

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, December 16, 2014**  
**WV Lottery Conference Room**

The WV Racing Commission met on December 16, 2014 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Bill Phillips and Commissioner Greg McDermott were present via conference call. Counsel was represented by Kelli Talbott.

**Approval of October 15<sup>th</sup> minutes**

The Commissioners and legal counsel received the minutes from the October 15<sup>th</sup> meeting prior to this meeting. Motion was made by Mr. McDermott to approve the minutes, seconded by Mr. Phillips. Motion passed.

**Executive Director's Report**  
**John Myers**

John Myers stated there was a memorandum in the Commissioner's binders from Sara Walker, Division of Personnel, stating the minimum wage has increased to \$8/hour. To his knowledge the Racing Commission has no employees that fall in this category, however, going forward, the Commission will have to comply with this wage should the situation arise.

The FOIA's for the current three month running report is the Commission received four FOIA's for the month of November.

At last month's meeting the Commission approved, with the contingency of receiving a letter from the Charles Town HBPA, the simulcast schedule for Charles Town. At this time, he still has not received a letter to that effect. As soon as the letter is received he will communicate that to the Commissioner's.

At the last meeting, Chairman Rossi asked staff to take a look at how the handle is received, basically not only what months receive the most handle but what days of the week, etc. He has included in the binders some graphs and numbers with that analysis. As can be expected, the winter months have the lower handle and the days of the week, Mondays, Tuesdays and Wednesdays, numbers also tend to be lower. As far as a recommendation, if the days have to be reduced at some point in the future, these numbers need to be taken into consideration. However, he is still in the process of gathering additional information.

An update on the issue that happened at Charles Town on Saturday, December 13<sup>th</sup>, is a conference call was held with management at the Charles Town track, as well as with the Board of Stewards. All are in agreement there are several things that need to be improved. Recognizing the issue earlier would certainly be of benefit. Post-event communication protocol needs to be set. Investigations are still being conducted into this event.

Mr. Phillips stated he believes the Commission should request the National Thoroughbred Racing Association Safety Alliance come into both tracks and do a safety review of the situation. Secondly, he would like to suggest considering having an outside party to take a look at what happened. Chairman Rossi replied what he would suggest is to ask John Myers to investigate the cost of such and how such a review would be funded. He does agree with Mr. Phillips but thinks cost and who bears that cost should be considered. He asked Mr. Myers to have that information for the Commissioner's at the next meeting. Mr. Myers suggested having

an interim meeting due to the importance of this issue. Terry Meeks, Jockey Guild, added they would like to be a part of the process as well in regards to moving forward. Mr. Phillips stated he really thinks this matter should not come down to availability of funds. We should find a way to get this done and use all the resources, whether paid or volunteered, to do a third party investigation. Chairman Rossi stated we are going to explore that possibility. He added he would like to see answers to what are the systems in place? What is the protocol for activating any of those systems? If the systems were in place, obviously there were breakdowns, so what was the root of the breakdown? How do we remedy that going forward? If there weren't appropriate systems in place, how do we get those systems in place to prevent this, or reduce the possibility, of it ever happening again? Whatever comes out of any report has to include the answers to these questions. Mr. Phillips stated he agrees and still feels the National Thoroughbred Racing Association Safety Alliance needs to come in and certify our protocols.

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

Joe Moore stated total live handle decreased 7.5% compared to October and nearly 7.5% YTD. The export handle has decreased less than 1% compared to October and 13.5% YTD. Simulcast handle has decreased 8% compared to October and nearly 3% YTD. In-state handle as a total has decreased nearly 5% YTD.

Mr. Phillips asked how have our decreases compared to national averages or to tracks nearby? Mr. Moore replied he will take a look at it and will either provide that information to him in an email or include it in next month's report.

### **Auditor's Report and FY 2015 Schedule of Audits Becky Carnefix**

Becky Carnefix stated the Capital Improvements submitted for reimbursement during the month included one request from Charles Town, encompassing several projects, however this has not been paid yet pending her review. Once that review has been completed, she will provide details of the payment and projects reimbursed. Mountaineer submitted four requests for reimbursement during the month and they have also not been paid yet pending her review. Details of the payment made and projects reimbursed will be provided once her review has been completed.

Supplemental Purse Award 14 day letters requesting additional information for residency verification for 3QFY14 claims (January 2014 – March 2014) were mailed out last week. Payments for this quarter are anticipated to be paid early January.

She has provided her audit schedule for the remainder of the year to the Commissioner's for their review.

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

Kelli Talbott stated the major highlights for the month are she has a brief due in the Supreme Court on January 5<sup>th</sup> in the Reynolds case. There are 2 ejection appeals scheduled in Charles Town in January, one for Angelo Jackson and the other for Richard Watson.

The Legislature will be coming in session in a few weeks and the amendments to the Thoroughbred Rules the Commission has proposed will be before the Legislature in this

session. The major amendment was to adopt the point system for medication violations. Updates will be provided as the session progresses on this issue.

**Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$16,430 for repairs to roof, columns, and walls at the test barn and replace damaged fascia on another barn**

**Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$10,388 for engineering of a new water distribution system for the barn area**

Becky Carnefix stated the first request is to make repairs to the test barn. She has reviewed the request and recommends for approval.

The second request is for engineering of a new water distribution system for the barn area. She has reviewed the request and recommends for approval.

Motion was made by Mr. McDermott for approval of both projects, seconded by Mr. Phillips. Motion passed.

**Hollywood Casino at Charles Town Races – request to approve stakes race schedule for 2015 and modify the purse payout at the Charles Town Classic to pay part of the purse to the trainer**

Erich Zimny, Charles Town, stated payment of part of the purse to the trainer is something that is being done at a lot of places, including Mountaineer. Mr. Phillips asked if this would be more of an appearance thing to have a trainer come in that is popular and known versus taking the money out of the purse? Mr. Zimny replied no, it's more of an inducement to bring in a horse. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Hollywood Casino at Charles Town Races – request to approve 2015 preference date policy**

Erich Zimny, Charles Town, stated this is a similar request as in the past, with the exception of striking the last bullet point from last year, which is not a substantive change. The Charles Town HBPA has no objections to this request. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

**Hollywood Casino at Charles Town Races – request to reduce live race dates in 2015 from 220 to 193 days**

John Myers stated this is a request to reduce racing days in 2015 from 220 days to 193 days. We have a process that has to be followed per statute which requires the Racing Commission to notify the pari-mutuel clerks, as well as the HBPA. There is a period of time that has to be left open for comments and then conduct a hearing, if necessary. The approval today allows the process to begin. Motion was made by Mr. McDermott for approval of the process to begin, seconded by Mr. Phillips. Motion passed.

Nelson Robinson stated he has not seen the request and inquired what the conditions were related to reducing the number of days? John Myers replied the proposal was that there

would not be enough horses. Mr. Robinson added prospectively the Commission is making a determination that there is going to be a shortage of horses in 2015. Mr. Myers replied we are not, we have the request and based on the statute he has 72 hours to send out a notice and begin the process that is required. Mr. Robinson replied he disagrees with Mr. Myers' interpretation and this is a prospective request. Ms. Talbott stated she does not think the Commission is making the determination today that there is a shortage of horses, that's what Charles Town is alleging in their request. The statute says once a request is made to go below 220 race days, the Commission is required to put out a notice to the relevant parties and give them so many days to make comments on that request. There could be comments that counter the shortage of horses and then the Commission would have to determine if Charles Town's representation is true or not. That is not what is being decided today, however. Erich Zimny stated there were actually two reasons, one being the horses and two being the purse funds and preserving the purse structure. This is not a prospective determination on their part. Chairman Rossi stated this is not the hearing. There will be a hearing, if there are objections, and at that time they should be prepared to present backup because the Commission has to hear it and has to make a decision based on the information provided. Nelson Robinson asked, for purposes of interpretation, can an objection come from any individual at any place? Kelli Talbott replied the notice goes to the majority representative of the pari-mutuel clerks and to the horsemen and it is up to those representatives to inform their constituents that the notice has been issued, and if one of their constituents that has a permit wants to file an objection, they can. Mr. Phillips asked if Charles Town made a similar request last year and there were no objections? Mr. Myers replied yes, but that was for not making up the days that were cancelled for bad weather. He also added the Commission has already received the letter from the HBPA stating they support the reduction in days as well.

Maria Catignani, Charles Town HBPA, stated the HBPA did agree to the 193 days and their motivation was to preserve the purse account, they did not have a discussion about a shortage of horses. They were trying to be forward thinking based on the temperature, the legislation before them and the money available to them. This is an ongoing discussion between track management and the HBPA in an attempt to preserve the purse account and to allow them to continue racing throughout the year. They are hoping that the funds that are available for the purses will exceed their projections and then PNGI and the HBPA can get together and talk about adding more days. Mr. Phillips added what he's hearing is that if weather becomes an issue in the next few months, the proposed schedule for July and August could potentially change. Mr. Zimny replied the amended schedule they gave is to build in a buffer at the end of the year for days that may have been lost or that could be added.

#### **Wheeling Island Request to approve the addition of a kennel contract for Ricardo Pacheco (Rico Racing)**

John Myers stated the Commission approved the kennel contract for the Wheeling facility a few meetings ago. Since that time they have added an additional kennel, with the same terms as the other contracts, for approval by the Commission. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

#### **Greenbrier – Request to approve simulcast import sites for 2015**

John Myers stated the list of sites to approve is included in the Commissioner's binders. Motion was made by Mr. Phillips to approve, seconded by Mr. McDermott. Motion passed.

**Request to approve Executive Director to make corrections of the code citations in the WV Breeders Classic contract for 2015, obtain signatures and process through the State purchasing division**

John Myers stated he received a letter from Breeders Classic asking to renew the contract for 2015. In reading the agreement, it appeared there are some issues with code citations. Addendums correcting those code citations can be placed in the contract. Purchasing has agreed to let the Commission proceed with the contract, using the term "reasonable time" to allow a new contract to be negotiated and written while the current one remains in effect for one additional year under the same terms. Mr. Phillips stated the contract still lists the former Executive Director so we may want to look at this contract carefully because there may be other things. Motion was made by Mr. McDermott to allow the Executive Director to move forward with the changes, seconded by Mr. Phillips. Motion passed.

**Request to approve occupational permit for Mr. Eric Levensgood**

John Myers stated Mr. Levensgood has a history but has written a letter asking for reinstatement. He appears to have completed several programs that show he is committed to being an upstanding individual. We have a letter from the Board of Stewards at Charles Town signed by all three stewards recommending he be reinstated. Mr. McDermott asked Mr. Myers to implicate the nature of the problems that led to Mr. Levensgood being before the Commission. Mr. Myers stated Mr. Levensgood has a couple of felonies in his past. He has a felony that was sexual assault related to his girlfriend of many years. He also had an altercation while he was in prison. He served 5-10 years and had 5 years probation.

Mr. McDermott stated they received a copy of the letter from the Stewards. The first sentence of the letter reads "The Board of Stewards spent a lot of time pondering whether to recommend or not recommend to the Commission that they grant an occupational permit to Mr. Levensgood." When he reads a sentence like that it suggests to him that this is really a close call to the Stewards. Is that a correct understanding on his part? Danny Wright replied they have made a decision to no longer "rubber stamp" these requests. They are going to do as much due diligence as possible. They have had several discussions with Mr. Levensgood and looking at what he's done since his incarceration and his release, they feel it is better to allow than to not allow him to be reinstated. He has made a lot of improvements. Mr. McDermott asked what time frame has elapsed since Mr. Levensgood's problems? Mr. Wright stated he has been out of prison since 2012 and has not been in any trouble since then.

Mr. Levensgood stated he had a lot of issues in the past, mainly around one specific time in his life, which was around 7 years ago. He has completely changed his life around. He would just like an opportunity.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Hearing examiners recommended decision in the appeal hearing of Ronaldo Marine**

Kelli Talbott stated this was a case in Charles Town where the Stewards issued a ruling against Mr. Marine, who was a trainer, after an incident where he disturbed the peace on the Association grounds and used obscene and foul language to the starter at the racetrack. The Stewards have suspended his permit for 30 days, fined him \$500 and ordered that he go through a certified anger management program. Mr. Marine had a previous history of these

types of incidents which led the Stewards to issue that enhanced penalty. The hearing examiner has recommended to uphold the Stewards ruling. Mr. Marine has, at this point, completed his 30 day suspension, but she does not think he has paid his fine or completed the anger management program. Until he does those two things he is not in a position to be reconsidered to come back to the track. Motion was made by Mr. McDermott to affirm the recommended decision of the hearing examiner, seconded by Mr. Phillips. Motion passed.

### **Hearing examiners recommended decision in the ejection appeal hearing of Walter Shauf and Scott Lane**

Kelli Talbott stated Mr. Shauf and Mr. Lane, a trainer and an assistant trainer, were ejected from Charles Town racetrack due to allegations that they had provided false information about a workout that a horse had to have in order to enter the race and apparently did not have. The hearing examiner has recommended the ejection essentially be upheld but that Mr. Shauf and Mr. Lane be allowed to re-enter the racetrack on June 25, 2015. Motion was made by Mr. McDermott to approve the recommended decision of the hearing examiner, seconded by Mr. Phillips. Motion passed.

### **Retirement Plan for Backstretch Personnel**

Mike Lloyd stated there are several documents for the Commission's consideration and approval. After a lot of great work by the HBPA representatives and the Racing Commission's attorney, they are in a position to have before the Commission all of the documents that relate to the retirement plan and the trust. The retirement plan was previously approved. Today they are requesting approval of the retirement plan trust document and a first amendment to the plan. They also have an investment policy and engagements of an Investment Manager and a Third Party Administrator. The Investment Manager is Wesbanco and the Third Party Administrator is Jackson Kelly. All of the documents have been reviewed by Racing Commission Counsel, Jim Rutledge. Chairman Rossi inquired if the one question he had had been corrected? Mr. Lloyd replied yes, it had been corrected as requested. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Next meeting – tentatively January 20, 2015**

Chairman Rossi stated for various reasons, he would rather have the next meeting the week before January 20<sup>th</sup> if possible. Next meeting tentatively scheduled for January 13, 2015.

### **Public Comments**

Mike Vales, horseman and trainer at Mountaineer Park, stated losing the race days in December is causing a great deal of concern for the horsemen at Mountaineer. According to some of the figures, they could have ran in December. He agrees with Charles Town and how they are working together with their management to work out their days. Not running in December put a hardship on the horsemen and they had the money to run. Mr. McDermott asked what the source of that information is for the statement he publicly made? Mr. Vales replied at the November hearing Mountaineer put out projections. There was no need for projections when they could have given hard numbers to show there was enough money to run

in December. Mr. Vales added that in August, the Commission had an Order and he is asking the Commission for a continuing resolution of that Order through December 2015 so they can run their required days. They cannot wait until next year to do this because Mountaineer will not be running in November and December of next year if this is not done now. Charles Town is working with their horsemen but Mountaineer is not getting the same cooperation. He is asking to be put on the agenda in January at a Racing Commission meeting to present this itinerary to the Commission and they can plan, like Charles Town is planning, for their 2015 season. Chairman Rossi stated he would recommend they do just what Charles Town is doing and the HBPA should strive very hard to work with the track.

Phil Reale stated in regards to the issue of reducing race days, there are very specific requirements in Code, and he would suggest those that are wishing to reduce racing days first have to make an application for 220 days and thereafter is when other things start to kick in. As a Racing Commission, make sure, as regulators, those activities are done correctly.

Troy Hendricks asked if Mr. Myers would keep them up to date on the reduction in race days issue. He added he will work with Mr. Myers and he has some information he would like to give him on this topic.

Jana Tetrault expressed her thanks to everyone for approving the Retirement Plan for Backstretch Personnel.

Nelson Robinson stated Mountaineer management met with the HBPA yesterday to discuss racing days. The reason for his earlier comments about Charles Town's request is because he thinks the statute is very clear: You make application, thereafter, which is on a prospective basis, that there are conditions why you would not meet the required number of race days. He does not think the Racing Commission should be put into a position where they are the arbitrator of negotiating race days. The statute is also very clear on objections. If the statute meant to say that an objection could come from a licensee, it would say that. The statute is very clear that you notify the majority of the representatives of the HBPA and the majority representative of the mutuel clerks. If an objection is received, his perception is an objection from those two entities, then a hearing is to take place. If an interpretation is that it could be from any licensee, that's what the statute would say. The purse situation is going to get worse. The competition factor is all around us and the purses are going to decrease.

Mr. Phillips stated he wanted to remind everyone that the Commission is on record of taking some action that would address several of the issues Mr. Robinson discussed. The Commission is on record to design and have legislation to reduce the number of live racing days, which he thinks would be a benefit to everyone. They are also on record for having addressed the revenue issues through the advanced deposit wagering and the instant racing. Other than just being on record, the Commission should be advocates of these items.

### **Adjournment**

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