

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, April 19, 2016**  
**WV Lottery Conference Room**

The WV Racing Commission met on April 19, 2016 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Greg McDermott and Commissioner Bill Phillips were present via conference call. Counsel was represented by Kelli Talbott.

**Approval of the February 23 and March 7 meeting minutes**

The Commissioners and legal counsel received the minutes from the February 23<sup>rd</sup> and March 7<sup>th</sup> meetings prior to this meeting. Mr. Phillips commented he noticed the March 7<sup>th</sup> minutes appear to end with no conclusion and he recalls empowering the Executive Director to proceed but the minutes don't include that. Motion was made by Mr. Phillips to approve the minutes with that change, seconded by Mr. McDermott. Motion passed.

**Executive Director's Report**  
**Joe Moore**

Joe Moore stated for the 3 month FOIA requests, the Commission received 16 requests. During the month of March 7 requests were received, 2 from Grey2K, 2 were media requests, and 3 were individual requests. Each of those requests have been answered and closed as of March 31<sup>st</sup>.

The 2016 Regular Session of the Legislative Session ended without any major changes to the Racing Commission or its operations at this point. There are items that still remain outstanding, awaiting passage of a Budget. Those would be the appropriated portion of the purse funds, as well as the Racetrack Video Lottery Fund, which funds the Capital Reinvestments, the Breeder's Classic, the WV Derby, etc.

The Commissioners have a quotation that was received in response to the discussion at the January meeting on the surface at Charles Town. This would be a project that if the Racing Commission were to move forward with would have to put out a RFQ to find multiple vendors who perform these types of services, or make the argument it's a sole-source contract, and it's going to be a lengthy process at this point.

The posting for the Steward vacancy at Charles Town closed as of Friday, April 1<sup>st</sup>. We have received about a dozen resumes for that vacancy. The Mountaineer position closed Friday, April 15<sup>th</sup>. We did not receive as many resumes for Mountaineer but some of the Charles Town applications overlapped due to being submitted prior to the Mountaineer position opening. His recommendation would be since we are interviewing for a position at both tracks, those interviews be conducted in Charleston in the Racing Commission office and that all applicants be considered for either track.

We have received reimbursement requests for the WV Bred Races that were approved in January. \$503,000 was approved to each track. Charles Town has submitted requests dated February 18<sup>th</sup> and March 14<sup>th</sup> for a total amount in excess of \$503,000 for the WV Bred Races. Mountaineer Park has submitted a schedule of races that they intend to conduct utilizing the WV Bred funding. They have proposed 12 WV Bred races, 2 of which will take place on WV Derby Day.

A resolution was read honoring Steven M. Kourpas, a Steward at Mountaineer Park. (See attachment). Motion was made by Mr. Phillips to adopt the Resolution, seconded by Mr. McDermott. Motion passed.

### **Auditor's Report Joe Moore**

Joe Moore stated the Commissioners were provided with the written report. Included on the report are several capital reimbursements that were approved and payments have been reimbursed for at both Mountaineer and Charles Town. The Commissioners were also provided with the projected Audit schedule for the remainder of FY16 for their review. Motion was made by Mr. McDermott to approve the Audit schedule for the remainder of FY16, seconded by Mr. Phillips. Motion passed.

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

Joe Moore stated the YTD live handle has decreased 7.5% compared to FY15. Export handle has decreased 17.5% compared to FY15. Simulcast handle has increased nearly 2%, with total in-state handle decreasing 1.8%. It's important to note that these numbers are slightly affected by the later start-up of Mountaineer Park, of which we are experiencing a higher handle than the start-up from last year.

The Commissioners have been provided with the Account Status Report for FY16, as well as February and March 2016. The projected year-end balance in the Thoroughbred Development Fund (Fund 7304) is \$275,000. The General Administrative Account (Fund 7305) has a projected year-end balance of \$750,000. The Greyhound Breeding Development Fund's (Fund 7307) projected balance is \$1.3 million.

The FY16 annual audit will be performed again this year by Suttle & Stalnaker. This will be the first of 2 1-year extensions on their current contract. We anticipate initial fieldwork to begin in May or June. Draft financials are due on September 15<sup>th</sup> with the final financials being issued on October 15<sup>th</sup>.

### **Legal Update**

Kelli Talbott stated she went to Delaware Park in mid-March to the Mid-Atlantic Racing meeting that we have been attending for several years now. There were some initiatives that the Mid-Atlantic states want to have the states pursue with regard to medication rules and she will discuss those in more detail later in the meeting. She has given the Commissioners an update on the various appeals and cases that are pending.

### **Governor Veto of Senate Bill 157 containing Racing Rules**

Kelli Talbott stated the Rules Bill in which the amendments to the Thoroughbred Rule and the Pari-Mutuel Wagering Rule were in was vetoed by the Governor on the first of April. It wasn't vetoed because of anything related to the Racing Rules, it was related to a Tax Commission Rule that the Governor had concerns about. Since all the Rules that are Revenue Bills are bundled together in one Bill, our Rule amendments went down with that veto. The

most significant thing that was in the Thoroughbred Rule amendments was to establish a threshold for cobalt and to start testing for cobalt and enforcing those thresholds. The effect of this is unless there would some off chance this would be put on a Special Session agenda, we would have to re-propose those same Rule amendments for 2017.

### **Update on Thoroughbred Rules for 2017**

Kelli Talbott stated the Thoroughbred Rule Committee had a meeting in Morgantown earlier this month and they not only talked about the veto of the Rule items from last year that need to be re-proposed but also talked about some additional items. Not only the items she learned about at the Mid-Atlantic but also some items the Committee members wanted to discuss. One of the things discussed was the Mid-Atlantic is proposing amending the Model Rule on out of competition testing. Out of competition testing is permitted under our current Rule but the scope of it is only blood doping and gene doping agents. The reason you would test for blood or gene doping in out of competition is because it's difficult to detect those agents in post-race testing. The Rule that the Mid-Atlantic proposed is to expand the out of competition testing and test for other substances, substances that should never be found in a horse. One of the things she learned while she was at the Mid-Atlantic meeting is that West Virginia is the only Mid-Atlantic state that is not conducting any out of competition testing. There was some discussion about whether we should find a way to start doing that testing. There have been some ideas about the way to start and get our feet wet would be to test for our Graded Stakes Races. During the Mid-Atlantic meeting there were also a couple of therapeutic drugs discussed that we would now establish thresholds for and start testing for.

The conclusion of the meeting was the items they had reached consensus on, the Committee wanted her to draft some specific language on and circulate that so the Committee could look at that. That is the next step they are on right now. She expects the Committee to have a conference call to conclude its work and then get something concrete to the Commission, if not by the next monthly meeting perhaps in a special meeting, depending on what the deadlines are for Secretary Kiss' rule making proposals.

Mr. Moore added they have reached out to both Delaware and Maryland who have out of competition testing specifically on Graded Stakes programs. He has reached out to them to see if we can review their policies and procedures in conducting those tests and once he receives that information he will forward it to the Commissioner's for their review in designing our program, specifically for Graded Stakes.

Mr. Phillips stated the out of competition testing is something he has been concerned about for some time and is a major national concern and issue. He thinks we need to take advantage of the fact that at the WV Derby, maybe use that as a model and come up with how we're going to do this. If he recalls correctly, the Jockey Club has a program that he thinks has about \$215,000 in it to assist states with out of competition testing and very little of it was used last year. He would encourage we get ourselves knowledgeable about that and see if we can tap into some of those financial resources that are available. Chairman Rossi stated that's a good suggestion and would ask Joe Moore and Kelli Talbott to look into it and come back to them to make a decision at their next meeting.

### **Consideration of Reduction of Cost Assessed to Lester Rao**

Kelli Talbott stated the Commission should recall at their last meeting in February they had before them a recommended decision from Hearing Examiner Blaydes that recommended upholding a \$500 fine that had been imposed against Mr. Rao for an altercation on the

racetrack, and awarding the costs of the hearing against Mr. Rao, which is permitted under the WV Code. There is a Statute that allows the Commission to assess costs. A final Order was entered to that effect. The Commission adopted that recommendation and awarded costs. Part of the costs were those incurred for the Hearing Examiner, some of the costs were those incurred for the room in which the hearing was held, there were costs for the court reporter and the transcript costs, there were travel costs for Legal Counsel to go to Charles Town and back. The piece of the costs that are an issue today is the cost the Commission incurred for Legal Counsel's actual time. State agencies are required to reimburse the Attorney General's account for attorney time expended on agency work. Sometime after that Order was entered, she received a letter from David Hammer, who represents the Charles Town HBPA. He was concerned about the larger picture for permit holders going forward should the Commission assess attorney costs against permit holders. He believes that attorney time should not be part of the costs associated with these appeals. He conceded the Code allows costs to be assessed and was not in disagreement with the other items that had been assessed. Mr. Rao has now appealed the Commission's Ruling to the Circuit Court of Jefferson County and Mr. Hammer made a motion to intervene in that case, but the judge held it in abeyance until the Commission could take up this issue on attorney costs. It is her understanding if the Commission takes out the attorney costs assessed against Mr. Rao, the horsemen will not be a part of the appeal and will not want to intervene. She does not have an issue in good faith with taking that out of the costs assessed and amending the Order to just include the remaining costs, which is roughly \$6,000. It would reduce the cost assessed to Mr. Rao from about \$15,000 to \$6,000. She stated she would like to resolve this issue and avoid litigation with the HBPA over it. Mr. McDermott stated that would be his preference as well. Chairman Rossi agreed. Mr. Phillips stated it's not particularly his preference because we are expending our funds of the Commission on matters that are appropriate to be reimbursed for and we should, however, he will go along with the other Commissioner's. Mr. McDermott added he thinks we are being substantially reimbursed and he thinks we ought to take a look back as to what our position has been in other cases with respect to seeking recovery of costs for what we are paying our attorney. Mr. Hammer's concerns are not unusual or unique concerns given the particular issue, therefore, his preference would be to compromise with respect to the actual time for the attorney's services. Mr. Phillips added this is the first time an issue like this has come up since he's been on the Commission so he's not familiar with what has occurred in the past, but he certainly doesn't want to drag the HBPA into this so he's willing to go along with this.

Ms. Talbott commented on Mr. Phillips concerns, the Commission is getting appeals over \$150 fines and it costs the Commission a substantial amount of funds to have these hearings and she doesn't think the permit holders often think through that issue before they proceed. We have been looking closer at these to look at cases and seek the assessment of the appropriate costs in these and she thinks they may see that come before them more often than they would have in the past. Mr. McDermott stated if we are going to implement a policy that involves uniform efforts to seek recovery of attorney's costs, he thinks we need to put everybody on notice. Ms. Talbott stated she agrees and she's not advocating going forward for seeking that, but the other costs for the hearing, she may be an advocate for. Mr. McDermott said he's with her on that, but the specific issue they are talking about right now is recovering for attorney's fees, we're not talking about those other fees. Mr. Phillips stated he would suggest the staff develop a policy of putting everybody on notice for the recovery of attorney's fees and have it ready for the next meeting so we can start this before we run out of money. Chairman Rossi asked Joe Moore to gather some information on this so they can look at it and make that decision going forward.

Mr. McDermott made the motion with the respect to the time for attorney's fees, we modify the cost assessment, and further move to go forward with the consideration of the attorney's fees issue for the future. Seconded by Mr. Phillips. Motion passed.

### **Hearing Examiner's Recommended Decision – Wayne & Cheryl Piquette**

Kelli Talbott stated this is an appeal out of Wheeling Island. There was a dog at Wheeling Island that was infested with fleas and the dog had to be scratched from a race because of it. The two trainers, Wayne & Cheryl Piquette, were displeased with their dog being scratched and both of them expressed their displeasure to the State Vet and racing officials. The Wheeling Island Board of Judges fined Wayne Piquette \$250 and fined Cheryl Piquette \$100. They appealed that to the Racing Commission. A hearing was held on this altercation and it was concluded that they were responsible for the conduct for which the Wheeling Island Board of Judges fined them and Mr. McClung recommended upholding the fines. This was a case in after talking with Mr. Moore, she put Mr. & Mrs. Piquette on notice that we would be requesting the recovery of costs in the hearing. The total costs, excluding attorney's fees, were \$2,558.52. Mr. Moore ran some figures and tried to apportion it proportionately between Mr. & Mrs. Piquette because Mr. Piquette was fined more than Mrs. Piquette was. The recommendation is Mr. Piquette be assessed \$1,829.34 and Mrs. Piquette be assessed \$729.18 and they would be given 30 days to pay those costs. Therefore, the recommendation before the Commission is to uphold the decision of the Wheeling Island Board of Judges against these two permit holders with regard to the fines and the conduct they engaged in and that the costs be assessed as presented. Mr. McDermott commented doesn't this clearly illustrate what was just discussed, namely a need to further vet the Code provision that would allow us to recover attorney's fees in certain situations? Ms. Talbott replied sure. Mr. McDermott stated we are talking about a total of \$400 in fines and total costs of \$2,558.52, not including attorney's fees which are typically the most expensive part of the process. Ms. Talbott stated attorney's fees were around \$4,000-\$5,000. Mr. McDermott continued that here we are \$7,000-\$8,000 in the hole over a matter involving \$400 in fines. To him that illustrates why we need to look into in the future seeking recovery of attorney's fees, given that the Code does permit that. Ms. Talbott added the hourly rate by which the Attorney General bills her time to state agencies is \$140/hour. She pointed out she does not personally get any benefit out of this. She is a salaried employee of the Attorney General and by law the Attorney General has to seek reimbursement for her time. Nonetheless, she agrees with Mr. McDermott that it's something that should be looked at going forward.

Mr. McDermott made the motion to approve the recommended decision of the Hearing Examiner, seconded by Mr. Phillips. Motion passed.

### **Hearing Examiner's Recommended Decision – Anthony Farior Ejection Appeal**

Kelli Talbott stated this is the second Anthony Farior ejection that has been in front of them. This ejection arose as a result of allegations that Mr. Farior had given the wrong horse's name to a clocker that was timing the workout of the horse. There was a hearing in Charles Town by Mr. Blaydes and his recommended decision is to uphold the ejection in so far as the track met its burden of proving the conduct alleged, but that Mr. Farior be ejected for a period of six months, which would run from today, if voted to adopt it, through sometime in October.

Motion was made by Mr. McDermott of adoption of the Hearing Examiner's recommended decision, seconded by Mr. Phillips. Motion passed.

### **Hearing Examiner's Recommended Decision – Harry Dodson Ejection Appeal**

Kelli Talbott stated this was an ejection at Charles Town racetrack. There was a hearing in front of Mr. Blaydes. The ejection was based upon multiple issues. The Hearing Examiner

recommended that the Commission not uphold the ejection in this case and that the ejection be declared null and void. Motion was made by Mr. Phillips to adopt the Hearing Examiner's recommended decision, seconded by Mr. McDermott. Motion passed.

### **Request for Reinstatement – Earl Miller**

Joe Moore stated Mr. Miller is applying at Charles Town for his assistant trainer license. An thorough investigative report conducted by Mr. Carper, Investigator at Charles Town, has been provided to the Commissioner's. There are a number of misdemeanor and felony offenses on Mr. Miller's record that occurred between the years of 1974-2011. Mr. Carper, along with the Board of Stewards at Charles Town, has recommended the Commission deny Mr. Miller permission to obtain an assistant trainer permit at Charles Town. Mr. Carper did, however, in his interview with Mr. Miller note that Mr. Miller expressed interest in transporting horses from Charles Town to Mountaineer Park and that would not be conducted under the assistant trainer permit, it would be a vendor permit at Charles Town in which Mr. Miller has not yet applied. The recommendation from the Investigator and the Board of Stewards is the Commission deny Mr. Miller from obtaining an assistant trainer permit at Charles Town. Motion was made by Mr. McDermott to adopt the recommendation that they deny the request for an assistant trainer permit, seconded by Mr. Phillips.

Mr. Miller stated he has a legit commercial hauling business now that he needs to transport horses for several clients and he needs access to drop off horses and pick up horses. Chairman Rossi asked if he would be filing a request for a vendor permit? Mr. Miller replied yes. Chairman Rossi stated Mr. Carper recommended this, did he not? Mr. Moore replied yes, and as part of Mr. Carper's recommendation it was recommended that the Commission would allow Mr. Miller, if he chose to do so, to apply and receive a vendor permit, for the sole purpose of transporting those horses from Charles Town to Mountaineer Park and back.

Motion passed.

Chairman Rossi asked what is the process for him applying for a vendor's license? Does that have to come back before the Commission? Ms. Talbott replied he will have to fill out his license application and since he has a felony is why he's in front of the Commission. If the Commission is alright with him getting that, she doesn't guess it would have to come back before them.

Motion was made by Mr. McDermott to prospectively approve the application for the vendor's permit that will be forthcoming, seconded by Mr. Phillips. Motion passed.

### **Request for Reinstatement – Timothy McDonald**

Joe Moore stated Mr. McDonald had applied for an exercise rider and an owner/assistant trainer permit at Charles Town. Mr. Carper did a background investigation on Mr. McDonald and that report has been provided to the Commissioner's. There were several misdemeanor/felony offenses occurring between 1982-2008. Mr. Carper and the Board of Stewards at Charles Town have recommended that the Racing Commission deny Mr. McDonald permission to obtain the exercise rider and owner/assistant trainer permit at this time. Motion was made by Mr. McDermott to deny the request, seconded by Mr. Phillips. Motion passed.

### **Charles Town Capital Improvement Request – 12H Motor Grader**

### **Charles Town Capital Improvement Request – Tractor Replacement**

### **Charles Town Capital Improvement Request – Lifepak-15**

### **Charles Town Capital Improvement Request – Graphics & Production Upgrade**

Joe Moore stated the first request is for a 12H Motor Grader at Charles Town for \$167,000. It is a used piece of equipment. There were not 3 bids submitted in this case as to the uniqueness of the equipment. Without having the opportunity to purchase this piece of equipment, a new Grader is probably in excess of \$250,000. The funding is available and the Director of Audits has reviewed it and gone over the details and recommends approval of this item.

The second request is for a tractor replacement at Charles Town in the amount of \$70,000. It is his understanding this tractor is used for maintaining the surfaces at Charles Town and is replacing an old tractor that was purchased 2008-2009 and is incurring a high maintenance cost for repairs at this time. The Director of Audits has contacted Charles Town to get backup questions answered on this and recommends it for approval and funding is currently available.

The third request is for a Lifepak-15 for Charles Town in the amount of \$38,121. Funding is available and is recommended for approval.

The last request for Charles Town is a graphics and production upgrade, programming and implementation. It is a sole-source project for an existing graphics system that was previously approved. The amount of this request is \$7,500. Sufficient funding is available and is recommended for approval.

Chairman Rossi commented he could have sworn the Racing Commission bought two new tractors at Charles Town in the past two years or so. He would like for the Commission's Auditor to maintain a schedule when this is done and needs to be given to the Commissioner's on a basis showing when they are requested, reimbursed for, etc. A \$70,000 tractor shouldn't wear out in a couple of years.

Motion was made by Mr. McDermott to approve the requests, seconded by Mr. Phillips. Motion passed.

### **Charles Town request to add PariBet, LLC to export signal**

Joe Moore stated this is a request from Charles Town. The approval letters from the Charles Town HBPA have been provided in the Commissioners information for their review. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

### **Wheeling Island Request to amend Racing Calendar for November & December**

Joe Moore stated a request was received from Jim Gartland of Wheeling Island and based on their success from their January and February racing calendars they are requesting to adjust their November and December calendars to the same winter schedule, running 20 race matinees on Tuesday's, Wednesday's, Friday's, Saturday's and Sunday's. The calendar has been provided for their review. The total number of race days will still be 260 under this new schedule. Chairman Rossi asked if they did something similar to this last year? Mr. Moore replied he doesn't believe they adjusted the end of the year last year. Mr. McDermott asked if

Mr. Moore was recommending the approval of this request? Mr. Moore replied yes. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Wheeling Island Request to added B3 Development Group, LLC to export list**

#### **Wheeling Island Request to add Harrington Racetrack to Import list**

Joe Moore stated the first request was received from Wheeling Island on March 11<sup>th</sup> and the second request was received on March 21<sup>st</sup> to add the mentioned sites to the export and import list, respectively. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Mountaineer Park Request to conduct Mystery Voucher Program**

Joe Moore stated on February 29<sup>th</sup> a request was received from Mountaineer Park to conduct a Mystery Voucher program for vouchers that will be worth between \$5-\$10,000. There were 46,209 vouchers that will be redeemable on Saturday, May 7<sup>th</sup> and Sunday, May 8<sup>th</sup>. This is in line with other Mystery Voucher programs that the Commission has previously approved and it would be his recommendation for this one to be approved as well. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

### **Mountaineer Park request to add Turf TV to TSG Global Wagering Site List**

Joe Moore stated the request from Mountaineer, as well as the signature and approval of Mountaineer Park's HBPA, have been provided to the Commissioners for their review. It would be his recommendation to approve this addition. Mr. Phillips commented he missed the January meeting and this item made him think about something. He believes the Commission changed the post time for Charles Town and that it directly competes with the post time at Mountaineer. Could somebody explain that to him because he thinks we are working against each other and this specific request made him think about it. Mr. Moore replied in the January meeting there was an agenda item where Charles Town requested that they be allowed to move their post time from 7:05 to 7:00. At that Commission meeting they stated they were requesting this to schedule their post times around another competing track they are in the area of. There was no discussion of it overlapping with Mountaineer Park in January. The Commission approved that post time change. To this date there has been no discussion or request from Mountaineer to move their post times at all. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Mountaineer Park Capital Improvement Request – Truck to pull starting gate**

Joe Moore stated this request is for a fifth wheel truck to pull the starting gate. They received multiple bids and the cost of the truck is \$64,282. To add to the Chairman's comment about Charles Town and their equipment list, it is his understanding that the Director of Audits does maintain a list of those assets per the Commission's request and he will have it forwarded to them as soon as he's able to. A list for Mountaineer Park has not yet been started. He thinks this is the first truck he remembers them requesting a reimbursement for in years, however, a list will be started and maintained for that location as well. Funding is available for this purchase



and it is recommended for approval. Chairman Rossi asked what do they do with an old truck, do they trade it in? Rosemary Williams replied the old truck isn't reliable and won't even start half the time. They will use it for the grounds or something like that. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **CT HBPA Request to Enforce Thoroughbred Racing Rule 22.1.f**

Chairman Rossi stated we go through a lot as a Racing Commission and the racing industry gets a lot of heat and he is concerned to even have this on the agenda and have to discuss it. Racing Rule 22.1.f says that the Association shall maintain adequate restroom facilities on Association grounds and ensure the safeness and cleanliness of restroom facilities at all times. Joe Funkhouser stated they have been in discussions with Charles Town management since this item was put on the agenda and believe they have come to an amicable resolution and would like to postpone this and hopefully remove it from the agenda. Chairman Rossi stated that's what he was going to recommend to the other Commissioner's to happen. Motion was made by Mr. Phillips to table this item, seconded by Mr. McDermott. Motion passed.

### **Charles Town Request to grant "special event" status to Caixa Electronica Handicap**

Joe Moore stated Charles Town has requested this special event status for the Caixa Electronica Handicap to be run on April 23, 2016. The purpose of this request would allow Charles Town to uncouple the entries for the race. The race is also a handicapped race that is named for the 2012 winner who died in a training accident at Belmont Park in 2014. It is believed by Charles Town it fits the spirit of what a special event status would encompass. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Consideration of Amendments to the Backstretch Retirement Plan**

Joe Moore stated a request was received from Mike Lloyd, the attorney that was used for the Pension Plan. The request is for amendments to the Retirement Plan to change the withholding provision, a change in the delay of vesting, as well as a clause of termination if the termination of horse racing came about to how the plan would be distributed. The request for a change in withholding provision would take the withholding provision from its current 10% to be increased up to 25%, if necessary, to pay federal and state taxes. The delay in vesting he's unsure of the change but Mr. Lloyd is on the phone if they need an explanation of what the delay in length of vesting would be. There is also a right to terminate should there not be any Thoroughbred racing conducted, this plan would be paid out to its participants.

Mr. Lloyd stated the withholding, they've discovered, created some hardship for participants because the withholding at 10% directly to the IRS was not enough to pay the taxes for people who remain vested and therefore taxed that didn't have access to the money to pay the taxes. They have a number of participants that were losing money by becoming vested in the plan because they have a tax obligation that was bigger than the amount that was withheld and sent to the IRS. The changes were to recognize this is a retirement plan and they don't want the money to come out unless it's necessary to pay the taxes, but that the money would go to the participants, and it's still 10% for a lot of the participants, it just didn't work for some of them. This would provide an elimination of that hardship by allowing the participants in order to

pay their taxes if it's more than 10% to increase that percentage up to 25. Chairman Rossi stated he does not disagree with this proposal.

The second amendment they did not foresee. They have several participants that became vested, and will become vested, and that has created a taxable event that brings hardship in their ability to receive Social Security or their ability to receive financial aid for their children to go to college. These people actually lost money by receiving a benefit through the plan. These would be rare situations, but allowing a participant to make an irrevocable election to delay until a time when they wouldn't have these other opportunities, the vesting of their benefit that they would not be harmed by the taxation.

The third amendment is one where they heard from a great number of participants that have been working and have good years of service in and they've become vested but they're not going to attain the age of 60 to become eligible for retirement benefits for many years down the road. The concern is that the way this plan is structured, for tax reasons, as an unfunded, unsecured plan subject to the creditors of the Commission that if something happened to racing at the racetrack, the money they've already paid taxes on many years down the road may never become available to them. To address that, the change would be that if racing were ever permanently discontinued at the track, the people that were vested and had paid taxes on their benefits would receive them.

Chairman Rossi commented he does not disagree with the first amendment, he thinks it's a good question. He does not disagree with the second amendment but has questions about it that he's probably going to have to discuss with Mr. Lloyd. He thought they had discussed when they structured the plan that there was no way it could not be a taxable plan and now people are coming back saying you're hurting me. He will discuss the third amendment with Mr. Lloyd in more detail as well. Chairman Rossi recommended delaying action on this until he gets some discussion with Mr. Lloyd. Motion was made by Mr. McDermott to table this item until more information is obtained, seconded by Mr. Phillips. Motion passed.

### **Public Comments**

Lester Rao stated a reason the number of appeals has been up is because they are done through the Stewards. He thinks it's time for an investigation to see if in fact the Stewards office treats people equally on similar subjects. The other thing he wants to instill the importance of is that people should not be prohibited from making appeals to the Stewards Rulings or any other Rulings because of the monetary aspect of potential legal fees and costs. Mr. McDermott inquired if this was appropriate for a public comment? Is it appropriate for someone with a pending appeal to come in under the guise of public comments and talk about their case? Chairman Rossi replied no. He added the best way to avoid having to expend money and incur legal costs is to comply with the rules and regulations and you won't get into these situations.

Rose Mary Williams inquired of the Commission if they would consider approving Joe Moore to approve the import and export sites as they come in, as long as the HBPA letters are attached to them. The reason being that holds their revenues up for about a month at times so if they could consider that, that would be helpful to the racetracks. Chairman Rossi stated they will consider that suggestion. Ms. Williams stated the second consideration she'd like to bring out is that Charles Town consider moving their post time back to 7:05 since Mountaineer is now back to running live. Both tracks go off at 7:00 which is not good for either one. Lastly, she stated that Danny Wright is doing a tremendous job as a fill-in Steward at Mountaineer and she appreciates the Commission appointing him to that position for the time being.

Joe Moore stated it is not on the agenda, but tentatively the next Commission meeting will be May 17<sup>th</sup>.

### **Adjournment**

Motion was made by Mr. McDermott to adjourn, seconded by Mr. Phillips. Meeting adjourned.