

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, May 18, 2021**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on May 18, 2021, to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Ken Lowe Jr., Commissioner Anthony Figaretti, and Commissioner JB Akers. Counsel was represented by Kelli Talbott.

**Approval of the March 26<sup>th</sup> minutes**

Motions to approve the meeting minutes for March 26<sup>th</sup> were made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motions were passed.

**Executive Director's Report**

Executive Director, Joe Moore, provided a quick update. Mountaineer Park has started their live racing. Their regular weekly cards are Sunday through Wednesday. We have re-race vet under contract to perform the pre-race inspections. State vet, Dr. Bohenko, continues to do the vet work on the live race card, and Dr. Day is available under contract for one to two days a week to work horses off the vet's list. He has included the Charles Town injury report as well as the parimutuel wagering comparison report for review. The current list of vacancies has been provided. We continue to seek a second steward at Charles Town and look for a full-time vet for Mountaineer Park. We have officially hired an investigator for Mountaineer Park who will start this Saturday.

**Legal Update**

Legal Counsel, Kelli Talbott, reported the Thoroughbred racing rule that the commission okayed to file for final filing with the amendment was filed. Those new amendments go into effect July 28<sup>th</sup>, 2021. She circulated that to all of the racing constituents; the track, horsemen, jockeys, and stewards so they would know when it goes into effect. The Greyhound racing rule and Advanced Deposit Account Wagering (ADW) rule are in effect now. They went into effect immediately upon final filing.

**Charles Town Requests Approval for 8 make-up days**

Joe Moore presented the request to approve 8 make-up days at Charles Town. The horsemen at the last commission meeting requested to approve making up eight days. The decision was deferred to the next meeting to allow the racetrack and horsemen to work together on which 8 make-up days to consider approving. What was submitted for today's request were the exact same dates provided from the previous meeting for dates in September and October.

Chairman Lowe read a written response provided by Charles Town racetrack management in a letter dated May 11<sup>th</sup> regarding a paragraph after the dates being requested that Charles Town casino also would like to reiterate, they strongly believe this is the wrong decision to mandate be made up and wish to reaffirm all objections made in the email made on April 28<sup>th</sup>, 2021. He asked Erich Zimny with Charles Town racetrack management if there was any improvement with the situation. Does he still feel the same way?

Erich Zimny asked about how days Mountaineer cancelling already due to the lack of entries. They have obviously cancelled, and it is not getting better. They obviously put in the request and have the same objections they had before.

Chairman Lowe asked if this was based the short number of horses.

Erich Zimny confirmed that is the only reason. When you are cancelling this much for a lack of entries looks bad.

Chairman Lowe stated so we all have to do as much as we can to help remedy that situation. More horses. More people. More involvement. It is a team effort. We all have to do our part to get through this the best we can. He appreciates Erich Zimny's position and will take those dates and see what happens. Let's hope it works out for everybody.

Motion to approve request was made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion was passed.

### **Occupational Permit Request - Raymond Ripley**

Joe Moore presented the occupational permit request for Raymond Ripley's application for a groom permit at Mountaineer Park. Mountaineer Park stewards have met with Mr. Ripley for the past year. He is requesting reinstatement of his permit. He is before the commission today because he has a felony for drug distribution record in 2014. The commission received a couple letters on Mr. Ripley's behalf in addition to some certificates of completion for programs he has gone through. The stewards recommend approving the reinstatement of his license permit.

Motion to approve request was made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion was passed.

### **Occupational Permit Request - Donald Robb**

Joe Moore presented the request to approve an occupational permit for Donald Robb. He is before you today for a felony on his record. He is applying for a vendor license at Charles Town. The Charles Town stewards, and investigator met with Mr. Robb. Several references on his behalf have been provided for review. The stewards recommend approving.

Chairman Lowe asked if Mr. Robb has anything he would like to say.

Ripley Robb stated he is not proud of his past, struggled with addiction, been clean for three years, puts recovery and God before everything. He appreciates the Commissioners time today.

Commissioner JB Akers thanked Mr. Robb for his appearance today. Mr. Robb congratulated him for his for recovery. He wants to make sure they do their due diligence. He asked if Mr. Robb had any other legal issues since applying and being clean? Reason for asking is on his application he had failed to disclose a prior arrest in Pennsylvania. So, there is no other records not on the application they are unaware of?

Ripley Robb said no sir.

Commissioner Figaretti asked how long Mr. Robb has been in rehab.

Ripley Robb replied he went into treatment in 2017.

Motion to approve request was made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion was passed.

### **Mountaineer Park Capital Improvement Request - Hot Water Supply Line**

Joe Moore presented the capital improvement request from Mountaineer Park for the hot water supply line. This is the supply line for the upper barns on the backside. The line needed to be replaced after it was identified as being broke. It was repaired at a cost of \$10,679.50. Joe Moore recommends approving.

Motion to approve request was made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion was passed.

### **Mountaineer Park Capital Improvement Request - Track Lighting**

Joe Moore presented the capital improvement request from Mountaineer Park for racetrack lighting. Several lights were identified needing repaired as Mountaineer Park came back with live racing. The total cost of repairs was \$30,777.25. Joe Moore recommends approving.

Motion to approve request was made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion was passed.

### **Wheeling Island Capital Improvement Request - HVAC Units for Kennel buildings**

Joe Moore presented the capital improvement request from Wheeling Island for the removal and replacement of HVAC units in fifteen kennels. The total amount of the capital improvement request is \$174,000.

Chairman Lowe asked Kim Florence with Wheeling Island Racetrack management if there was any credit, deduction, or trade in for purchasing the new units.

Kim Florence reported they evaluated all options such as being recyclable. The units are estimated in her range of over ten years old. The parts are hard to come by due to the age of the equipment. It is an important project to maintain the safety for the kennels.

Chairman Lowe noticed there is a statement in proposal regarding asbestos removal. Is there asbestos there?

Kim Florence stated no not to the best of her knowledge. It is part of the standard advising for work being done.

Motion to approve request was made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion was passed.

### **Approval of 2021 ADW License – Watch and Wager**

Joe Moore presented the request for approving an ADW 2021 license for Watch and Wager. A copy of their license application has been provided for review. We have received their payment for the commission fee. Joe Moore recommends approving.

Chairman Lowe asked Joe Moore if they have been in business for a while?

Joe Moore reported in reviewing their application they had a gaming license issued in 2017.

Chairman Lowe asked if they have already taken any wagers in WV?

Joe Moore is not aware of that yet since the Thoroughbred Racing Protective Bureau (TRPB) will begin assessing it upon license approval.

Commissioner JB Akers identified their application indicates they have been doing business in WV since July 2020. Have they been doing business in WV already?

Joe Moore reported not that he is aware of. Once the request to issue a license is approved the TRPB can begin receiving data files from the ADW operator to assess whether they have taken any wagers since July 2020. The Racing Commission would take similar action previously taken with ADW operators who took wagers in WV before being licensed after July 20210.

Motion to approve request was made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion was passed.

### **Approval for Proposed Thoroughbred Rule changes to be published for Public Comment.**

Joe Moore presented the request to approve for the proposed Thoroughbred racing rule to be published for public comment. He clarified the purpose of this request to put proposed amendments out for public comment only.

Kelli Talbott reviewed several proposed Association of Racing Commissioners International (ARCI) model rules. Some of these were enacted from ARCI from December 2019. In December 2019, the ARCI scientific advisory committee determined permissible threshold needs to be lower for non-steroidal anti-inflammatory drugs (NSAIDs) for the horse safety and integrity of racing. A vet could speak to this better than she, but her understanding is the horse's pain could be hidden through using a higher dose. Her understanding is WV is the only state in the mid-Atlantic who has not adopted the rule. Another change being propose is the penalty guideline to 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> offenses. The other one it makes horses ineligible to race for 14 days for corticosteroid injection for equine and jockey safety. To best of her knowledge WV is the only state in mid-Atlantic not to adopt.

Chairman Lowe so what we are trying to do here is discuss the proposed changes, and then approve to put out for public comment to have anyone provide feedback.

Joe Moore and Kelli Talbott concurred.

Chairman Lowe stated having been to every one of the other mid-Atlantic state racetracks he knows although we are similar, we are different than others. There is more to it, and he feels it his duty as Commissioner to listen and act on what the racing industry in his state wants. He is always subject to change. Number one in his opinion, he understands we do not want to be an outlier, but he cannot agree just because everyone else is doing it. He cannot do what is not fair to WV. He agrees on the thresholds but the dollar amount for penalties is more to an owner/breeder in WV than in somewhere like NY.

Kelli Talbott continued to review the remaining proposed ARCI model rules included in the proposed Thoroughbred racing rule to go out for public comment.

Motion to approve including ARCI model rules to go out for public comment was made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion was passed.

Chairman Lowe reviewed the Charles Town Horsemen's Benevolent and Protective Association (HBPA) proposed change. It would require rule change to apply to all tracks and not just Charles Town.

Kelli Talbott reviewed the request by the Charles Town HBPA to adopt a rule requiring the stable gate to be open 24-hours a day seven days a week. Even though this is the Charles Town HBPA the Racing

Commission does not promulgate rules for just one track. Any rule being adopted would be applicable to all tracks. She believes the Charles Town HBPA believe this to be a safety issues for the welfare of the horses. The Charles Town HBPA also want the receiving barn to be maintained put in the rule. The other issue is the release of purse funds. Currently the test results have to be cleared before the purse funds can be released. The horsemen want to operate like Maryland requiring the owner to enter into a release agreement so they can receive the purse within 48-hours of the race. In the even there is a positive test the purse would have to be fully recovered within 24-hours or their permit would be suspended.

Chairman Lowe asked what Mountaineer Park racetrack management requirements and policies are for stable gate access and receiving horses.

Mountaineer Park racetrack management, Jim Colvin, reported they have an agreement with Mountaineer Park HBPA to provide access for live racing. If any of the horses come in from 6am to midnight the stable gate is closed but will open up to load/unload if they call dispatch. They grant the horsemen access to the backside has 24x7 access if they wish to walk-in. That is their stable gate policy right now with the pandemic. They will go to staffing 24x7 access soon but facing same issues with staffing as Charles Town.

Chairman Lowe asked about the receiving barn situation.

Jim Colvin stated their receiving barn has never been closed. They do social distancing in the receiving barn. They put stalls in between one set of trainers and horses to keep them separated. Regarding ship ins if prior arrangements are made, they allow them to stay in the barn.

Chairman Lowe asked for Erich Zimny with Charles Town racetrack management's opinion.

Erich Zimny shared that if anything these last 18 months taught us is that situations change. There are times when something was not possible, practicable, or otherwise feasible he does not think during a pandemic anybody would have here thought it was not a good idea. As far as the stable gate being 24x7 as he has explained before it is not possible right now. They are trying as hard as they can to do that. The only reason it is not being done right now is due to circumstance. To compel something on them that from time to time may not be possible that is not easy. Not mention business models change. Circumstance's change.

Chairman Lowe asked Erich Zimny he had last discussed using a private security firm to assist.

Erich Zimny believes some of them are on the ground now being trained. That is what he was told.

Chairman Lowe asked Erich Zimny if he feels this is something positive happening to more likely suit the horsemen.

Erich Zimny stated it is their hope and they want to do this.

Jim Colvin stated during the rules committee meeting and will again say this is an organizational issue that should be worked between the racetrack and HBPA. It should not be added to the rules of racing at this time.

Erich Zimny concurs.

Commissioner JB Akers said it sounds like the stakeholders are not in agreement to make these changes.

The Mountaineer Park HBPA executive director, Jana Tetrault, stated the horsemen bookkeeping rule is supported by all. She believes maybe the 24x7 access should be separate of the bookkeeping rule.

Chairman Lowe asked if Erich Zimny could put something in writing to let the commission know what they are doing now to address the stable gate access need and moving forward.

Erich Zimny can tell them the way they would like it to go but pandemics do not always cooperate. It is really what he has spoken to on this call. If there was a rule about the stable gate being 24x7 they could not comply with it. They want to move in that direction. He cannot stress that enough. They are taking steps that are not cheap to move in that direction. They cannot do a whole lot better than that right now. They are working very hard.

Joe Moore said where we are today could be different six weeks from now. It would take time to go through the time to get through the public comment period. Due to the same differences of opinion during the rules committee that is why he decided to put this before the commissioners to consider approving to go out for public comment to allow stakeholders to formally submit in writing their position and reasons.

Motion to approve putting the proposed Charles Town HBPA changes out for public comment made by Commissioner JB Akers, seconded by Chairman Lowe. Motion was passed.

Kelli Talbott will notify everyone once the public comment period has started.

### **Public Comments**

### **Adjournment**

Motion to adjourn was made by Commissioner Akers, seconded by Chairman Lowe. Motion was passed.