

NYS Gaming Commission - Public Meeting Transcript

January 17, 2023 1:30 p.m.

633 3rd Avenue, 36th Floor Conference Room, New York, NY

Executive Director Robert Williams: New York State Racing, Pari-Mutuel Wagering and Breeding Law § 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are necessary to afford the Commission an ability to establish a quorum and undertake action. This present meeting of the Commission is now called to order.

This meeting is being conducted in conformity with Chapter 1 of the Laws of 2022. Such Chapter authorizes State and local government entities to meet and take such action authorized by law without permitting in public in-person access to meetings and authorizes such meetings to be held remotely by conference call or similar service, provided that the public can view or listen to such proceeding and that such meetings are recorded and later transcribed. Accordingly, this Commission meeting is being conducted in conformance with such allowance and we are both allowing the public to listen to our proceeding, and we are recording today's meeting for transcription, as required.

Ms. Secretary, will you please call the roll?

Acting Secretary Kristen Buckley (via video): John Crotty

Commissioner John Crotty: Here.

Kristen Buckley: Peter Moschetti.

Chair Brian O'Dwyer: Here.

Kristen Buckley: Christopher Riano

Commissioner Christopher Riano: Here.

Kristen Buckley: Marissa Shorestein

Commissioner Marissa Shorestein: Here.

Kristen Buckley: Jerry Skurnik

Commissioner Jerry Skurnik: Here.

Robert Williams: Ms. Secretary, please have the record reflect the quorum of established members is present, thus enabling the transaction of business. Please also note that there are bilateral visual and oral communications between Schenectady where

Commissioner Moschetti sits and Manhattan where the remaining members of the Commission sit.

Chair O'Dwyer: Minutes of the Commission meeting conducted on December 12, 2022, have been provided to the members in advance. At this time, I'd like to ask the members if there are any edits, corrections or amendments. Hearing none, Ms. Secretary, please let the record reflect the minutes were accepted.

As I had indicated to our Commissioners at our last meeting I had asked that in the future that our Executive Director give a report on the activities of the staff since our last meeting. For this first time, our Executive Director Mr. Williams is going to deliver his report and I urge all the Commissioners to take note of it and ask any questions that they might have.

Robert Williams: Since we last met, there have been a few developments within our industry I would like to share.

Resorts World Hudson Valley. Part S of § 6 of chapter 39 of the Laws of 2019 authorized the establishment of a video lottery gaming in Orange County, to be operated by Monticello Raceway Management, Inc. On 28 December 2022, this allowance was met with the opening in Newburgh of Resorts World Hudson Valley. The facility, which employs 228, has 1,107 video lottery gaming devices and 82 electronic table games. In the first day of operation, Resorts World Hudson Valley netted \$679,633 on a handle of \$7,726,860. Since opening, Resorts World Hudson Valley has contributed \$2.25 million to public education.

The 50,000-square-foot facility is located at the Newburgh Mall in the former home of the Bon Ton. The space had been vacant since the fourth quarter of 2021.

RFA. On January 3, 2023, the Gaming Facility Location Board issued its Request for Applications for the additional commercial casino authorized by Part RR, Chapter 56, L. 2022. The initial return items are First Round of Bidder Questions, which are due on February 3, 2023.

The Board unanimously determined that the minimum capital investment and license fee for Applicants seeking to build a commercial casino is \$500 million each.

By statute, a separate, appointed Community Advisory Committee will review Applications. In addition, the successful completion of municipal zoning and land-use processes will ensure that only projects embraced by the community would be presented to the Board for consideration.

The Board chose not impose artificial deadlines, other than the due date for the first round of questions and the Return Date, which is 30 Days from the Board's response to the second set of questions.

After the Return Date for this RFA, a Community Advisory Committee for each Application received may be formed and obtain a complete copy of the associated Application materials.

HISA. The Horseracing Integrity and Safety Authority anti-doping and medication program was scheduled to become operational in January 10, 2023 following adoption of governing rules. However the Federal Trade Commission, under which the HISA rules are subject, declined to publish the drug rules until constitutional issues were resolved. Recall, in November the Fifth Circuit Court of Appeals found infirmities in the exercise of control under the Horseracing Integrity and Safety Act. A legislative fix regarding the constitutional infirmities was included in the federal Omnibus Reconciliation bill, which has passed both the House and the Senate and was signed into law by President Biden on 28 December 2022.

HISA intends to resubmit its Program Rules to the FTC for approval and anticipates the FTC will post the Rules to the Federal Register in the coming weeks. Once the Rules are posted, there will be another public comment period, and following that comment period, the FTC will have 60 days to approve or deny them. Based on the most optimistic timeline, the Program could go into effect in mid-March 2023.

MSW. New York just marked the end of the first full year of mobile sports wagering operation. In the first year, the total mobile sports wagering handle reached \$16.5 billion, and generated net revenue to education of \$709,247,358. An additional \$200 million in licensing fees was also collected. According to GeoComply, a software firm used to ensure geolocation requirements, since initiation in New York, more than 3.8 million unique player accounts were created and over 1.2 billion transactions have been processed.

In addition to the education revenue, \$5 million was directed to fund sports programs for underserved youths, and \$6 million has been used to fund problem gambling education and treatment.

Chair O'Dwyer: Thank you Mr. Williams. Do any of the Commissioners have any questions?

Rulemaking.

N.Y.S. Racing, Pari-Mutuel Wagering and Breeding Law § 104.19 authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that regard, the Commission will from time-to-time promulgate rules and rule amendments pursuant to the State Administrative Procedure Act.

Today we have one rule proposed.

Robert Williams: For Commission consideration are amendments to the rule governing the content of casino license applications. Current casino licensees are licensed pursuant to Title 2 of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law. Racing Law § 1313.1 directed the Commission and the Gaming Facility Location Board to prescribe the form of the application, which the Commission did by promulgating Commission Rules 5301.1 and 5301.2. The proposal is intended to correspond the existing rule with the changes in State law that enabled the additional casino licenses process. Staff recommends that the Commission propose this rulemaking.

Chair O'Dwyer: Commissioners, any questions on the proposal regarding amendments to the Casino License Application? Hearing none. May I have a motion to propose this rule?

Commissioner Skurnick: So moved.

Seconded?

Commissioner Shorestein: Second.

Chair O'Dwyer: Any discussion on the motion? All in favor?

Commissioners: Aye

Chair O'Dwyer: The motion carries. Mr. Williams, will you please outline the next item for Commission consideration?

Robert Williams: As you may be aware, there is a national shortage in the number of veterinarians in the United States, with demand far outstripping availability. This is particularly acute with large animal veterinarians. The Commission has been affected by the shortage, with recruitment of licensed veterinarians for employment as a Supervising Racing Veterinarian in State Test Barns being a continuing challenge. Commission veterinarians collect biologic specimens and supervise the sealing, labeling, storage and shipment of these samples to the New York Drug Testing and Research Laboratory at Morrisville State College which conducts testing and analysis. These veterinarians are also responsible for undertaking lameness examinations when rules require. Commission staff is in a state of continual search for qualified veterinary candidates.

New York law generally prohibits persons from being employed by the Commission if, during the period commencing three years prior to the proposed employment, they were employed by an association or corporation engaged in gaming activity within the state. During the 2019 legislative session, the general prohibition was changed, and now the Commission may, by resolution adopted by unanimous vote at a properly noticed public meeting, waive for good cause the pre-employment restrictions for a prospective employee whose duties and responsibilities are primarily on racetrack grounds.

By law, the resolution must detail the reasons for waiving the pre-employment conditions for the prospective employee and include a finding that there were no other qualified candidates with the desired experience for the specified position.

Despite best efforts – including postings, direct electronic mailings, engagement of trade groups, discussion with staff of the Cornell University College of Veterinary Medicine – the Commission remains without full staffing of veterinarians with flexibility to accept work assignments on an as needed basis.

A recently retired regulatory veterinarian from the New York Racing Association has offered to undertake Supervising Racing Veterinarian roles, as needed, at both thoroughbred and standardbred racetracks, with flexibility of service.

Staff seeks Commission consideration of an employment waiver for Anthony R. Verderosa.

Dr. Verderosa is a 1987 graduate of the Iowa State University, College of Veterinary Medicine and worked in private practice as an equine practitioner in Florida and Kentucky from graduation through 1996 when he joined the NYRA veterinary staff. During his time at NYRA, Dr. Verderosa held positions of increasing responsibility, serving as an examining veterinarian, chief examining veterinarian, and concluding his employment as Director of the Veterinary Department. His decades of experience as a NYRA regulatory veterinarian gives Dr. Verderosa unparalleled experience with health and welfare of equine athletes. Well known to, and respected by Commission staff, Dr. Verderosa last worked at NYRA on December 31, 2022 and has recently surrendered his Commission-issued occupational license as a racing official.

Chair O'Dwyer: Mr. Williams will you read the proposed resolution?

Robert Williams: Resolution 01-2023. Whereas the New York State legislature passed a law prohibiting any person from being appointed to, or employed by the Commission, if during the period commencing three years prior to appointment or employment such person held direct indirect interest in any corporation, association or person engaged in gaming activity in the state. And whereas the law was amended by Part BB of Chapter 59 of the laws on 2019 in relation to pre-employment restrictions for certain prospective Commission employees. And whereas under the amended law the Commission may, by resolution adopted by a unanimous vote in a properly notice meeting waive for good cause the pre-employment restrictions for a prospective employee whose duties and responsibilities are primarily on race track grounds so long as the resolution details the reasons for waiving the pre-employment conditions for the prospective employee and includes a finding that there are no other qualified candidates with the desired experience for the specified position. Whereas the commission has experienced difficulty despite extensive recruitment efforts in identifying licensed veterinarians to work as a standardbred racing veterinarian in test barn of standardbred and thoroughbred test barns to collect biologic specimens and to supervise the sealing, labelling, storage and shipment of these samples to the New York state drug testing and research laboratory

for drug testing purposes and to perform certain lameness examinations as regulations require and whereas the commission is in dire need of full time and part time veterinarians with the flexibility to work irregular schedules and fulfill the requirements of veterinary staffing at racetrack operating throughout the state and whereas the commission has been presented the opportunity to flexibly employ a uniquely qualified applicant possessing decades of experience and training with a deep understanding of New York laws and medication rules as well as substantial knowledge of racing and back stretch operations. Whereas this veterinarian has during the period three years commencing prior to potential state employment been employed by an association conducting horse racing within the state and whereas the commissioners find that the position of supervising veterinarian to be integral to the execution of certain on track duties and responsibilities of the commission. Whereas the prospective employee's duties are primarily limited to race track grounds and whereas only one uniquely qualified candidate has been identified who possesses the desired experience and flexibility for vacant veterinary positions and now therefore be it resolved that the commission hereby finds that there were no other qualified candidates with the desired experience and flexibility to perform the requisite duties of a supervising racing veterinarian and at this properly noticed public meeting waives for good cause the pre-employment restriction for Dr. Anthony N. Verderosa to be employed as a supervising racing veterinarian. Be it further resolved that the commission chair be authorized to sign this re that the Commission chair be authorized to sign this resolution indicating the unanimous assent of the Commission to the contents herein.

Chair O'Dwyer: Commissioners, I understand that you all have been previously advised of this proposal. Are there any questions on proposed Resolution 01-2023, to Waive Employment Restrictions for ANTHONY R. VERDEROSA to work as a Supervising Racing Veterinarian? Hearing none, may I have a motion to propose this resolution?

Commissioner Crotty: So moved.

Commissioner Riano: Second.

Chair O'Dwyer: Ms. Sectary please call the roll. Please indicate your vote commissioners. I know that for this resolution to pass it must be unanimous.

Kristen Buckley: Brian O'Dwyer?

Chair O'Dwyer: Yea.

Kristen Buckley: John Crotty?

Commissioner Crotty: Yes

Kristen Buckley: Peter Moschetti?

Peter Moschetti: Yea

Kristen Buckley: Christopher Riano

Commissioner Riano: Yea

Kristen Buckley: Marisa Shorenstein

Marisa Shorenstein: Yea

Kristen Buckley: Jerry Skurnick?

Jerry Skurnick: Yea

Chair O'Dwyer: Ms. Secretary could you please have the minutes reflect that the resolution was adopted by a unanimous vote at a properly noticed public meeting as the standards required by New York Racing Pari-Mutuel Wagering and Breeding Law 107.1.

Any new or old business?

I just want to make my report to the commissioners as I have regularly done. First of all I want to note I was at the meeting of the that of the site selection board for the new casino licenses and that the RFA has gone out. I think we've all been through that. The questions regarding the RFA need to come in 30 days and that is all set out. as part of that I noted that there is a quiet period. And the quiet period is that nobody in the Commission, the staff or site selection board is to be approached and any such approaches, if they are approached either by principals interested in bidding or lobbyists engaged on their behalf must be reported to the Commission Secretary. I have asked staff to give us as soon as they get the information a list of the people who are interested, the entities interested in bidding on casino licenses – and also those people that have been hired as lobbyists as representatives to speak on those peoples' behalf. All of us will have been or will be asked questions in that regard. Some very innocently by friends of ours or acquaintances who have nothing to do with it. But others might be people have an interest in the proceedings. It is for that reason that I think it's important that we know who has expressed an interest and who their representatives are. As soon as we get that - and I assume Mr. Williams will do that on a rolling basis as soon as people start expressing interest. I caution my colleagues that the rules are very specific and that we are not to discuss the process or the bidding with anyone who has an interest in it. I think that's pretty clear.

Mr. Crotty: Yes. I think knowing that list would be very helpful. Thank you.

Chair O'Dwyer: A few other things I wanted to bring up. I have asked what - our General Counsel - we had some discussion myself and Commissioner Skurnick the other day on the impropriety of universities offering promotions to students to engage in gambling at casinos or otherwise. I have asked our general counsel to give us a memo on what action is any this commission could take. I know that I am very offended by that type of action myself. I think we've seen some articles in the paper. I think US News had

one the other day I shared with the Commissioners. Counsel has asked for additional time to come back to that. I said that was fine but that will be on the agenda for our next meeting for discussion and I hope we can come to conclusion in that regard.

I want you to know that on the Thoroughbred Fund it was my suggestion - the Thoroughbred Fund among the other things they do is contribute per law to various entities that are engaged in after care of horses so that they after racing days are over so they can live out their lives peacefully. And there are various entities that take care of those horses. And the Thoroughbred Fund has been over the past few years giving money in support of that. On February 21st there will be a, I've asked them to have a reception and ceremony where those checks will be given out. All of the Commissioners are invited. It will be in Saratoga at the Racing Museum. I think it is important that that type of work be acknowledged.

We've had some more discussions with the New York Racing Association in regard workers' housing. I'm working for a follow up as even as we speak. The Executive Director and I are to make another visit out to Belmont as the backstretch in the near future to really go over even in the cold weather to assess the workers' housing and to get a more concrete proposal from NYRA than we've have had in the past. I don't this to be taken in any way as being overly critical of them, they have been working with us. I just think we need to be a lot clearer and with lot more specificity as to what's going to happen. I note that they have worked with Mr. Williams in regard to the Saratoga situation and that that is proceeding with some new workers' housing. Again, I want to complement NYRA in that regard. And there are difficulties there due to the historic commission and they are overcoming those. This is really very important. I know that NYRA has we all know that NYRA has plans for an extensive renovation of Belmont including the provision of luxury boxes. I think it is incumbent on this Commission that along with looking at to make sure than along with the luxury boxes is decent workers' housing for the back stretch workers. I can tell you that's obviously one of the major priorities for me. Finally I was able to visit Racing World, Resort World racino at Aqueduct and have an interesting and very productive time understanding the extent of that facility which is obviously quite impressive. I look forward to visiting the other upstate facilities with our staff. But not in February. That concludes the agenda. Are there any other issue to come before the board. Hearing none. May I have a motion to adjourn?

Mr. Crotty: So moved. Second by Commissioner Shorenstein. We are adjourned.

Commissioner Skurnik: So moved.

Chair O'Dwyer: The meeting is adjourned. Thank you all.

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