning the contracts, Chair Seyfer requested a motion. Commissioner Cutler moved to approve the contracts as submitted by PMR&C. Commissioner Hayes seconded the motion, which carried unanimously. (See Order No. 09-83)

Chair Seyfer moved to the appeal of an Administrative Law Judge Decision by Frank Cardenas. He advised Mr. Cardenas that he would have ten minutes to present his case, and three minutes for rebuttal following the presentation of the State's remarks by Assistant Attorney General Jeff Peterzalek.

Mr. Cardenas stated that he was employed as the casino host at the Diamond Jo Dubuque (DJ) for nine months. Some allegations were made by another employee that he had offered her drugs during an out-of-town trip; he has denied the allegations from the beginning. He stated that when the allegations were presented to the DJ, he was asked to take a drug test which he refused based on the DJ's drug testing policy. He believes the policy does not permit them to request the drug test. He read the following from the DJ's policy on reasonable cause for chemical testing:

“Employees will be asked to submit to a drug test if reasonable suspicion exists indicating that the employee is under the influence of illegal drugs. Reasonable suspicion means a basis for forming a belief based on specific facts and rational inferences drawn from those facts, by direct observation of specific, contemporaneous physical, behavioral or performance indicators of probable use. ...”

Mr. Cardenas stated that it was undisputed that at the time the test was requested he was not showing any signs of being under the influence nor was there was any observation of any physical signs of drug use. Based on the foregoing, Mr. Cardenas stated that he did not feel the DJ had any reason to request the drug test; that the allegations had been made several days prior to the request. He noted that he was allowed to return to work after refusing the drug test. Mr. Cardenas pointed out that DJ's alcohol drug testing policy is worded exactly the same as the drug testing policy and reads: “Employees will be asked to submit to an alcohol test if reasonable suspicion exists indicating that the employee is under the influence of alcohol.” He stated that if an employee were to make allegations that someone was drinking alcohol two days prior there would be no reason to insist that an employee take a drug test several days after the fact. He feels the policy is worded in such a way to specifically prevent random allegations to get someone in trouble. It is his interpretation of the policies that DJ would not test for drugs or alcohol unless the

individual is showing signs of being under the influence. Mr. Cardenas noted that Judge Priester's ruling indicated that he found no evidence of illegal drug usage at the time the drug test was requested, but went on to state that "the casino only needs reasonable suspicion that an employee used an illegal drug." It is Mr. Cardenas' belief that Judge Priester has misinterpreted the policy. He stated that if the DJ wanted to attach any weight to allegations made by other employees, or indicate that he violated the drug policy that would be a separate issue from the testing. Mr. Cardenas stated that testing is only allowed if an employee is showing signs of being under the influence. He then referred to Iowa's drug testing laws which state in part that drug testing must be conducted pursuant to a company policy. Mr. Cardenas stated that it is his belief that the drug test would be a violation of state law. He pointed out that the Commission's rule regarding revocation of a gaming license for refusing to take a drug test indicates that any testing must be conducted pursuant to state law.

Mr. Cardenas stated that at the time the allegations were made, the claim was made that he was on the clock, which is why the DJ was allowed to request the drug test. He stated that he was out-of-town at an event attempting to recruit a player to come to the DJ. Noting that he had made similar trips in the past, Mr. Cardenas advised that except for this last trip he was considered to be on the company's time. He stated he was specifically advised by General Manager Todd Moyer prior to leaving on the trip that the poker event was more than likely an illegal gambling event; and in order to avoid any issues with the Commission, the DJ could not appear to be sending an employee on the clock to an illegal event out-of-state. He was informed that he would not be on the clock during this trip, and could not appear to be representing or endorsing the event. Mr. Cardenas stated that this information was ignored during the hearing.

Mr. Cardenas concluded his remarks by indicating that everyone knows "what being under the influence" means; and if a policy indicates that a company can test an employee if they are showing signs of being under the influence that is different from a policy that indicates an employee can be tested if the employer has reason to believe that the employee may have used drugs at some point in the past. Mr. Cardenas noted that he passed the drug test when he was relicensed by IRGC in June 2007, has had no drug convictions or charges of any kind, and has never been arrested for anything. Mr. Cardenas stated that he believes DJ turned their back on him and chose to believe an employee that been working for them for a shorter period of time than he had.

Mr. Peterzalek stated that he had not planned to go into the facts on this case, but advised that there were a couple of significant issues that did need to be brought to their attention, some of which were not significantly disputed at the hearing:

- Whether Mr. Cardenas and the two women he recruited to accompany him were on the clock. The evidence clearly indicates that they were being paid while they were in Wisconsin.

Mr. Peterzalek stated that the case boils down to whether or not the policies and laws that govern drug testing were followed. He advised that Iowa Code Section 730.5 as addressed in the Administrative Law Judge's (ALJ) Decision requires that there be reasonable suspicion to conduct drug testing and that the facility or entity conducting the testing comply with their policies. Mr. Peterzalek stated there was reasonable suspicion. The evidence cited by the ALJ in his Decision goes through the offering of drugs to the women, the commentary and discussion of drugs during the trip back from Wisconsin, and the statement that the women had "missed some good drugs".

Mr. Peterzalek stated that another disturbing fact in this case is that one of the women, during the course of the evening, ended up being found unconscious in a hotel room naked from the waist down. The ALJ indicated this was another issue to be taken into consideration when determining if drug use might have occurred.

Mr. Peterzalek concluded his remarks by stating that there was reasonable suspicion as defined by law; the way the ALJ defined it, the way the Gaming Representative defined it and the way the casino defined it. He stated that every person or entity in a decision making capacity that has looked at this matter has found that there was reasonable suspicion and that the facility was justified in requesting that Mr. Cardenas submit to a drug test, who refused. Under IRGC rules, if an individual refuses a drug test authorized under the Code, the individual is subject to having their license revoked, which is what occurred in this instance. Mr. Peterzalek stated that Mr. Cardenas still has other avenues to appeal this matter; Iowa Code Chapter 730 provides specific methods for challenging the appropriateness of the drug test – he can go to court, seek injunctive relief, ask for a hearing, or as pointed out by the ALJ, if Mr. Cardenas pursues any of these avenues and a different outcome is reached, the ALJ could reconsider the matter. Mr. Peterzalek stated that IRGC does not want the Gaming Representatives in a position where they are acting as the district court; their role in this case was to determine if the drug test was offered in accordance with the law based upon their conversation with the facility, at which time license revocation became mandatory. Mr. Peterzalek stated that the procedures followed in this case are the same as in other similar cases; that the only thing unusual about this case is Mr. Cardenas' overly strict interpretation of the policies. Under Mr. Cardenas' interpretation, the facility or IRGC would be prohibited from doing anything about drug use occurring off facility property but while on company time, which is contradictory to DJ's policy and the law. Mr. Peterzalek requested that the Commission uphold the ALJ's Decision.

Mr. Cardenas pointed out that only one of the women made allegations, noting that the other woman was present when the offer of drugs supposedly occurred; however, she could not confirm the conversation. With regard to the woman found in the hotel room, Mr. Cardenas stated that it was never implied in the hearing that he was connected to that incident. He stated that the woman had a meeting with the DJ Director of Human Resources who asked her if she thought she was violated in any way. Her response was that she bruised easily, that she did not have any bruises and did not think anything had happened.

With regard to the interpretation of Iowa's drug testing laws, Mr. Cardenas indicated he had brought a ruling issued by the Unemployment Board. He made the statement that the Unemployment Board probably deals with the drug testing laws more often than Judge Priester. The Unemployment Board ruling stated that: "Our records indicate that you were dismissed from work on April 6, 2009 for alleged misconduct; however, your employer did not furnish sufficient evidence to show misconduct." Mr. Cardenas stated that anytime there was some conflict as to the interpretation of the drug testing laws, the Iowa Unemployment Board was involved. In this matter, the Board has indicated there is no evidence of misconduct; the misconduct that was alleged was violating DJ's drug testing policy.

Mr. Peterzalek advised that the case mentioned by Mr. Cardenas was something that was mentioned throughout the proceeding; legal issues surrounding it were addressed during the hearing, and the ALJ determined that for a variety of reasons that it did not change the way the ruling should be issued.

Chair Seyfer asked Mr. Ketterer how the Commission makes decisions on affirming ALJ Decisions. Mr. Ketterer stated that the Commission either needed to affirm or overturn the ALJ's Decision.

Hearing no comments or questions for Mr. Cardenas or Mr. Peterzalek, Chair Seyfer requested a motion. Commissioner Hayes moved to affirm the ALJ's Decision in this matter. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 09-84)

Chair Seyfer moved to the election of a chair and vice chair for FY 2010. Commissioner Cutler moved to reappoint Greg Seyfer as Chair and appoint Toni Urban as vice chair for FY 2010. Commissioner Hayes seconded the motion, which carried unanimously. (See Order No. 09-85)

Chair Seyfer moved to Administrative Business. Mr. Ketterer advised that the Commission was provided with proposed regulatory fees for FY 2010 at the June Commission meeting which showed the new IRGC fees for FY 2010, but the FY 2009 figures for the Division of Criminal Investigation (DCI). The fees before the Commission today reflect the final figures for both IRGC and the DCI. He recommended approval.

Hearing no comments or questions concerning the fees, Chair Seyfer requested a motion. Commissioner Harrison moved to approve the FY 2010 Regulatory Fees as presented. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 09-86)

Chair Seyfer requested a motion to adjourn the meeting. Commissioner Cutler so moved. Commissioner Urban seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

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JULIE D. HERRICK