**MINUTES**

**WV RACING COMMISSION**

**Tuesday, October 17, 2017**

**WV Lottery Conference Room**

The WV Racing Commission met on October 17, 2017 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Ken Lowe, Jr. Commissioner Anthony Figaretti was available via conference call. Counsel was represented by Kelli Talbott.

**Approval of the August 15th, August 22nd, September 1st, September 13th minutes**

The Commissioners and legal counsel received the minutes from the August 15th, August 22nd, September 1st and September 13th meetings prior to this meeting. Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

**Executive Director’s Report**

**Joe Moore**

Joe Moore stated the Commission requested at their August 22nd meeting for him to write a letter to Wheeling Island addressing some facility issues and maintenance of equipment. He did so and a response has been received and has been provided to the Commissioners for their review. Some of the highlights in that response were repairs for the second floor escalator for $36,000, a new HVAC unit for the Racing side of the facility for $150,000, a new tractor for $50,000, a refurbished tote board for $13,000, a kennel refurbish project for $70,000, and new HVAC units for the paddock and kennel compound for $65,000.

The 31st running of the WV Breeders Classics was this past weekend. Charitable Annuity, owned by Mark Russell and trained by James W. Casey, won for the second time. Wagering for the 9 race event set a record for Breeders Classics day of almost $2.2 million, eclipsing the previous record by nearly $500,000.

The Commissioners have been provided, for their review, the NTRA Accreditation progress. Both tracks have made substantial progress in this manner and he anticipates a full review, with recommendations, the completed work and outstanding tasks in the first quarter of calendar year 2018.

Lastly, October 27th will be Larry Carraher’s final day with the Racing Commission. He has submitted his letter of retirement.

**Auditor’s Report**

**Becky Carnefix**

Becky Carnefix stated for the Supplemental Purse Awards, 2QFY17 claims, covering race dates October 2016-December 2016, are being finalized and will be sent to the Auditor’s office for payment within the next week.

A mailing was sent out early October to all participants in the Thoroughbred Development Fund at Mountaineer and Charles Town. The mailing covered race results January 2017-September 2017 for verification of race information in preparation for the February 15th distribution.

**Accountant’s Report**

**Joe Moore**

Joe Moore stated live handle is down 10.25% through the first quarter of FY17. Total in-state handle is down 7.5% YTD compared to last year. He did a summary on the average daily handle for a 3-year period through the 1st quarter FY18. The average daily handle on our races, both live and export combined, at Charles Town is up 26%, Mountaineer is up 6.24%, Mardi Gras is up 1.32%, and Wheeling Island is down 6.92% through the first quarter. This is average daily handle, total handle based upon number of live race days. If you look at these numbers solely on live racing, which is the wagering being conducted at our track on our races, Charles Town is up 2.75%, Mountaineer Park is relatively flat, with the dog tracks being down roughly 13% each. Commissioner Figaretti asked if heard Mr. Moore correctly and that Wheeling Island is down 7%? Mr. Moore replied they are down 7% when you combine live and export together and divide it by the number of race days they’ve conducted. That would represent the total amount wagered on our races and that is compared to the first quarter of last year.

The annual audit has been filed. It was submitted to FARS on October 4th. There is one finding and is a similar finding we have had in prior years dealing with our financial reporting process. We are, at the end of this month, taking measures to move several of the accounting functions within our office to better have a review process of those items. There is also one prior year reclass and it was related to how we were showing the transfers to the Mountaineer Park Purse Fund and the Greyhound Breeding Development Fund on the face of our financials.

Mr. Figaretti asked Mr. Moore if Wheeling Island’s numbers being down would be because they combined all of the races they used to have on Friday’s and Saturday’s into one day? Mr. Moore replied it could. By reducing the number of races you could effectively reduce the amount wagered on a given day. The flip side would say if I was going to spend a set amount of money on wagering on a race day I would spend it regardless of how many races there were.

**Legal Update**

Kelli Talbott stated there are 2 cases set for Hearing on October 31st in Charles Town. One of them is a positive for the metabolite of cocaine. The other one is a naproxen related issue. There also is a case pending for a drug positive at Charles Town. The permit holder is seeking legal counsel to represent him so we have accommodated his need to do that.

With regard to the Thoroughbred Racing Rules, the amendments were filed with the Legislative Rulemaking Review Committee and we are waiting for the Rules to be put on an agenda for that Committee. The Legislature is having Interims now, but the Rules aren’t on the October agenda so we’re looking forward to possibly being on the November agenda when Interims are held.

**Hearing Examiner’s Recommended Decision – Jose Nunez**

Kelli Talbott stated this case involved a trainer at Charles Town who had 2 different positives in 2 different horses for separate occasions, separate races, separate race dates. The drug in question is a stimulant and is a Class 1 drug, which means it is essentially a drug that should never be found in a racehorse. It’s a drug that has a high probability of affecting the performance of the horse. Class 1 drug positives carry significant penalties under the penalty guidelines that we have in our Rule, which are the ARCI penalty guidelines. In this case, the Stewards penalized Mr. Nunez for each of those positives according to the penalty guidelines. The total penalty combined for both offenses was 4 years and 360 days suspension, and a $35,000 total fine. The Hearing Examiner, after hearing all of the evidence which was quite extensive, has recommended the penalty imposed by the Stewards be upheld against Mr. Nunez. In addition, under the Commission’s Statute that the Legislature passed, if a permit holder does not substantially prevail in front of the Commission, which Mr. Nunez did not in this case, we requested that the cost of the Hearing be assessed against him and the Hearing Examiner recommended that be done here. Information was gathered for the costs that were incurred here and we subtracted out the cost that was paid for the filing fee, which in this case was $100, and the total was $6,491.57, and that included the cost for the Hearing Examiner, the cost for Ms. Talbott’s travel to and from Charles Town for the Hearing, the cost for the Court Reporter and the cost for the Hearing room that was rented. So, what’s in front of the Commission today is the recommended decision to not only uphold the penalty against Mr. Nunez but also to assess the costs as she just outlined.

Mr. Figaretti asked what does this drug actually do? Ms. Talbott replied it’s a stimulant and it basically peps up a horse and gives it more energy. Mr. Lowe stated it’s important to note as to why both horses were tested and it was because both were winners. Ms. Talbott stated that is correct. Mr. Lowe added one thing that’s probably not been done before, and maybe it’s not logical and maybe it is, it would be interesting to go back and look and see if somebody bet a bunch of money on this horse. Ms. Talbott replied that one of the factors that the Stewards are required to look at in the mitigating circumstances in our Rule is whether or not there was any suspicious betting pattern on a race. In this case she doesn’t know specifically what steps the Stewards did, but she doesn’t believe they determined there was any suspicious betting pattern on these races. Mr. Figaretti asked what kinds of odds did these horses have, were they longshots, a favorite? Ms. Talbott replied she does not know the answer to that question.

Chairman Rossi stated the Hearing Examiner has recommended to uphold the Board of Stewards Ruling which is a suspension for a total of 4 years and 360 days and fine him $35,000 plus the recovery of costs of $6,491.57. Motion was made by Mr. Lowe to accept the Hearing Examiner’s recommended decision, seconded by Mr. Figaretti. Motion passed.

**Felony Applicant request for Occupational Permit – Alejandro Reyes**

Joe Moore stated Mr. Reyes is seeking an owner/trainer permit at Mountaineer. Mr. Reyes has a prior felony conviction related to possession of stolen property and possession of firearm during the felony. Due to those felony charges, the Stewards and Judges are not able to issue permits themselves, the applicants have to appear before the Commission and the Commission has to grant the approval of those. Mr. Reyes is licensed, and in good standing, in other jurisdictions. Based on that and several meetings and interviews with the Stewards at Mountaineer, the Stewards at Mountaineer recommend the Racing Commission grant the permit request.

Motion was made by Mr. Lowe to approve the request, seconded by Mr. Figaretti. Motion passed. Chairman Rossi abstained from voting on this issue.

**Felony Applicant request for Occupational Permit – Joseph Marsello**

Joe Moore stated since the information was put together and sent to the Commissioners for their review, Mr. Marsello has submitted a request to withdraw his application. Motion was made by Mr. Lowe to withdraw his application, seconded by Mr. Figaretti. Motion passed.

**WI requests reimbursement of blanket & trophy for WVGOBA Juvenile, approx. $250**

Joe Moore stated the Commission approved this request last year and it’s a very similar request. The money would come out of the Greyhound Breeding Development Fund bank account as promotional activities and be used for the purchase of a trophy and blanket for the Juvenile Stakes. The blanket cost was approximately $145 and the trophy was approximately $100. Motion was made by Mr. Lowe to approve, seconded by Mr. Figaretti. Motion passed.

**Mardi Gras request to add JS Kennels LLC**

Joe Moore stated Mardi Gras has recently lost a kennel this past Saturday. JS Kennels LLC was going to come in next year but has stepped up and are willing to come in early and run the remainder of this year. This request is to approve their 2017 kennel license.

Mike Staats stated the kennel is owned by Monte Jacobs and he was previously licensed in the state of WV to race greyhounds at Wheeling Island and Mardi Gras. He was one of the kennels to be approved for 2018. If they get the approval for this kennel today, they will be back up to 12 kennels.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

**Mardi Gras 2018 Kennel Contracts**

Joe Moore stated the Commissioners have a copy of the actual contract, as well as the signed, final page of each of the kennels that will be located at Mardi Gras for 2018. Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

**Charles Town Capital Improvement Request – Longshots Reach-In Cooler, $2,478.00**

**Charles Town Capital Improvement Request – Roof Repairs – Barns 13, 14, 15 & 16, $243,241.00**

Becky Carnefix stated the first request is for a Reach-In Cooler in the Longshots area due to the current cooler no longer maintaining the proper cooling temperature and is for the amount of $2,478.

The second request is for roof repairs to Barns 13, 14, 15 and 16. This is to replace all of the damaged trusses and outer steel shell of these barns that were damaged during a severe storm in July. The cost of the request is $243,241.

She has reviewed the information submitted for both of the requests and recommends both for approval.

Motion was made by Mr. Lowe for approval of the request for the Reach-In Cooler, seconded by Mr. Figaretti. Motion passed.

Mr. Lowe stated he would think there would be insurance to cover a repair of this type. Mr. Moore stated he asked that question and the response was that the amount of damage is below the deductible on this insurance policy. The deductible is somewhere between $500,000-$1 million on the policy. Erich Zimny stated the deductible is $1 million and it’s per incident, not a cumulative deductible over the course of a year. Mr. Lowe stated as a business person he knows the higher deductible he has, the lower the premium. That’s a business decision he, or someone else, would make. So, that was a business decision that was made to save money so why would the Commission necessarily want to fund something based upon that decision. Mr. Figaretti stated he has to agree with Mr. Lowe on that. Mr. Lowe stated to add to that Barn 6 at Charles Town suffered from storm water management deficiencies (flooding) twice and both times it got to the point the trainers in that barn were instructed to move and another barn was found for them. It is his understanding that there are over 300 empty stalls right now at Charles Town and he’s believing they don’t have roof damage so why couldn’t these horses be removed from where they are to go to a barn that is already accessible to be utilized? Furthermore, it’s his understanding that when Barn 6 trainers were told to go to another barn, those trainers, mostly at their own expense, prepared the new stalls. So, if all of that was done in Barn 6 with a multiple number of trainers, why couldn’t that also be done if it needed to be at another barn and we could actually save this money to be used perhaps for a better time?

Erich Zimny replied he doesn’t believe in Barn 6 it was multiple trainers, he believes it was 2, but it was essentially one outfit. It was a little different than the number of people here. A lot of the damage in Barn 6 was a result of care by the individuals that were in Barn 6. You’re talking about relocating a lot of trainers and would be a massive undertaking and he doesn’t even know if that would be done. As far as the insurance policy, he’s not sure if it’s procured at the property level or procured at the corporate level. He can find more information on the policy if the Commission would like for him to. Chairman Rossi asked Mr. Zimny to give the Commission the information out of that policy about the limits, etc. Mr. Zimny asked if there was anything specific they would like to know outside of the deductible and the limits? Chairman Rossi stated that’s all he would like to see. Mr. Lowe stated the Commission needs to feel comfortable in doing this and from a business sense needs more information. He added he’d like for Mr. Zimny to take the time in figuring out what’s involved in moving those folks to empty stalls that already exist so we don’t have to spend this amount of money. Can we figure out a way to compromise that works best for everybody? Mr. Zimny stated at the end of the day they’re also going to render 3 barns not really habitable long-term. If the Commission would like for them to leave 3 or 4 barns non-functionable, he doesn’t think that’s a good solution either. He can look into it but he doesn’t really see a way, practically speaking, that it could be done to relocate all those people out of those barns. It would be a nightmare for them, even if it could be done. He added the approval process is per the Commission and he really hates to see these folks continue to go without a permanent solution on their barns or where their horses are but if that’s what the Commission is asking, we can do that. Mr. Lowe stated they are currently located in a barn that doesn’t have any problems, right? Mr. Zimny replied no, they are still in their barns with a temporary fix on there that would only be applied in an emergency situation. The company that put on the temporary fix wouldn’t even guarantee their efficacy. Joe Moore stated in addition to what Mr. Zimny has said, there are temporary fixes to these roofs, it’s not the entire barn that was affected by the roof, but it is his understanding that the barns are also affected to the tune of there’s no power and while this wasn’t as big of an issue a few months ago, now it’s dark when they go in in the mornings and it’s dark at 6:30-7 in the evenings in these barns with no electricity.

Chairman Rossi stated he’s inclined to approve the request provided they fix the barns because he doesn’t want the horses there without the lights and a roof but he’d still like to look at their policy so they can look at this going forward. Mr. Lowe asked Mr. Zimny if they approve this now, he will get the Commission a copy of their policy? Mr. Zimny replied whatever they want to see he can provide for them.

Motion was made by Mr. Lowe to approve the request so they fix the barns but the Commission needs to do further research on follow-up on this matter, seconded by Mr. Figaretti. Motion passed.

**Public Comments**

Mr. Lowe stated everywhere he goes to race in other states, he is finding that consistently the horsemen are offered a discount on the food and beverage. His experience is it’s anywhere from 10-20%. He’s merely suggesting that tracks that do not that, consider doing so.

**Racing Industry Committee – Org Meeting**

Joe Moore stated for several months the Commission has asked for this Committee to be put together, similar to what was done a couple of years ago. He has contacted several individuals and has gotten commitments from industry representatives. A Racing Industry Committee has been formed that consists of 3 subcommittees. The first subcommittee is Revenue Enhancement and Statutory Changes. The participants in that subcommittee were listed. The second subcommittee is a Marketing Committee. Its participants were listed. The third subcommittee is a Greyhound Committee, solely focused on greyhound issues. Its participants were listed.

Mr. Moore has spoken with all of the individuals and has sent out contact information to each of them with their subcommittee representatives on there with phone numbers and email addresses. What he would anticipate happening at this point is each of the subcommittees would start to communicate with one another and have a scheduled public meeting. It’s important to note that all of these meetings are public. They have to be noticed with the Secretary of State’s office 5 business days before the meeting is to take place and he will be responsible for making those notices so as the subcommittees agree on a meeting date, they need to make sure and keep him in the loop so the meetings can be properly noticed with the Secretary of State’s office. He will also need an agenda for each of the meetings that has to be posted 3 days ahead of the meeting. Meetings can be telephonic or you can agree to meet at a neutral location. That is strictly up to the members of that committee. While the Commission has put forth the effort to put this together, this is really the industry’s project. He sent out the minutes and agendas from the last time one of these projects was conducted for the members to review in coming up with some thoughts and ideas of how to proceed going forward. He forwarded the report from a few years ago. He would urge everyone to take ownership of these subcommittees and really put forth an effort in coming up with how we want or need the racing industry to look moving forward. It’s the middle of October now and Session is going to begin the first of the year so it’s a fairly short time-frame. If the subcommittees could have a product ready to discuss with their representatives first of the year or February it would be a benefit to the industry. Mr. Lowe stated he read through the reports and was very impressed or pleased. He’d like to suggest giving the subcommittees a date to have the meetings done by and make that known right now. Mr. Moore stated he would anticipate you would want to give these subcommittees at least 2 maybe 3 meetings to get ideas generated and enhanced. It’s the middle of October and that could be done by the end of December and presented back to the Commission and in that period of time we will have to figure out whether we’re going to formally put together another report as we did before or whether it’s something that each of our organizations want to publish and post to their website, or what the publication is of these efforts. Mr. Lowe stated hearing Mr. Moore say it may take 3 meetings, he suggests coming up with the date for the first meeting now. Mr. Moore stated to have the first meeting for each of these subcommittees prior to October 31st.

Mindy Coleman, Jockey’s Guild, stated her organization would like to be involved in these subcommittee meetings. Chairman Rossi instructed her to contact Mr. Moore after the meeting and get that set up.

Jana Tetrault asked what is the Commission’s idea on the implementation of the report? This was done a few years ago and there were a lot of ideas but she doesn’t think it got to the point of implementation. What does the Commission see as the goal in helping them to come together as an industry? Chairman Rossi replied it depends on what the report entails. The Commission spent a lot of money last time making copies and providing them to every Legislator and he doesn’t think that was the best use of resources. Ms. Tetrault agreed. There were a lot of good ideas last time and a lot of input and people worked together and she thinks they need to focus on that next step after they get back together again and follow through. She thinks if there were an action plan after it, that’s the kind of thing they can go to the Legislators with and say this is what we need in order to be able to do this and move our industry forward. Chairman Rossi agreed.

Kelli Talbott stated she wanted to add to Mr. Moore’s comments on the technical side of this, these subcommittee meetings are subject to the Open Meetings Law. The committees can’t conduct business by email, they have to conduct their business in an open meeting. They can exchange emails with trying to set up an agenda or selecting a hearing date or logistical things like that, but substantive deliberations have to be done in the open subcommittee meeting. The agenda needs to be posted 3 working days before the meeting. In addition, the agenda can’t be general in nature, it has to have some specificity to the agenda items to be considered.

Mr. Moore summarized each subcommittee should meet for the first time prior to October 31st. We are shooting for completion of everything by December 15th. He would also anticipate the Racing Commission is going to have an early January meeting so the subcommittees should prepare to present their individual reports to the Commission at that point.

**Adjournment**

Motion was made by Mr. Lowe to adjourn, seconded by Mr. Figaretti. Meeting adjourned.