

STATE OF ILLINOIS
IN THE ILLINOIS GAMING BOARD

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THE RE-ISSUANCE OF THE)	BOARD DECISION
10TH OWNER'S LICENSE:)	JANUARY 14, 2009

On December 20, 2005 the Illinois Gaming Board (the Board or IGB) revoked the Owner's License held by Emerald Casino, Inc. That decision withstood judicial challenge and in July 2008 the IGB announced that it would accept applications for what is now commonly referred to as the 10th License. On December 22, 2008 the Board, by a majority vote of 3 -- 1, determined to re-issue the 10th License to Midwest Gaming & Entertainment LLC (Midwest Gaming).

The Board is required to regulate the Illinois Riverboat gambling industry in a manner that maintains the public confidence and trust in the credibility and integrity of the gambling operations. Confidence and trust in the regulatory process is equally important. To accomplish these directives the Riverboat Gambling Act (the Act) calls for strict and broad regulation pursuant to the police powers of the State.

Within the broad regulatory power granted to the Board is the discretion to re-issue an owners license that has been revoked. To re-issue a revoked owners license, the Act mandates that the Board consider all of the factors set forth in sections 7(b) and (e) of the Act. The Act does not mandate that the Board select the applicant with the highest license bid, as doing so would render the remaining factors irrelevant. Instead, if the Board, in its discretion, selects an applicant who did not submit the highest bid for the license, it must issue a written decision explaining why that applicant was chosen. This decision will comply with that requirement, as Midwest Gaming did not submit the highest license bid.

The majority of the factors favor the Midwest Gaming proposal. We adopt our comments made at the Board's December 22, 2008 Open Meeting. We also adopt sections I and II of the analysis provided by staff.

If the highest bid offered were the only criteria to consider Trilliant Gaming would have to be awarded the license. Looking at the net present value of each proposal, Trilliant Gaming remains at the top at \$406 million. Midwest Gaming is second at \$272 million and Waukegan Gaming third at \$216 million. In our view, Trilliant does not win any other factor.

Each applicant provided detailed information regarding anticipated plans for capitalization. Each plan had components of equity, debt and host community financing. We agree with staff that Trilliant provided more committed financing than Midwest or Waukegan. However, in the current financial climate, that does not outweigh Midwest's ability to access equity and secure financing. This factor does not favor any applicant significantly over another.

Waukegan, along with much of the area surrounding it, is economically depressed. It is certainly more economically depressed than Rosemont or Des Plaines and the area surrounding those adjoining communities. Unfortunately it is the only factor which Waukegan Gaming wins. That said, we give high marks to Midwest Gaming's proposal which includes Des Plaines' commitment to share at least \$6 million annually with a minimum of ten of the most economically depressed communities in Cook County. That, combined with development plans that are addressed below, strongly favors Midwest Gaming for presenting a plan which provides for significant economic development over a large geographic area.

It is difficult to consider the proposed facilities apart from the anticipated development costs and the amount of development planned. Trilliant Gaming's proposal is limited to a casino and night club. As spectacular as they are on paper, the development ends there. Waukegan

Gaming proposes two construction phases, however, phase two, consisting of a hotel, may not begin for several years. Midwest Gaming, on the other hand, submitted plans to spend more than two times the amount of either Trilliant or Waukegan to develop its gambling operation. Put another way, Midwest Gaming's development costs are more than Trilliant's and Waukegan's combined. Midwest will spend over \$700 million in three phases that include a casino, restaurants and a parking facility for 1700 vehicles in phase one. Phase two includes a hotel with an addition to the hotel added in phase three. Although the City of Waukegan intends to utilize a portion of the gaming tax revenue it receives from the State to speed the long planned redevelopment of its lakefront that will not, in our opinion, surpass the amount that Midwest will spend in development costs or negate the likelihood of additional development in and surrounding the casino site. Midwest Gaming's facilities will be of the highest quality as reflected by its budget.

We view the highest prospective total revenue to be derived by the State factor to include more than a blinkered view of adjusted gross receipts. Indeed, this factor as well as the proposed facilities and economic development factors are intertwined. As to net gaming revenue there is no significant difference between a casino in Rosemont and a casino in Des Plaines. What is significant is threefold. First, in our view a casino in either location will produce more net revenue than a casino in Waukegan. Second, either location will produce more new net revenue than a casino in Waukegan due to their proximity to O'Hare Airport, the Rosemont convention center, the I 294 and I 90 interchange and downtown Chicago, which will draw some Illinois patrons who now travel to northwest Indiana to gamble. Third, as stated in open session, we agree that cannibalization will be minimized due to Illinois' cap on positions.

Minority ownership and proposed affirmative action plans are areas on which we are not in complete agreement. Although one member favors the Trilliant Gaming model, the majority is concerned with the regulation of the thousands of individuals who will become involved with the regulatory process through ownership. Their past and future conduct and associations will become relevant to their suitability to maintain ownership, regardless of the percentage of ownership held. As an example, in 2007 the Board ordered the economic disassociation of an individual owner of the Casino Queen based on his associations with unsavory individuals even though he held less than a 5% interest in the casino. In addition to ensuring that the owners are in fact minorities, the Board would also have to establish procedures to ensure that sources of funds are legitimate and not evidence of hidden ownership. Accordingly, we consider the Trilliant model to be inferior to the Midwest and Waukegan proposals in this regard.

The minority ownership factor includes an affirmative action component. The Waukegan proposal suffers in that its affirmative action plan, while detailed, is limited to the construction or development phase of the project. The plan does not deal with the recruitment, training and upgrading of minority persons and females following construction. To the contrary, the affirmative action plan submitted by Midwest Gaming is aggressive in goals ranging from the creation of an Oversight Committee to the day-to-day administration of affirmative action and diversity. In conclusion, this combined factor – minority ownership and affirmative action – favors Midwest Gaming.

We have considered the character, reputation, experience and financial integrity of the applicants and persons and entities associated with the application and proposed gambling operation based on information learned to date. The salience of these elements is amplified by the fact that they must be positively demonstrated to the Board's satisfaction before an applicant

can be found suitable for licensing. See section 230(c) of the Board's Adopted Rules. Character - those distinctive elements of honesty, integrity and openness that are so vital to the regulation of gambling. Reputation - the public estimation of a person, business or locale. Experience - the personal knowledge acquired from participation. And finally financial integrity, which in our view includes not only the ability to consummate the transaction but also the ability to maintain ownership and financial viability with legitimate sources of funds. Negative perceptions related to any of these elements can result in adverse publicity for Illinois and its Gaming industry.

After considering all persons, associations and locations, Midwest Gaming prevails with regard to these unique components. We point out that comments made at the December 22, 2008 Open Meeting, as well as staff's comments on certain principals, were limited to an assessment of this factor, and this factor, alone, was not determinative of the outcome. Moreover, we do not mean to call into question the suitability of everyone associated with the other two applicants. That said, we note that we are constrained from disclosing all information received from other law enforcement sources. Additionally, we have not made suitability determinations on any applicant or potential owner.

Trilliant Gaming went to extraordinary efforts to alleviate our regulatory concerns regarding a casino operation located in Rosemont. Despite those efforts, we continue to have regulatory concerns and the Village of Rosemont's reputation hurt Trilliant Gaming with regard to this factor. No principal of Trilliant Gaming gave us any reason to question his or its suitability at this juncture.

We have not hidden our concern regarding William Cellini's longstanding association with the Waukegan casino project. Richard Stein and Allan Ludwig invited Mr. Cellini to participate in a Waukegan casino venture in the early 1990s. Separately, Mr. Stein has had a

longstanding business relationship with Mr. Cellini. Chairman Jaffe questioned Edward Duffy about Mr. Cellini's "interests" during Waukegan Gaming's public presentation. Mr. Duffy stated that Mr. Cellini's interest terminated about 18 months ago.

Actually, Mr. Cellini held a "participation option" and a "management option" in any Waukegan casino owned by the venture. In 1994 Mr. Cellini sold the management option to Argosy Gaming, a gaming company over which he exercised significant control and which, at the time, operated two casinos in Illinois. We note also that the IGB fined Argosy Gaming in 2001 for its failure to conduct proper due diligence on NII-JII Entertainment, a company that intended to operate a casino in southern Wisconsin. Mr. Cellini was in control of Argosy Gaming at the time.

Mr. Cellini exercised the participation option in 2004, contemporaneous with Waukegan's entry into the Emerald Casino auction process. Mr. Cellini included other family members in his ownership stake at that time. The management option was returned to the Cellini group in 2006. In July 2007 the Cellini group sold the management option and their ownership in the Ludwig-Stein-Cellini/Waukegan Gaming venture to Michael Pizzuto. The Cellini group, however, continues to hold a financial interest in a casino awarded to the Waukegan applicant. Indeed, if Waukegan is ever selected, Michael Pizzuto, a longtime associate of Mr. Cellini who purchased the collective Cellini interests for \$32,450, must pay the Cellini interests the balance of their prior costs in the Waukegan project, an amount in excess of \$600,000. The fact that the Cellini – Pizzuto agreement provides that the payment of prior costs may be disallowed does not abate our concern.

We again stress that the concerns touched on above regarding certain ownership interests in Waukegan Gaming relate to the character, reputation, experience and financial integrity factor. In our view they hurt Waukegan Gaming on this important factor. The other Waukegan principals, both individual and financial, were not involved with Mr. Cellini and we have no derogatory information regarding their suitability.

In conclusion, the factors that we must consider favor Midwest Gaming's proposal and they outweigh the up front license bid offered by Trilliant Gaming. We will not simply take the money and ignore the many other factors deemed important by the legislature. We have and will continue to focus on our responsibility to comply with the intent of the Act and to maintain the integrity of gaming in Illinois.

ILLINOIS GAMING BOARD

By:


Aaron Jaffe Chairman