

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MARCH 18, 2015
“RENAISSANCE DINING ROOM”
FREEHOLD RACEWAY
FREEHOLD, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, March 18, 2015, in the Renaissance Dining Room, located at Freehold Raceway, Freehold, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner (by phone)
Michael J. Arnone, Commissioner
Anthony G. DePaola, Commissioner
David C. Gruskos, Commissioner
Francis X. Keegan, Jr., Commissioner
Peter T. Roselle, Commissioner
Frank Zanzuccki, Executive Director
DAG Susan C. Sharpe

The following were absent:

Peter J. Cofrancesco, III, Commissioner

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the “Open Public Meetings Act,” and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

WHEREAS in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, be it resolved that consistent with the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the 2015 race dates for the thoroughbred meet at the Meadowlands Racetrack.
2. Legal advice concerning the approval of an order directing all undistributed purse money accumulated at Atlantic City Race Course to be paid to the New Jersey Thoroughbred Horsemen's Association ("NJTHA"), as the holder of thoroughbred racing permits, and shall be used for thoroughbred purses.
3. Legal advice pursuant to N.J.S.A. 5:5-189, to consider the request of the NJTHA, as permit holder, and NJTHA, as horsemen's association, to utilize the total amount of the undistributed purse money accumulated at Atlantic City Race Course to fund assessments for the thoroughbred workers' compensation insurance coverage as provided in N.J.S.A. 34:15-134.
4. Legal advice concerning the modification of the Commission's 2012, 2013 and 2014 orders, which approved the New Jersey Sports and Exposition Authority's ("NJSEA") petition to appoint Darby Development, LLC ("Darby") as day-to-day manager of the account wagering system to require that the NJSEA shall amend the Account Wagering Management Agreement by and among the NJSEA, Darby and other parties, dated October 1, 2012, in accordance with the Appellate Division's decision: IMO Order of the New Jersey Racing Commission Approving the NJSEA's Application for Approval of an Account Wagering Management Agreement, Docket No. A-2194-12T1 and A-2353-13T1 (February 17, 2015) to provide that Darby shall act as the NJSEA's agent as ordered by the court.
5. Legal advice considering approval of the NJSEA's petition to modify the Account Wagering Management Agreement, dated October 1, 2012, to provide that Darby shall act as the NJSEA's agent in accordance with the Appellate Division's decision: IMO Order of the New Jersey Racing Commission Approving the NJSEA's Application for Approval of an Account Wagering Management Agreement, Docket No. A-2194-12T1 and A-2353-13T1 (February 17, 2015).

6. Legal advice considering the readoption of the Off-track Wagering and Account Wagering rules: N.J.A.C. 13:74 pursuant to N.J.S.A. 52:14B-1 et seq.
7. Legal advice concerning recent opinions:
 - a) ACRA Turf Club, LLC v. Zanzuccki, Civil Action No. 12-2775 (MAS) (January 31, 2015).
 - b) In the Matter of the Veto by Governor Chris Christie of Minutes of New Jersey Racing Commission of June 20, 2012 Minutes and New Jersey Racing Commission Action Taken at that Meeting Relating to Agenda Item 10 as to Freehold Raceway Off-Track, LLC and ACRA Turf Club, LLC, Docket No. A-5571-11T3 (February 23, 2015) and
8. Other legal advice and/or status of pending litigation.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise his ethical duties as a lawyer and/or matters involving pending or anticipated litigation.”

It was noted that Commissioner Aponte is participating by telephone.

Chairman Clyne motioned to adopt the resolution to adjourn. Commissioner Keegan seconded the motion. The Commission then adjourned to Executive Session.

The Commission ended the execution session and Chairman Clyne moved to reconvene the public session. Commissioner Keegan seconded the motion and the Commission concurring, the public session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE JANUARY 14, 2015 COMMISSION MEETING

Commissioner Keegan made a motion to approve the public and executive minutes of the January 14, 2015 public meeting. Commissioner Abbatiello seconded the motion and all Commissioners voted yes with the exception of Commissioner DePaola who abstained.

CONSIDER 2015 RACE DATES FOR THE THOROUGHBRED MEET AT THE MEADOWLANDS RACETRACK

William Knauf, Vice President, stated that Monmouth Park is requesting 13 race dates to be conducted at the Meadowlands Racetrack which is one fewer day than conducted last year. The NJTHA and the New Jersey SBOA indicated their support of the request.

Chairman Clyne made the following motion:

The Racing Commission at its November 19, 2014 public meeting considered applications for thoroughbred race dates and approved the Monmouth Park dates but tabled, as requested by the applicant, the application for thoroughbred race dates at the Meadowlands. It also approved thoroughbred race dates for Atlantic City Racecourse that were subsequently considered null, void and of no effect due to that facility's closure on January 16, 2015.

The Commission received a new application for thoroughbred race dates for the Meadowlands Racetrack on January 7, 2015 requesting a total of 13 dates from September 24 through October 31, racing Thursday and Friday in September and Fridays and Saturdays in October (plus Monday, October 12). The Commission circulated this request by letter dated February 17, 2015 to all permit holders with a March 3, 2015 deadline for submitting written comment and I note that no written comment was received.

I find that approval of these race dates would be in the public interest as set forth in N.J.S.A. 5:5-22 et seq. specifically as provided for in N.J.S.A. 5:5-43 and 44. Public interest is defined as: protecting the State's revenues from racing and generating additional revenues to the State, its agencies and subdivisions; providing continuity of racing and year round racing; providing recreational opportunities for residents in several areas of the State; and maintaining the State's competitive position with regard to neighboring racing states.

I further find that approval of these dates is consistent with its obligation to endeavor to allot to each applicant the dates requested after giving due consideration to all factors involved, including the interests of such applicants, the Standardbred race dates requests, the industry participants, and the public.

It is noted that this request for 13 dates, coupled with the Monmouth Park's proposed thoroughbred amended race schedule of 58 dates, meets the 71 date minimum requirement of the Off-track and Account Wagering Act, and as required by statute, has been approved in writing by the NJTHA.

I, therefore, move that the race dates request for 13 thoroughbred dates at the Meadowlands Racetrack be approved subject to all previously required conditions imposed on the NJTHA and which will be forwarded in writing to the permit holder and further move to direct staff to amend the race date allocation order for 2015 dates.

Commissioner DePaola seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC (“DARBY”) ON BEHALF OF THE NEW JERSEY THOROUGHBRED HORSEMEN’S ASSOCIATION (“NJTHA”) TO REVISE THE 2015 RACE DATES FOR THE MONMOUTH PARK THOROUGHBRED MEET

William Knauf, Vice President, stated that Monmouth Park is requesting approval to add 9 race days to the previously approved 49-day race schedule. He indicated that this 58-day schedule is similar to last year’s and he believes is the best formula for the racetrack.

Commissioner Keegan motioned to approve the request. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF OFFICIALS, POOLS, POST-TIMES, ETC. FOR MONMOUTH PARK’S 2015 MEET

Chairman Clyne motioned to approve the 2015 Monmouth Park format. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO FREEHOLD RACEWAY TO RESCHEDULE THREE WEATHER-RELATED RACE DAYS ON FEBRUARY 23, MARCH 2 AND MARCH 9, 2015

Executive Director Zanzuccki confirmed with the New Jersey SBOA that they have granted approval for Freehold Raceway to reschedule the noted dates.

Chairman Clyne motioned to approved the request. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED CONCERNING THE FOLLOWING HANDICAPPING CONTESTS:

A) MONMOUTH PARK RACETRACK:

- 2015 Simulcast Series Challenge on February 21, 2015
- 2015 Simulcast Series Challenge on March 15, 2015

B) NEW MEADOWLANDS RACETRACK:

- \$400 Harness Handicapping Contest on February 21, 2015
- \$150 Harness Handicapping Contest on March 28, 2015

C) Request of Borgata Hotel Casino and Spa (“the Borgata”) to Conduct Four Handicapping Contests in a Four-part Series on January 31, 2015, March 14, 2015, July 11, 2015 and October 3, 2015

Commissioner Keegan motioned to approve the handicapping contests. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE BORGATA TO PAY IN EXCESS OF 6% BUT NOT MORE THAN 9% TO A SENDING TRACK FOR THE FOLLOWING RACES OF NATIONAL INTEREST PURSUANT TO N.J.S.A. 5:12-201B:

- Wood Memorial - Aqueduct (NYRA) on April 4, 2015
- Kentucky Oaks - Churchill Downs on May 1, 2015
- Kentucky Derby - Churchill Downs on May 2, 2015
- Preakness Stakes - Pimlico (MJC) on May 15, 2015
- Belmont Stakes - Belmont (NYRA) on June 6, 2015
- Travers Stakes - Saratoga (NYRA) on August 22, 2015

Commissioner Keegan motioned to approve the request of the Borgata Casino. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF AN ORDER DIRECTING ALL UNDISTRIBUTED PURSE MONEY ACCUMULATED AT ATLANTIC CITY RACE COURSE TO BE PAID TO THE NJTHA, AS THE HOLDER OF THOROUGHBRED RACING PERMITS, AND SHALL BE USED FOR THOROUGHBRED PURSES

PURSUANT TO N.J.S.A. 5:5-189, CONSIDER THE REQUEST OF THE NJTHA, AS PERMITHOLDER, AND NJTHA, AS HORSEMEN'S ASSOCIATION, TO UTILIZE THE TOTAL AMOUNT OF THE UNDISTRIBUTED PURSE MONEY ACCUMULATED AT ATLANTIC CITY RACE COURSE TO FUND ASSESSMENTS FOR THE THOROUGHBRED WORKERS' COMPENSATION INSURANCE COVERAGE AS PROVIDED IN N.J.S.A. 34:15-134

Executive Director Zanzuccki made the following statement:

Staff recommends that the Commission address agenda items 9 and 10 together since our recommendation is that both items be tabled. Regarding agenda item 9, the Atlantic City Race Course permanently ceased all operations on January 16, 2015 at 4:00 p.m. By letter dated January 22, 2015, I informed Atlantic City that its closure rendered the Commission's November 19, 2014 decision to issue it a thoroughbred racing permit "null, void and of no effect." I ordered Atlantic City to account for all monies collected from parimutuel wagering by February 16, 2015 and provide the Commission with bank statements evidencing the existence and location of said monies. Greenwood ACRA Inc. notified the Commission that as of February 16, 2015, it is holding \$1,082,506.63 in monies statutorily designated for thoroughbred purses.

Regarding agenda item 10, John Heims, attorney for Darby, filed a letter with the Commission on March 10, 2015 on behalf of Monmouth Park and the New Jersey Thoroughbred Horsemen's Association. Attached to the letter was a contractual agreement, which the THA reached with itself, in its dual capacity as thoroughbred permit holder and thoroughbred horsemen's association. In this agreement, the THA seeks to use an unspecified portion of the purse monies being held by Atlantic City to fund the thoroughbred horsemen's assessments for the cost of workers' compensation insurance coverage for calendar year 2016. In addition to failing to identify what portion of the purse monies will be used for workers' compensation insurance, the agreement also fails to identify where the monies will be held, by whom and how they will be safeguarded.

Staff recommends agenda items 9 and 10 be tabled to give the THA time to submit a contractual agreement that complies with the requirements of N.J.S.A. 5:5-189 for the Commission's consideration at our May 13th meeting.

Thomas Luchento, President of the New Jersey SBOA, asked the Commission why the Atlantic City Race Course purse money is not being distributed equally between the standardbred and thoroughbred industries as it was done in connection with the closing of Garden State Park. The Executive Director indicated that the Commission has asked for legal advice in regard to this issue and will review the advice before the Commission will consider this matter. He also noted that unlike Garden State Park, which conducted standardbred and thoroughbred meets, Atlantic City Race Course only conducted thoroughbred meets.

Commissioner Abbatiello motioned to table the agenda item. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER MODIFICATION OF THE COMMISSION'S 2012, 2013 AND 2014 ORDERS, WHICH APPROVED THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY'S ("NJSEA") PETITION TO APPOINT DARBY DEVELOPMENT, LLC ("DARBY") AS DAY-TO-DAY MANAGER OF THE ACCOUNT WAGERING SYSTEM TO REQUIRE THAT THE NJSEA SHALL AMEND THE ACCOUNT WAGERING MANAGEMENT AGREEMENT BY AND AMONG THE NJSEA, DARBY AND OTHER PARTIES, DATED OCTOBER 1, 2012, IN ACCORDANCE WITH THE APPELLATE DIVISION'S DECISION: IMO ORDER OF THE NEW JERSEY RACING COMMISSION APPROVING THE NJSEA'S APPLICATION FOR APPROVAL OF AN ACCOUNT WAGERING MANAGEMENT AGREEMENT, DOCKET NO. A-2194-12T1 AND A2353-13T1 (FEBRUARY 17, 2015) TO PROVIDE THAT DARBY SHALL ACT AS THE NJSEA'S AGENT AS ORDERED BY THE COURT

Executive Director Zanzuccki made the following statement:

On February 17, 2015, the Appellate Division issued its decision in In the Matter of the Order of the New Jersey Racing Commission Approving the New Jersey Sports and Exposition Authority's Application for Approval of an Account Wagering Management Agreement, Docket Numbers A-2194-12T1 and A-2352-13T1. At issue in this decision was the legal interpretation of account wagering statute N.J.S.A. 5:5-140. In November 2012, the Authority filed a petition with the Commission seeking the Commission's approval of a Management Agreement it had reached with Darby Development. The Management Agreement authorized Darby to act as the day-to-day manager of the account wagering system. By order dated December 6, 2012, the Commission approved Darby as manager for the remainder of 2012 and for calendar year 2013. Also at issue was the Commission's December 12, 2013 order which approved Darby as manager for 2014. New Jersey Account Wagering, LLC appealed the Commission's orders and the appeals were consolidated.

In these appeals, NJAW argued that the Authority's Management Agreement with Darby was contrary to N.J.S.A. 5:5-140(c) because the agreement stated that Darby would be acting as an independent contractor and not as the Authority's agent. NJAW argued that although the statute allowed the Authority to enter into an agreement with Darby, the statute required that Darby must act as the Authority's agent.

The court agreed and ordered the Commission to modify its orders to require that the Authority amend the Management Agreement to provide that:

- Darby is acting as the Authority's agent with respect to all account wagering system matters;
- Darby has no final decision making authority;
- the Authority retains ultimate control and decision-making authority; and
- the Authority shall oversee and manage Darby.

Staff is recommending that these orders be amended consistent with the court's decision. Staff notes that while these appeals were pending, the Commission issued an order dated November 26, 2014 which approved Darby as the manager of the account wagering system for 2015. Staff is recommending that all three orders be amended consistent with the court's decision and has provided the Commission with a draft proposed motion to that effect.

Chairman Clyne made the following motion:

"I move that the following language be added to the Commission's orders dated December 6, 2012, December 12, 2013 and November 26, 2014 and that the Executive Director be directed to issue amended orders on behalf of the Commission:

It is further ordered that the NJSEA shall amend the Account Wagering Management Agreement by and among the New Jersey Sports and Exposition Authority ("NJSEA"), Darby Development, LLC ("Darby"), the New Jersey Thoroughbred Horsemen's Association, Inc. and New Meadowlands Racetrack, LLC, dated October 1, 2012, in accordance with the Appellate Division's decision in In the Matter of the Order of the New Jersey Racing Commission Approving the NJSEA's Application, Docket Numbers A-2194-12T1 and A-2353-13T1 (February 17, 2015) to provide that Darby is acting as the NJSEA's agent with respect to all account wagering system matters, and that Darby has no final

decision making authority, the NJSEA retains ultimate control and decision-making authority, and the NJSEA shall oversee and manage Darby.

This concludes my motion.”

Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NJSEA’S PETITION TO MODIFY THE ACCOUNT WAGERING MANAGEMENT AGREEMENT, DATED OCTOBER 1, 2012, TO PROVIDE THAT DARBY SHALL ACT AS THE NJSEA’S AGENT IN ACCORDANCE WITH THE APPELLATE DIVISION’S DECISION: IMO ORDER OF THE NEW JERSEY RACING COMMISSION APPROVING THE NJSEA’S APPLICATION FOR APPROVAL OF AN ACCOUNT WAGERING MANAGEMENT AGREEMENT, DOCKET NO. A-2194-12T1 AND A-2353-13T1 (FEBRUARY 17, 2015)

Executive Director Zanzuccki made the following statement:

On March 4, 2015, counsel for the Authority filed a letter petition with the Commission seeking approval of an amendment to the Account Wagering Management Agreement in accordance with the Appellate Division’s decision we just addressed in agenda item 11. On March 10, 2015, counsel for New Jersey Account Wagering, LLC submitted a letter opposing the petition and arguing that the amendment did not comply with the court’s decision. Staff recommends that this matter be tabled to give the Authority time to respond to the opposition and also notes that the Sports Authority asks that this matter be tabled.

Commissioner Roselle motioned to table the agenda item. Commissioner DePaola seconded the motion and all Commissioners voted yes.

CONSIDER READOPTON OF THE OFF-TRACK WAGERING AND ACCOUNT WAGERING RULES: N.J.A.C. 13:74 PURSUANT TO N.J.S.A. 52:14B-1 ET SEQ.

Executive Director Zanzuccki stated that the readoption proposal appeared in the October 20, 2014 New Jersey Register and the comment period expired on December 19, 2014. He noted that one comment was received from a member of the public in opposition of the proposal, however, the reasons given for the opposition do not in any way relate to off-track or account wagering. After review and consideration of the comment, staff recommends the Commission reject the comment as it has no relevance to the readoption.

Commissioner DePaola motioned to adopt the proposal. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE NEW JERSEY THOROUGHBRED HORSMEN'S ASSOCIATION'S 2015 BUDGETS (2.9% STATUTORY AND .06% PUBLIC PURPOSE)

The Executive Director stated that during the executive session, the Commission requested legal advice concerning the NJTHA's 2015 budget, therefore, staff is recommending the agenda item be table pending receipt of legal advice.

Commissioner Aponte motioned to table the item. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE NEW JERSEY JOCKEY'S HEALTH AND WELFARE TRUST 2015 AND 2016 BUDGET

The Executive Director stated that the Jockey's Health and Welfare Trust 2015 and 2016 proposed budget amount is \$171,580 which is a 22 percent reduction due to the decline in the number of active riders. He indicated that funding for the budget will be derived from a contribution of \$150,000 pursuant to N.J.S.A. 5:5-151 and from contributions of current employees and retired members. Staff recommends approval of the budget.

Commissioner Keegan motioned to approve the budget. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION'S FY 2015 PROGRAM BUDGET

Executive Director Zanzuccki stated that the total proposed budget is \$7,504.00 which represents a 3.3 percent decline from last year. He noted that due to delays with the Department, the supporting documents are not yet available for inspection. Therefore, staff recommends the Commission approve the budget and direct the Executive Director to review the supporting documents to ensure that they coincide with the budget being considered by the Commission today.

Chairman Clyne motioned to approve the budget subject to the Executive Director's review of the supporting documentation. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE 2015 CHARITY DAYS

Commissioner Gruskos made a motion to approve the 2015 charity days. Commissioner Arnone seconded the motion and all Commissioners voted yes.

AGENDA ITEMS FOR DISCUSSION AND INFORMATION

NOTICE TO INDUSTRY OF A CHANGE TO THE DISTRIBUTION OF FUNDS GENERATED AT THE VINELAND OTW PURSUANT TO N.J.S.A. 5:5-153

The Executive Director indicated that due to the closing of the Atlantic City Race Course, an announcement was provided to the industry that all proceeds from the Vineland City OTW through the Racing Industry Special Fund shall be distributed to thoroughbred racing. The proceeds, however, exclude breakage and expired tickets.

ACKNOWLEDGE RECEIPT OF THE STANDARD BRED BREEDERS' & OWNERS' ASSOCIATION'S 2014 AUDIT

The Commission acknowledged receipt of the SBOA's 2014 audit.

There being no further discussion or comments from the public, Commissioner Keegan moved that the meeting be adjourned subject to the provisions of the "Open Public Meeting Act." Commissioner DePaola seconded the motion and it was approved unanimously.

ATTEST:



Executive Director Frank Zanzuccki