

**MINUTES**  
**WV RACING COMMISSION**  
**Monday, December 9, 2013**  
**WV Lottery Conference Room**

The WV Racing Commission met on December 9, 2013 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 22<sup>nd</sup> minutes**

The Commissioners and legal counsel received the minutes from the October 22<sup>nd</sup> meeting prior to this meeting. Mr. McDermott moved to accept the minutes, seconded by Mr. Phillips. The Commission approved the October 22<sup>nd</sup> minutes.

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

Jon Amores, Executive Director, stated the Thoroughbred Rules were approved by Rule Making Committee at the end of October, with some minor changes that were discussed with the Commissioners.

We are currently instituting a badge list at Charles Town, and will do the same at Mountaineer. This will be a list at the clerk's office of those who are employed by trainers at the track. This is for verification purposes of who should be at the track working and for whom. This will be implemented 1<sup>st</sup> of December at Charles Town and at Mountaineer when they resume live racing in March 2014.

Update for work with RCI – database for the rulings has been installed at 3 tracks with 1 more track still to come. This will allow our rulings to be plugged into the RCI database of rulings so we can have a much more comprehensive connection nationally to rulings that affect permit holders. The licensing software will take a little longer as it is more complicated but it is proceeding. We are currently working with RCI to determine our hardware and software needs and are looking at the next 6 months or so for our licensing software to be a part of RCI. More updates will be provided over this period of time.

We are in the process of instituting some Standard Operating Procedures. This will be a project at Mountaineer while they are dark over the next few months, especially for the Vets and Vet Techs. We want them to work on specifically what they do every day, during racing, etc. and put in SOP format. We will use this as a template for Charles Town.

Permit renewals are posted online for all permit holders set to expire December 31, 2013.

At the prior Commission meeting, it was discussed ways to honor former Commissioner Harry Buch. After some discussion with the staff, we thought it might be fitting to name our Conference Room after him. Motion was made by Mr. McDermott to name the Racing Commission Conference Room after former Commissioner Harry Buch, seconded by Mr. Phillips. Motion passed.

Maureen Vulgamore, license clerk at Mountaineer, is retiring from the Racing Commission after 12 years of service.

This month marks the 80<sup>th</sup> anniversary of racing at Charles Town.

**Auditor's Report  
Becky Carnefix**

Becky Carnefix stated the Capital Improvements update since the last meeting was Mountaineer submitted 6 projects for reimbursement in October and November totaling \$111,408.30. They were reimbursed \$73,130.40 for 3 of these projects during November and the other 3 projects will be reimbursed this week. Mardi Gras was reimbursed \$23,446.44 during the month of October for 2 prior projects submitted for reimbursement.

Supplemental purse awards 3<sup>rd</sup> quarter claims, covering race dates January-March 2013, are in the process of being reviewed. 14 day letters requesting additional information for residency verification should be mailed out mid-December.

Thoroughbred Development Fund – a mailing was sent out late November to all participants, for race results January-October 2013, for verification of information for the February 15<sup>th</sup> distribution.

**Accountant's Report  
Joe Moore**

Joe Moore stated for the month of October, in state handle increased, revenue generated from live and simulcast increased, as well as license fees. Financial projections in the binders do include the November estimated figures. The Racing Commission has calculated checks related to the Burdette settlement. The Settlement was entered into late October and on November 19<sup>th</sup> the distribution calculation was finalized and approved. On November 22<sup>nd</sup>, checks were written to 108 participants totaling \$1,825,130.26. There are 13 remaining participants due \$233,781.24, pending ownership rights verification. On November 22<sup>nd</sup>, the Racing Commission wrote a check to Wyatt Hanna for \$50,000 for legal fees related to the settlement agreement. On December 3<sup>rd</sup>, \$2,008,911.50 was deposited into FIMS account 7307.

**Legal Update  
Attorney General's Office**

Kelli Talbott stated the most significant item to take note of is the Christopher Grove case. Mr. Grove's trainer permit was suspended for 6 months and he was fined \$5,000 for a Class I drug. The Commission upheld the Stewards decision. Mr. Grove's has now appealed to the Kanawha County Circuit Court and his attorney filed a brief recently in which he is contesting the constitutionality of the absolute insure rule. This rule holds the trainers liable for a drug positive in a horse regardless of how the drug got into the horse and regardless of the acts of third parties. Our Supreme Court back in the 1940's upheld the constitutionality of the absolute insure rule. Mr. McDermott asked if any other state's Supreme Courts abolished this rule as unconstitutional? Ms. Talbott replied she was only able to find 1 other state Supreme Court that found it unconstitutional.

There are some appeals pending that are set for hearing. Randy Wehrman has appealed his license suspension. He is the former Racing Secretary for Charles Town. The Schweizer case is also still pending in the state Supreme Court.

-----Chairman Rossi requested approval from the Commissioners to move item #19 on the agenda to the next item. Motion was made by Mr. McDermott, seconded by Mr. Phillips. Motion passed.-----

### **Approval of Third Party Administrator for Backstretch Personnel Retirement Plan**

Mike Lloyd, representative for HBPA's, stated his presentation is both a report and a request for certain action items. A Request for Proposal (RFP) was put together to identify a TPA for the administration of the current or new HBPA Retirement Plan for Backstretch Personnel. The RFP was submitted to 3 firms they have identified that do this kind of work. They have received proposals back from 2 of the firms and anticipate receiving the 3<sup>rd</sup> proposal today. They have also conducted phone interviews with the 2 they have already received. The first item they would like to acknowledge and request is if the Racing Commission has other firms we would like considered, they would be pleased to submit the RFP to them as well. The firms they selected to receive the RFP are Buck Consultants, DB&Z, and Jackson Kelly. They will not be making a recommendation today for a TPA, but rather a request to be put on the January agenda for that recommendation. In order to properly evaluate these proposals there are a couple additional items they ask to be considered. The first item they would like some clarification on relates to the status of the Trustee in the Investment Manager. The Administrator will work very closely with the contact representatives for the Trustee in the Investment Manager. It is currently proposed that the State will serve in this status, and if it's possible, they would like to have this confirmed. The second item is in the version of the plan they have provided to the TPA, they have brought up provisions they would like to be considered. This brings up the proposal of a first amendment to the plan. The retirement plan itself provides that the Racing Commission can amend the plan with a written amendment so long as it doesn't take benefits away and does not provide a return of money back to the Commission. The amendment drafted in proposed form is compliant with the federal tax laws that relate to this type of plan and believe it will also substantially reduce the cost of administration and address potential future operational issues. The draft of the amendment is also included in the materials. The substantive items of the amendment are: The first one relates to the vesting provision. The plan is currently designed to provide class year vesting. Each year of contribution vests separately on a five year cliff schedule. It is very difficult for the Administrators to administrate a class year. Vesting schedules are very difficult for a participant to understand what their benefits are at any time. Concerned this will cause unintended forfeitures so they have proposed eliminating the class year vesting and replacing it with a straight 5 year cliff vesting schedule. Another item currently in the plan relates to the eligibility of participation and forfeitures on account of participation in any other retirement plan. Under the current provision, a person is not eligible under the HBPA plan if they participate in another plan. This will be virtually impossible to administer and do not believe in limiting participation in this plan when participating in another plan. Another change proposed relates to the separate account that already exists in the plan with respect to what is referred to as prior plan money. The plan money, or contributions, for years 2010 and 2011 has been held separate because of it relating to the prior plan and is proposed because of the uncertain status of the plan in contributions that it would be advisable to vest and distribute that money in 2014. Another provision provides that when a person receives a distribution they are not permitted to participate in the plan again for 5 years. They believe this restriction is not necessary and would also be inconsistent with the other changes identified. There is also a provision in the plan about withholding. This is a plan that allows for taxation of amounts once participants become vested and provides for an automatic 10% withholding. They feel there may be participants in the plan that may have withholding needs that are greater than 10% and would like to permit

those participants to make an election to have a greater withholding than 10%. Finally, there is a definition of eligible trainer they would like to change to clarify that starts at ineligible racetracks shall not accumulate against a trainers total number of starts when the participating track has been dark for more than 14 consecutive days. The items just discussed are the items they would like to be considered by the Racing Commission. Chairman Rossi inquired if they were going to submit all of this in writing? Mr. Lloyd responded yes they would. Chairman Rossi stated he's not sure the Commission will have something ready for them at the January meeting but they will definitely look at all of it.

### **Permit application, Darryl Brinkley**

Jon Amores stated this item was held over from the last meeting for a check provided on Mr. Brinkley. The information is identical to what was provided at the last meeting. Mr. Brinkley has been a jockey for 20 years at Mountaineer Racetrack. He had a 3<sup>rd</sup> positive drug test and had to complete a 6 month suspension. He has attended treatment and continues to do so. The Mountaineer Board of Stewards have provided a letter of recommendation, with qualifications since he has failed drug testing in the past. The Board of Stewards believe Mr. Brinkley should be on a zero tolerance approval which means he should be reinstated but if he fails another drug test or refuses to take one at the discretion of the Stewards his permit should be permanently revoked and Mr. Amores concurs with this recommendation. Mr. McDermott moved to accept the Board of Stewards recommendation, seconded by Mr. Phillips. Motion passed.

### **Permit application, John Luzzi**

Jon Amores stated Mr. Luzzi was before the Commission in September. He has prospective employment in the state of Florida, where he currently lives and is continuing treatment there. The Commission's action in September was intended to allow him to continue and take a job in Florida, however, there was a condition on that. The desire of the Commissioners was to give him an opportunity to start over in Florida and to do that he had to receive an unconditional, good standing restoration of his permit in West Virginia. Secondly, if he does seek license reinstatement in West Virginia, the Commission would have the discretion to turn down or reject his application in West Virginia. Florida is a state that has reciprocity with West Virginia so they need to see, at least on paper, that his license is unconditional so they can issue him a license. Mr. Amores requested that the Commission consider unconditionally restoring Mr. Luzzi's permit. Mr. Phillips asked if something would come up in the future, can the Commission then take action as if he were in fact licensed in West Virginia? Mr. Amores responded yes. Mr. McDermott moved to approve Mr. Luzzi's request in accordance with the Racing Commission's Executive Director's recommendation, seconded by Mr. Phillips. Motion passed.

### **Permit application, Katherine M. Duffy**

Jon Amores stated Ms. Duffy is seeking a grooms license at Charles Town and has a 3<sup>rd</sup> offense DUI felony on her record. She has completed treatment programs. The Charles Town Board of Stewards have given her a letter of recommendation stating she should be reinstated, subject to alcohol testing at the discretion of the Board of Stewards and adopt the zero tolerance policy, which means any failure of a test or refusal to take a test will result in

immediate permit revocation. Mr. Amores concurs with the Stewards recommendation. Mr. McDermott moved to approve the reinstatement in accordance with the Executive Director's recommendation pursuant to the conditions described, seconded by Mr. Phillips. Motion passed.

### **Permit application, David Chaney**

Jon Amores stated Mr. Chaney is an HVAC mechanic and has been so at Charles Town, however, he has a felony on his record. The felony occurred a while back, however, under the new rules, any felony is required to be brought before the Commission. Mr. Chaney was charged in 1986 with involuntary vehicular manslaughter. He did complete treatment programs shortly after his conviction and since then has had no other incidents on his record. In support of his application, PNGI management, as well as the Charles Town Board of Stewards, have submitted letters of recommendation supporting his approval. Mr. Amores concurs with the recommendations that have been submitted and recommends his application be approved. Mr. McDermott moved to approve Mr. Chaney's application, seconded by Mr. Phillips. Motion passed.

### **Mardi Gras Racetrack, approval of 2014 race dates**

Jon Amores stated they have 2014 race dates and import/export lists in their binders. The live racing calendar submitted for approval seeks approval to add a 16<sup>th</sup> race to each performance beginning April 1<sup>st</sup> through October 31<sup>st</sup>. Mr. Amores recommended approval of the race dates. Mr. McDermott made the motion to approve the 2014 race dates for Mardi Gras, seconded by Mr. Phillips. Motion passed.

### **Wheeling Island, approval of 2014 race dates and changes to wagering format**

Wheeling Island has submitted their 2014 race dates and import/export sites. In addition to that, they have also asked for changes to a wagering format, which are included in the binders. Mr. Amores recommends the race dates and changes to wagering format for approval. Mr. McDermott moved to approve the race dates and changes to wagering format, seconded by Mr. Phillips. Motion passed.

### **Wheeling Island, approval of 2014 kennel contract**

Jon Amores stated the contract is included in their binders, and at the end of the contract is agreed upon revisions to the contract which shows the contract has been agreed upon between the track and the kennel owners. Mr. Amores recommends the contract be approved. Mr. Phillips asked if the contract has been reviewed by Racing Commission staff? Mr. Amores stated no, typically negotiations between the track and kennel owners are business decisions the Commission doesn't get involved in. Mr. McDermott moved to approve the 2014 kennel contract, seconded by Mr. Phillips. Motion passed.

### **Charles Town Racetrack, approval of live racing dates, simulcast agreement, and preference system for 2014**

Jon Amores stated Charles Town has provided their live racing dates and their preference system for 2014, however, the simulcast agreement has not yet been provided. We have been advised that as soon as the simulcast agreements are approved by the HBPA we will receive those and be ready to approve those at that time. Randy Funkhouser, Charles Town HBPA, stated they have been in contract negotiations with Charles Town and they have agreed and he has currently sent to legal counsel for review and approval of the simulcast agreement for a 90 day period of time and is current until December 31, 2013. They have told Charles Town they will approve all race dates submitted to them from January 1, 2014 through March 31, 2014 and he intends on signing tomorrow. They have not been provided a list of live race dates, but assumes they are for 220 days of live racing. Erich Ziminy, Charles Town, concurred it was 220 days submitted for. Mr. Amores stated the request is to approve the live racing dates and the preference system. Mr. Phillips moved to approve the live race dates and preference system, seconded by Mr. McDermott. Motion passed.

### **Charles Town Racetrack, approval of 2014 stakes races**

Mr. Amores recommended the stakes races provided by Charles Town for 2014 be approved. Mr. McDermott moved to approve the 2014 stakes races, seconded by Mr. Phillips. Motion passed.

### **Charles Town Racetrack, approval of new tote vendor (Sportech)**

Mr. Amores stated Charles Town has replaced United Tote with a new tote vendor, Sportech, effective January 1, 2014. Mr. Amores recommends for approval. Mr. Phillips moved to approve the new tote vendor, Sportech, seconded by Mr. McDermott. Motion passed.

### **Mountaineer Racetrack, approval of stakes races and preference system for 2014**

Jon Amores stated that included in the list of stakes races was the annual request for \$750,000 be allocated for the WV Derby. This request has not changed over the years and Mr. Amores recommends it be approved. Mr. Phillips moved to approve the stakes races and preference system for 2014, seconded by Mr. McDermott. Motion passed.

### **Mountaineer Racetrack, approval of Mystery Voucher promotion and 12/22 make up day**

Jon Amores stated the Mystery Voucher promotion was done earlier in the year as well and was a very successful promotion and they are asking to do it again. The make up day is due to a cancellation of a race day due to inclement weather. Mr. McDermott moved to approve, seconded by Mr. Phillips. Motion passed.

### **Approval of The Greenbrier simulcast contracts for 2014**

Jon Amores stated The Greenbrier has provided their import/export information and he recommends it be approved. Mr. McDermott moved to approve The Greenbrier simulcast contracts for 2014, seconded by Mr. Phillips. Motion passed.

### **Hearing Examiner's Recommended Decision: Patty Burns**

Kelli Talbott stated this was an ejection appeal heard by Jeff Blaydes. He recommended her ejection be upheld but she be reinstated and be allowed re-entry to the racetrack on March 13, 2014. Mr. McDermott moved to adopt the Hearing Examiner's recommended decision, seconded by Mr. Phillips. Motion passed.

### **Renewal of contract for Breeders Classics XXVIII, to be held Saturday, October 18, 2014**

Jon Amores stated this request was for the same terms, conditions and amounts contained in the current contract. Mr. Phillips moved to approve the contract, seconded by Mr. McDermott. Motion passed.

### **Charles Town Capital Improvement Request, \$20,075 for chain link fencing and gates**

Becky Carnefix stated this request is for chain link fencing and gates for the 6 ½ to 7 furlong and overflow parking areas. This request is rather self-explanatory. She has reviewed the bids received and recommends for approval. Mr. McDermott moved to approve the request, seconded by Mr. Phillips. Motion passed.

### **Charles Town Capital Improvement Request, \$5,948.77 for counter unit gas griddle**

Becky Carnefix stated this request is for a counter unit gas griddle for Longshots, which is located in the Simulcasting area. She has reviewed the bids and recommends for approval. Mr. McDermott moved to approve the request, seconded by Mr. Phillips. Motion passed.

### **Mardi Gras Capital Improvement Request, \$566,399.08 for construction of buffet**

Becky Carnefix stated this is a carryover from the October meeting. At that meeting we asked Mardi Gras to provide us with an allocation for reimbursement of this project they felt to be of benefit to Racing. Mardi Gras has allocated 50% of those expenses, totaling \$283,199.54. After reviewing the documentation Mardi Gras submitted explaining the reasoning for their allocation, she recommends the 50% allocation for approval of \$283,199.54. Mr. McDermott moved to approve the reimbursement in the amount of \$283,199.54, seconded by Mr. Phillips. Motion passed.

### **Personnel matters, Executive Director review**

Mr. Phillips moved to hold this item over until the January meeting, seconded by Mr. McDermott. Motion passed.

### **Public Comments**

Randy Funkhouser stated Buck Woodson is the breeder of a WV Yearling (Giovanni Baldini) that is one of the early favorites for the Kentucky Derby next year, and is a WV bred horse. This horse is internationally recognized right now and is at the top of the charts.

Sam Burdette thanked the Racing Commission and the accounting and auditing staff for the expediency of the checks in the settlement distribution.

### **Next meeting**

The next meeting is scheduled for Tuesday, January 21, 2014.

### **Adjournment**

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