

**IOWA RACING AND GAMING COMMISSION
MINUTES
JANUARY 23, 2025**

The Iowa Racing and Gaming Commission (IRGC) met on Wednesday and Thursday, January 22-23, 2025 at Wild Rose Jefferson in Jefferson, Iowa. Commission members present were Daryl Olsen, Chair; Mark Campbell, Vice Chair; and members Julie Andres, Amy Burkhart and Alan Ostergren.

APPROVE AGENDA: Chair Olsen called the meeting to order at 4:00 PM and requested a motion to approve the agenda. Commissioner Campbell moved to approve the agenda as presented. Commissioner Ostergren seconded the motion, which carried unanimously.

EXECUTIVE SESSION: Commissioner Campbell moved to go into Executive Session pursuant to Iowa Code Section 21.5(1)a and applicable state or federal laws authorizing or requiring confidentiality including but not limited to Iowa Code § 22.7(5)m 28 U.S.C § 534 and 28 C.F.R § 20.33 for the purpose of receiving Division of Criminal Investigation background reports on entities related to Linn County Gaming Association, Inc./Cedar Rapids Development Group, LLC and Bally's Corporation (Standard General L.P./Casino Queen Marquette, Inc.). Commissioner Burkhart seconded the motion and the motion carried unanimously on a roll call vote.

Following the conclusion of Executive Session, Commissioner Ostergren moved to leave Executive Session. Commissioner Burkhart seconded the motion, which carried unanimously. Chair Olsen recessed the meeting until 8:30 AM on January 23rd.

Chair Olsen called the meeting back to order at 8:30 AM, and noted the agenda had been approved.

APPROVE MINUTES: Chair Olsen requested a motion to approve the minutes from the November 20, 2024 and November 21, 2024 Commission meetings. Commissioner Ostergren moved to approve the minutes as printed. Commissioner Burkhart seconded the motion, which carried unanimously.

WELCOME: Ian Wilkinson, Assistant General Manager, welcomed everyone to Jefferson on behalf of himself and their 150 team members. He stated that they just completed their most recent project, which was a remodel of their sports bar, Lucky's. He said they will also be celebrating their 10th anniversary in July of this year. Mr. Wilkinson said they are very fortunate to have an incredible partnership with their Qualified Sponsoring Organization (QSO), Grow Greene County Gaming Corporation, and he introduced their chair, Norm Fandel.

Mr. Fandel began by thanking the Commission for approving the facility. He said they have a tremendous partnership, and commented on what a wonderful facility Wild Rose Jefferson is. He said one of their greatest accomplishments was the improvements made to the high school. He invited everyone to drive around town and look at all the improvements that have been made possible over the past ten years by this partnership.

ANNOUNCEMENTS: Tina Eick, Administrator, announced that the next Commission meeting is being held on February 6th at Prairie Meadows in Altoona, Iowa and stated the Commission will be handling regular business at that meeting. She also stated that the submission deadline for that meeting is today, January 23rd. Ms. Eick said the March meeting, which is the 99F annual renewal meeting, will be on March 6th and will also be held at Prairie Meadows; and the April meeting, which is the annual audit review meeting, will be held on April 24th at Ameristar in Council Bluffs.

Ms. Eick also took a minute to recognize local Commission staff, gaming representative, Dan Thurman. She noted his hard work at Wild Rose Jefferson is appreciated.

RULES: Ms. Eick introduced rule package ARC 8475C and stated it was the same package that was submitted for intended action at the November 21, 2024 Commission meeting. She said since the November meeting there was another public hearing on the rules that both Wes Ehrecke and John Cacciatore participated on behalf of their organizations, and both were supportive of the rules. Staff also appeared before the Administrative Rules Review Committee at the legislature on January 13th and there were no concerns raised at that meeting. Ms. Eick stated that BetMGM provided written comments requesting that the Commission consider adding language to rule 13.2(7)"b", to state licensees are required to use "commercially reasonable efforts" to identify and suspend accounts opened by individuals on behalf of persons under the age of 21. Staff concluded that the preamble of that rule already includes reasonable methods so reasonableness is already implied in those rules. The matter is now before the Commission to consider final adoption of those rules.

Chair Olsen asked to clarify the timeline for the rules package after final adoption, including when the rules would become effective. Ms. Eick stated the rules package will go before the Rules Review Committee again, and the effective date would tentatively be the end of March.

Commissioner Ostergren stated that he knows how hard the staff has worked on these and he appreciates it.

Hearing no further comments or questions, Chair Olsen requested a motion on the proposed rules. Commissioner Ostergren moved to adopt the rules as proposed. Commissioner Campbell seconded the motion, which carried unanimously.

CASINO QUEEN MARQUETTE, INC.:

Remodel Update: Ed Winkofsky, an attorney with, Greenberg Traurig, stated they brought a team with them to provide a construction update on the property, seek approval of a lease that would provide additional financing, seek approval of the Bally's merger transaction, and seek approval of the contracts. He then turned it over to Craig Eaton, Senior Vice President for Bally's.

Mr. Eaton recognized the efforts of the local general manager, Robin Corbeil, and acknowledged the challenges she has faced with this remodel. He then addressed the time it has taken and the number of changes that have been made to this project. He said they are aware of the history and

they want to prove that they will get this done. He said this is the first time Bally's is working in Iowa, but they promise to bring their large operational experience here. He mentioned many other projects they have done and said they are very experienced in bringing these projects to fruition. Mr. Eaton turned it over to Bill Vandersand, General Counsel for The Queen Casino & Entertainment.

Mr. Vandersand announced that they had a ground breaking ceremony on October 1st and excavation equipment arrived at the property in December. He said as of today there are 5 heavy pieces of equipment on site. Mr. Vandersand said after they received approval in August for their general contractor, W.E. O'Neil Construction, Co. cost estimates went up significantly and at that point they reached out to some Iowa general contractors. They are now seeking to replace the W.E. O'Neil contract with Conlon Construction. He said they are reducing the footprint from 119x130 feet to 119x90. The property will have 428 slot machines, six live table games, and eight electronic table games. He said the cost estimate is \$21 million with a large portion of that being the general contractor.

Commissioner Andres asked them to better explain the square footage and the changes that were made from when this was approved. Mr. Vandersand said the width is the same at 119 ft, but the length has gone down from 130 ft to 90 ft. Commissioner Andres then asked him to explain how many less slot machines and table games the property will have from when first approved in August. Mr. Vandersand said it will have six less slot machines, 16 less electronic table games and six more live table games.

Commissioner Campbell said they originally approved the larger floor plan so his concern is that if prices continue to go up, will this project continue to get smaller and smaller. He asked what will this destination really end up being? Mr. Vandersand said they have budgeted an additional \$1 million contingency for those type of things.

Commissioner Burkhart stated that this is already the smallest property in Iowa and in August Casino Queen discussed making it smaller, and now it is smaller yet again. She noted the Commission has always said they don't want these properties to be slot houses and instead to be a destination. She said with all of the changes she does not have a full understanding of what this project looks like. Mr. Winkofsky said he believes they need to come back at a later meeting and seek approval of the construction plan since it has changed. He said he understands there is a timing issue with the deadline for the February meeting being today but he would like to get that approved as soon as possible so as not to delay this.

Commissioner Burkhart asked Ms. Eick if there was any leniency in the submission deadline so that they could review this at the February meeting. Ms. Eick said certainly, as long as we are aware it is coming we can get it on the agenda and she can work with them to make sure they get the documentation in a timely manner in order to distribute to the Commissioners with time to review before the meeting. Mr. Winkofsky said they are willing to do that at the February meeting or the March meeting if it is easier as long as it doesn't delay the process.

Chair Olsen said the Commissioners understand Marquette is a small market and they aren't trying to be unreasonable. He said they have heard a lot of things but not seen a lot of action and they are expecting to see more action. He said he would be really frustrated if the Commission and the facility couldn't meet in the middle somewhere concerning the size of the remodeled facility.

Commissioner Andres said they are really focusing on size here but it really has more to do with the things the facility is pulling out of it. She said they want to see what is being put into it as well. Mr. Winkofsky said Mr. Schlang and Ms. Corbeil would be able to address that better. Commissioner Burkhart said she would like to hear from Mr. Schlang because she is curious if the facility would be different had the merger happened before the construction began.

Mark Schlang, Vice President of Architecture for Bally's, said they are committed to this project. He said the land based project is less square footage than the vessel, but he said land based properties have efficiencies that vessels don't. He mentioned having more parking spaces as one of the efficiencies and incentives. He said Bally's is committed to moving forward quickly.

Commissioner Burkhart asked again if the project had been theirs from the beginning, would it look the same as it does now. Mr. Schlang said he thinks so as far as scale and scope. He said if one looks at what the operation was on the vessel and what it will be landside, there will probably be more space utilized landside.

Commissioner Campbell said he is very excited about the project and he does support the merger, but his concern is the Commission has not approved the smaller version. Mr. Schlang said he understood and is willing to work with the Commission on whatever they feel is necessary.

Commissioner Burkhart said she had more of a procedural question. She said they approved the remodel and now it is quite different and she wanted to know if that is something they take into consideration when approving the merger, or the contractor, or how they insulate themselves from approving things today that won't allow the facility to back tread if what comes from that meeting is not something they want to take on.

Commissioner Campbell stated that agenda item A didn't really need a vote. Agenda item B was just a lease agreement and didn't really have anything to do with construction at this time. He said agenda item 8 deals with the merger and after the discussion, he feels much more comfortable that the proposed merger will benefit this Commission and Marquette.

Commissioner Andres asked if the facility is willing to make the remodel project larger. Mr. Winkofsky said yes. Chair Olsen asked if that affected the lease. Mr. Winkofsky said they might have to come back for an additional amendment if they need to finance a larger project.

Ms. Eick said just to clarify, agenda item 7B is a request to amend the lease. She said that is financing for this specific project and for a specific amount. She noted she is hearing Mr. Winkofsky say however, that this could be amended to increase that amount but this provides at least a baseline amount of funding.

Request for Approval of the Second Amendment to Third Amended and Restated Master Lease with GLP Capital, L.P.:

Hearing no further comments or questions, Chair Olsen requested a motion. Commissioner Campbell moved to approve the Second Amendment to Third Amended and Restated Master Lease with GLP Capital, L.P. as presented by Casino Queen Marquette, Inc. Commissioner Andres seconded the motion, which carried unanimously.

THE QUEEN CASINO & ENTERTAINMENT INC.: Commissioner Campbell said he wanted it on record that the current plan is probably not what the Commission wants.

Hearing no further comments or questions, Chair Olsen requested a motion. Commissioner Ostergren moved to approve the business combination and merger among The Queen Casino & Entertainment, Inc., Bally's Corporation and Standard General L.P. involving Iowa licensee Casino Queen Marquette, Inc. Commissioner Burkhart seconded the motion, which carried unanimously.

CONTRACTS:

Casino Queen Marquette, Inc.: Robin Corbeil, General Manager, presented the following contracts for Commission approval:

- Allen Roofing & Construction – Expansion of Warehouse Located in McGregor Iowa
- A.J.R. Equities – Marketing Promotional Gifts and Prizes
- Conlon Construction Co. – Contractor for Construction/Assembly of Land-Based Casino Queen Marquette Casino
- Lime Rock Springs Co. – Supplier of Pepsi Products
- M&D Inc. – Vessel Maintenance, Welding, Electrical Repairs, Painting (OSV)
- Sysco Corporation – Sysco Iowa – Food Distributor

Commissioner Burkhart asked if there is continued interest in the facility during the construction, or if people are frustrated with it. Ms. Corbeil said there has been some frustration, mostly due to the cold weather and the further walk to get indoors. She said they are doing everything they can to help make that walk as easy as possible. She said she does have patrons that are also very excited for the new space.

Hearing no further comments or questions, Chair Olsen requested a motion. Commissioner Burkhart moved to approve the contracts as submitted by Casino Queen Marquette, Inc. Commissioner Campbell seconded the motion, which carried unanimously.

IOC Black Hawk County, Inc.: Meagan Miller, Director of Finance, presented the following contracts for Commission approval:

- Atlantic Bottling Company – Coca-Cola Vendor/Beverage Vendor
- Witham Auto Center – Car Dealership

Hearing no comments or questions, Chair Olsen requested a motion. Commissioner Campbell moved to approve the contracts as submitted by IOC Black Hawk County, Inc. Commissioner Andres seconded the motion, which carried unanimously.

Iowa West Racing Association d/b/a Horseshoe Casino Council Bluffs: Janae Sternberg, Vice President of Finance, presented the following contracts for Commission approval:

- ServPro – Emergency Water Clean Up for Water Main Break
- TH Construction – Emergency Water Main Plumbing and Remediation Service (OSV)

Hearing no comments or questions, Chair Olsen requested a motion. Commissioner Andres moved to approve the contracts as presented by Iowa West Racing Association d/b/a Horseshoe Casino Council Bluffs. Commissioner Ostergren seconded the motion, which carried unanimously.

SCE Partners, LLC: Doug Fisher, General Manager, presented a contract with Vestis Services, LLC for Laundry Services, for Commission approval.

Hearing no comments or questions, Chair Olsen requested a motion. Commissioner Burkhart moved to approve the contract as submitted by SCE Partners, LLC. Commissioner Andres seconded the motion, which carried unanimously.

Rhythm City Casino, LLC: Sharon Haselhoff, General Manager for Grand Falls Casino Resort, LLC presented the following contracts for Commission approval on Mo Hyder's behalf:

- Chingon Touring – Comedian – George Lopez (OSV)
- Performance Food Service – Food Purchases
- TJX Companies – TJ Maxx/HomeGoods/Marshalls Gift Cards

Hearing no comments or questions, Chair Olsen requested a motion. Commissioner Campbell moved to approve the contracts as presented by Rhythm City Casinos, LLC. Commissioner Burkhart seconded the motion, which carried unanimously.

Prairie Meadows Racetrack and Casino, Inc.: Michele Wilkie, Executive Vice President, presented the following contracts for Commission approval:

- Doll Distributing – Beer Distributor
- Electronic Engineering – Electronic Hotel Room Door Locks and Surveillance Equipment
- Iowa Beverage Systems – Beer Distributor
- Johnson Brothers – Wine Distributor
- Laser Tech (Office Express) – Office and Housekeeping Supplies
- State of Iowa (Iowa Alcoholic Beverages) – Liquor Products

Hearing no further comments or questions, Chair Olsen requested a motion. Commissioner Burkhart moved to approve the contracts as submitted by Prairie Meadows Racetrack and Casino, Inc. Commissioner Ostergren seconded the motion, which carried unanimously.

PRAIRIE MEADOWS RACETRACK AND CASINO, INC.:

Request for Approval of the 45-Day Plan for the 2025 Mixed Meet: Derron Heldt, Vice President of Racing, presented the 45-day plan for Commission approval and noted that the gap between percentages for Iowa bred horses running in Restricted races versus running in Open Company races has increased to help encourage more participation by Iowa bred horses in Open Company races during the 2025 racing calendar. He also noted that they updated the schedule from TBD on July 4th and 5th to a 4:00 PM post time.

Commissioner Burkhart asked if they are continuing to meet with other stakeholders. Mr. Heldt said yes, they met in December and January and will meet again in February. He said they are having pretty good talks and have discussed some suggestions. He said the talks are continuing, progress is being made and they have had good dialogue.

Hearing no comments or questions, Chair Olsen requested a motion. Commissioner Campbell moved to approve the application for season approval and the contents contained within, contingent upon the immediate written notification to IRGC staff any change of racing official positions and the completion of necessary IRGC license and DCI background checks of racing officials. Commissioner Ostergren seconded the motion, which carried unanimously.

HEARINGS:

Grand Falls Casino Resort, LLC.: Ms. Eick presented the Stipulated Agreement for a violation of Iowa Code § 99F.4(22) (Self-Exclusion). Ms. Haselhoff apologized for the incident. She said 2023 was a year of change for their security team and while the security manager was on vacation she didn't have someone lined up to do the upload and download. She said they have since changed, that they have someone on every shift to upload and download every day. Ms. Haselhoff said this did not result of anything of value, however she understands because of their mistake there was that potential. They have taken measures to make sure this doesn't happen again.

Chair Olsen requested a motion. Commissioner Burkhart moved to approve the Stipulated Agreement with an administrative penalty of \$10,000. Commissioner Andres seconded the motion, which carried unanimously.

Chair Olsen called for a 5 minute break.

STATEWIDE MARKET ANALYSIS PRESENTATION:

Marquette Advisors, Inc.: Brent Wittenberg, Sr. Vice President, thanked the Commissioners for the confidence in their firm. He also thanked Ms. Eick and staff as well as the casino operators and said the data exchange has been terrific and provided them with a really good baseline. He

said the gaming industry had a strong bounce back after Covid. He said FY23 created a lot of stress in the economy and it showed in the casinos.

The data used for Marquette's study focused on where customers are coming from, how frequently they visit the casino, and how much they are spending. He said there is good coverage across the state, but Eastern Iowa has some overlapping competition. He said the participation rate has gone down over the past ten years, Covid excluded. Mr. Wittenberg noted that gaming revenue as a percentage to personal income is down and per admission spending has had a history of increasing but is also coming back down. He said they visited every casino in the state and a few in the surrounding states. He noted that the investment in the facilities varies from casino to casino.

Mr. Wittenberg said there is some stress in the market and that is important to understand. Population growth rate is relatively slow and the economy is relatively uncertain. He said they are predicting a downward market for 1-2 years and then some recovery. They spent a lot of time reviewing the proposal materials and a lot of time in the Cedar Rapids market. He said the entertainment and food options presented by this project are probably the best in the state, and he commended them on putting their best foot forward. He stated that there would be considerable redistribution of market share with the most pronounced being in the Eastern part of the state. They are measuring the cannibalization at \$68 million. He also said it's important to note the offset of the negative impact, and this property will create 300 plus jobs, which he believes is actually understated.

Commissioner Ostergren said that the tax structure for free play is changing, and asked if that's included in the report. He said they provided numbers showing the effect of free play and how it plays into cannibalization but he wanted them to talk him through where that 4-10% comes from. Mr. Wittenberg said given their knowledge of how that free play is phasing out they've done their best to quantify that today with the resources they have available. He said they've done their best to estimate where things are now and base that off competition. Commissioner Ostergren said a reduction in tax as it applies to free play is making free play less expensive for operators to use as a marketing tool. He said the operator can put dollars in free play less expensively than it can put dollars in free hotel rooms and dinners. Mr. Wittenberg agreed. Commissioner Ostergren asked if the estimates take this into account or if the cannibalization will be higher due to the change in free play. Mr. Wittenberg said some markets could see more than 10%. Commissioner Ostergren asked how that affects the cannibalization estimates that they presented, if an operator chooses to emphasize free play. Mr. Wittenberg said he believes if there is more free play the cannibalization could be higher. Commissioner Ostergren asked if there was any way today to see how the cannibalization will change with the cheaper free play. Mr. Wittenberg said not today but that's something we could run the math on.

Commissioner Burkhart pointed out that the study noted some markets with multiple facilities actually had a higher participation rate. She asked if they considered whether having a second casino in the area might actually increase the participation rate for current providers. Mr. Wittenberg said the participation rate will increase resulting from the new entry to the market but those benefits would be for the new facility not existing markets.

Chair Olsen said that there was a great increase post Covid for all of the casinos and he said the study shows that a lower percentage of total income is being spent. He asked if it's possible they are spending the same amount of money but their income has just increased. He was curious about the percentage on that. Mr. Wittenberg said the gross numbers are in the study, but he will get the percentage for them. He said it's also important to note that groceries and the cost of living are also up, so people are spending less on discretionary items such as leisure activities and gaming.

The Innovation Group: Tom Zitt, Executive Vice President, presented a high-level summary of the study they conducted. He explained the criteria they used and what they concluded. He said he would echo everything Mr. Wittenberg from Marquette Advisors said about the support from staff and casino operators. He also stated he would not get into what the market did pre Covid and post Covid because he thinks Mr. Wittenberg did a great job presenting that.

Mr. Zitt said that their study shows that the Cedar Rapids casino will reduce the Net Gaming Revenue (NGR) at existing Iowa casinos by \$56 million. He said Riverside and Isle Waterloo would be the most heavily impacted. However, he said that statewide NGR is expected to increase by \$60 million from Cedar Rapids.

Commissioner Ostergren asked the same questions about the free play that he asked the first market study group. Mr. Zitt said he thinks Mr. Wittenberg is correct and free play is going to go up. He said for that reason they took those numbers out of their calculations.

Commissioner Burkhardt said she had a question about the sensitivity analysis. She said they have a comparison of the projected size of the current Cedar Crossing project and then increasing that number by 25 and 50%. She wanted to know if it was possible to show those numbers with a smaller size project. She wants to see if there is a sweet spot where cannibalization rate is lower but tax revenue stays positive. Mr. Zitt said he could follow up with those additional projections.

Chair Olsen said that the study was very thorough and therefore they don't have a lot of questions.

COMMISSION QUESTIONS TO CEDAR RAPIDS DEVELOPMENT GROUP, LLC AND LINN COUNTY GAMING ASSOCIATION, INC. ON APPLICATION TO ESTABLISH A GAMBLING STRUCTURE:

Johnathan Swain, President Cedar Rapids Development Group, introduced the people from their team that were present to answer any questions. He also introduced Suzanne Leckert who was attending virtually as she was snowed in in New Orleans. Mr. Swain handed the Commissioners a packet of information that might help with some of the questions. He also commented that he did provide a new financing letter from Santander as was requested by Commissioner Ostergren at the November meeting.

Mr. Swain then went through some of the questions that had already been asked of them. He started with cannibalization and touched on two properties, Wild Rose Jefferson and Grand Falls, that were projected to cannibalize revenue significantly from existing properties. He noted after Wild Rose Jefferson and Grand Falls each opened, the existing facilities were not forced to close

because of lost revenue and in some cases even grew their revenue. He also discussed some of the traffic concerns with the Cedar Crossing proposal and how they are addressing those. He also touched on the non-profit and what they would contribute to the QSO.

Commissioner Ostergren asked Mr. Swain to comment on the question he had asked previously about free play. Mr. Swain stated he believes the objective was to grow revenue. He said that by giving people free play it is in the hopes they come in and spend not only the free play but their own money as well so in turn this will actually grow revenue.

Commissioner Campbell asked what will set them apart from other casinos when it comes to knowing your customer and identifying potential problem gambling. Mr. Swain said in the past few months they have been looking at some technology that uses AI to detect problem gambling. He thinks there are ways to do this better, using AI to track people's behavior. He said their goal is to identify potential problem gambling early.

Commissioner Burkhart said the proposed entrance has been moved and she wanted to know why that is. Mr. Swain said when they were at the site in November they had the opportunity to see the best way to get emergency vehicles in and out of there as well as the surrounding area. That change was made to incorporate that.

Commissioner Burkhart said they provided some data about growth in other casinos as a result of Cedar Crossing. She wanted to know what the impact is on participation rate and will it capture 100% of that increase. Mr. Swain said with any business if it's closer to its customers the higher the use will be. So, participation rate in Linn County for customers within a 45 min drive time will increase. As they get more familiar with gaming they will widen their use across the state of Iowa.

Mr. Swain said he is deeply appreciative of all the hard work and they look forward to the decision on February 6th.

PUBLIC COMMENT: Scott Sirois, General Manager of Meskwaki Bingo Casino Hotel wished to make a public comment and thanked the Commission for giving him the opportunity to do so. He said they do not support another gaming license in the state of Iowa. He believes the State is already oversaturated. He thanked the Commission for requesting a copy of their study for consideration. He stated all of the studies are well done. Mr. Sirois commented that while not every study projects the same revenue for a Cedar Rapids casino, everyone agrees on the likelihood of some cannibalization. As an operator, he said the one thing that he sees is cannibalization will go up, not down because gaming in surrounding states is growing too so Iowa is already seeing fewer visiting gamers from other states. He also said free play is not free play, it costs operators money. Without the tax on that, it will certainly help the operators give them one more toggle to flip to make the revenue go up.

ADMINISTRATIVE BUSINESS:

Horseracing Integrity and Safety Authority (HISA) – Lasix (furosemide) Exemption: Ms. Eick said that the Commission has an opportunity to ask for an exemption to the use of furosemide. HISA has prohibited the use of Lasix in thoroughbred racing. HISA has allowed state commissions to ask for exemptions for up to 3 years. Last year they asked for and received exemption for the 2024 racing season. The HBPA is supportive of this request. The issue before the Commission is whether the Commission would like to do that again.

Chair Olsen asked if they could do that for 2025 and 2026. Ms. Eick said no, they have asked for it two times prior so this would be the last time unless HISA rules were to change.

Hearing no comments or questions, Chair Olsen requested a motion. Commissioner Andres moved to direct staff to request an exemption with HISA for the prohibition against the use of furosemide in covered horseraces as permitted in the act. Commissioner Campbell seconded the motion, which carried unanimously.

Notice of Iowa Race Horse Aftercare Fund: Ms. Eick presented the notice of the request for proposals of the fiscal year 2025 Iowa Race Horse Aftercare Fund. She stated the fund had approximately \$34,739 in it and the deadline for submissions was February 14, 2025 by 3:30 PM via email to IRGC@Iowa.gov.

PETITION FOR DECLARATORY ORDER REGARDING IOWA CODE SECTION 99F.7(11):

Progress Update/Briefs and Comments Received: David Ranscht, General Counsel for IRGC, gave a brief summary of the procedural history of the Petition for Declaratory Order. At the November meeting the Commission decided to set a schedule to hear arguments from both sides. Cedar Rapids Development Group and Linn County Gaming Association intervened, and then provided their briefs. Then there was an opportunity for public comments and the next part of the schedule gave the petitioners the chance to respond. The Commission has been given copies of those briefs. The next part of the schedule is to give the parties an opportunity to present their oral arguments on why the Commission should side with them. The petitioners will be allowed ten minutes to present, then the intervenors will be allowed ten minutes and then five minutes for the petitioners to reply.

Oral Argument: Mark Weinhardt, representing Riverside Casino & Golf Resort and the Washington County Riverboat Foundation, stated they are here today to ask the Commission under its authority to issue a declaration that the 2021 referendum in Linn County does not today give the Commission the authority to issue a license to conduct gambling games in that county. One of the requirements of the law is an electoral requirement. The residents of a county in two different elections have to vote in favor of having gambling in that county.

Commissioner Ostergren asked about an affidavit that was included in the reply brief but not in the original brief. Mr. Weinhardt said it was really just a time constraint and also a reaction to information that came from Linn County. Commissioner Ostergren then went on to ask Mr. Weinhardt to point him to a case where a court would look at an affidavit to interpret what they

think people thought when they were voting. Mr. Weihardt showed the actual ballot language that was on the referendum. He says this language tells people that gambling is already going on in Linn County, which it was not.

Commissioner Campbell asked how many other operators used this same language. Mr. Weihardt said no other operator used this exact language from these facts, where there was no gambling in that county. He said this is the only time to his knowledge this has ever happened.

Commissioner Burkhart said there was another vote in a county where a license had been approved but gambling games were not in action. Mr. Weihardt said that is correct, in Lyon County the casino was under construction when the second referendum was voted on. Commissioner Campbell stated, however there was no gambling going on. Mr. Weihardt said there was no gambling going on at that moment but they believe that the critical distinction is a license had been issued, whereas no license had been issued in Linn County.

Mr. Weihardt said the issue is that this referendum passed with 54.7% in 2021. He said if you subtracted 5% of that, one out of every 20 voters, that referendum fails and they suspect that one out of every 20 voters would look at that language and think there must be some gambling going on somewhere within the county.

Commissioner Ostergren asked Mr. Weihardt to point him to an Iowa Supreme Court case where they said if that language was different that would have failed and therefore it is not valid. Mr. Weihardt mentioned two cases where the language in the referendum does not accurately fit what they are voting on, but he said in both of those cases it doesn't drill down that far.

Commissioner Campbell asked, if the initial vote can establish gaming in that county. Mr. Weihardt responded, no a license issued by your Commission establishes gaming because there are many other things that have to be satisfied, such as an application and approval. He said all those things have to happen for gaming to take place in that county.

Commissioner Burkhart asked Mr. Weihardt what his understanding of the purpose of the two referendums was. Mr. Weihardt said the first authorizes the Commission to issue a gambling license in that county. The second authorizes the continuation of gaming if there was a licensed issued or it authorizes the initiation of gaming if the license has not been authorized. He said it just so happens that Linn county is the only county in the eight years between votes that there hadn't been a gaming license issued.

Commissioner Andres asked if Mr. Weihardt could tell us the timeline of when they became concerned about this. Mr. Weihardt said last fall, not long before they filed the petition on November 8th. He said as soon as they recognized the problem they moved quickly. He stated this question is not going away. Mr. Weihardt said this Commission cannot vote on February 6th without answering this question. He said nothing more will come forward prior to February 6th so the Commission needs to decide today.

Guy Cook, attorney on behalf of Cedar Rapids Development Group and Linn County Gaming Association, then took the podium. He said this filing is not in good faith and does not meet the rules of petitions for declaratory order. He said the Riverside filing cannot and should not be granted under the rules.

Commissioner Ostergren asked a couple hypothetical questions. He said hypothetically the referendum passed in 2013 and then failed in 2021, the Commission could not issue a license. Mr. Cook agreed. Commissioner Ostergren then asked if hypothetically in 2014 the Commission issued a license and the casino is operating and then in 2021 Linn County forget to put a referendum on the ballot, would that casino license have to be revoked at that point? Mr. Cook said he thinks the question is if there is a requirement for the second ballot. The answer to that is yes and they submit the ballot was valid and satisfied that requirement. He said the second referendum is important and it meets the standard that this Commission must follow under chapter 99F.

Commissioner Ostergren noted the language on the Lyon County referendum was mentioned in their brief and he asked if there was any action that took place in Lyon County because of that referendum language. Mr. Cook said no, of course not.

Mr. Cook said this petition is not valid, and it's not a real request. He said the distinction between a shield and a sword was brought up in Burlington and the usual declaratory order request is to act for guidance how to proceed. Mr. Cook said that's not what this is, this is not an attempt to use a sword but a nuclear bomb. Commissioner Ostergren asked if he agreed that one way or the other they have to decide if the referendum is valid? Mr. Cook said he thought you could but he didn't think you have to. He said under the Commission's rule 2.28, it will consider this decision as part of the February 6th decision whether or not to issue a license. He said the rules allow the Commission to say they don't wish to answer or they refuse to.

Mr. Cook stated that in their brief they showed the bold language that was used on the referendum, but the petitioners said that didn't matter as that wasn't the whole wording. Mr. Cook presented a hand out showing the language for the Washington County ballot in which only a summary was used, without any subsequent explanation like the one that followed the summary language on the 2021 Linn County ballot.

Mr. Cook said the time to challenge this is long gone. He rhetorically asked if Mr. Weinhardt and his clients were willing to accept the decision of the Commission and opined that what Petitioners are really wanting is a court to decide on this and challenge the decision of the Commission. He said this is a corruption of the process and it is inappropriate.

For his rebuttal argument, Mr. Weinhardt said this is not a nuclear option, it's not in bad faith, and it's not a corruption of the process. He said Riverside raised a valid problem and there is an easy solution to the problem: Linn County can do another referendum with the right wording and if there is support as Cedar Rapids Development suggests, then it will pass. Mr. Weinhardt said if the Commission skips over this step there will be further legal proceedings. He said someone needs to decide if this is a correct legal application of the statute. Mr. Weinhardt said they are not

challenging what happened in Linn County in 2021, Linn County posed a question to its voters and the voters voted on that question. The point is that the question that they posed wasn't the correct question.

Commissioner Campbell said it's the same question that was asked in other counties where there was no gaming. Mr. Weinhardt said in none of the other cases was there a challenge or an absence of the license to conduct gambling. Mr. Weinhardt said this Commission cannot avoid, sidestep, or ignore its obligations.

Commissioner Burkhardt asked Mr. Weinhardt if he was aware of any circumstances in which any operator in the room may not be satisfying the requirements as it pertains to referendums. Mr. Weinhardt, said he is not aware of any other circumstances with this problem. Commissioner Burkhardt said she is asking if this Commission looks at strict compliance versus substantial compliance might that affect other operators in this room. Mr. Weinhardt said he believes the electoral requirement is a strict requirement that requires strict compliance. Commissioner Campbell asked if he's saying that if any operator raises a challenge about another operator's license it should be strict compliance. Mr. Weinhardt said it should be strict compliance when looking to issue a license but if it has gone on for years and years and nobody has complained that might be a different story. Commissioner Burkhardt asked what Mr. Weinhardt considers years and years. Mr. Weinhardt said frankly if the license is granted and the casino is built and people are moving forward and then someone raises the question then there would be a very good argument that its too late.

Chair Olsen asked why November 2024 is not too late to complain in this instance. Mr. Weinhardt said that because only when someone applies for a license is it even thought about.

Commission Deliberation: Chair Olsen said that discussion was had whether to go into closed session to deliberate on this, but in order to stay open and transparent they decided to stay in open session. Commissioner Campbell asked if they had questions for the attorneys, how that would work. Jeff Peterzalek, Deputy Attorney General, said typically they would not provide legal advice in open session.

Commissioner Ostergren stated that he believes they need to answer the question one way or another. He said he does not believe the Commission can issue a license without answering this question. He said if a party is dissatisfied they usually have 30 days to go to district court to challenge that. He said if we want to get this resolved, the fastest way to do that is to decide on the petition for declaratory order.

Commissioner Ostergren said that under IRGC rules there are a number of factors listed that are discretionary as to why they could decline to answer the declaratory order. The first factor is that the petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the commission to issue an order. He stated that no one is disputing that there will be some economic injury to Riverside. How big that injury is, is to be determined, but it's not zero.

Commissioner Ostergren said the second factor is that they don't have jurisdiction over the question presented. He said he does not agree with that at all, as the Commission has full jurisdiction over Iowa's gaming industry.

Commissioner Ostergren said the third factor is that the questions presented by the petition are also presented in a current rulemaking, contested case, or other commission or judicial proceeding, that may definitively resolve them. He said if they decide to issue a license in two weeks it will implicitly decide it, but it doesn't decide it in a mainstream way, it's binding on the Commission, the petitioners and the interveners. He said if they refuse a license that does not definitively answer the question as there are a lot of reasons they may not grant a license that has nothing to do with whether the referendum is valid. Commissioner Campbell said if the license is refused then the issue is resolved. Commissioner Ostergren said he doesn't agree with that, because someone else could come in and apply for a license the very next day.

Commissioner Ostergren said the fourth factor is that the questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter. Commissioner Ostergren believes this does not apply as the Commission has full jurisdiction.

Commissioner Ostergren said the fifth factor is the facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order. Commissioner Ostergren feels the facts in the petition are clear and straightforward.

Commissioner Ostergren said the sixth factor is the petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a Commission decision already made. Commissioner Ostergren feels that because the petitioner is not asking to litigate solely about conduct in the past, this ground does not apply to the petition.

Commissioner Ostergren said the last factor is the petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not or in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be averse to that of petitioner. Commissioner Ostergren said the intervenors claim the Commission cannot proceed with issuing a declaratory order because the Linn County Board of Supervisors and Linn County have not consented to participate and they would be substantially prejudiced by the requested declaratory order. He said this argument fails because there is potentially only one party that has not intervened here, the only interest of the county identified in the intervenors' brief is the ministerial duty to direct the county auditor to place a public measure on the ballot when presented with a valid petition, and the Commission received a letter dated December 5, 2024, from an Assistant Linn County Attorney on behalf of the board of supervisors and the county. The letter explains the board and the county are aware of the petition for declaratory order and have chosen not to intervene. The letter identifies no substantial prejudice to the county from the declaratory order and does not object to the proceeding moving forward.

Commissioner Burkhart asked if he was making the argument that they should answer the question. Commissioner Ostergren said yes and Commissioner Burkhart said she isn't sure from the discussion so far what he thinks the answer should be and Commissioner Ostergren said he hasn't gotten there yet.

Commissioner Burkhart acknowledged Commissioner Ostergren's point about economic injury but stated that would only come in to effect if the Commission grants a license. If the Commission says no, we don't lack authority, that doesn't mean necessarily that it will issue a license. Commissioner Ostergren said that's an excellent question. He said standing analysis requires a number of things: the potential injury that you would suffer is tangible, the dispute is ripe, and the potential injury is not speculative. Commissioner Andres said that is his opinion and her opinion is that Commissioner Burkhart's question is valid.

Chair Olsen said that he believes, just as he did back in November, that they have a strong basis to decline to answer. He said at this point in time he would like to decline to answer and it doesn't bring it to an end. Commissioner Ostergren said he appreciates that, but he would like to finish what he was saying before. Commissioner Ostergren said this is a judgement call, it's not a black and white answer. If challenged the court will review the refusal. The standard that the court will apply is whether the decision to refuse to answer was arbitrary. That record will have to speak for itself.

Chair Olsen said his comments are consistent, nothing has changed his stance. Commissioner Campbell said when he looks at the info provided he don't know if they have the place to answer.

Commissioner Ostergren said that no party in an actual live dispute has taken a position on what that referendum means. He disagrees that an election contest is the only way to challenge a public measure. He said they have to decide if the public measure complies with the law. He said there are arguments back and forth. He also doesn't agree that the ballot measure in Linn County shows strict compliance. He said it's very important for him to point out that the public referendum that occurred in Lyon County was before changes were made to chapter 99F by the legislature. Commissioner Burkhart asked if that was the same language that was retroactive and went back almost to the beginning of gaming. Commissioner Ostergren said yes, it applies retroactively.

Commissioner Burkhart said that's where she gets stuck because strict compliance could have other significant effects when the Commission has licensing renewals coming up. She is in the camp of having strong reasons why the Commission should strongly consider declining to answer the question in the petition.

Commissioner Burkhart said referendum one establishes the ability of the Commission to issue a license and referendum two establishes that the operator would not have to continue to do the referendums. So today we're being asked, do we have the authority to issue a license. She said as stated before the Commission has full jurisdiction over Iowa's gaming industry. She asked if answering the question in the petition would be inviting a challenge to some of these other issues and asked what that might do to the daily business of this Commission. Commissioner Ostergren said generally we as a Commission cannot avoid from time to time making really hard decisions.

Chair Olsen read the rule IAC 491-2.28 that says an agency cannot issue a declaratory order in some scenarios and may refuse to issue a declaratory order in others. He said this rule hits absolutely the fact that the Commission should not issue a declaratory order in this situation. He said for that reason he thinks the Commission must decline to answer the question. He said they can continue to talk about it, but he thinks they would be acting unfairly to both parties if they were to answer.

Commissioner Andres said she agrees and if she understands it correctly, it's not the end of the road, if a district court reviews this and tells the Commission it must answer, then so be it. Chair Olsen agreed, that is also his understanding. Chair Olsen asked Commissioner Ostergren if he had said what he needed to say. Commissioner Ostergren indicated he believes that the Commission should answer this question. He thinks the Commission has no choice but to answer, and he thinks the Commission should grant the petition and agree with Riverside that the Commission does not have authority to issue a license in Linn County. Commissioner Ostergren said he doesn't think the language in 2021 was sufficient to authorize gambling games in Linn county. He said it's unfortunate and he thinks both sides provided good arguments. He said he hopes Linn County can get this back on the ballot for September as that's going to be a lot easier than to appeal what the Commission decides or doesn't decide.

Commissioner Burkhart said she agrees that both sides were persuasive, but whether each side was persuasive is not the question. Rather, whether the Commission has licensing authority. She thinks ultimately given the Commission's options today, they need to refuse to answer the petition for a declaratory order.

Vote on Resolution of the Petition: Commissioner Campbell moved to decline to answer the petition under Iowa Code section 17A.9(1)(b)(1) and Iowa Administrative Code rule 491-2.28, and to direct staff to prepare a written decision by January 27, 2025. Commissioner Andres seconded the motion, which carried with a 4-1 vote. Commissioner Ostergren dissented.

ADJOURN: Chair Olsen adjourned the meeting at 11:53 AM.

MINUTES TAKEN BY:


CHANTELLE ARMINTROUT