

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, September 24, 2013**  
**WV Lottery Conference Room**

The WV Racing Commission met on September 24, 2013 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Bill Phillips and Commissioner Greg McDermott via conference call. Counsel was represented by Kelli Talbott.

Teleconference attendee Sheila Dupuy, Auditor Charles Town, requested item 21b on the agenda be discussed in open meeting.

**Approval of August 20<sup>th</sup> minutes**

The Commissioners and legal counsel received the minutes from the August 20<sup>th</sup> meeting prior to this meeting. Mr. Phillips moved to accept the minutes, seconded by Mr. McDermott. The Commission approved the August 20<sup>th</sup> minutes.

Chairman Rossi stated he would entertain a motion for tabling items 21a and 21b on the agenda. Mr. Phillips made the motion to table indefinitely item 21b due to inadequate time to review the proposal in the binders and he would also include in that motion to table item 21a. Motion seconded by Mr. McDermott. Motion passed.

**Executive Director's Report**  
**Jon Amores**

Jon Amores, Executive Director, stated the Commissioners were provided with a summary of data services that RCI provides. The WVRC is in the process of evaluating these services and has had initial discussions with RCI. Larry Carraher will be providing the Commissioners with his feedback on these services.

The WVRC is still working on improving its permitting system. Charles Town's system is being used as the model for building the improvements. Larry will be working to make sure the data between both tracks is synchronized for permitting and in addition he will be posting permitting data online so people can see if their permit is due for renewal. This will hopefully lessen the number of scratches due to expired permits. The tracks will work in a collaborative effort with the WVRC in getting the word out for permits up for renewal. Mr. Phillips commented he has had the RCI system demonstrated to him, there is no cost involved, and it does what the WVRC staff is working on related to permits. The staff needs to look at the RCI project if it is available to with free training. Chairman Rossi requested an evaluation in writing to the Commissioners by October 4<sup>th</sup>.

An update on the Dennis Dibbern matter is the motion to dismiss has been filed. Mr. Dibbern's attorneys have responded and the Commissioners will be updated as more information is received.

**Auditor's Report**  
**Becky Carnefix**

Becky Carnefix stated there were no capital improvement reimbursement requests submitted for any of the 4 tracks in August, other than Wheeling's request, which is agenda item number 13.

Responses have been received from the letters that were mailed out for the Thoroughbred Development Fund last month for verification of race data for race dates January-June 2013 and applicable changes have been made in the system by the Thoroughbred Development Fund Clerks. Staff anticipates doing another mailing late October or early November in preparation for the February 15<sup>th</sup> distribution.

Purse Supplement Awards - 14 day letters requesting additional information for residency verification for claims submitted for 2QFY13 were mailed out Friday, September 20<sup>th</sup>. Claims for this quarter are expected to be paid out early October.

**Accountant's Report**  
**Joe Moore**

Joe Moore stated the financial summary report for August 2013 showed an increase in live handle of 17% over July 2013 and state revenue increased approximately 25% from July 2013, with much of that increase being attributed to permit fee renewals.

Drafts of the annual audit were submitted to FARS on time and he expects the audit to be finalized and issued prior to October 15<sup>th</sup>.

**Legal Update**  
**Attorney General's Office**

Kelli Talbott stated we received an appeal to the WV Supreme Court in the Schweitzer case. She will keep the Commission informed of updates on this matter. In addition, Christopher Grove, trainer whose license was suspended for 6 months, has appealed to the Kanawha County Circuit Court, and has filed a claim for damages. There is a Court of Claims case, filed by John McKee, that she will be attending the hearing for this week on our behalf. Last Friday she attended the deposition of Mr. Cuomo for the Burdette case. The Burdette case is scheduled for trial October 28<sup>th</sup>. Mr. Phillips inquired about a checklist of things that had to be accomplished by the time the rules went into effect on August 14<sup>th</sup> and asked if those items had been done. Ms. Talbott replied she had made up a list of all the changes that were to go into effect on August 14<sup>th</sup> and she had circulated that to all of the tracks and the horsemen, as well as the Commission staff. She added she has not heard of any issues that have come back to her from that list.

**Occupational Permit Review: John Luzzi**

Mr. Amores summarized two letters of recommendation received this morning in support of Mr. Luzzi. The first letter states Mr. Luzzi has been an employee of Turtle Creek Golf Club for the last 4 months and indicates he has not missed a day of work, has been dependable,

exercises good judgment, and would be an asset to any organization. The second letter is from the regulators in Florida, where Mr. Luzzi is hoping to be permitted, and states they have received his request for a permit, it is being processed, but the agency is not able to make a determination until the criminal background investigation is complete. Mr. Amores stated Mr. Luzzi has been before the Commission before and the Commission has extended to him the opportunity to redeem himself on more than one occasion and he has failed to do so. Mr. Luzzi is struggling with an addiction but is trying to put his life back together. Mr. McDermott asked Mr. Amores what his recommendation was and what motion would he recommend they entertain? Mr. Luzzi has also agreed that if his revocation is set aside so he can get a permit in Florida, he has agreed that he will never again seek to obtain a permit in West Virginia. Mr. Amores then stated since Florida is willing to give Mr. Luzzi a second chance, his personal recommendation would be for the Racing Commission to allow that to happen, if possible. Mr. Luzzi stated it has been 2 years since he rode a horse and has been sober now for close to 2 years. What is different now is that he knows what not to do. Horse racing is his livelihood and he would like to get back into horse racing. Mr. Phillips inquired of Mr. Amores if he has communicated with the Florida regulatory people about this issue so they understand we have this request and we don't want to push our problems off to them and what is their attitude about it? Mr. Amores replied he has talked with them informally as it relates to the background check but has not had that type of conversation with them. He added Florida has been extremely cooperative through this process. Mr. McDermott made a motion to set aside Mr. Luzzi's revocation under the condition that he remains barred from obtaining an occupational permit in West Virginia. Seconded by Mr. Phillips. Motion approved.

#### **Occupational Permit Review: Marlene Pitner**

Mr. Amores stated Ms. Pitner is seeking a an occupational permit for a groom's license at Charles Town and she is before the Commission because she has one felony conviction on her record for a bad check. The stewards have recommended she be reinstated and his recommendation is the same. Mr. Phillips moved to accept the recommendation of the Executive Director and stewards, seconded by Mr. McDermott. Motion approved.

#### **Hearing Examiner's Recommended Decision: Robert Bir**

Ms. Talbott stated this was an ejection appeal where Mr. Bir was ejected from Charles Town racetrack indefinitely. Mr. Blaydes' recommended decision, made in late August, was for Mr. Bir to be reinstated September 1 or sooner. Since that date obviously can't happen, if the Commission desires to accept the recommended decision, they can order it be reinstated today. Mr. McDermott made the motion to adopt the recommendation of the Hearing Examiner to reinstate Mr. Bir as of September 24<sup>th</sup>, seconded by Mr. Phillips. Motion approved.

#### **Hearing Examiner's Recommended Decision: William R. Wehrman**

Ms. Talbott stated this was an appealed ruling of the stewards. He was the Racing Secretary at Charles Town. His racing official permit was revoked with the condition he would not be able to seek eligibility for a racing official permit for a minimum period of 2 years. The Hearing Examiner has recommended the stewards ruling be upheld and Mr. Wehrman's permit be revoked, with the caveat he can seek to reapply after a two year period, beginning on February 1, 2013, which was the date of the stewards ruling. Mr. Phillips made the motion to

accept the recommendation of the Hearing Examiner, seconded by Mr. McDermott. Motion approved.

### **Recommended Order of Dismissal: Marion Cuttino**

Ms. Talbott stated this was a case where the stewards at Charles Town fined Mr. Cuttino because he was the owner of two horses entered in a race as separate entries and they should have been a coupled entry. Mr. Cuttino appealed the ruling. The Hearing Examiner suggested the parties attempt to resolve the matter. Ms. Talbott and the stewards discussed the matter and resulted in the stewards deciding that the two trainers involved should have been fined. Both of those trainers accepted a fine and Mr. Cuttino's fine was withdrawn. The Hearing Examiner recommended the matter be dismissed since there is nothing else to litigate. Mr. Phillips made the motion to dismiss the matter with prejudice. Seconded by Mr. McDermott. Motion approved.

### **Wheeling Island request for approval to list certain "Buckeye" races as stakes races**

Jane Horvath stated this is a project she has been working on with Steve Saris so they can continue their marathon races at Wheeling Island. It was brought to her attention by Mr. Saris that this a practice that already takes place at one of their Delaware North sister tracks and it works out very well for them. Wheeling would like to continue their marathon races because it can increase their handle and also because it provides an extra distance for the dogs to run. It would also increase the purse. Mr. Amores stated he recommends this for approval. Steve Saris, kennel owner, stated he would like these races designated as stakes races because marathon races are rare and they have been having significant difficulties with fielding a marathon race and running it with regularity. By classifying it as a stakes race will allow 3 different grades of dogs to run at the same time. He has consulted with a number of kennel owners and a vast majority are in agreement with this. Mr. McDermott made the motion to approve the request of Wheeling Island to list certain "Buckeye" races as stakes races. Seconded by Mr. Phillips. Motion approved.

### **Mountaineer Racetrack request for approval, Mystery Voucher Promotion**

Rosemary Williams stated this is a promotion they brought back several years ago and it increased the handle and increased the attendance so they would like to bring it back again this year. The dollar value of the prizes ranges from \$5 - \$10,000. Mailers will be sent out with a mystery amount and they have to be brought back to the track and redeemed through the tote machines. Motion was made by Mr. Phillips to approve the Mystery Voucher Promotion program, seconded by Mr. McDermott. Motion approved.

### **Wheeling Island Racetrack request for \$394,174.80 in FY13 Capital Improvement Funds**

Becky Carnefix stated this is a carry forward of the Phase II expansion project completed in June 2003. The amount available for FY13 disbursement is \$394,174.80. The documents have been reviewed and is recommended for payment of the FY13 available funds. Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion approved.

**Charles Town Racetrack, Capital Improvement Request, \$62,500, New Holland tractor**

**Charles Town Racetrack, Capital Improvement Request, \$7,775, John Deere mower**

**Charles Town Racetrack, Capital Improvement Request, \$8,850 for construction of West Garage handicap ramp**

**Charles Town Racetrack, Capital Improvement Request, \$130,322 for Terrace Restaurant renovation project**

Becky Carnefix stated the first request for the New Holland tractor includes in the cost a trade in allowance of \$32,500. The second request for the John Deere mower will be used for track maintenance. The third request for the West Garage handicap ramp will provide access from the parking garage to the racing area. The fourth request for the Terrace Restaurant renovation project will include the purchase and custom installation of kitchen fixtures and equipment, as well as replacement of custom buffet serving items. The bids have been reviewed for all 4 requests and they are recommended for approval. Motion was made by Mr. Phillips for approval of the 4 requests, seconded by Mr. McDermott. Motion approved.

**Mountaineer Racetrack, Capital Improvement Request, \$18,131.55, 2014 Jeep Patriot for State Vet Use**

**Mountaineer Racetrack, Capital Improvement Request, \$5,293.43, hot water tank for groom's quarters**

Becky Carnefix stated the first request for the Jeep Patriot is to replace the current vehicle the State Vet is using. The second request is an emergency purchase of a replacement hot water tank for the groom's quarters. The bids have been reviewed for both requests and they are recommended for approval. Motion was made by Mr. McDermott to approve both requests, seconded by Mr. Phillips. Motion approved.

**Mountaineer Racetrack, approval of 2014 live race dates**

Rosemary Williams stated this is for approval of their 2014 schedule, which will include 210 race days. 209 of the races will be evening races and 1 race will be a matinee which will be the WV Derby. The only deviation from this schedule to their current schedule is they will race Saturday through Wednesday instead of Friday through Tuesday. Mr. Phillips asked how many race days were in the current schedule. Ms. Williams responded 210, the same amount being requested for 2014. Mr. McDermott inquired of Mr. Amores what his recommendation was for this item. Mr. Amores stated he recommended the schedule be adopted. Mr. McDermott made the motion to approve Mountaineer's request relative to the 2014 live race dates. Seconded by Mr. Phillips. Motion approved.

**Executive Session: a. Burdette v. Sidiropolis mediation**

**b. Consideration of auditor or license clerk reductions in light of budget shortfall**

Chairman Rossi stated this item was voted to be tabled. As Ms. Talbott stated, there is a mediation scheduled on the Burdette/Sidiropolis for the 10<sup>th</sup> of October and they will discuss that when the time comes.

Item b: Chairman Rossi stated that The Commission is faced with administration of the Commission, and they are going to continue to study ways from top to bottom to make the Racing Commission more efficient and more effective. When they get a finalized situation, they will bring it back, and they have had requests for open discussion and those are permitted under law and they will follow the law. The goal is to be fair to everybody on both sides of the fence.

### **Public Comments**

There were no public comments.

### **Next meeting**

The next meeting is posted for October 15, 2013.

### **Adjournment**

Mr. McDermott moved to adjourn, seconded by Mr. Phillips. Meeting adjourned.