

MINUTES

NEW YORK STATE RACING AND WAGERING BOARD

MEETING OF JUNE 21, 2001

A meeting of the New York State Racing and Wagering Board was held on Thursday, June 21, 2001 at 11:30 a.m. at the Racing & Wagering Board's Albany Office located at 1 Watervliet Avenue Extension, Albany, New York.

The meeting was called to order at 11:40 a.m.

In Attendance Were:

Michael J. Hoblock, Jr., Chairman

Joseph Neglia, Member

Cheryl Buley, Member

Edward Martin, Executive Director

Maureen McGrath, Secretary to the Board

Robert Feuerstein, General Counsel

Tom Casaregola, Director of Audits & Investigations

Joe Lynch, Chief of Racing Operations

Also in Attendance Were:

Dianne Landor, NYSR&WB

Stacy Walker, NYSR&WB

Denise Poole, NYSR&WB

Mark Stuart, NYSR&WB

Justice Cheney, Vernon Downs

Jim Wise, Vernon Downs

Yancey Roy, Gannett

Dennis Yusko, Times Union

Mike Kane, Gazette

Andrea Kosier, Powers, Crane/Vernon Downs

Paul D'Onofrio, Finger Lakes

Dick Powell, Vernon Downs

Robert Perez

OPEN COMMENT PERIOD: Mr. Robert Perez addressed the Board regarding his application to reopen his adjudicatory matter and requested a follow-up to his complaint concerning the NYRA Racing Secretary. Justice Cheney from Vernon Downs stated that Vernon has worked diligently to come into compliance and asked for consideration of the approval of their track and simulcast licenses.

A. The Board approved the minutes of the Board meeting held on May 23, 2001.

B. ITEMS PREVIOUSLY APPROVED OR DEFERRED BY THE CHAIRMAN.

1. NYRA STEWARD REQUEST FOR EXTENSION OF APPRENTICE JOCKEY ALLOWANCE - JOHNSON

For entry into the minutes, on May 25, 2001, approval was granted for the request by NYRA Steward, Carmine Donofrio for an extension of the qualified apprentice year of jockey Richard Johnson of an additional 28 days stemming from an injury on March 7, 2001. Mr. Johnson's apprentice allowance was originally scheduled to expire on April 3, 2001.

Mr. Johnson's date of record for the expiration of his apprenticeship allowance is now Friday, June 22, 2001.

2. NYRA REQUEST TO OFFER \$250,000 PICK-FOUR ON BELMONT STAKES

For entry into the minutes, on May 25, 2001, approval was granted for the request by NYRA to guarantee the Belmont Stakes Day pick-four pari-mutuel pool total to a minimum balance of at least \$250,000.

Should the pool total less than \$250,000 upon the close of pick-four wagering, an additional amount of NYRA promotional money will be added to the pool to attain the minimum \$250,000 figure.

3. SUFFOLK OTB REQUEST TO RELOCATE BRANCH - FARMINGDALE

For entry into the minutes, on May 25, 2001, approval was granted for the request by Suffolk OTB to amend their plan of operation providing for the relocation of a simulcast branch in Amityville to Farmingdale. Both branches are within the Town of Babylon.

Upon receipt, a copy of the certificate of occupancy from the Town of Babylon for the 1741A Broad Hollow Road rental is to be forwarded to the Board.

4. BUFFALO RACEWAY REQUEST TO ADD THURSDAYS IN JUNE

For entry into the minutes, on May 31, 2001, approval was granted for the request by Buffalo Raceway to amend their plan of operation by the addition of three Thursday race programs during the month of June in the year 2001.

The specific added dates are June 14th, 21st and 28th. The Thursday racing will continue after June 28th and four-day-a-week racing will be held throughout the month of July 2001.

5. FINGER LAKES REQUEST FOR SIMULCAST LOCATIONS FOR YEAR 2001

For entry into the minutes, on May 31, 2001, approval was granted for the request by Finger Lakes to amend their simulcast plan of operation enabling the exportation of Finger Lakes simulcast signals to a new customer, Lakes Region Greyhound Racetrack in New Hampshire.

This approval is valid through December 4th, 2001 as listed within the submitted contract.

* For entry into the minutes, on June 5, 2001, approval was granted for the request by Finger Lakes to amend their simulcast plan of operation enabling the import of the simulcast signal from the New Jersey Sports and Exhibition Authority d/b/a Monmouth Park in New Jersey.

This simulcast signal may be utilized whenever permitted under the Racing Law. This approval is effective immediately.

* For entry into the minutes, on June 20, 2001, approval was granted for the request by Finger Lakes to amend their simulcast plan of operation enabling the exportation of their simulcast signal to a new customer, the Choctaw Racing Services, LLC in Durant, Oklahoma, effective immediately.

6. FINGER LAKES REQUEST FOR VARIOUS PROMOTIONS

For entry into the minutes, on May 31, 2001, approval was granted for the request by Finger Lakes to conduct two promotions at the track in late July of 2001.

Specifically approved were the Finger Lakes Handicapping Challenge on July 21st and 22nd and the \$25,000 Kick for Cash on July 28th.

The Board also acknowledges the Zone Days and Old Fashion Day promotions, which do not require Board approval.

7. CATSKILL OTB REQUEST TO RELOCATE BRANCH - CHENANGO

For entry into the minutes, on May 31, 2001, approval was granted for the request by Catskill OTB to relocate the branch located within the Binghamton Plaza in Binghamton to a new location within the Nimmonsburg Plaza at 1139 Front Street in the Town of Chenango, New York.

Before opening this relocated branch within the Nimmonsburg Plaza, Catskill OTB must file the temporary certificate of occupancy with the Board.

8. NEW YORK CITY OTB REQUEST TO OFFER PROMOTION FOR TRIPLE CROWN

For entry into the minutes, on May 31, 2001, approval was granted for the request by New York City OTB to conduct a contest, in conjunction with the newspaper known as *The New York Post*, on the year 2001 Triple Crown Race, The Belmont Stakes.

Since the value of the prizes available to the winners of this contest is greater than \$5,000, this contest required registration as a sweepstakes with the Secretary of State of the State of New York. In addition, proof of such filing must be forward to the Board upon receipt.

This approval is effective upon the forwarding to the Board of proof of such registration with the New York State Secretary of State.

9. MONTICELLO RACEWAY REQUEST FOR NON-WAGERING PROMOTION

For entry into the minutes, on June 1, 2001, approval was granted for the request by Monticello Raceway to conduct a non-wagering "Bartenders Derby" race to be held on Sunday, June 3, 2001.

All contestants will be "seasoned" mixologists and/or bar and tavern owners that will compete using jog carts and not carrying whips.

10. NYRA STEWARD REQUEST FOR EXTENSION OF APPRENTICESHIP JOCKEY ALLOWANCE - DUARTE

For entry into the minutes, on June 4, 2001, approval was granted for the request by NYRA Steward, Carmine Donofrio, for an extension to the apprenticeship year of Jorge Duarte, Jr. for an additional fifty-eight (58) days. This is the time Mr. Duarte, Jr. lost due to a race-related injury incurred on February 2, 2000.

The original date of the expiration of his ability to claim the five-pound apprentice allowance was July 7, 2001. His ability to claim the five-pound apprentice allowance has now been extended. His new expiration date will now be **September 3, 2001**. During this extended time period, Jorge Duarte, Jr. will be eligible to claim his five-pound apprentice allowance in all overnight races (other than stakes or handicaps).

11. BUFFALO RACEWAY REQUEST TO SIMULCAST FROM SUFFOLK RACECOURSE

For entry into the minutes, on June 5, 2001, approval was granted for the request by Buffalo Raceway to amend their simulcast plan of operation enabling the import of the Suffolk Downs simulcast signal during the year 2001, whenever in accordance with the Racing Law.

12. MONTICELLO RACEWAY LIST OF SIMULCAST LOCATIONS FOR 2001

For entry into the minutes, on June 5, 2001, approval was granted for the request by Monticello Raceway to amend their simulcast plan of operation enabling the import of simulcasts from Hazel Park in Michigan and from Suffolk Downs in Massachusetts.

These approvals are effective immediately. The simulcasts may be imported whenever permitted under the Racing Law.

* For entry into the minutes, on June 20, 2001, approval was granted for the request by Monticello Raceway to amend their simulcast plan of operation enabling the export of the simulcast signal from Monticello Raceway for use by Racing Gaming Services (RGS, Inc.).

13. VERNON DOWNS REQUEST TO CHANGE POST TIMES

For entry into the minutes, on June 5, 2001, approval was granted for the request by Vernon Downs to amend the Vernon Downs plan of operation with a new first post time of 7:35 p.m. on the Fridays of June 8th, 15th, 22nd and 29th.

14. NASSAU OTB REQUEST TO SIMULCAST VARIOUS LOCATIONS FOR 2001

For entry into the minutes, on June 5, 2001, approval was granted for the request by Nassau OTB to amend their simulcast plan of operation enabling the import of the simulcast signal from Louisiana Downs in Bossier City, Louisiana whenever permitted under the Racing Law.

This approval extends to the Suffolk Regional Off-Track Betting Corporation.

15. NYRA REQUEST TO DESIGNATE RACE AS "SPECIAL EVENT"

For entry into the minutes, on June 20, 2001, approval was granted for the request by NYRA for an amendment to their simulcast plan of operation by designating a Hollywood Park guaranteed one million dollar pick-six wager on Sunday, July 1, 2001 as a "special event."

If no one anywhere participating in this pick-six pool properly selects all six winners on Sunday, July 1st, NYRA patrons may also participate in the carry-over pool on Wednesday, July 4th, 2001.

D. ITEMS TO BE APPROVED, DENIED OR DEFERRED BY THE BOARD

1. IN THE MATTER OF ALAN HOFFMAN

The Board, after due deliberation, adopted Hearing Officer Martin's findings that the violations for using improper language, threatening to do bodily harm, for failing to cooperate in an investigation, etc. proven, together with Mr. Hoffman's past experience as a licensee are such that he shall be ineligible for any occupational license for a period of ten (10) years until on or after June 22, 2011. Further, Mr. Hoffman shall be excluded from the grounds of all licensed harness tracks for a period of ten (10) years pursuant to Rule 4119.8(g).

2. IN THE MATTER OF ALAN HOFFMAN

The Board approved Hearing Officer Dranichak's recommendation to uphold the determination that Mr. Hoffman violated Board Rule 9E NYCRR 4117.4(p) for lack of effort at Monticello Raceway on March 25, 2001 and ordered that the 30 days suspension shall be served subsequent to service of the 10 year ineligibility imposed (see Item D-1), if Mr. Hoffman is relicensed.

3. IN THE MATTER OF HARRY NIEBERG

The Board approved Hearing Officer Ritchko-Buley's recommendation that the harness racing license of Mr. Nieberg be suspended for a period of 90 days for refusing to permit the inspection and examination of the motor vehicle within his custody and control on the grounds of Yonkers Raceway on May 5, 2001, in violation of Rule 4120.6(d). The suspension period shall be from 5/7/01 through 8/4/01.

4. IN THE MATTER OF NICHOLAS P. ZITO

The Board approved Hearing Officer Dranichak's recommendation to uphold the finding of the State Steward that trainer Zito violated Board Rules 4043.2(f) and 4043.4 due to the post-race lidocaine positive of MARK'S MINER, which competed in the second race on August 2, 2000 at Saratoga Race Course. The Board further finds that lidocaine was administered to MARK'S MINER within 24 hours prior to collection of its post-race samples and modifies Hearing Officer Finding six to read, "It is unclear whether or not this prescribed medication contained lidocaine."

The Board did not accept the Hearing Officer's recommendation to modify the 15-day license suspension and \$1,000 fine to be a fine with no license suspension. The Board voted unanimously to modify the penalty of the State Steward to be a fine of \$2,000 with a 15-day suspension, provided that 5 days of the suspension are to be stayed and thereafter discharged if Mr. Zito does not violate any Board rules relating to equine drugs within one year from the Board's determination.

The Board also found that the mitigating factors cited in the Hearing Officer Report support some reduction of the suspension but not such a substantial departure from typical lidocaine drug penalties in cases of trainer responsibility.

5. THE APPLICATION TO REOPEN THE FINDINGS & ORDER IN THE MATTER OF CARMINE FUSCO

After due deliberation, the Board finds, pursuant to 9 E NYCRR Section 5402.10 that the applicant had not established that there is newly discovered evidence or other compelling reasons sufficient to warrant reopening of the administrative proceeding. The application to reopen the administrative proceeding is denied.

6. THE APPLICATION TO REOPEN THE MATTER OF ROBERT PEREZ

After due deliberation, the Board finds, with Mr. Neglia abstaining, pursuant to 9 E NYCRR Section 5402.10 that the applicant had not established that there is newly

discovered evidence or other compelling reasons sufficient to warrant reopening of the administrative proceeding. The application to reopen the administrative proceeding is denied.

7. CONSENSUS RULE MAKING THOROUGHBRED RULES PROJECT

The Board approved the rule amendments as a proposal. The amendments will be submitted to the Governor’s Office of Regulatory Reform, together with Notice of Intent to Propose and other required submissions. Publication in the *New York State Register* as a proposal would occur only after receipt of approval for publication. These procedures are established pursuant to Executive Order No. 20.

8. PROPOSED AMENDMENTS TO GAMES OF CHANCE RULES

The Board approved the proposed amendments to the Games of Chance Board Rules 5602.1, 5606.1, 5606.14, 5608.7, 5620.12, 5624.1, 5624.18 and 5624.21. These are approved for proposal by consensus rule making.

9. FINGER LAKES REQUEST TO WITHDRAW FROM CIF - \$131,047.96

The Board approved the request by Finger Lakes Racing Association to withdraw \$131,047.96 from its CIF Fund for reimbursement of capital improvement expenditures. The following items were approved:

<u>Backstretch (66%)</u>		
John Deere Tractor		\$52,965.00
20 Tack Sheds for Barns		15,087.00
Remodel of Backstretch		13,625.00
Restrooms		
Tiller and Mower Deck		<u>4,982.99</u>
Subtotal – Backstretch		
<u>Other (34%)</u>		
Satellite Dish		\$ 2,920.03
40 TV Monitors		13,054.00
2 Glass doors – Clubhouse		4,800.00
Fax Machine – Simulcast Dir.		742.65
Floor Scrubber		8,255.42
Heating, Air Conditioning &		-

assoc. electrical work – Betting	<u>14,615.87</u>
Carrel area	
Subtotal – Other	
Total Recommended Approval	\$131,047.96

10. MONTICELLO RACEWAY REQUEST TO WITHDRAW FROM CIF - \$27,500.45

The Board deferred the Monticello CIF request because a recent inspection of the Monticello Raceway backstretch area conducted by Racing and Wagering Board Director of Racing Officials, Brian Barry, the Board's Presiding Judge assigned to Monticello Raceway, Lance Ditewig and the Monticello Raceway Assistant General Manager, Sean Wiles revealed certain problems.

The problems identified were:

- The roads connecting the barns badly need paving. A large and potentially dangerous hole was noted in one of the roads.
- An unclean and unsanitary condition in the hallways and bathrooms of the groom's quarters. Green mold or fungus was noted in the shower area.
- Barns in disrepair most notably the roof that was leaking in Barn N.
- An existing fire hazard with the presence of "knee-high" or longer grass adjacent to many barns.

Upon these problems being fixed, future Monticello Raceway CIF reimbursement requests will be considered.

11. CAPITAL OTB REQUEST TO ADD E-Z BET LOCATION - PLATTSBURGH

The Board approved the Capital District Regional OTB request, dated April 6, 2001, to conduct wagering and display simulcasts at the Red Lyon Tavern at 12 Ames Plaza in Plattsburgh, New York (Clinton County). At this new E-Z Bet location, all wagering is self-service and initiated using a winning ticket or voucher only. The amount limit for the issuance of any voucher to a customer at any one time will be five hundred dollars (\$500).

In addition, Capital OTB, using its own "North Country" security employees, will occasionally inspect the Red Lyon Tavern E-Z Bet facility and certify that all rules and laws concerning the conduct of wagering in New York State, are being followed. Due to the expected high volume of wagering expected of this branch, frequent security checks are in order.

The Secretary to the Board is to be notified in writing, in a timely manner, whenever a change in procedure affects the operation of this approved E-Z Bet facility.

12. WESTERN OTB REQUEST TO APPOINT NEW BOARD MEMBER - BUTLER

The Board approved the appointment of Ms. Carole Butler to the Western Regional Off-Track Betting Corporation's Board of Directors.

Ms. Butler will be representing the County of Wyoming on Western's Board.

13. VERNON DOWNS TRACK LICENSE APPLICATION FOR 2001

The Board approved the year 2001 track and simulcast license for Mid-State Raceway d/b/a Vernon Downs.

The Board provided that should Vernon Downs apply for a track and simulcast license for the year 2002, Vernon is required to submit current year-to-date financial statements as well as projected financial statements for 2002. This information is to be submitted with the 2002 track and simulcast license application.

14. VERNON DOWNS SIMULCAST LICENSE APPLICATION FOR 2001

See item number 14.

E. ITEMS FOR BOARD INFORMATION/DISCUSSION

1. VERNON DOWNS ANNUAL CIF INSPECTION - 06/01-11-E

On June 1, 2001, staff conducted their annual capital improvement inspection at Vernon Downs.

2. CAPITAL OTB LARCENY AT WOODLAWN BRANCH - 06/01-02-E

On April 3, 2001 two OTB employees were assaulted with hammers and thousands of dollars in receipts were stolen.

3. MONTICELLO RACEWAY INSPECTION - 06/01-13-E

On June 7, 2001 Presiding Judge Lance Ditewig and Director of Racing Officials, Brian Barry, conducted an inspection of Monticello Raceway.

Meeting was adjourned at 1:25 p.m.