

**NEW JERSEY RACING COMMISSION
WEDNESDAY, OCTOBER 3, 2012
LIBRARY ROOM
MONMOUTH PARK
OCEANPORT, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, October 3, 2012, in the Library Room of Monmouth Park, located in Oceanport, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner (by phone)
Manny E. Aponte, Commissioner (by phone)
Anthony R. Caputo, Commissioner
Pamela J. Clyne, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Julie Barnes

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 Meeting Law,” 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 reconsideration of the distribution of Casino Simulcasting Special Funds accumulated in 2005 and 2006 pursuant to N.J.S.A. 5:12-205d.;
2. Legal advice concerning the adoption of the proposed readoption of specially-adopted amendments to the Commission's Off-track and Account Wagering rules at N.J.A.C. 13:74-1.1, 1.2, 2.1 and 2.2 (recodified as 2.3); specially-adopted new rules N.J.A.C. 13:74-2.2 and 2.4; and amendments to N.J.A.C. 13:74-2.2 and 2.3; consider the adoption of amendments to the off-track and account wagering rules as required by the enactment of P.L. 2011, c. 205; and consider the proposal of new rules and amendments to the Off-track and Account Wagering rules to implement P.L. 2011, c. 26 & P.L. 2011, c. 205;
3. Legal advice concerning the matter of Frederic Esposito v. New Jersey Racing Commission; OAL Docket No. RAC 3743-2011S;
4. Legal advice concerning the matter of Michael Gulotta, on Behalf of Crys Dream, v. New Jersey Racing Commission; OAL Docket No. RAC 09712-2011N; and
5. Legal advice concerning the approval of the New Jersey Racing Commission Program Budget for FY 2013.

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 her ethical duties as a lawyer."

Commissioner Aponte then motioned to adopt the resolution to adjourn. Commissioner Abbatiello seconded the motion and the Commission adjourned to Executive Session.

The Commission ended the executive session and Commissioner Caputo motioned to return to public session. Commissioner Keegan seconded the motion and the public session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE AUGUST 15, 2012 COMMISSION MEETING

Commissioner Abbatiello made a motion to approve the public and executive session minutes of the August 15, 2012 public meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE BILLS

Commissioner Keegan made a motion to approve the bills as certified to by staff. Commissioner Abbatiello seconded the motion and all Commissioners voted to approve the bills as certified to by staff.

CONSIDER APPROVAL OF MUTUEL POOLS AND POST-TIME, ETC. FOR THE MEADOWLANDS RACETRACK 2012 THOROUGHBRED MEETING

Commissioner Abbatiello motioned to approve the Meadowlands Racetrack's 2012 thoroughbred race meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes.

RECONSIDER DISTRIBUTION OF THE 2005 AND 2006 CASINO SIMULCASTING SPECIAL FUND

Executive Director Zanzuccki read the following introduction:

Based upon the June 2, 2011 Superior Court of New Jersey, Appellate Division decision in the case of In the Matter of Reconsideration of the Distribution of the Casino Simulcasting Special Fun (Amounts Accumulated in 2005, 2006, 2007 and 2008) pursuant to N.J.S.A. 5:12-205(d), this Commission must consider "de novo" the distributions for the amounts accumulated in 2005 and 2006.

It is important to note that the de novo consideration of the amounts in question is based upon events and facts from those specific years under consideration—that is 2005 and 2006. Therefore, in advance of this meeting today, each Commissioner has been provided with materials and correspondence from all racetracks and horsemen's groups regarding the aforementioned distributions which were received by the Commission prior to the June 20, 2012 meeting, and which encompass those materials submitted for the years in question. The oral commentary at the June 20, 2012 meeting is also being considered and a copy of a transcript of the commentary has also been provided to each Commissioner in advance of today's meeting.

Additional facts relevant to the specific years under consideration were previously compiled by Commission staff members and include wagering and other data related to the casinos, transportation data regarding Atlantic City, as well as statistical information such as handles of the various racetracks, OTW parlors, New Jersey telephone and internet betting systems.

The record in these matters was closed following the oral commentary at the June 20, 2012 meeting.

Every year, the racetracks and horsemen's groups set forth compassionate need for casino simulcasting special fund monies. However, the Commission cannot logistically fulfill the requests of each interest group for any single year due to the fact that we are working with very limited monies.

Furthermore, although the Commission can allocate these monies as it considers appropriate, in exercising its discretion, we must follow the statutory guidelines and priorities established by law. We must give the highest priority to any racetrack who demonstrates that its financial well being has been negatively affected by casino simulcasting, then to any racetrack who demonstrates that it is financially distressed, then to any horsemen's organization which will use the money to fund a project which the Commission determines will be beneficial to the racing industry, and finally, if there still funds left over after those three distributions are made, the money will be divided equally among the racetracks.

At the last meeting of our Commission in August, the Commission formed a committee to review all of the documentation and reasoning regarding this matter and report back to the Commissioners at the this meeting. The committee members are Commissioner Cofrancesco and Keegan. Commissioner Keegan will present the results of the committee's review for you today. Commissioner Cofrancesco was planning on being here, but he's ill and cannot participate, so Commissioner Keegan will present the views of the committee which I said, are comprised of both Commissioner Keegan and Commissioner Cofrancesco. Before Commissioner Keegan begins his discussion, I would like to highlight some of the pertinent facts that are contained in the material that the Commissioners have before them just as a refresher.

- Atlantic City continued to expand as a destination resort in those two years—2005 and 2006
1. The success of the Borgata which opened in 2003 has increased the draw of Atlantic City and their casino simulcast facility is the most successful in Atlantic City and reportedly has attracted many large bettors from racetracks
 2. New entertainment and retail opportunities such as “the Walk” an outlet shopping and dining area, were developed

3. Casino revenues continued to rise while wagering on horse racing continued to decline at racetracks and simulcast facilities
 - 4.4 percent increase in gaming wins from 2004-2005
 - 2.7 percent decrease in Casino simulcasting from 2004-2005
 - Total gaming wins for casinos in 2005 was 5 billion dollars and continues to trend up
 - Total New Jersey track handle in 2005 was less than 900 million dollars and continues to trend down
 - Total gaming wins in casinos in 2006 rose 4 percent to 5.2 billion dollars
 - Total New Jersey track handle in 2006 was barely more than 800 million dollars which was an 11 percent decline in the previous year
4. Transportation and access to Atlantic City was enhance by increased car, bus and air according to the South Jersey Transportation Authority traffic and plans were made for a new direct train service from New York City while racetrack attendance continued to decline
 - One-way traffic to Atlantic City in 2005 was 80,000 people, up up from 70,000 in 2000
 - Air visits 260,000
 - Bus visitors over 6 million going to the casinos
 - By comparison racetrack attendance in 1999 was 2.4 million, in 2005 it was 1.8 million and in 2006 it was 1.7 million

At this time, Commissioner Keegan will now present to the Commission the findings and recommendations of the committee. The Executive Director stressed the importance that this discussion is among Commissioners only as the record was closed on June 20 and there will be no additional discussion accepted from interested parties or the audience.

2005 Allocation

Commissioner Keegan opened the discussion by indicating that the total amount to be distributed is \$1,820,669.42 and began with considering Priority Category No. 1.

Priority Category No. 1

Commissioner Keegan stated that the statute governing the distribution of the Casino Simulcasting Special Fund designates an order of priority by which entities can be compensated. Priority Category No. 1 provides for a racetrack to demonstrate to the Commission that its financial well-being is negatively affected by casino simulcasting. The Commissioner stated that clearly from the statistics just reviewed by the Executive Director, casino simulcasting and casino gaming negatively impacts the four racetracks. The casinos market to the areas of the state, provide transportation such as bus excursions, limo service and other incentives for individuals to visit Atlantic City, and the statistics show a significant loss of wagering dollars at New Jersey racetracks while the gaming wins substantially increase year after year. Commissioner Keegan stated that all of the racetracks have submitted documentation of having been negatively impacted by casino simulcasting and historically, the Commission has found this to be the case when previously allocating these funds.

A discussion began among the Commissioners concerning the distribution of funds under Priority Category No. 1. Commissioner Caputo questioned whether there was an impact on income to the racetrack itself and to the simulcasting industry in Atlantic City in 2005. Executive Director Zanzuccki responded that it is hard to specifically identify that the casinos in Atlantic City, by offering simulcasting and other games, specifically caused the reduction at racetracks in those years. He added that the facts are that the handle and attendance decreased dramatically at the racetracks during those years. He also stated that the Commission has reviewed the way the casinos market their product to not only the regional area of Atlantic City, but statewide and even multi-state wide by trying to draw as many people to Atlantic City as possible. The statistics reveal that the casinos are successful in their marketing efforts. The Executive Director continued that the committee has determined that all racetracks were negatively affected because of the efforts by the casinos to draw people to Atlantic City by casino simulcasting and gaming. Commissioner Caputo concluded that state-wide marketing by the casinos has impacted all of these racetracks located throughout New Jersey, and is not limited to one area.

Commissioner Keegan provided more statistics by stating that as each year passes, the regional draw of Atlantic City casinos and the impact of casino simulcasting on New Jersey's racetracks becomes less related to a particular racetrack's proximity to Atlantic City. This was documented in the Racing Commission's 1999 distribution and the distribution was upheld by the Appellate Division when challenged in 2003. The Commissioner continued that following a careful review of all facts in the record, it is our

belief that the most viable racetracks are affected and the greatest of these that offer meaningful and substantial racing opportunities should receive the largest distribution of these funds. While Atlantic City Race Course has maintained in its correspondence that it is impacted to the greatest degree due to its close proximity to the Atlantic City casinos, Commissioner Keegan indicated that the committee does not believe the facts support this position and feel that the Atlantic City Race Course's four-day live race meet does not represent a significant and viable racing opportunity when compared to the state's other racetracks. The Commissioner noted that in 2005, Monmouth Park raced 90 dates, the Meadowlands thoroughbred meet conducted 27 dates, and Freehold Raceway raced 191 days. Commissioner Keegan disagreed with Atlantic City's assertion that it deserves the bulk of the funds and asked for the opinion of the other Commissioners.

A discussion occurred concerning the issue of proximity as set forth in the documentation submitted by the racetracks and Atlantic City Race Course's assertion that since they are in close proximity to Atlantic City that they are most affected by casino simulcasting and gaming and should, therefore, receive 90 percent of the funds. The Commissioners noted that the other racetracks have indicated that because of the casinos' marketing efforts all racetracks are affected by casinos. Commissioner Caputo felt that all tracks are equally affected, especially in light of the statistics concerning the increase in traffic to the Atlantic City area. The Commissioner indicated that he finds it difficult to give priority to a racetrack that conducts a four-day meet when the impact is not as significant due to the effect of marketing that is state-wide and even nation-wide.

Commissioner Aponte asked if the committee took into consideration the amount of money that casino simulcasting generates, on a percentage basis, compared to the entire revenue of the casino, specifically, simulcasting is what percent of the casinos' actual gambling (excluding the hotels, restaurants, etc.) revenue? The Executive Director responded that the committee has the whole numbers that break down as to what is wagered in the casinos versus wagering on table games, versus wagering on slot machines. However, overwhelmingly, the highest percentage of dollars wagered in the casinos is on their slot play and table games. He stated that the percentage wagered on horse racing in the casinos is minuscule in comparison. Commissioner Aponte questioned how casino simulcasting is affecting the industry. The Executive Director indicated that the committee has determined through statistics that the draw that the casinos can provide to citizens in the state is much greater than marketing efforts at the racetracks. The casinos provide incentives which cannot be matched by racetracks. By doing so, the casinos draw people away, who have disposable wagering dollars, that might otherwise have gone to racetracks. Commissioner Aponte asked whether or not the committee looked at the revenue that simulcasting provided to the casinos. Commissioner Keegan indicated the committee did not. Commissioner Aponte stated that if the Commission wants to look at the effect of

casino simulcasting, it should review the last ten years and see if the amount wagering on casino simulcasting is one percent of the revenue, or a half-percent, determine if that number has increased or decreased, and then compare that figure with the racetrack handle in order to obtain a more objective number rather than a subjective figure.

Commissioner Keegan stated that on a general basis, the number wagered on horse racing in casinos is minuscule and has gotten smaller in that a few casinos have closed their horse parlors. Commissioner Aponte stated that there are subjective terms in how the Commission is discussing this issue and he indicated his opinion that the analysis needs to be more analytical. Executive Director Zanzuccki responded that the committee has attempted to provide meaningful statistics and noted that while there may be other ways to look at this issue, the committee considered the data before it. Commissioner Aponte indicated that as far as whether or not Atlantic City Race Course then deserves 90 percent, that seems like a large number, however, he does believe that they are directly impacted more than the other racetracks because of the race course's direct proximity to the travel route of Atlantic City. Commissioner Aponte voiced his appreciation of the committee's effort in making their determination, however, he indicated his disagreement.

There was no further discussion concerning Priority Category No. 1. Commissioner Keegan proposed the following distribution:

Monmouth Park, Meadowlands Racetrack and Freehold Raceway to receive 75 percent of the funds which equates to \$455,167.35 to each facility. The Commissioner proposed that Atlantic City Race Course, although entitled to some of these funds, should receive less due to its limited racing schedule and recommended they receive \$75,000.

Commissioner Caputo inquired as to how the committee arrived at the proposed distributions. Executive Director Zanzuccki responded that the first priority category entails those racetracks that are negatively impacted by casino simulcasting, therefore, this being the first category, it is believed that the Legislature felt that this was the most important factor. He pointed out that over the course of the years, the Commissioners have believed that a reasonable amount of money to be directed to that category is 75 percent. The Executive Director stated the committee is recommending that 75 percent go to the racetracks that offered the majority of the racing in the state. The committee also determined that Atlantic City Race Course is also impacted by casino simulcasting in that people all over the state are traveling to Atlantic City.

Priority Category No. 2

Commissioner Keegan explained that the definition of Priority Category No. 2 is any racetrack in this state which the Commission finds to be financially distressed. He noted that none of the racetracks claimed financial distress in their initial submissions in 2005 and 2006. Subsequently, Atlantic City Race Course and Freehold Raceway have submitted affidavits claiming financial distress. The Executive Director read the definition of financial distress, according to the "Fairfax Financial Dictionary," to be "a stage before bankruptcy where a company's creditors are not being paid or are paid through significant difficulty." Commissioner Keegan stated that if the racetracks were financially distressed in 2005, they would not have documented a profit at that time and actually Freehold Raceway and Atlantic City Race Course both reported a small profit in 2005. Specifically, Freehold Raceway reported a profit of \$2.2 million and Atlantic City Race Course report a profit of \$152,000. In his opinion, Commissioner Keegan stated those recent assertions claiming financial distress are not to be considered.

The Commissioners engaged in a discussion concerning the issue that a racetrack making a profit does not qualify to be in financial distress. Commissioner Aponte disagreed and stated that in his opinion, a profit of \$152,000 is not a viable profit.

Priority Category No. 3

Commissioner Keegan explained that Priority Category No. 3 provides for distribution to any horsemen's organization which will use the money to fund a project which the Commission determines will be beneficial to the racing industry. He indicated that the three horsemen's groups, the SBOA, the THA and the TBA, have submitted requests for funds. The Commission noted that based upon a review of the submissions, they qualify, for the most part, as they intend to use the funds allocated for the benefit of the industry by helping fund health and welfare programs for horsemen and to sustain and/or increase New Jersey breeders' award programs.

In discussing these submissions, it was noted that the SBOA originally submitted a request to also fund Sire Stakes purses and the standardbred retirement programs, and although these are worthwhile programs, given the limited amount of funding available. The Casino Simulcasting Special Fund monies would be best used to fund the health and welfare program and that other funding sources should be found for purses and retirement programs, if possible. Commissioner Caputo agreed with Commissioner Keegan and said that money should be spent where it is needed most and the health programs are the most beneficial of any funds. Commissioners Clyne and Aponte also agreed that the funds be utilized on health and welfare programs.

Commissioner Keegan then indicated that the Thoroughbred Horsemen's Association (THA) submitted a request for funds for use in health and welfare programs to contribute to a workmen's compensation insurance program and supplement purses for New Jersey-bred overnight stake races. The THA also requested in its 2009 supplemental filing for redistribution of the 2005 funds, to fund a winter stabling program. The Commissioner suggested that the Commission grant the THA funds for the health and welfare programs pointing out that the current funding is limited and these monies can be best used to help maintain the health and welfare program. Commissioner Keegan felt that while New Jersey would best be served if the state had a winter stabling program, there is currently no funds available at this time and he is not recommending the use of any of the Casino Simulcasting Special Fund monies for that purpose. Commissioner Caputo stated that the promotion of the health and welfare of the horse racing industry begins with the building blocks of those individuals that work in the industry. He felt that the greatest priority of those individuals is the availability of health benefits. Commissioner Abbatiello agreed with the importance of providing health and welfare programs to the industry participants, however, he disagreed with the issue of winter stabling. He stated that there are individuals in the state that pay for stalls and felt it would not be fair to those individuals offering winter stabling to have competition from those persons not paying for winter stabling. Commissioner Keegan pointed out that if there were a winter stabling program, there would likely be a cost for individuals who wish to be a part of the program. Commissioner Aponte opined that the benefits to the health and welfare program far outweigh the detriments of not having winter stabling.

Commissioner Keegan indicated that the Thoroughbred Breeders' Association (TBA) submitted a request to fund its breeders' award program and noted the Commission has always found this program to be a viable use of these funds and suggested that the Commission award funds to support the breeders' award program. Commissioner Caputo agreed strongly with this suggestion and indicated that to maintain racing and breeding in New Jersey there has to be supplementation in order for the program in New Jersey to continue. Commissioner Abbatiello voiced his concerns should there no longer be a breeders' program in the state.

Commissioner Keegan stated that after allocating funding under Priority Category No. 1, there remains a balance of \$380,167.37 for distribution under Priority Category No. 3. He indicated his belief that the funds should be divided equally between the two breeds as each provides significant live racing opportunities, employment, substantial open space by virtue of the land devoted to horse breeding and training, and recreational opportunities for our residents. He specified that the funds should be divided with half of the amount going to the standardbred industry and the remaining half to the THA and the TBA for the purpose of health and welfare programs and breeding purposes.

Priority Category No. 4

Commissioner Keegan indicated that no funds remain for distribution under Priority Category No. 4, which category provides for distribution to all racetracks in the state under an equal basis.

Executive Director Zanzuccki recapped the \$380,176.30 remaining distribution under Priority Category No. 3 to be as follows: \$190,083.69 to be awarded to the SBOA and \$95,041.84 to be awarded to the THA and to the TBA.

Commissioner Caputo had an accounting question as to why the distribution amounts are not awarded in even dollar amounts. Executive Director Zanzuccki provided an explanation which satisfied the Commissioner's question.

2006 Allocation

Commissioner Keegan opened the discussion by indicating that the total amount to be distributed is \$1,904,927.14 and indicated that all of the facts Director Zanzuccki mentioned initially prior to the 2005 allocation discussion apply in the 2006 reasoning, including the fact that casinos offer multiple games of chance, comps and other incentives that racing cannot match. These factors result in a continuing loss of revenue to the horse racing industry.

The discussion then began with the redistribution under Priority Category No. 1.

Priority Category No. 1

Commissioner Keegan indicated that under the statistics just reviewed, casino simulcasting and casino gaming negatively impact New Jersey's four racetracks. He stated that the casinos market to all areas of the state, by providing bus and limo transportation to consumers and offer many other incentives to visit Atlantic City casinos. The 2006 plans were made for high-speed, direct rail service from New York to Atlantic City casinos and the statistics clearly show a continuing loss of wagering dollars down 11 percent at New Jersey's racetracks from 2005 to 2006 while the gaming wins substantially increased by 4 percent to \$5.2 billion dollars. The Commissioner stated that all racetracks have submitted documentation that each were negatively impacted by casino simulcasting and, historically, the Commission has found this to be the case when allocating these Casino Simulcasting Special Fund monies.

The Commissioners agreed that the reasons and comments previously discussed when awarding the money for 2005 under Priority Category No. 1, apply to the distribution for 2006.

Commissioner Keegan stated that Atlantic City Race Course has maintained in its correspondence that they are impacted to the greatest degree due to their close proximity to the Atlantic City casinos. He indicated, once again, that the committee does not believe that the facts support this position and it believes that Atlantic City Race Course's four-day live meet in 2006 does not represent a significant and viable racing opportunity when compared to the state's other tracks. The Commissioner noted that in 2006 Monmouth Park had 87 thoroughbred dates, the Meadowlands thoroughbred meet conducted 33 days, Freehold Raceway raced 192 days, and the Meadowlands harness meet raced 157 dates. The Commissioner added that in regard to the 2006 distribution, Atlantic City Race Course again requested 90 percent of the funds.

Commissioner Keegan proposed that Monmouth Park, the Meadowlands and Freehold Raceway receive 75 percent of the funds which equates to \$476,231.78, and Atlantic City Race Course, while entitled to some of these funds, should receive less due to its limited race scheduled. The Commissioner recommended that Atlantic City Race Course receive \$80,006.96. Executive Director Zanzuccki clarified that the increase in the amount for Atlantic City is because the amount of funds available for distribution in 2006 compared to 2005, represents a 4.2 percent increase, therefore, the committee felt that since the other racetracks were receiving the percentage increase, that Atlantic City Race Course be included in that increase as well.

Commissioner Aponte inquired as to whether the racetracks claimed a profit (net wins and losses) for 2006. The Executive Director explained that although the racetracks indicated that they were financially distressed, they did not submit any documentation whatsoever in support of that claim.

Priority Category No. 2

Commissioner Keegan addressed Priority Category No. 2 in which any racetrack in the state claims to be financially distressed, and the Director read the definition of financially distressed. The Commissioner noted that none of the racetracks claimed that they were financially distressed in their initial submissions, however, in their submissions this year, they all claim they were financially distressed in 2006 and Atlantic City Race Course and Freehold Raceway submitted affidavits claiming financial distress. The Commissioner stated his belief that if the tracks were financially distressed in 2006, they would have documented it then. He noted that Freehold Raceway indicated a net loss of

\$2.6 million and Atlantic City Race Course a net loss of \$149,000 in 2006. The Commissioner opined that these recent assertions claiming financial distress are not to be considered since a one-year financial downturn does not qualify under the definition of financial distress.

Commissioner Caputo clarified that in 2006 when the Commission reviewed the submissions, none of those materials proved financial distress, and subsequently, six years later, upon review of the submissions filed in connection with the court-appointed redistribution of these monies, the racetracks then provided proof of financial distress.

Commissioner Aponte stated that the Appellate Court did not agree with the Commission in its distribution, and believes that any pertinent facts should be considered. He noted that in subsequent documentation submitted by Atlantic City Race Course and Freehold Raceway, revealed that there is a \$301,000 loss for Atlantic City Race Course and \$4.8 million loss for Freehold. The Commissioner opined that a loss is noteworthy, such as a profit is noteworthy, and you cannot have different standards in applying the priority categories. Commissioner Caputo stated he was troubled with the fact that the documentation of financial distress was provided subsequently. Executive Director Zanzuccki explained that the Appellate Division instructed the Commission to reconsider the distribution de novo which gave the racetracks an opportunity to submit their documentation again. He indicated that in their documentation, they did supply affidavits stating losses in 2006, and as part of the record, is certainly information to be considered and each Commissioner is entitled to his or her own opinion. Commissioner Clyne stated that she would need to review more than one year of a loss in order to determine whether that is genuine financial distress. Commissioner Aponte indicated his belief that the analysis is flawed. Commissioner Caputo asked what the standard is in reviewing previous records in order to determine financial distress, e.g., how does the Internal Revenue Service proceed? Commissioner Aponte stated that the additional documentation the Commission is reviewing is being done as the result of the Court's instructions and, therefore, the Commission is not determining whether the permit holder is viable.

Commissioner Keegan stated his opinion that the recent assertions claiming financial distress are not to be considered since a one-year financial downturn does not qualify under the definition of financial distress, therefore, none of the racetracks qualify under Priority Category No. 2.

Priority Category No. 3

Commissioner Keegan noted that the submissions by the horsemen's groups for consideration under Priority Category No. 3 for 2006 are similar as those in 2005 and are

included by reference. The Commissioner summarized that the horsemen's groups have submitted requests for funds that qualify for the most part due to the fact that they intend to use the funds allocated for the benefit of the industry by helping to fund health and welfare programs for horsemen and to sustain and/or increase New Jersey breeder award programs.

The Commissioner proposed that the SBOA and the THA be allocated monies to fund the health and welfare program only. The Commissioners agreed with this proposal.

Commissioner Keegan proposed that the TBA be allocated monies for use to supplement its breeders' award program. The Commissioners agreed with this recommendation.

Commissioner Keegan indicated that there remains a balance of \$396,224.84 for distribution under Priority Category No. 3. The Commissioner recommended, that as with the 2005 funds, the 2006 funds should also be divided equally by breed as each group provides significant live racing opportunities, each provides opportunities for employment, each provides substantial open space by virtue of the land devoted to horse breeding and training as well as recreational opportunities for New Jersey residents.

Commissioner Keegan proposed that the SBOA receive \$198,112.42 and the THA and the TBA each receive \$99,056.21.

There were no funds remaining for distribution under Priority 4.

At the request of the committee, Commissioner Keegan asked the Executive Director to read the following motion:

Based upon the June 2, 2011 Superior Court of New Jersey, Appellate Division decision in the case of In the Matter of Reconsideration of the Distribution of the Casino Simulcasting Special Fund (Amounts Accumulated in 2005, 2006, 2007 and 2008) pursuant to N.J.S.A. 5:12-205(d), this Commission must consider "de novo" the distributions for the amounts accumulated in 2005 and 2006.

It is important to note that the de novo consideration of the amounts in question is based upon events and facts from those specific years under consideration. Therefore, in advance of this meeting today, each Commissioner has been provided with materials and correspondence from all racetracks and horsemen's groups regarding the aforementioned distributions which were received by the Commission prior to the June 20, 2012 meeting, and which encompass those materials submitted for the years in question. The oral commentary at the June 20, 2012 meeting is also being considered and a copy of a transcript

of the commentary has also been provided to each Commissioner in advance of today's meeting.

Additional facts relevant to the specific years under consideration were previously compiled by Commission staff members and include wagering and other data related to the casinos, transportation data regarding Atlantic City, as well as statistical information such as handles of the various racetracks, otw parlors, New Jersey telephone and internet betting systems.

The record in these matters was closed following the oral commentary at the June 20, 2012 meeting.

Every year, the racetracks and horsemen's groups set forth compassionate need for casino simulcasting special fund monies. However, we cannot logistically fulfill the requests of each interest group for any single year due to the fact that we are working with limited monies. Furthermore, although the Commission can allocate these monies as it considers appropriate, in exercising its discretion, we must follow the statutory guidelines and priorities established by law. We must give the highest priority to any racetrack who demonstrates that its financial well being has been negatively affected by casino simulcasting, then to any racetrack who demonstrates that it is financially distressed, then to any horsemen's organization which will use the money to fund a project which the Commission determines will be beneficial to the racing industry, and finally, if there are any monies left following our application of these tiered levels of priority, the remaining monies are required to be equally divided amongst each racetrack.

I would now like to address each of the particular years in question beginning with 2005.

2005 Accumulated Funds

The accumulated funds for 2005 is \$1,820,669.42. Our initial distribution was legally challenged by the thoroughbred horsemen. The Appellate Division held that the Commission violated the Open Public Meeting Act because the Commission's public vote on the distribution was based on private discussions and deliberations. The court also held that the Commission had not complied with the Administrative Procedures Act because we had not adopted a regulation describing the procedures governing submission and consideration of special fund applications. The Court therefore remanded the matter back to the Commission with specific instructions. The Commission adopted Comprehensive regulations as directed by the Court. Our second distribution on June 17, 2009, was again legally challenged by the thoroughbred horsemen. The Appellate Division decided that the

Commission had failed to cure the previous Open Public Meeting Act violation. The Court indicated that the Commission had not had de novo deliberations during the public meeting as previously required by the Court, and again this matter, together with the 2006 distribution, have been remanded to the Commission for deliberation and public discussions pertaining to the facts and reasons for the Commission's decision to allocate funds under each statutory category of N.J.S.A. 5:12-205(d).

Turning to the first and highest statutory category, a review of the facts in the record before the Commission relating to a distribution of this category is in order.

In our very early distributions, particularly 1995, we found that only the Atlantic City Race Course and Garden State Park qualified under this provision. Since 1998, however, we have awarded monies under this provision to the other racetracks, who were less proximate in location to Atlantic City. This shift followed the issuance of the 1998 Racing Industry Study Commission report, which highlighted the fact that horse racing is in an intense competition for the gambling dollar with the casinos. As we stated previously, the introduction of mega-resorts to Atlantic City has extended the tentacles of the cash rich casinos in attracting horse players from all over the state. This trend continued with the opening of the Borgata, with its state-of-the art simulcast parlor, in 2003. As we stated in our decision concerning the 2003 accumulated funds, which distribution was sustained by the Appellate Division, the negative impact of casino simulcasting on our racetracks, as each year passes, becomes less related to a particular racetrack's distance from Atlantic City. As the Atlantic City transportation, supporting infrastructure and entertainment offerings expand, the City effectively becomes more attractive as a destination and more accessible to the wagering population, including to those who might otherwise opt to spend their limited wagering dollars on New Jersey race offerings. These facts continue to effect New Jersey's racing industry.

Additionally, during the time frame under discussion, developments in Atlantic City's growth included the purchase of a 20 acre parcel of land along the boardwalk by MS Gaming to develop a casino resort, the expansion of entertainment and retail by Showboat and Caesars, each of which has a simulcast facility. The expansion of "The Walk," a midtown outlet, dining and entertainment facility, continued. These attracting expansions moved forward, in the wake of a 4.4 percent increase in gaming wins between 2004-2005 and a 2.7 percent decrease in simulcasting at the nine outlets in Atlantic City. The statistics of the South Jersey Transportation Authority, common sense, and our expertise, collectively support the fact that New Jersey residents visit Atlantic City casinos from each racetrack territory, and I continue to believe, wagering dollars and attendance at each racetrack are negatively impacted. Further, casino facilities, unlike racetracks, offer amenities as well as complementaries not available to racetrack patrons, such as hotel rooms and fancy meals.

They also offer multiple games of chance, and the recreational horse player attracted to a casino simulcast facility, is placed in an environment where he or she unquestionably wagers portions of a limited gambling budget on other casino games. Thus, the negative impact of casino simulcasting is enhanced by non-horse race casino gaming and casino offerings.

The success of the casinos in attracting limited wagering dollars from racing, and utilizing casino simulcast parlors and hotel amenities as a “carrot” to attract them, can be gleaned by comparing table game and slot win at the casinos, to the less profitable horse wagering opportunities at those facilities. While the simulcasting win totals in Atlantic City casinos was \$9,867,000 in 2005, those of the other games are far greater. In comparison, slot win totaled \$3,673,955,000, and table game win excluding casino simulcasting totaled \$1,344,317,000. For 2005, this translates to an average win per casino trip of \$143.70. This compares to \$112.64 in 1995, the first year that we distributed special fund monies. The magnitude of these 2005 casino figures is quite pronounced, especially when viewed in the context of total New Jersey Racetrack handle. Total New Jersey track handle declined from \$1,062,386,950 in 2001, to \$923,124,547, and even lower in 2005, to \$873,369,497. Although racetrack entities attempted to improve their plight through the new initiatives of internet and phone wagering on horse racing, which commenced in 2005, with an additional resulting handle of \$45,123,001, this decline nonetheless persisted year after year.

Although there are no direct attendance figures for casino simulcast parlors or the casinos themselves, statistics of the Atlantic City transportation infrastructure reflects the extent of the region’s visitors. The records of the South Jersey Transportation Authority for the Atlantic City vicinity shows a daily one-way traffic average total for 2005 of 80,854, which compares to 72,529 in 2000, 71,867 in 1990 and 40,867 in 1980. Annual visits by air, through the Atlantic City International Airport, totaled 261,000 in 2005, while casino bus visitors totaled 6,104,000 for the year. At our racetracks, we see far less visits. In 1995, two years after casino simulcasting began, racetrack attendance was 3,229,489. In 1999, statewide on-track attendance was 2,362,567, almost 900,000 less. In 2003, the year the Borgata and its impressive casino simulcast parlor opened, that number dwindled to just 1,895,968. In 2005, racetrack attendance declined even further, to 1,858,790.

As in prior years, the negative impact of casino simulcasting to our racetracks remains non-quantifiable in terms of dollars and cents, but it can be said that the impact is at a heightened sense. I therefore believe that each New Jersey racetrack qualifies under this highest priority category and the greatest share of the available special fund monies should legally and factually be devoted to our most viable racetracks.

From ACRC’s 2009 supplemental filing, concerning the 2005 accumulated funds under consideration, ACRC believes that its proximity to Atlantic City equates to the

greatest negative economic impact, and that viability considerations are inappropriate. As noted by ACRC, the legislature provided it a significant financial benefit, in the form of monetary compensation, limited by its terms to the first few years of casino simulcasting. Contrary to ACRC's present position, the legislature did not envision or intend that it would receive the bulk of the special fund monies, upon the expiration of that special legislation. The legislature intended that the Commission would distribute those special fund monies, consistent with its mandate, which we have continuously done. When ACRC qualified for the bulk of that money, as it did in 1995, 1996, 1997 and 1998, it was awarded such. When it did not qualify for the bulk of that money, it was not awarded that money.

However, ACRC's continued reliance of a proximity argument ignores our prior findings, which continue to be valid. Those findings reflect that, while proximity to Atlantic City was a more compelling consideration in the early years of casino simulcasting, it has become less and less important with the progression of time, in terms of assessing the negative impact of casino simulcasting. Further, while ACRC says that its proximity to Atlantic City is the continuing and present cause of its woes, it can just as easily be said that its business decisions, as well as that of its parent, which have focused on developing its simulcasting operations and not a unique, meaningful, and competitive live racing product, are the cause of its woes.

Live racing is crucial to our industry, to our breeding industry, to our State's open space considerations, and to the many ancillary industries that depend on live racing for survival - the blacksmiths, the feed companies, the hay providers, and so on. We must not lose sight of the fact that live racing, at our state's racetracks, is the one attraction, and "carrot" that racetracks can offer, and casinos cannot. We too must remember that it is not only the responsibility of the racetrack managers, but more properly said, the responsibility of the racetrack managers and the horsemen's groups, to present a live race product that attracts people. To be successful with the competing gambling opportunities, we must achieve full field live racing. I remain hopeful that our racetracks live race offerings will develop into an attraction, characterized by full fields, which will serve to draw customers back from the casino simulcast parlors and casinos. This may seem as a bold statement, but the proud history of racing demonstrates that it is a realistic one.

Racetracks that offer meaningful and viable live racing are investing in their future, and the future of our industry. However, as we all know, the conduct of a meaningful live race meeting is dramatically expensive, especially when compared to the costs involved for the maintenance of simulcast operations within a racetrack. Racetracks managers have to make choices, in the wake of economic factors, inclusive of the negative impacts of casino simulcasting. They can reduce their live race offerings, and minimize such impact by

reducing costs, or they can continue on the forward-thinking path of viability by developing their unique live racing wagering product.

Because of these factors, it stands to reason that racetracks whose management strive to offer meaningful live racing are harmed more by the negative impacts of casino simulcasting, than those that do not. Racetracks, such as ACRC, who offer the minimal racing necessary to qualify them to engage in more profitable aspects of horse race wagering, as year-round simulcasting, do not have these same level of expenses. ACRC's far less costly mini-meets, which do not include stabling costs as incurred by Monmouth Park and the Meadowlands Racetracks, have by its own management's account been successful in terms of productivity and attendance. Everyone, including this Commission, the horsemen, the breeders, and the public, would welcome expanded live racing at ACRC. In 2005, ACRC raced just 4 days, with 2 of those dates being steeplechase events. Indeed, the reported success of ACRC's mini-meet format demonstrates that a decision on its management's part to expand live racing, as it has previously promised, might very well have a positive financial impact because of its proximity to the casinos---- horse players drawn to Atlantic City simulcast parlors from across the State might very well leave those casino facilities, travel the few minutes on the Atlantic City Expressway, and gamble their limited wagering budget at an expanded and exciting Atlantic City's live meet. If this were to occur, the entire industry would benefit. In sum, racetracks who offer viable and meaningful live racing dates are more negatively impacted by casino simulcasting than those that do not, and the awarding of a greater share of monies to those viable racetracks is not only legally appropriate, but serves to enhance the ability of those facilities to remain viable. As in the past, in awarding special fund monies, ACRC's reduced race schedule offering, in my opinion, should be taken into consideration as a negative factor.

Based upon all of the foregoing facts, I believe that each of our racetracks qualifies under the highest priority category, in that each has been negatively impacted by casino simulcasting. Therefore, I propose that each racetrack is entitled to funds under this provision because of the continuing and pervasive adverse impact of casino simulcasting.

Accordingly, having considered the above and the respective applications, supplemental applications and comments of the industry parties, under paragraph d(1) to the statute, I move that the racetracks be allocated the following respective amounts based upon a finding that the financial well-being of each has been negatively impacted by casino simulcasting, and, subject to the condition that they each demonstrate in writing to the Executive Director that the awarded funds are to be used for a valid purpose.

I would propose that 75 percent of the total available casino simulcast special fund monies, or \$1,365,502.05, be allocated to our three most active racetracks in this highest

statutory category, who in 2005, continued to run live, viable racing meets of meaningful duration. I propose that the 75 percent amount be split equally between Monmouth Park, the Meadowlands and Freehold Raceway, with each racetrack thereby receiving \$455,167.35.

I would propose that a total \$75,000 be allocated to ACRC under the highest statutory category. This amount comprises 4.2 percent of the total amount of casino simulcast special fund monies available. As discussed above, I believe a lesser amount of monies in this category should be distributed to ACRC due to its reduced racing schedule.

In terms of the application of the second priority category d(2), which entitles racetracks who demonstrate to our satisfaction that they are financially distressed, I have reviewed the original, as well as the supplemental submissions and contend that none of the racetracks have supplied sufficient documents to qualify for such funds under this priority category.

A balance of \$380,167.37 remains after the distribution to the racetracks. Moving to the next statutory category, I will address the applications from the horsemen's groups. This, the third priority category, authorizes this Commission to allocate funds, in an amount it deems appropriate, to any horsemen's organization which will use the money to fund a project beneficial to racing.

Based upon facts which I shall elaborate on further, I propose that the standardbred horsemen's group, the SBOA, qualifies for distribution of funds under this paragraph. I also propose that the two thoroughbred horsemen's groups, the THA and TBA, qualify under this paragraph.

In its original application filed in 2006, concerning the accumulated 2005 funds, the SBOA sought funds in connection with its Health and Benefits Program. Through its supplemental 2009 filing, also concerning the 2005 accumulated funds, it additionally sought funds to supplement the SBOA sponsored Stakes races, and to aid standardbred retirement horse programs, but in their April 25, 2012 letter to the Commission, the SBOA rescinds these supplemental requests. The Commission has traditionally found the Health and Benefits Program to be a significant project beneficial to racing and I propose that this continues to be the case at this time.

In its original application, the THA sought funds to cushion the direct benefit costs and welfare payments, which project we have historically found as qualifying, and which I believe remains as such. In its supplemental 2009 filing, also concerning the 2005

accumulated funds, the THA also sought funds to begin a reserve to contribute to the annual Worker's Compensation payments, instead of, as it says, taxing those funds set aside for purses and/or avoiding the possible future necessity of taxing the trainers for a portion of this cost. In reviewing this request again, I would note that the funding sources of Worker's Compensation, as concerns racing, is a function of law. Aside from this, in its application, the THA fails to demonstrate that there is a present need for such a program, and it specifically states that it seeks to set up a reserve to address a suspected or perceived future need. If the THA believes that the statutory funding sources for this program may someday be insufficient, I would respectfully suggest that they bring such concern to their lobbyist, so that the legislature may consider amending the governing laws. It is not for this Commission to supplant existing law, by here approving a project which would allow for annual Worker's Compensation premiums to come from a new fund, instead for example from purses, when the law provides that such funding should come from purses. I would note that the THA did heed the recommendations of the Commission in seeking other sources of revenue to fund the program. Additionally, even if the THA had established this to be a qualifying program, and even if the Commission could legally allocate funds for this purpose, the other qualifying program appears to be more beneficial to racing and the devotion of limited allocated monies for use by the THA to its direct benefits program would achieve a maximum benefit to racing.

The THA also sought funds, through its 2009 supplemental filing, in connection with restricted Jersey Bred Overnight Stakes. This proposed program involved just two days of racing at Monmouth Park only, with \$700,000 offered in purse money each day. The THA believes that trainers and owners who are unsuccessful in entering these races should be compensated. I find this proposed project, as presented to this Commission by the THA, to be wholly insufficient. Racing is a competitive sport, and entries to big race events are limited. Sometimes you can't get into the race you want, so you compete in other races that you can get into. This proposed program seeks to financially reward horsemen who do not make it into these two race events. It appears designed to allocate money to a very select group of horsemen who participate at Monmouth Park, the number of whom constitute a substantial minority of the THA constituency. In any event, in my opinion, it has not been demonstrated that this is a project beneficial to racing. Further, even if the THA had established this to be a qualifying program, the other qualified program is more beneficial to racing and the devotion of limited allocated monies for use by the THA will achieve the maximum benefit to racing.

The THA, in its 2009 supplemental filing also sought to establish a new project to fund winter stabling for horsemen who race the entire New Jersey meet. The THA stated, more specifically, that those horsemen who are loyal and dedicated to the Monmouth meet are here impacted. The THA contends that these horsemen have no place to go, but to a

New Jersey training facility or out-of-state, during the winter. Traditionally, winter stabling has either been the subject of negotiation efforts between industry interest groups including the THA, or has been paid for by the horse owners at private training facilities. It has also been the subject of proposed legislation. While I sympathize with the horsemen, and support the ongoing efforts to provide all horsemen with a legitimate, well-thought out and effective winter stabling program, I also recognize that there are current anticipated individual costs associated with the decision to own a racehorse, and in the absence of a workable solution, one of them is the cost of stabling horses during the non-racing season. The THA's project proposal would be limited to a reimbursement of \$10 per day over 120 days, and would be limited to 500 horses. It appears that the individual reimbursements associated with this project would be directed to THA constituents who race the entire Monmouth meet, to the exclusion of all others, including those THA constituents who

compete at our other thoroughbred tracks. Further, the THA contends that if winter stabling costs make it unaffordable for horsemen to compete at Monmouth Park, they will "close shop" or go to and remain in other states to take advantage of winter stabling. However, considering what is known to be the costs of stabling and maintaining a race horse, the THA has made no showing that reimbursement at the levels here proposed will be effective in achieving the goal of the proposed project. Further, the THA concerns fail to take into account the various incentives associated with New Jersey, as the previously referenced Jersey-bred Stakes days at Monmouth Park, which otherwise encourage individuals to compete at our tracks. On the face of the THA submission, and as proposed, I cannot find that the proposal would be fair or effective. Additionally, even if the THA had established this to be a qualifying program, the other program appears to be more beneficial to racing, and the devotion of limited allocated monies for use by the THA for its direct benefits cost/welfare payments would achieve the most benefits to racing.

With regard to the TBA, it seeks funds to provide monies to cover its breeder award programs. We have historically found this project to be beneficial to racing. In proposing this motion, with regard to the 2005 accumulated monies in question, I emphasize that it is expected that the TBA will use these monies to enhance the breeders awards programs.

I would propose that the remaining available funds should be allocated evenly between the two horse breeds. New Jersey continues to have live racing which showcases both standardbred and thoroughbred racing. The standardbreds in New Jersey are represented by one horsemen's group - the Standardbred Breeders' and Owners' Association (the SBOA), while the thoroughbreds are represented by two horsemen's groups, the Thoroughbred Breeders' Association (the "TBA") and the Thoroughbred Horsemen's Association (the "THA"). I propose that it is fair and equitable to allocate the remaining monies evenly between the two breeds, with the amount for the thoroughbreds then being

shared between its two horsemen's organizations. With the above comments, and having considered the initial applications, the supplemental 2009 and 2012 filings, and the industry parties comments, I propose through this motion the following horsemen group allocations, pursuant to paragraph d(3) of the law:

\$190,083.69 to the SBOA, which is 50 percent of the remaining funds;

\$95,041.84 to each the THA and the TBA, which total represents 50 percent of the remaining funds, equally divided between the two groups.

As these distributions equal the total funds available, no distribution is proposed under paragraph d(4) to the Statute.

2006 Accumulated Funds

I will now proceed with a motion regarding the 2006 accumulated fund monies, which total \$1,904,927.14.

We initially considered this distribution in August 2007. The THA, as it did regarding the 2005 accumulated funds, challenged our decision, and filed an appeal with the Appellate Division. In view of this, and before the Court considered the claims of the THA, we proposed that the matter be returned to us. The Court, by Order dated April 1, 2008, remanded the 2006 distribution back to us for such purpose. In bringing this matter before us, the regulations we adopted as a result of the Court's decision concerning the 2005 accumulated funds, were followed. As with the 2005 distribution, a second distribution of the 2006 accumulated funds occurred on June 17, 2009. That distribution was again legally challenged by the thoroughbred horsemen. The Court again indicated that the Commission had not had de novo deliberations during the public meeting as previously required by the Court, and again this matter, together with the 2005 distribution, have been remanded to the Commission for deliberation and public discussions pertaining to the facts and reasons for the Commission's decision to allocate funds under each statutory category of N.J.S.A. 5:12-205(d).

I have reviewed this matter de novo, and my review included the careful consideration of the materials initially filed in 2007, the supplemental 2009 and 2012 filings concerning the 2006 accumulated funds, the verbal comments of the industry parties, and materials provided by staff.

The rationale I set forth in the 2005 distribution, concerning the basis for concluding that a negative impact arises from casino simulcasting, is also pertinent to this distribution.

During the relevant time frame, developments in Atlantic City's growth continued with the expansion of entertainment and retail by Showboat and Caesars, each of which has a simulcast facility. "The Walk," a midtown outlet, dining and entertainment facility, was completed. These attracting expansions continued, in the wake of a 4.0percent increase in gaming wins between 2005-2006 and a 0.1percent increase in simulcasting at the nine outlets in Atlantic City. Furthermore, as noted by the Chairman of the Casino Control Commission in that Commission's 2006 annual report, at the end of 2006, there was more than \$5 billion in casino expansions and new casino projects. The Chairman also stated that revenues continued their unbroken record of year over year increases and gross operating profits reached record levels. Clearly, the growth of the Atlantic City Casinos continued to have a negative effect on New Jersey's horse racing industry.

At our racetracks, New Jersey gross handle went down again, from a little more than \$873,369,497 in 2005, to slightly less than \$809,806,142 in 2006. Racetrack attendance continued its diminishing path, from 1,858,790 in 2005, to 1,743,485 in 2006.

There were no permitted otw facilities opened as of 2006. However, 2006 saw the first full year of internet and telephone wagering, which handle increased from \$45,123,001 in 2005 to \$60,980,433 in 2006. The positive impacts to our industry of these emerging revenue streams in no way dissipated the negative impact of casino simulcasting to racetrack operations. It remained. Based upon the data available, and the logical and reasonable inferences required to be drawn, without casino simulcasting, this total handle figure would be higher. While these new revenue streams constitute a diligent effort of our racetrack properties to generate new cash flow, the addition of this revenue to NJ gross racetrack handle merely demonstrates that the declining trend continues — but to a less marked degree.

While the negative impact of casino simulcasting to our racetracks remains non-quantifiable in dollars and cents, the impact remained at a heightened state. As demonstrated by the above numbers, the adverse financial impact to our racetracks from casino simulcasting continued and is growing. Therefore, based upon all of the foregoing facts, I believe each New Jersey racetrack qualifies under the highest priority category and the greatest share of the available special fund monies should legally and factually be devoted to our most viable racetracks. I propose that the following amounts be distributed under category (d)(1) of the law, while taking into account, as we have done in the past, ACRC's reduced race schedule offering as a negative factor.

I would therefore again propose that 75 percent of the total accumulated funds for 2006, or \$1,428,695.34, be divided equally between New Jersey's three most active and viable racetracks which continued to offer live racing meets of meaningful duration in 2006.

This equal division will result in allocations of \$476,231.78 each to Monmouth, Freehold, and the Meadowlands.

Based upon ACRC's reduced racing schedule, I would again propose an allocation of 4.2 percent of the total casino simulcast special fund to ACRC, or \$80,006.96.

I note that the distributions to each racetrack are subject to the condition that each demonstrate in writing to the Racing Commission Executive Director that the allocated funds will be used for a valid purpose.

As concerns the special monies accumulated in 2006, I propose that none of the racetracks, either through their original filings or supplemental filings, have demonstrated that they are financially distressed and I propose that no distributions from the fund monies occur under section (d)(2) of the law.

I note that the response to ACRC's continued argument concerning its proximity to Atlantic City, and my assessment of its live race offering, as set forth in my motion concerning the 2005 proposal, is also relevant here.

Moving on to the third category under the statute, N.J.S.A. 5:12-205(d)(3). The discussion concerning the horsemen's groups, in my the proposed distribution concerning the 2005 accumulated funds, including my conclusions regarding the sufficiency of their programs, is equally relevant here. Accordingly, the funds I propose for distribution to the SBOA and THA, may also be used for those programs I propose be qualified in the 2005 accumulated funds motion. As concerns the SBOA, that program consists of its Health & Welfare Program. As concerns the THA, the qualified program consists of its direct benefit/welfare payment initiative. As concerns the TBA, it is expected that the TBA will use any allocated monies to enhance the breeders award programs. As discussed above, New Jersey continued to have both live standardbred racing and live thoroughbred racing in 2006. Therefore, I would again propose that it would be fair and equitable to equally split the remaining monies between the two breeds, regardless of the fact that one breed is represented by two constituency groups and the other breed, only one. With this in mind, I propose the following allocations of the remaining fund monies under the third priority category of the statute:

\$198,112.42 to the SBOA, or 50 percent of the remaining fund monies; and

\$99,056.21 each to the THA, and the TBA, the total of which represents 50 percent of the remaining fund monies, equally divided between the two constituency groups.

Commissioner Keegan moved to accept the proposal as read by the Executive Director. Commissioner Caputo seconded the motion. There was no further discussion on the motion. A roll call of the Commissioners indicated that all members of the Commission voted yes with the exception of Commissioner Aponte who voted no to Categories 1 and 2 and voted yes to Category 4. Commissioner Aponte stated that it is too difficult to reconsider the funds in a de novo manner when knowledge of the future is known and which really cannot be extracted. The Commissioner believed that the analysis was more subjective than objective and used one standard for financial distress in 2005 and one in 2006. The Commissioner felt that the simulcasting as a percentage of gambling was not discussed and the analysis had no clear nexus between the attendance and profitability. He also questioned the credibility of the "Fairfax Financial Dictionary" because it is a web site and unless it was footnoted properly, he did not feel the Commission should be discussing the definition of financial distress without having a criteria or litmus test of the definition.

CONSIDER THE REQUEST OF THE APPROVED ATLANTIC CITY CASINOS TO ENTER INTO AN AGREEMENT (WHICH MAY CALL FOR THE PAYMENT OF MORE THAN SIX PERCENT OF THE CASINO PARI-MUTUEL POOL TO THE SENDING TRACK) PURSUANT TO N.J.S.A. 5:12-201(B)

- a) Nine percent for the following (15) Breeders' Cup races conducted on November 2 and 3, 2012: Juvenile Fillies Turf; Filly and Mare Sprint; Juvenile Fillies, Filly and Mare Turf; Ladies' Classic; Juvenile Sprint; Marathon; Juvenile Turf; Sprint; Turf Sprint; Dirt Mile; Turf; Juvenile; Mile; and Classic
- b) Nine percent for the (7) remaining races on the race card conducted on November 2 and 3, 2012

Commissioner Keegan moved to approve the request of the Atlantic City casinos to receive the races as contained on the agenda. Commissioner Caputo seconded the motion and all Commissioners voted yes.

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

- a) Monmouth Park Handicapping Contest held on September 16, 2012
 - b) New Meadowlands Racetrack Breeders' Crown Challenge held on October 27, 2012
-

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

CONSIDER THE ADOPTION OF THE PROPOSED READOPTION OF SPECIALLY-ADOPTED AMENDMENTS TO THE COMMISSION'S OFF-TRACK AND ACCOUNT WAGERING RULES AT N.J.A.C. 13:74-1.1, 1.2, 2.1 AND 2.2 (RECODIFIED AS 2.3); SPECIALLY-ADOPTED NEW RULES N.J.A.C. 13:74-2.2 AND 2.4; AND AMENDMENTS TO N.J.A.C. 13:74-2.2 AND 2.3; CONSIDER THE ADOPTION OF AMENDMENTS TO THE OFF-TRACK AND ACCOUNT WAGERING RULES AS REQUIRED BY THE ENACTMENT OF P.L. 2011, C. 205; AND CONSIDER THE PROPOSAL OF NEW RULES AND AMENDMENTS TO THE OFF-TRACK AND ACCOUNT WAGERING RULES TO IMPLEMENT P.L. 2011, C. 26 & P.L. 2011, C. 205

Executive Director Zanzuccki stated that one portion of this agenda item concerns the adoption of proposed amendments to the Off-Track and Account Wagering rules which were previously advertised in the January 3, 2012 New Jersey Register and comments were received as a result of the proposal. The second portion of the agenda item concerns regulations that are being proposed and advertised which will allow for written comment from interested parties.

At this time, the Director read the comments received and the Commission's response to those comments in connection with the consideration of the adoption of the proposed amendments which appeared in the January 3, 2012 New Jersey Register.

By letter dated March 1, 2012, Francis E. McDonnell, Esq. filed comments on behalf of Freehold Raceway and Atlantic City Race Course to the Proposed Readoption of Special Adopted Amendments to N.J.A.C. 13:74-1.1, 1.2, 2.1 and 2.2; the Proposed Readoption of Special Adopted New Rules N.J.A.C. 13:74-2.2 and 2.4; and the Proposed Amendment to N.J.A.C. 13:74-2.2 and 2.3. These rule amendments and new rules, which were published to implement changes to the Off-Track and Account Wagering Act, N.J.S.A. 5:5-127 et seq. ("Act") made by the Legislature in P.L. 2011, c. 26, were published at 44 N.J.R. 42(a) on January 3, 2012. The 60-day comment period closed on March 3, 2012. A summary of the thirteen comments submitted by Mr. McDonnell in the March 1, 2012 letter and the Commission's responses to them are set forth herein. After setting forth these comments, Mr. McDonnell argues at length about the negative impact that statutory amendments to the Act have had upon his clients and the legality of these amendments. Mr. McDonnell also urges the Commission to review carefully recently announced lease agreements for the Meadowlands Racetrack and Monmouth Park. The Commission is not legally required to, and does not, respond herein to arguments challenging legislation enacted into law as these arguments are not directed to the proposed readoption of the new rule and rule amendments.

COMMENT 1: The commentator asserts that the failure to acknowledge and account for the Master Off-Track Wagering and Account Wagering Participation Agreements, which were executed in 2003, “is [g]laringly absent from the statutory changes.” The commentator states that these agreements took three years of negotiation with the NJSEA and private racing operators and they “create the template for a 40 year term in which the development of OTWs and Account Wagering would proceed.” According to the commentator, “[i]gnoring these agreements or attempting to alter these agreements by statute or regulation raises serious constitutional and other legal issues.”

RESPONSE: The Commission has no response to the commentator’s assertion that the statutory changes to the Act fail to acknowledge and account for the Master Off-Track Wagering and Account Wagering Participation Agreements. The statutory changes were enacted by the Legislature and the Commission does not have the authority to alter them. To the extent that the comment can be read to apply to the readoption of these rules and amendments, the Commission disagrees with the commentator’s assertion that the rules fail to acknowledge and account for the off-track wagering participation agreement which is referenced in the Commission’s rules by the term “Participation agreement.” The amendments to N.J.A.C. 13:74-1.1 amends the definition of this term so that it is consistent with the legislative amendments made by P.L. 2011, c. 26 to the definition of this term. In addition, the amendments to N.J.A.C. 13:74-2.1(b)(2) and 2.1(k)(3), now recodified in this adoption as 2.1(j)(3), also address the Participation agreement. In these amendments, the Commission added language to clarify that in filing an application for an initial off-track wagering license, the Authority must include a copy of a fully executed participation agreement “which is consistent with current law.” Finally, the commentator is correct that these rules and amendments do not address the participation agreement applicable to account wagering. These rules and amendments apply to off-track wagering and not account wagering. The Commission’s rules which regulate account wagering are located elsewhere in Chapter 74 of Title 13. See, e.g., N.J.A.C. 13:74-3.1, 3.2 and 7-1 to 7.18.

COMMENT 2: The commentator states that the definition of “‘Off-Track Wagering Licensee’ should include the permit holders and their assignee or assignees, in addition to the NJSEA.” According to the commentator, the original off-track wagering participation agreement created the mechanism for ensuring that the participating permit holders who invested millions of dollars in OTWs have the security of knowing that they have rights to their licenses. The commentator indicates that this participation agreement allowed for the assignment of the OTW license to the permit holders once the NJSEA met its burden in the initial application process and that the licenses for the Toms River and Vineland OTW locations have been assigned by the NJSEA to the permit holders of these sites. For these reasons, the commentator asserts that “permit holders” should be included in the definition of “Off-Track Wagering Licensee.”

RESPONSE: The Commission rejects the commentator's statement that the definition of "Off-Track Wagering Licensee," as amended in N.J.A.C. 13:74-1.1, should include the term "permit holders." The definition in the Commission's rule conforms to the statutory definition of this term set forth in N.J.S.A. 5:5-129. In its rule, the Commission has accurately defined "Off-Track Wagering Licensee" to mean "the Authority or its assignee or assignees or another entity to which the Commission has granted its approval to conduct an off-track wagering facility as provided for in the Act." To the extent that the Authority assigns an off-track wagering license to a permit holder, that permit holder is included within the definition. The Commission therefore rejects the commentator's position that "permit holder" must be included within this definition.

COMMENT 3: The commentator questions why the definition of "Participation agreement" does not state the actual date of the Master Off-Track Wagering agreement which he indicates is September 8, 2003.

RESPONSE: The Commission rejects this comment. The definition of "Participation agreement" in N.J.A.C. 13:74-1.1 conforms to the statutory definition of the same term. The definition the rule as written accurately identifies the agreement and the Commission disagrees that inclusion of the date upon which the agreement was reached is necessary.

COMMENT 4: The commentator states that the words "to the Authority" in the title of N.J.A.C. 13:74-2.1 should be stricken from the rule. According to the commentator, "[t]he procedure for the grant of an initial off-track wagering license is a simultaneous process in which both the Authority and the permit/holder applicant apply at the same hearing." The commentator states that "once the Authority has completed its presentation the permit holder/applicant presents its application and an assignment of the Authority's license to the off-track applicant occurs." The commentator indicates that this is the procedure that was used when the current off-track wagering licenses for Toms River and Vineland were assigned to Freehold Raceway and ACRC by the Authority.

RESPONSE: The Commission rejects this comment. Pursuant to the Act, only the Authority is authorized to file an application for an initial off-track wagering license for a facility proposed by the Authority or proposed by a permit holder or permit holders subject to the Participation agreement. See N.J.S.A. 5:5-130. As a result, the title of the rule accurately describes the scope of the rule. Under current law, a permit holder subject to the Participation agreement is not legally authorized to file an application for an initial off-track wagering license on its own behalf. For these reasons, the Commission rejects this comment.

COMMENT 5: The commentator states that the language “that is consistent with current law” should be deleted from N.J.A.C. 13:74-2.1(b)(2) because it is “superfluous” and “unnecessary.” The commentator points out that the Participation agreement and the separate participation agreement applicable to account wagering have been reviewed and approved by the Commission and Attorney General. The commentator asserts that “[i]f any changes are to be made to the existing agreements it is implicit that they must be compliant with the law.”

RESPONSE: The Commission rejects this comment. When the Authority files an application for an initial off-track wagering license on behalf of itself or a permit holder subject to the Participation agreement, it must include a copy of a fully-executed Participation agreement that “meets the requirements of the Act.” N.J.S.A. 5:5-130(b). The Commission therefore rejects the commentator’s position which argues the language “that is consistent with current law” is superfluous or unnecessary. The commentator’s references to the participation agreement applicable to account wagering is irrelevant in this context as this rule only applies to off-track wagering.

COMMENT 6: The commentator states that it would be helpful if a definition for the term “first-class dining” contained in N.J.A.C. 13:74-2.1(c) could be provided “that relates to quality food and beverage.” The commentator points out that defining this term “would avoid future problems for all licensees in meeting an illusory threshold that is not patron-based.” According to the commentator, “our extensive experience in Pennsylvania and New Jersey has shown that patrons of OTWs don’t necessarily desire higher-priced, or ‘fine’ dining.” The commentator asserts that “[f]irst-class dining”, unless defined conservatively, will not serve the needs of the patrons and will be a costly requirement for operators.”

RESPONSE: The Commission rejects this comment. N.J.S.A. 5:5-131(a)(5) requires that at the time of filing an application for an off-track wagering license, the applicant shall submit to the commission a certification which specifies "the type of food and beverages available, which shall include, but not be limited to "(5) the provision of first-class dining facilities...." Once the application has been determined to be complete, the Commission must hold a public hearing in the municipality in which the proposed off-track wagering facility is to be located within 45 days to examine specific details regarding the proposed facility. Pursuant to N.J.S.A. 5:5-133(a), the Commission shall make a final determination on the license application following the public hearing and it "shall approve the application if it determines that the plan for the proposed facility includes appropriate standards of quality for the premises and services it will provide and that the applicant has demonstrated by clear and convincing evidence that establishment of the proposed off-track wagering facility will not be inimical to the interests of the public and the horse racing industry in

this State." Any determination by the Commission shall be submitted to the Attorney General for review and approval. Ibid. As a result, N.J.A.C. 13:74-2.1(c) is consistent with law as written because the determination whether the applicant will provide "first-class dining" is fact-specific, required by the Act and must be examined within the context of the application and public hearing process.

COMMENT 7: The commentator states that the January 1, 2012 deadline set forth in the proposed amendment to N.J.A.C. 13:74-2.1(h)(1), now recodified in this adoption as N.J.A.C. 13:74-2.5, "is burdensome to all present permit holders and in fact exempts the new lessees of the Meadowlands and Monmouth Park racetracks." The commentator asserts that this "brings up the double standard and unequal treatment of certain permit holders in the state and raised significant legal and constitutional issues." The commentator adds that "the potential erasure of all the permit holders' 'shares' of licenses is oppressive and illegal and we vehemently oppose any attempt to nullify, withdraw or transfer these permits from us." According to the commentator, "'progress' on one license at a time is more realistic, before such drastic and illegal action is taken, given the extremely short time-frame imposed by the Legislature." The commentator submits that "permit holders are exempt from the licensure and escrow/deposit requirements of the law pursuant to the 'making progress' language" in N.J.S.A. 5:5-130b(1). According to the commentator, "N.J.S.A. 5:5-130b(1) provides that forfeiture of all licenses is avoided by 'making progress toward obtaining **an** off-track wagering license and establishing **an** off-track wagering facility...' and not all facilities, as provided in the rule." (Emphasis in original).

RESPONSE: The Commission rejects the comment, which in large part voices objection to the statutory changes mandated by P.L. 2011, c. 26. The January 1, 2012 deadline, was established by the Legislature in P.L. 2011, c. 26, §3, which amended this legislation in P.L. 2011, c. 205, §1, to establish a deadline consistent with the effective date of that legislation, which is December 31, 2012. The commentator's contentions of unequal treatment, legal arguments, potential loss of OTW facilities within the permit holders' shares and the reference to the escrow/deposit requirements take issue with the statutory changes enacted by the Legislature.

COMMENT 8: The commentator states that the language "'Any amendments to' ...the Participation agreement(s)" should be added to N.J.A.C. 13:74-2.1(k)(3), now recodified as 2.1(j)(3) in this adoption, and the language "and is consistent with current law" in this paragraph should be deleted. In making this statement, the commentator specifically references the reasons already set forth in comment number 4. The commentator's reference is in error as he likely means to reference the reasons set forth in comment number 5.

RESPONSE: The Commission rejects the comment for the reasons already set forth in the response to comment number 5. In addition, the Commission points out that the requirement in 2.1(j)(3) that “the participation agreement meets the requirements of the Act...” includes validly-executed amendments to the agreement.

COMMENT 9: The commentator states that it is unclear whether the time lines set forth in N.J.A.C. 13:74-2.1(o) run from the original Act or the effective date of the Act as amended. The commentator questions whether current law authorizes a maximum of 15 OTWs or now allows an additional 15 OTWs for a total maximum of 30 OTWs. The commentator also questions whether “the 8-license build-out limitation” includes the existing 3 OTWs or does it authorize 8 additional OTWs. The commentator states that the 8-license build-out limitation “seems inconsistent with the benchmarks that all licensees need to show progress.”

RESPONSE: The Commission rejects the comment which addresses the existing rules of the Commission which are not part of the special adoption, readoption or amendments other than to recodify 2.1(o) as 2.1(n) without any changes in text.

COMMENT 10: The commentator states that there should be a provision in N.J.A.C. 13:74-2.2 “that requires compensation to the existing permit holders to the taking of its ‘share’ by one of these groups or by a ‘bidder’ under the statute.” The commentator indicates that Freehold Raceway and ACRC, as private operators, “have already invested tens of millions of dollars in the New Jersey racing industry in good faith and have been mischaracterized as the cause of the industry’s malaise, despite the fact that we have operated at significant disadvantages versus NJSEA-operated racetracks and have had to absorb operational losses without the benefit of taxpayer subsidies.” The commentator asserts that N.J.A.C. 13:74-2.2 should be stricken because the “horsemen’s groups” and “well-suited entities” “should not be permitted to file an application for a license until the Commission has ruled that an existing permit holder has not made progress on a license” The commentators states that allowing these two groups to do so “will be inequitable to existing permit holders and will be an unnecessary administrative burden on the Commission.” The commentator adds that “[a]ny opportunity for these groups to file applications must be conditioned upon payment of the present day value of their existing OTW allocations.” According to the commentator, “these new ‘applicants’ must be required to adhere to the existing geographic and other provisions of the current Participation Agreements.” Finally, the commentator states that “there is no provision for compensation to permit holders for their loss of economic rights ... and the Commission must be mindful of the significant investment of the current operators.” The commentator points out that provisions have been added to law that give the horsemen’s groups the authority to file license applications and receive bid fees “despite their having no economic investment in the racetracks and existing OTWs.” The

commentator concludes by stating that “[i]f a preferential scheme is to be devised, the existing operators should receive such preferences and not favored groups who stand to benefit by these new laws and regulations.”

RESPONSE: The Commission rejects the comment. First, the commentator seeks changes to N.J.A.C. 13:74-2.2 in connection with the alleged preferential treatment and loss of economic rights that are not authorized by current law and are, therefore, beyond the Commission’s regulatory authority. Second, the commentator’s suggestion that horsemen’s organizations or well-suited entities will apply for a license they are not entitled to receive is completely speculative. The filing of any such application is adequately deterred under the provisions of the rule in 2.2(a)(1) and 2.2(a)(2), respectively, that require that an application shall be accompanied by a nonrefundable filing fee of \$2500, in the case of horsemen’s organizations, or the amount of the successful bid, in the case of well-suited entities. Third, the Commission rejects the contention that any application filed by a horsemen’s organization or well-suited entity “must be conditioned upon payment of the present day value of their existing OTW allocations.” In making this contention, the commentator seeks changes to the rule that are unauthorized by current law and his comment is hereby rejected. Finally, the terms of the Participation agreement must be negotiated by the parties to the agreement and the Commission does not seek to regulate the contents of this private agreement by rule other than to require that the Participation agreement meets the requirements of the Act and is consistent with law.

COMMENT 11: The commentator states that N.J.A.C. 13:74-2.3(d) should be changed to allow a permit holder or other entity that is a party to the Participation agreement to file an application to renew an off-track wagering license. According to the commentator, the historic practice has been that the permit holders subject to the Participation agreement file their own renewal applications and the NJSEA sends a concurrent approval letter to the Commission stating that the permit holder filing the application has met its financial obligations. The commentator asserts that the rule should be changed to recognize this practice.

RESPONSE: The Commission rejects the comment. Pursuant to the Act, only the Authority is authorized to file an application to renew an off-track wagering license held by a permit holder. N.J.S.A. 5:5-133(b) specifically provides that “[w]ith the approval of the commission, the authority may assign an off-track wagering license to a permit holder, provided that the authority shall retain responsibility for license renewals.”

COMMENT 12: The commentator states that the language “and is consistent with current law” should be deleted from N.J.A.C. 13:74-2.3(d)(2) and 2.3(j)(3) for the reasons in comment number 4. The commentator’s reference is in error as he likely means to reference

the reasons set forth in comment number 5. Referencing N.J.A.C. 13:74-2.3(h), the commentator asks how a license for an off-track wagering facility that is not operational can be renewed.

RESPONSE: The Commission rejects the comment for the reasons already set forth in the response to comment number 5. In response to the commentator's question, the Commission points out that to receive an off-track wagering license, an off-track wagering facility is not required to be operational.

COMMENT 13: The commentator states that the language "became eligible" in N.J.A.C. 13:74-2.4(a) "should be defined to be not earlier than the Commission's ruling that a permit holder has not 'made progress.'" The commentator also states that the language "Commencing on January 1, 2012" in N.J.A.C. 13:74-2.4(b) should be deleted because "[i]t is premature to permit an application to be filed until a ruling has been made by the Commission that a permit holder has not made 'progress.'" The commentator again questions, this time in connection with N.J.A.C. 13:74-2.4(b), how a license for an off-track wagering facility that is not operational can be renewed.

RESPONSE: The Commission rejects the comment. Once again, the commentator's suggestion that a horsemen's organization will apply for a license they are not entitled to receive is completely speculative. The Commission also references its responses to comment number 10 and 12.

The Executive Director explained that this reading ends the summary of comments received concerning the adoption portion of the regulation. He further explained that there are another set of regulations that are to be considered for advertisement as a rule proposal which deal with setting forth benchmarks for racetracks to show progress on an annual basis and other progress as required by the statute.

Commissioner Aponte questioned if the vote can be bifurcated in regard to considering the adoption and proposal. The Director recommended that the Commission move forward in one motion and if there are concerns about a particular aspect of the item, those concerns can be raised during the motion period.

Commissioner Caputo motioned to adopt the rules as they appeared in the January 3, 2012 New Jersey Register, and to propose for advertisement those rules concerning the benchmarks. Commissioner Aponte indicated that he is not comfortable with voting for the adoption as he did not have the requisite time to fully review the document as it was provided to him just prior to the meeting and noted for the record that this is not a castigation of the Commission, however, he prefers to fully read documentation prior to

voting. Therefore, the Commissioner voted no as concerns the rule adoption and voted yes to propose the rule amendments. A roll call of the remaining Commissioners indicated a yes vote and the motion carried.

CONSIDER THE MATTER OF FREDERIC ESPOSITO V. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. RAC 3743-2011S

Commissioner Keegan motioned to table the item based upon advice of counsel. Commissioner Caputo seconded the motion and all Commissioners voted yes.

CONSIDER THE MATTER OF MICHAEL GULOTTA, ON BEHALF OF ALL OWNERS OF CRYSTAL DREAM V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 09712-2011N

Commissioner Caputo motioned to table the item based upon advice of counsel. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION PROGRAM BUDGET FOR FISCAL YEAR 2013

Commissioner Caputo made a motion to table the item in order that additional research can be provided before considering approval. Commissioner Keegan seconded the motion and all Commissioners voted yes.

ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Zanzuccki stated that the 2013 race date submissions are due by October 15 for consideration at the November 14 Racing Commission meeting.

There being no further discussion or comments from the public, Commissioner Keegan moved that the meeting be adjourned. Commissioner Caputo seconded the motion and it was approved unanimously.

ATTEST:



Frank Zanzuccki, Executive Director