

**NEW JERSEY RACING COMMISSION
FRIDAY, MARCH 18, 2011
RENAISSANCE DINING ROOM
FREEHOLD RACEWAY
FREEHOLD, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Friday, March 18, 2011, in the Renaissance Dining Room of Freehold Raceway, located in Freehold, New Jersey.

The following were present:

Dennis A. Drazin, Chairman
Anthony T. Abbatiello, Commissioner
Anthony R. Caputo, Commissioner
Peter J. Cofrancesco, III, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Noel Love Gross, 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:

Legal advice concerning the request of the New Jersey Thoroughbred Horsemen's Association to waive the requirement of reporting the receipt and disbursement of public purpose funds received from the New Jersey Sports and Exposition Authority;

Legal advice concerning the settlement agreement concerning Eric Abbaitello;

Legal advice concerning the matter of Elvis Trujillo v. New Jersey Racing Commission, OAL Docket No. RAC 7021-2010S; and

Other legal advice and/or status of pending litigation.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise her ethical duties as a lawyer."

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

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

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE JANUARY 19, 2011 COMMISSION MEETING

Commissioner Abbatiello motioned to approve the public and executive session minutes of the January 19, 2011 public meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE BILLS

Commissioner Cofrancesco 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 RATIFICATION OF THE APPROVAL GRANTED TO THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY CONCERNING THE FOLLOWING HANDICAPPING CONTESTS:

- a) National Harness Handicapping Championship Qualifier on Saturday, March 26, 2011 at the Meadowlands Racetrack;
- b) National Harness Handicapping Championship Qualifier on Saturday, February 19, 2011 at the Meadowlands Racetrack;
- c) 2011 Simulcast Series Challenge on Saturday, February 26, 2011, at Monmouth Park, limited to races simulcast from Aqueduct, Gulfstream Park and Tampa Bay Downs Racetracks; and
- d) 2011 Simulcast Series Challenge on Saturday, March 19, 2011, at Monmouth Park, limited to races simulcast from Aqueduct, Gulfstream Park and Tampa Bay Downs Racetracks.

Commissioner Abbatiello motioned to ratify approval granted to the NJSEA for the noted handicapping contests. Commissioner Cofrancesco seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF ATLANTIC CITY RACE COURSE'S 2011 WAGERING FORMAT, OFFICIALS, DEPARTMENTS HEADS, ETC.

Commissioner Cofrancesco motioned to approve the 2011 race format of Atlantic City Race Course. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF MONMOUTH PARK'S 2011 WAGERING FORMAT, OFFICIALS, DEPARTMENT HEADS, ETC.

Commissioner Cofrancesco motioned to approve the 2011 race format of Monmouth Park. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF PENNWOOD RACING TO AMEND THE 2011 RACING DATES AT FREEHOLD RACEWAY

General Manager of Freehold Raceway, Howard Bruno, addressed the Commission concerning the change in race dates which include eliminating dates in April and moving those dates to the fall. Mr. Bruno indicated that if the legislation to reduce standardbred race dates is approved, Freehold will appear again before the Commission with a revised schedule.

Commissioner Caputo made a motion to approve the amended race dates. Commissioner Cofrancesco seconded the motion and all Commissioners voted yes. It was noted for the record that the S.B.O.A. concurs with the revised race schedule.

CONSIDER THE REQUEST OF THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY TO AMEND THE 2011 RACING DATES

Vice President Robert Kulina of Monmouth Park racetrack, addressed the Commission concerning the revised date schedule and it was noted for the record that the total thoroughbred race dates to be conducted will remain at 141 days.

Commissioner Abbatiello motioned to approve the amended race dates. Commissioner Caputo seconded the motion and all Commissioners voted yes. It was noted for the record that the T.H.A. had no comment.

CONSIDER THE REQUEST OF THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY TO WAIVE A PROVISION CONTAINED IN N.J.A.C. 13:71-16.5 (ENTRIES) THAT RESTRICTS THE UNCOUPLING OF OWNER ENTRIES "FOR RACES WORTH \$500,000 OR MORE" AND APPROVE THE UNCOUPLING OF OWNER ENTRIES IN ALL RACES OF \$100,000 OR MORE THROUGHOUT THE DURATION OF THE 2011 RACE MEETING

The Commission considered the NJSEA's request to allow commonly-owned horses to race as individual betting interests in all races of \$100,000 or more throughout the duration of the 2011 race meeting. The Commission's waiver rule set forth at N.J.A.C. 13:71-1.34, permits the Commission to waive certain portions of its rules if it is determined that it will benefit the horse racing industry in the State, is consistent with the intent of, or not, the letter of the rules and where strict application of the rule would create an unnecessary hardship and is contrary to the Legislative intent of the underlying statutes, the public interest or the integrity of the sport. The NJSEA indicated that the request is based upon the economic effect that the existing rule would have on the racetrack in that more horses would have to be coupled thereby creating less wagering interests and reducing the amount of dollars wagered.

Commissioner Abbatiello motioned to approve the request of the NJSEA. Commissioner Cofrancesco seconded the motion.

Robert Kulina, Vice President of Monmouth Park, asked that the Commission consider that the request include to allow commonly-owned horses to race as individual betting interests in all races of \$100,000 or more for the duration of thoroughbred racing. Commissioner Abbatiello amended his motion to include the thoroughbred race meets. Commissioner Caputo seconded the motion and all Commissioners voted yes.

CONSIDER THE PETITION FOR RULEMAKING RECEIVED FROM THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION TO ALLOW FOR SPLIT SAMPLE TESTING

It was noted for the record that Chairman Drazin has recused himself from this item

Executive Director Zanzuccki read the following motion:

The THA has proposed that true "split sampling" be allowed, through the Racing Commission rules, with regard to positive test results involving blood and urine samples. Presently, the Racing Commission rules provide for confirmatory testing with regard to residue urine samples only. To allow for confirmatory testing in the event of a positive test result on a blood sample taken from a horse, as determined by the Racing Commission laboratory, the THA proposes that: a true split of the blood sample be taken at the detention barn; that the split be maintained at the detention barn and not at the Racing Commission laboratory; that any outside testing laboratory to be used for confirmatory testing be designated by the Racing Commission but approved by the THA; and among other things, that, although the trainer or owner requesting the confirmatory testing is responsible for the

costs where the testing is confirmed, that the Racing Commission pay for the testing where a positive is not confirmed. The THA further proposes that the existing procedure for confirmatory urine testing, as set forth at N.J.A.C. 13:70-14A.4, also be changed in this manner.

We initially considered this request at our January 19, 2011, public meeting, and determined to defer our decision on the request in order to allow for further investigation and study of the request, and of course, to allow for informed deliberation on our part. The Racing Commission staff has researched the THA request, as we requested, and its findings have been reported to us.

Based upon my review, I believe that the THA's intent is to achieve a scientifically sound confirmatory testing program, characterized with the highest degree of integrity. However, when you apply the scientific and economic implications to the proposal, these goals of the THA are not met through their proposal. The creation and maintenance of a true split, at the detention barn, implicates integrity as well as practical concerns. With regard to blood samples, in order to maintain the integrity of the sample taken, plasma must be separated from the blood cells, through a centrifuge process, within approximately 48 hours of the sample first being taken. Applying the THA proposal to this reality, centrifuge equipment would have to be placed in the detention barn at each racetrack, and either non-scientific personnel would have to perform that process, or additional scientific personnel would have to be hired to perform that function. Additionally, integrity concerns would be implicated under the THA scenario, as to both blood and urine samples, because handling and refrigerated storing of the sample within the detention barn would allow greater access to the sample by others, and therefore, a greater potential for sample tampering would be present. Additionally, handling and storing the sample at the detention barn would create an environment where persons involved in maintaining the sample could know which horse a particular sample came from, thus also increasing the potential for tampering. This potential is eliminated under current procedures applicable to urine testing, because all samples are assigned an anonymous number prior to submission to the laboratory, where the sample is tested and stored in a controlled environment not accessible to non-laboratory personnel.

Although the THA proposal involves its approving any confirmatory laboratory to be used, I consider that approval to be a governmental function — and therefore, a function which should remain properly be vested in this Commission. Of course, from my perspective, and I would think that my fellow Racing Commissioner's share my view, we would welcome the THA's and any interested parties suggestions in this area. Finally, although the THA proposes that the Racing Commission pay for any confirmatory testing where a positive test is not confirmed by the outside laboratory, I believe that the requesting horsemen should in all cases bear the cost for confirmatory testing.

Subject to these views and comments, I do agree with the THA that the time has come, and the state of the science presently allows for, confirmatory testing on blood samples. I believe that our confirmatory sampling procedure for urine residue samples, as set forth at N.J.A.C. 13:70-14A.4 and the equivalent standardbred cite has been proven through the regulatory and hearing process to be effective, safe, and fair. I therefore believe that it should not be changed as suggested by the THA. Indeed, I believe a similar approach should apply to a confirmatory blood testing program. Thus, I would propose that N.J.A.C. 13:70-14A.4 and N.J.A.C. 13:71-23.4 be advertised for amendment, in order that we may receive and consider public comment, to allow for confirmatory testing of any residue blood sample. Under our present blood testing protocol, multiple blood samples are normally taken from a horse for various testing purposes. In the event of a positive test, any remaining plasma portions from those samples are presently combined and frozen. As this already is occurring, no noteworthy change to this current protocol need be made, and no change to that protocol is being proposed. However, in order to achieve confirmatory testing on any such residue portion, the procedure detailed in N.J.A.C. 13:70-14A.4 and the corresponding standardbred cite, as concerns outside laboratory confirmatory testing procedures for urine residue samples, should be made to apply to the blood confirmatory process. Accordingly, I propose that those necessary changes to the rule, to achieve this result, be advertised for public comment and that the Commission direct staff to prepare the necessary documents to file with the Office of Administrative Law.

Also, I believe that confirmatory blood testing should also be available to our harness horsemen. I therefore propose that the harness counterpart rule, that is, N.J.A.C. 13:71-23.4, also be advertised for proposed amendment consistent with my comments.

It was noted that the S.B.O.A. concurs with the Commission that the confirmatory blood testing be available to the harness horsemen.

Commissioner Caputo motioned to reject the rulemaking petition submitted by the THA. Commissioner Keegan seconded the motion and all Commissioners voted yes, with the exception of Chairman Drazin who was recused.

Commissioner Keegan made a motion to accept the motion read by the Executive Director to advertise a rule amendment to N.J.A.C. 13:70-14A.4 and 13:71-23.4 which will allow for split sample confirmatory testing of blood. Commissioner Cofrancesco seconded the motion and all Commissioners voted yes. Chairman Drazin voted yes in regard to the standardbred rule proposal and was recused from the thoroughbred portion of the rule.

CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO N.J.A.C. 13:70-8.18 AND 9.12 (ITEMS INCLUDED IN JOCKEY'S WEIGHT; SAFETY VEST REQUIREMENT AND SAFETY HELMET)

Commissioner Cofrancesco motioned to adopt the reproposal of amendments to the safety vest and helmet requirements. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION TO WAIVE THE REQUIREMENT OF REPORTING THE RECEIPT AND DISBURSEMENT OF PUBLIC PURPOSE FUNDS RECEIVED FROM THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY

It was noted for the record that Chairman Drazin and Commissioner Keegan recused themselves from this agenda item, therefore, there was no quorum of Commissioners to consider the matter.

CONSIDER THE REQUEST OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION FOR APPROVAL OF BUDGETS RELATING TO STATUTORY ALLOCATED FUNDS, HORSEMEN'S BOOKKEEPER INTEREST FUNDS AND PUBLIC PURPOSE FUNDS FOR CALENDAR YEARS 2011, 2012 AND 2013

Executive Director Zanzuccki proposed to the Commission that due to the uncertainty of 2011 race dates, the budgets relating to the thoroughbred horsemen's association be considered for calendar year 2011 only. The thoroughbred horsemen had no objection to this proposal.

Statutory Allocated Funds

The Executive Director stated that the THA is projecting total expenditures of \$1,581,000 which is slightly less than what was approved in 2010. The THA is also projecting that more than 70 percent of funds will be utilized for benevolence programs as previously approved by the Commission. It was noted that the projected expenditure in the 2010 budget was \$1,581,00, however, the amount spent in 2010 was substantially higher than

the budgeted amount (approximately \$1.8 million) due to medical expenses. In 2010, the THA projected that medical expenses would total \$495,000 when in fact the actual expenditures were more than one million dollars. The THA reduced expenditures in other areas to compensate for this increased line item, however, in 2010, there was a deficit of slightly more than \$250,000.

The Commission heard from Tim Williams, representing the THA as to why 2010 medical expenses were more than what was projected. Mr. Williams stated that the THA never anticipated what the cause and effect would be when the horsemen were asked in 2010 to run the 50 million dollar meet at Monmouth Park, and they did not consider the turnover in the backstretch of stables shipping into the racetrack. The population of backstretch people that were covered was far greater than prior years. Also, because the benefit program offered by the THA is so much better than other states, the program drew a greater number of people to New Jersey. Executive Director Zanzuccki questioned Mr. Williams as to whether the THA believes the \$700,000 projected for this year's medical costs to be reasonable. Mr. Williams responded that the THA believes this to be sufficient. The Executive Director indicated that the 2011 budget also proposes a deficit of approximately \$130,000 and asked how the THA would fund this deficit. Mr. Williams replied that the deficit would be funded from a balance of approximately \$200,000 of statutory money carried over from 2010. Mr. Williams added that in the event the cost of medical expenses exceed the projected \$700,000 and there was no further statutory carry-over money, the THA would draw the funds from the public purpose fund (approximately \$400,000) or from the ancillary fund which contains simulcast fee money negotiated from the Breeders' Cup association in the amount of approximately \$1 million.

The Executive Director stated that the budget appears to be in compliance with the Racing Commission's rule regarding the percentage of money being used to fund benevolence programs and that staff would recommend approval of the statutory allocated fund budget. A brief discussion occurred concerning the difference in horsemen's benefits in comparison to surrounding states. Commissioner Keegan motioned to approve the budget. Commissioner Caputo seconded the motion and all Commissioners voted yes with the exception of Chairman Drazin who had recused himself.

Horsemen's Bookkeeper Interest Funds

The Executive Director informed the Commissioners that the proposed Horsemen's Bookkeeper Interest Fund budget contains a line item of \$4,000 for "political contributions, lobbyists and legislative." The Executive Director indicated that he had discussed this line item with the Executive Director of the THA, Michael Musto, and that Mr. Musto informed

him that this line item would be removed from the budget and a revised budget would be submitted. Mr. Williams confirmed the removal of this line item and indicated that the revised budget removing the \$4,000 amount will be forwarded to the Commission and the total budget anticipated expenditures in the horsemen's bookkeeper interest account was \$390,000.

The Executive Director asked Mr. Williams to explain the \$100,000 line item in the budget designated as "slot initiatives." Mr. Williams indicated that the THA embarked on a slot initiative which resulted in a study by Richard Thalheimer that was distributed to members of the Legislature. The Executive Director asked Mr. Williams if the THA planned on spending \$100,000 for this initiative in 2011 and Mr. Williams responded the THA Board instructed THA staff to include the item as a possible expenditure. The Executive Director asked Mr. Williams if the money would be spent on a lobbyist and Mr. Williams indicated that it would not since the THA had been instructed not to spend money on lobbyists. Mr. Williams noted that whatever the THA can do politically to educate someone on why the racing industry needs slots, they will do in order to save the industry.

The Executive Director noted that a balance of approximately \$45,000 was currently available in the Horsemen's Bookkeeper Account under the control of the Commission. The Executive Director asked if the interest income that was earned at the 2010 thoroughbred meet was included in this balance and if not, how much did the THA anticipate it will be. Mr. Williams indicated that it was not included and he anticipates that the interest check will be considerably higher than last year because of the purse levels that were paid during 2010, and the THA is awaiting that check from Monmouth Park.

The Executive Director asked how the THA would fund a deficit of \$300,000 or more. Mr. Williams indicated that in 2010, the THA had an obligation to add money to the backstretch pension plan. Whether the THA will have that expense again, he does not know, therefore, the THA reported what they had spent in the prior year. If there is a shortfall, the THA will reapply to the Board to use funds from the public purpose fund or from the Breeders' Cup simulcasting fund.

A brief discussion occurred concerning the investment management of the Breeders' Cup simulcast fund. Mr. Williams indicated it is a fund held by the THA's attorney in trust, in an interest-accruing account.

Executive Director Zanzuccki mentioned that the THA might consider changing the line item entitled “slot initiative” to a more descriptive title such as the “future of racing initiative” so that it would be clear that the THA would not be using the money for a lobbyist, and that it would be used to enhance the future of racing. Mr. Williams agreed with the suggestion and will recommend the change to the THA Board.

There being no further discussion, the Executive Director stated that the budget appeared to be consistent with the 2005 settlement agreements that resolved NJRC v. NJTHA and recommended approval.

Commissioner Abbatiello motioned to approve and Commissioner Cofrancesco seconded the motion. All Commissioners voted yes with the exception of the Chairman who abstained.

Public Purpose Funds

The Executive Director stated that the public purpose budget for 2011 anticipates expenditures of approximately \$370,000 with a projected income of \$300,000 resulting in a \$70,000 loss. The Executive Director asked Mr. Williams how the THA would fund the loss. Mr. Williams indicated that the THA would cut expenses in the amount of \$70,000 or use funds from the Breeders’ Cup simulcast fund. The Executive Director noted two line items in the budget designated for “political contributions“ in the amount of \$125,000 and an item entitled “government relations and legal” and asked if these moneys would be used to pay lobbyists. Mr. Williams indicated that there is no expenditure for lobbyists whatsoever.

The Executive Director indicated that the budget appeared to be consistent with the approved expenditures from the prior year and is consistent with the court settlement agreement. It was noted that the actual expenditures in 2010 for the public purpose fund was approximately \$160,000, there was a surplus of \$180,000 and this amount is part of the \$400,000 available in the fund. Mr. Williams indicated this was correct and the THA budgeted a certain amount of money that was not expended.

Commissioner Cofrancesco motioned to approve the budget. Commissioner Abbatiello seconded the motion and all Commissioners voted yes with the exception of the Chairman who recused himself.

CONSIDER THE REQUEST OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY FOR APPROVAL OF THEIR 2011 CALENDAR YEAR BUDGET

Executive Director Zanzuccki stated that the TBA is projecting a total budget of \$225,697 for 2011 which is approximately \$1,000 less than the 2010 budget. It was noted that the TBA spent approximately \$7,000 less than the approved 2010 budget. The 2011 budget, if approved, in its present form would require \$195,000 to be directed from the award account to the TBA cost administration account which would reduce the amount available for awards. The \$195,000 amount is less than what was approved by the Commission in prior years. It was also noted that the TBA received a loan from the Horse Racing Injury Compensation Board in 2010 and the TBA has made the first payment on the loan well in advance of the January 2012 scheduled payment date.

The Executive Director indicated that the budget as submitted is in compliance with the requirements of the Commission's rules and regulations and staff recommended approval.

Commissioner Keegan motioned to approve the budget. Commissioner Abbatiello seconded the motion and all Commissioners voted yes with the exception of the Chairman who recused himself.

CONSIDER APPROVAL OF THE 2011 CHARITY DAYS

The Commission conducted a brief discussion explaining the awarding of charity days. Commissioner Cofrancesco motioned to approve the 2011 charity days (appended to these minutes). Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER ADVERTISEMENT OF THE REPROPOSAL OF AMENDMENTS TO N.J.A.C. 13:71-17.1 (STARTING GATE) AS IT RELATED TO THE IMPLEMENTATION OF A FAIR START POLE

The reproposal of amendments to the fair start pole address those concerns of the Commission expressed at the January 2011 meeting. The reproposal will allow for comments to be received from the public, including the SBOA. Chairman Drazin motioned to approve the advertisement of the reproposal. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE PROPOSED SETTLEMENT AGREEMENT IN THE MATTER OF ELVIS TRUJILLO V. NJRC, OAL DOCKET NO. RAC 7021-2010S

Commissioner Caputo made a motion to approve the settlement agreement in the matter of Elvis Trujillo. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE PROPOSED SETTLEMENT AGREEMENT CONCERNING ERIC ABBATIELLO V. NJRC

It was noted for the record that Commissioner Abbatiello recused himself from this agenda item, therefore, there was no quorum of Commissioners to consider the matter.

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

ATTEST:

Executive Director Frank Zanzuccki