

# ILLINOIS GAMING BOARD



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## MEMORANDUM

TO: Members of the Board

FROM: IGB Senior Staff

DATE: December 22, 2008

SUBJECT: Re-issuance of 10<sup>th</sup> License – Staff Analysis and Recommendation

## INTRODUCTION

In July 1997 the Silver Eagle, located on the Mississippi River in Jo Davies County, Illinois, closed. That license, now known as the 10<sup>th</sup> License, has not generated revenue for the State of Illinois since that date and, to the contrary, was mired in litigation until the end of 2007. In 2008 the Illinois Gaming Board (the Board or IGB) initiated a process to re-issue the 10<sup>th</sup> License.

The Board contracted with Credit Suisse to assist in developing the re-issuance process and in analyzing applications for the 10<sup>th</sup> License. An application for the 10<sup>th</sup> License was made available on July 18, 2008 and was due on October 14, 2008. The Board received 7 applications for the 10<sup>th</sup> License. After an intense, preliminary review and visits to each site, the Board announced 3 Finalists on November 14, 2008.

As referenced in the IGB's December 20, 2005 Final Board Order, in which the Owner's License held by Emerald Casino, Inc. (the 10<sup>th</sup> License) was revoked, there have been many individual Board members involved with this license since the Silver Eagle closed in 1997. Interestingly, since the 10<sup>th</sup> License was revoked in 2005, Board membership, and for the most part the Board's senior staff, remained consistent. This gives the Board and staff a unique perspective.

The overall purpose of the Illinois Riverboat Gambling Act (the Act) was succinctly set forth by the legislature. “This Act is intended to benefit the people of the State of Illinois by assisting economic development and promoting Illinois tourism and by increasing the amount of revenues available to the State to assist and support education.” 230 ILCS 10/2(a). The legislature recognized what was at stake in the legalization of gambling and statutorily announced that concern as follows:

While authorization of riverboat gambling will enhance investment, development and tourism in Illinois, it is recognized that it will do so successfully only if public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process is maintained. Therefore, regulatory provision of this Act are designed to strictly regulate the facilities, persons, association and practices related to gambling operations pursuant to the police powers of the State, including comprehensive law enforcement supervision. (230 ILCS 10/2(b)).

In light of the history associated with the 10<sup>th</sup> License it bears emphasizing that the process of re-issuing the 10<sup>th</sup> License is as much a part of the “regulatory process” as any other regulatory function. The Board and staff were keenly aware of the scrutiny that would accompany the process, as well as the result. Against that history and anticipated scrutiny, we unified in our commitment to conduct a legitimate process, uninfluenced by outside comment or opinion. We remained objective and unbiased in our review of each application. No applicant was prejudged. Rather, each application was reviewed for completeness, content and certainty, against the intent of the Act and the factors on which an owner’s license is to be issued. As in all cases, facts known from prior investigations and proceedings were considered and new investigations were conducted.

## **LEGISLATIVE INTENT**

The legislature made clear the intent behind the legalization of gambling in Illinois. The legislature advised that the legalization of gambling was intended to benefit the people of the State of Illinois. To do so, legalized casino operations must assist in economic development, promote Illinois tourism and increase “the amount of revenues available to the State to assist and support education.” (230 ILCS 10/2(a)). The legislature reiterated its overall intent as follows: “In determining the water upon which riverboats will operate, the Board shall consider the economic benefit which riverboat gambling confers on the State, and shall seek to assure that all regions of the State share in the economic benefits of riverboat gambling.” 230 ILCS 10/7(e).

## ANALYSIS

### I.

The proposals submitted by each of the applicants will, to one degree or another, assist in economic development, promote Illinois tourism and increase the amount of revenues available to the State to assist and support education. From ownership and minority participation to financing certainty and revenue generation, each proposal has particular merits as well as flaws. No singular component in any of the applications was enough to definitively conclude that a particular applicant should be selected. The comments that follow are summary in nature. The Board has reviewed all supporting documentation.

Trilliant's bid to pay \$435 million for the 10<sup>th</sup> License is \$210 million more than the next highest proposal. Midwest proposed paying \$2.5 million to the State within 10 days of selection as the winning applicant. Trilliant proposed paying \$2.5 million to the State within 20 business days of selection as the winning applicant. Waukegan proposed paying \$2.5 million to the State within 45 days of selection as the winning applicant. Trilliant and Waukegan proposed a payment of \$50 million within 60 days of being found suitable. Trilliant made that offer unconditional. Waukegan's offer to pay \$50 million is subject to financing. Midwest offered to pay \$50 million within 60 days of being found suitable conditioned on there being no legal challenge to Midwest's selection as the winning applicant. Midwest's \$50 million payment is not guaranteed by the equity investors.

Each applicant submitted a Market Analysis that made the case for a casino in its proposed location. The concept of cannibalization, easy to manipulate and highly subjective, was given significant attention. Applicants' projections were both accepted and challenged during the analysis. An exact answer, from estimated projections, is not possible.

A casino in Rosemont or Des Plaines will likely have an immediate cannibalization effect on Elgin and Aurora, but that should not be sustained over time. In sum, a Rosemont or Des Plaines casino will draw patrons from existing casinos in Illinois, as well as Indiana and even Wisconsin, for a certain period of time. The limit on the number of gaming positions available for patron play at a Des Plaines or Rosemont casino will cause those patrons who want to play, but cannot access a position to return or relocate to a casino where they can play. Supply and demand in a capped market should minimize long term cannibalization.

Revenue projections to the State over time were analyzed and tested in detail, from multiple perspectives. Excluding the difference in the up front payment to the State, a casino in Rosemont or Des Plaines will likely bring substantially the same

long term revenue to the State. Both should bring more revenue to the State than the Waukegan Gaming proposal.

Each applicant reallocates local gaming tax revenue from the local communities to the State. While the Trilliant and Waukegan proposals redirect local gaming tax proceeds through a municipal bond offering in order to increase the up front License Fee to the State, Midwest redirects local gaming tax to the State over a 30 year period in the amount of \$10 million per year. Midwest stated that it is also prepared to increase the up front payment to the State through a municipal bond offering in lieu of the 30 year future payments. On a comparable basis, the Midwest plan reallocates more local tax revenue than both the Trilliant and Waukegan plans over the first 30 years. Rosemont is the only host community that agreed to give its share of the local gaming tax revenue to the gaming operator/developer in perpetuity. Rosemont is not expected to receive any local gaming tax revenue so long as the WCMC revenue sharing agreement is not terminated after year 25.

The Act requires minority and female ownership of 16 and 4 percent respectively. The concept of mandated ownership, enacted in 1999 as part of the legislation allowing Emerald Casino to move from Jo Davies County, had negative economic consequences to several minority and female investors in Emerald Casino. We do not know how broad a base the legislature desired for inclusion. Here, each applicant submitted a proposal that will ultimately meet or exceed the minority ownership requirement.

Staff notes that the Trilliant model for minority ownership is novel. It will introduce thousands of people into ownership. Although similar to ownership in a public company, the individual owners investing through this vehicle will have to be monitored for eligibility. Those investing 5% or more will become Key Persons and have to submit to a due diligence investigation. The degree of resources needed to monitor or perform investigations on the thousands of individuals who invest less than 5% is unknown and will be determined on an ongoing basis.

The Board must also consider the applicants' proposed facilities. Development costs and timelines were evaluated. Each applicant plans to construct and open a casino within 12 to 17 months of being found suitable. Waukegan Gaming intends to spend less to develop and construct a casino in Waukegan than either Trilliant Gaming or Midwest Gaming intends to spend in Rosemont or Des Plaines respectively. The salient factor associated with this issue is not staff's aesthetic preference but, rather, the financial certainty that the casino will be built.

The financial climate in which the applicants have had to compete is dire. Between July 1, 2008 and December 8, 2008, Gaming operator stock price equity returns – based on a composite of 8 gaming operators – fell approximately 72.5%. From October 14, 2008, when the proposals were first due until December 8, 2008,

Gaming operator stock price equity returns fell approximately 39%. The financial strength and certainty of each applicant's proposal was, accordingly, tested even more intensely against the likelihood that it can pay the up front money when due and actually maintain the financial components of its proposal through construction.

Letters from financial institutions indicating varying degrees of confidence or providing certain levels of commitment are difficult to rely on in the current financial market. Despite that reality, staff notes that, amongst the 3 Finalists, Trilliant Gaming provided commitments for more than 50% of its equity and debt financing. Waukegan Gaming provided commitments from two of its equity sponsors for approximately 22% of its financing. Although Midwest identified source of funds and the ability to access equity and secure financing, it did not provide commitments from any of its financial sponsors. Trilliant's proposal provides the most financial certainty in terms of committed financing.

Against the backdrop of an uncertain financial market the Board must consider each Applicant's likely ability to assist economic development. Each Applicant submitted information on its principals' development experience and on the effect its particular plan will have on the economic development of the area. Each plan will create jobs. Each will drive tourism in ways unique to its location. The City of Waukegan intends to use a portion of its local share of gaming taxes to speed the re-development of its lakefront. Midwest will develop more of the immediate area surrounding its site.

In 2003 the Act was amended to provide for the re-issuance of a revoked owner's license. The location of 6 of the initial 10 owners licenses were statutorily designated to a specific community, county or region. The 4 remaining licenses were to be issued at the Board's discretion, based on delineated factors. In addition, the Board had discretion to consider and give favorable consideration to economically depressed areas of the State and to plans which provide for significant economic development over a large geographic area. The 2003 amendments made it mandatory for the Board to consider these 2 questions when re-issuing the 10<sup>th</sup> License.

Each host community will share a portion of the gaming tax revenues it receives with other communities. Des Plaines intends to distribute 40% of net tax revenue, estimated at \$5.5 million in year 1, to at least 10, but not more than 25, of the neediest communities in Cook County. Waukegan intends to distribute 20% of net tax revenue, estimated at \$4.6 million in year 1, to 8 of the neediest communities in Lake County and has specifically targeted the redevelopment of its lakefront. Rosemont intends to distribute 80% of net tax revenue, estimated at \$17 million in year 1, to 70 communities throughout Cook County. While Rosemont has a larger dollar impact on non-host communities, Des Plaines and Waukegan will have a greater dollar impact per community.

Character, reputation and experience are vital issues in gaming. Initial and intense investigations have been conducted and preliminary assessments have been made on these factors. The principals of Trilliant Gaming and Midwest Gaming, and certain principals of Waukegan Gaming, have significant gaming experience. Staff notes that Trilliant has identified its management team and actually introduced them during its presentation to the Board. No other applicant did so. No derogatory information has been discovered thus far that would call into question the character or reputation of the Trilliant Gaming team or the principals of Midwest Gaming. However, certain principals of Waukegan Gaming have questionable associations and business dealings that give staff considerable pause. Of course, the winning applicant will undergo an exhaustive due diligence investigation, including source of funds, prior to being found suitable and actually being issued an owners license.

## II.

Staff is acutely aware of regulatory concerns about locating a casino in Rosemont. Many have been critical of Rosemont as a site for a casino operation. Because this process has not been prejudged, staff offers the following comments on those concerns so that the Board can make a reasoned determination based on current and unbiased information.

Following the 2003 – 2004 attempt to sell Emerald Casino pursuant to a Bankruptcy Court sanctioned process, Attorney General Lisa Madigan criticized the selection of Isle of Capri as the winning purchaser. Attorney General Madigan argued that Rosemont had an improper advantage over other possible sites because 1) it had a \$45 million claim in bankruptcy based on an unauthorized contract with Emerald Casino to build a garage, 2) selection of Rosemont as a host community would moot Rosemont's litigation associated with the revocation proceedings and 3) Isle of Capri claimed that it would be able to construct and open a casino sooner than anyone else due primarily to the existence of infrastructure that Rosemont built without authority.

Other than the fact that the Rosemont site is adjacent to an existing parking structure, which Midwest Gaming and Waukegan Gaming would have to build, the current situation is markedly different than when Isle of Capri won the right to build in Rosemont in 2004. Here, Rosemont is not waiving its bankruptcy claim in order for Trilliant to obtain an advantage. Trilliant is purchasing the real estate and the adjacent parking garage. Rosemont's bankruptcy claim will be reduced correspondingly.

The Revocation Proceedings and the associated "Rosemont litigation" have been concluded. This concern is moot. Finally, Trilliant Gaming may take longer to construct a casino due to the need to remove the infrastructure that Emerald Casino

built in 1999. To the extent that it may have given Isle of Capri an advantage in 2004, that advantage no longer exists.

Unlike Emerald Casino, which became entangled with the late Mayor Donald Stephens as a result of a confluence of legislation and secret dealings amongst its principals and others concerning ownership, Trilliant Gaming has publicly testified that it sought out Rosemont after consulting with other potential host communities. Trilliant was not thrust on Rosemont and Rosemont was not thrust upon Trilliant. Moreover, the Trilliant Gaming ownership structure is vastly different than that of Emerald Casino. First and foremost, Donald and Kevin Flynn and the late Mayor Stephens are not involved. Second, the structure of the Trilliant Gaming statutory ownership should not lend itself to the nefarious relationships and disastrous consequences associated with Emerald Casino's sham attempt to fulfill the minority ownership requirement.

The Attorney General correctly pointed out that a host community can assert influence by insisting that the licensee use certain contractors or service providers. The community provides police and fire protection, traffic control, water supply and waste and sewage removal. The community also holds the power to tax.

Trilliant Gaming and Rosemont have attempted to address each of these concerns. Trilliant Gaming will purchase the land on and surrounding the casino as well as the parking garage. This relationship eliminates the previous Lease And Development Agreement that raised concerns about Rosemont's ability to control the casino operation because it still owned the land and controlled the parking garage. Trilliant Gaming will also manage all aspects of construction and even act as the general contractor.

Trilliant Gaming and Rosemont have also entered into a contract that defines their relationship. All dealings must be commercially reasonable and at arm's-length. The agreement puts parameters on municipal services, utility services, police and fire protection and traffic control. The agreement contains a non-interference provision that specifically prevents Rosemont from taking or attempting to take any action to influence or interfere with the casino operation or its affiliates. Noteworthy, unlike any other host community in Illinois, Rosemont will prohibit any contractor or vendor doing business with Rosemont from doing business with the casino operation. Conversely, any contractor or vendor doing business with the casino operation will be prohibited from doing business with the Village of Rosemont. The Mayor of Rosemont and all Rosemont Village Trustees will be prohibited from gambling at the Rosemont casino operation and no Rosemont employee or elected official will have any affiliation or interest in the casino operation. If Trilliant Gaming is selected, staff recommends that these provisions be made a condition of licensure.

The Attorney General and others also questioned why the IGB would place the 10th License in a community that will fight the Board in its efforts to regulate the licensee. Given the amount of litigation initiated by Rosemont during the Revocation Proceedings it is a fair question, but one that should not dictate a result if the applications and the factors set forth in the Act are legitimately evaluated. Moreover, although not binding on unrelated, future litigation, Rosemont has executed a Release of all Claims against the IGB relative to Trilliant's bid for the 10<sup>th</sup> License and Rosemont as the host community.

As has been opined, bad acts should have consequences. Emerald Casino paid the ultimate price for its conduct, which included allowing persons with organized crime ties and persons connected to Rosemont into ownership by hidden or surreptitious means. In staff's judgment, the law does not allow us to prejudge Trilliant Gaming in the manner suggested and we will not do so. If Trilliant is awarded the 10<sup>th</sup> License and fails to diligently protect the integrity of a casino gaming operation in Rosemont it will suffer the same consequence as Emerald – the revocation of that license.

Whether or not the Trilliant proposal is selected, staff feels compelled to make one further point. The City of Des Plaines sits adjacent to the Village of Rosemont. To the extent that there are improper attempts to exert control over a casino in Rosemont by anyone, let alone organized crime, it is naive to think that there is an invisible wall running down the middle of Devon Avenue that would prevent the same improper attempts from occurring at a casino operation in Des Plaines.

The Board is statutorily required to consider the economic benefit of a proposal to the State. Second, the IGB was criticized by some in 2002 for not taking a substantial payment in settlement of the Revocation Proceedings. Instead, with the assistance of the Attorney General, Emerald's owner's license was ultimately revoked. To suggest that the IGB is now making a decision to simply grab the money is misplaced.

One additional point should be made regarding political contributions. Depending on the donor and timing with other events, political donations can give rise to reasonable inferences of nefarious conduct. Such inferences were evident in the Emerald Casino Revocation Proceedings. Unlike that situation, staff has not discerned donations from any Trilliant Gaming source to any Rosemont politician or related political fund. No contributions from Midwest Gaming sources were discovered to the Mayor of Des Plaines. Waukegan Gaming sources have made recent contributions to the Mayor of Waukegan. If Waukegan Gaming is selected as the winning applicant, this circumstance must be further investigated.

After considering all of the foregoing, the Board should take into account that staff has concerns related to Rosemont as a host community. Staff notes that

certain businesses related to the Emerald Casino proceedings continue to make contributions to The Bradley A. Stephens Committeeman Fund and the Regular Republican League of Leyden Township. Additionally, staff has concerns about potential negative influences on Mayor Stephens from persons identified in the Emerald proceedings who either associate with elements of organized crime or otherwise acted improperly.

### III.

The Trilliant Gaming proposal provides the highest bid and, further, offers more financial certainty than the other proposals in terms of commitments from financial sponsors. Midwest and Trilliant should provide significantly the same amount of gaming tax revenue to the State over time. Both proposals are financially superior to the Waukegan proposal.

Excluding Trilliant's up front bid amount, the Trilliant and Midwest proposals are similar. The Board must weigh the financial commitments obtained by Trilliant against the certainty that Midwest will, if selected, meet the financial obligations set out in its proposal. Staff believes that Midwest can meet those obligations if selected.

The Board must consider other factors, summarized above, in addition to the financial strength and revenue generation of a proposal. The weight to be given those factors is purely within the discretion of the Board. If the Board determines that other factors outweigh Trilliant's up front bid, it must issue a written decision explaining why another applicant was selected and identify the factors that favored the winning bidder. Staff can support the selection of Midwest Gaming as the winning applicant.

Section 7.3 of the Act provides for the State to operate a gambling operation if the Board determines that a State owned and operated casino would produce the highest prospective total revenue to the State. Staff recommends against a finding that the highest prospective total revenue to the State would be derived from State operation of a casino in lieu of re-issuing the 10<sup>th</sup> License.

A casino operation located at the proposed sites in Rosemont, Des Plaines or Waukegan can be regulated just as efficiently and diligently as other casino operations in Illinois. If there is any inappropriate influence on the operator, from any source, let alone the host community, it will be dealt with, up to and including revocation of the license. That is the expectation of the law and the obligation of the Board.