

## KENTUCKY HORSE RACING COMMISSION

October 24, 2011

1:30 PM

U.S. Dressage Federation Building  
Kentucky Horse Park  
Lexington, KY

### **MINUTES OF MEETING**

The meeting was called to order by Chairman Robert Beck. Chairman Beck then took the roll. Present were Vice-Chairman Tracy Farmer, Mr. Edward "Ned" Bonnie, Mr. Burr Travis, Jr., Mr. Alan Leavitt, Ms. Elizabeth Lavin, Mr. Frank L. Jones, Jr., Dr. Foster Northrop, Mr. Tom Ludt, Mr. John Ward, Mr. Wade Houston, Jr., and Secretary Robert Vance representing the Public Protection Cabinet; Mr. William Dexter representing the Tourism, Arts, and Heritage Cabinet; and Mr. George Burgess representing the Cabinet of Economic Development. The presence of a quorum was recognized. Industry representatives also present were Mr. Robert Elliston, President/CEO, Turfway Park ("Turfway"); Mr. Kevin Flanery, President, Churchill Downs ("Churchill"); Mr. Ron Geary, Owner/President, Ellis Park Race Course ("Ellis Park"); Mr. Vincent Gabbert, Executive Assistant to the President, Keeneland Association ("Keeneland"); Mr. Jerry Bradley, General Manager, Players' Bluegrass Downs ("Bluegrass Downs"); Mr. Jon Goodman, General Manager, Kentucky Downs; Ms. Julie Sorrell, Director of Mutuels & Simulcasting, The Red Mile; and Mr. Marty Maline, Executive Director, Kentucky Horsemen's Benevolent and Protective Association, Inc. ("KyHBPA").

The first item on the agenda was the approval of the minutes of the August 17, 2011 and September 7, 2011 Kentucky Horse Racing Commission ("KRHC" or "Commission") meetings. Chairman Beck noted the corrections of typographical errors. Mr. Travis made a motion to approve the minutes of each meeting, as amended, and was seconded by Ms. Lavin. All present voted aye and the motion was carried.

Next, Mr. Marc Guilfoil, KHRC Deputy Executive Director, reported that by letter dated September 21, 2011, The Red Mile requested approval for a change in its roster of race officials for the remainder of its 2011 meet. Mr. Guilfoil advised that Mr. Anthony Clark would replace Mr. Brent McLaren as an Associate Judge and that Mr. Clark had previously held this position at The Red Mile as well as other standardbred tracks. Mr. Guilfoil explained that pursuant to KRS 230.230, the Executive Director had previously approved this request and the Commission was now being asked to ratify her action. Mr. Jones moved to ratify the action of the Executive Director and was seconded by Mr. Travis. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Jamie Eads, KHRC Director of Breeders' Incentives and Development, reported that by letter dated September 12, 2011, Churchill requested approval of the Kentucky Thoroughbred Development Fund ("KTDF") purse structure for its 2011 Fall meet. Ms. Eads confirmed that Churchill had a surplus of \$147,219, and proposed KTDF purses in the range of \$550,000-\$600,000. Ms. Eads also reported that Churchill requested permission to payout from first to last place. Ms. Eads stated that the KTDF Advisory Committee (the "Advisory Committee") recommended approval of Churchill's requests. Mr. Jones offered a motion to approve the recommendation and was seconded by Mr. Travis. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated September 14, 2011, Turfway requested approval of the KTDF purse structure for its 2011 Holiday meet. Ms. Eads stated that Turfway had an anticipated surplus of \$175,510 by the end of the 2011 Fall meet. She further stated that Turfway anticipated additional earnings of \$320,000 during the 2011 Holiday meet and a pay out to eligible horses on eligible races of \$374,000, leaving an anticipated surplus balance of \$121,510. Ms. Eads also reported that Turfway requested permission to payout from first to last place, and that the Advisory Committee recommended approval of Turfway's requests. Mr. Jones offered a motion to approve the recommendation and was seconded by Mr. Travis. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated September 14, 2011, Turfway requested approval of the KTDF purse structure for its 2012 Winter meet. Ms. Eads stated that Turfway had an anticipated surplus of \$121,510 by the end of the 2011 Holiday meet. She further stated that Turfway anticipated additional earnings of \$800,000 during the 2012 Winter meet and a payout to eligible horses on eligible races of \$825,000, leaving an anticipated surplus balance of \$96,510. Ms. Eads also reported that Turfway requested permission to payout from first to last place, and that the Advisory Committee recommended approval of Turfway's requests. Mr. Bonnie offered a motion to approve the recommendation and was seconded by Mr. Ward. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated October 3, 2011, Turfway requested reimbursement in the amount of \$8,000 from Backside Improvement Fund for asphalt pavement repair work done throughout the barn area. The work had previously been approved by the Commission at its August 17, 2011 meeting. Ms. Eads confirmed completion of the project and that Turfway had a balance of \$63,313.93 in the Backside Improvement Fund. She further reported that all documentation remained on file at the KHRC offices and that the staff recommended approval. Mr. Jones offered a motion to approve the recommendation and Mr. Ward seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Mr. Tim West, KHRC Assistant General Counsel, reported that by letter dated October 6, 2011 co-signed by Mr. Robert Elliston and Mr. Marty Maline, Turfway Park requested the Commission's approval for reimbursement from the Backside Improvement Fund for certain renovations to its racing surface. Mr. West stated that he had researched whether the "racing surface" was a "backside facility" as defined in KRS 230.218(2) and 810 KAR 1:021, Section 1. Mr. West stated that he had not found anything in KRS 230.218(2) and 810 KAR 1:021, Section 1, that he felt would authorize the expenditure of backside improvement funds for the requested purpose and the staff recommended denial of the request. Dr. Northrop commented, "no racetrack, no backside," and offered a motion to approve the request. Following a discussion, Vice-Chairman Farmer offered a motion to approve the request with reimbursement being contingent on an Attorney General's Opinion stating that the expenditure was statutorily authorized. Following further discussion, Dr. Northrop and Vice-Chairman Farmer withdrew their motions and Vice-Chairman Farmer reoffered a motion to approve the request subject to the Attorney General's approval of the expenditure. Mr. Jones seconded. Prior to a vote, Dr. Northrop stated for the record that he believed that the safety of the racehorse was paramount and that if the resurfacing of the racing surface was an issue that he felt it would fall under this fund. All present voted aye and the motion was carried. A copy of the request and Mr. West's October 18, 2011 memorandum were ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated October 7, 2011, Churchill requested reimbursement in the amount of \$11,260.09 from Backside Improvement Fund for electrical work performed in connection with the reconstruction of Barn 23. Ms. Eads confirmed that Churchill had a balance of \$11,260.09 in Backside Improvement Funds from fiscal year 2009. Mr. Jones offered a motion to approve the recommendation and Mr. Houston seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated October 11, 2011, Keeneland requested reimbursement in the amount of \$357,770.93 from Backside Improvement Funds for improvements made to Keeneland facilities as approved by the Commission at its March 10, 2011 meeting. Ms. Eads noted a typographical error in the balance of Backside Improvement Funds in her October 14, 2011 memorandum provided in the agenda books, and confirmed that she and Bill Thomason agreed that the amount of the balance is \$367,766.69. The staff recommended approval. Mr. Farmer offered a motion to approve the recommendation and Ms. Lavin seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Mr. Guilfoil reported that by letter dated October 10, 2011, Turfway requested approval of its roster of race officials for its Winter 2011 meet. Mr. Guilfoil advised that all the racing officials have been accredited and have previously performed the duties for which they were listed. The staff recommended approval. Mr. Houston offered a motion to approve the recommendation and Mr. Travis seconded. All present

voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Mr. West presented the Application of Ellis Park for Wagering on Historical Races (the "Application"). Mr. West stated that Ellis Park has requested the same menu of wagers as Kentucky Downs was offering. He stated that the KHRC staff and Mr. Kling had extensively reviewed the Application, that the Application complied with the requirements of the exotic wagering regulation and recommended approval. Mr. West noted that Ellis Park had agreed to the Conditions of Approval ("Conditions") identical to those approved for Kentucky Downs. Vice-Chairman Farmer offered a motion to approve the Application and the Conditions as presented and Dr. Northrop seconded. All present voted aye and the motion was carried. A copy of the Application and the Conditions were ordered to be attached to the minutes.

Next, Mr. West reported that since Kentucky Downs began offering wagering on historical races, it had made various requests of the Commission for permission to make non-substantive modifications to certain aspects of its day-to-day administrative operations in connection with historical racing. Mr. West noted the necessity of bringing these day-to-day operating decisions before the Commission for approval would create a very cumbersome process for the racing associations that offered wagering on historical racing. Therefore, the staff recommended that the Commission delegate the authority to the Executive Director to approve or deny these day-to-day type requests with written notice to be given to the Commission of what action the Executive Director has taken. Mr. West stated that all requests received for substantive changes would still be brought before the Commission for approval. Mr. Bonnie offered a motion to approve the recommendation and Mr. Travis seconded. All present voted aye and the motion was carried. A copy of Mr. West's October 17, 2011 memorandum outlining the recommendation was ordered to be attached to the minutes.

Next, Ms. Susan Speckert, KHRC General Counsel, presented the 2012 Conditions of Racing Association and Off-Track Facility Licensing ("Conditions of Licensure"). She stated that the Conditions of Licensure were identical to those approved and adopted by the Commission for 2011 and that the racing associations had been provided copies. Mr. Ward offered a motion to approve the 2012 Conditions of Licensure and Mr. Jones seconded. All present voted aye and the motion was carried. A copy of the Conditions of Licensure was ordered to be attached to the minutes.

The next item addressed was the approval of the requests for race track licenses, race dates and simulcasting dates and locations for 2012. Chairman Beck stated that the Race Dates Committee (the "Committee") had thoroughly reviewed the race tracks' applications, requests for race dates and requests for simulcasting dates and locations at its October 11, 2011 meeting. Ms. Speckert reported in her October 14, 2011 cover memorandum that the Kentucky Thoroughbred Association ("KTA") and Kentucky Thoroughbred Owners & Breeders ("KTOB") had approved all requested dates for the thoroughbred tracks and the Kentucky Harness Horsemen's Association ("KHHA") had

approved all requested dates for the harness tracks. Chairman Beck noted that a couple of small changes had been requested by a few tracks and asked that a representative from each race track present a short summary of their requests.

Mr. Flanery stated that Churchill requested 39 days in the Spring meet and 21 days in the Fall meet. He stated that originally Churchill had requested to end the Spring meet on June 30, 2011; however, after conversations with the horsemen, Churchill was requesting to end the Spring meet on July 1, 2011.

Ms. Speckert stated that Churchill ending on July 1, 2011 would result in a one day overlap between Churchill and Ellis Park and asked Mr. Flanery if Churchill and Ellis Park had reached an agreement on host track status for that day. Mr. Geary, on behalf of Ellis Park, stated that to accommodate the horsemen who wanted more dates at Churchill, Ellis Park was willing to voluntarily withdraw its request to become the host track on July 1, 2011 and would become the host track on July 2, 2011 instead, with live racing to begin on July 4, 2011. He stated Ellis Park would now be requesting 30 race days instead of 31 race days. Additionally, Ellis Park requested to simulcast the full calendar year. Chairman Beck noted the amendments to Ellis Park's application.

Next, Mr. Gabbert stated that Keeneland requested 32 total race dates, 15 days in the Spring meet and 17 days in the Fall meet. He stated this was the same number of days as requested for 2011.

Next, Mr. Goodman stated that Kentucky Downs requested six days, which is two days more than they asked for in 2011.

Next, Mr. Elliston stated that Turfway requested 83 days, which is one additional day from 2011.

Next, Mr. Bradley stated that Bluegrass Downs requested 15 days, which is the same number as requested in 2011.

Next, Ms. Sorrell stated that The Red Mile requested 29 days, which was the same number as 2011, with the exception of moving night racing from Friday to Saturday.

Next, no one was present on behalf of Thunder Ridge and Chairman Beck stated that they had applied for 21 days, which was three less than 2011. Ms. Speckert noted that Thunder Ridge operates as Appalachian Racing Association.

Vice-Chairman Farmer then offered the following motion:

I move to approve the lot of the applications, live racing dates and proposed simulcasting dates for racing year 2012, subject to receipt of any outstanding information and subject to compliance with the conditions to license approved by the commission for the following racing associations: Appalachian Racing Association, Churchill Downs, Ellis Park, Keeneland Association, Kentucky Downs, Lexington

Trot Breeders Association/The Red Mile, Players Bluegrass and Turfway Park. I request that the racing associations notify the commission of any additional simulcast outlets and note that the commission maintains the discretion to deny approval of those simulcast outlets, which may be determined by the commission to allow the technology to transmit wagering data in a timely fashion. I also move to approve the applications of Appalachian Racing Association Hazard U-Bet and Kentucky Off Track Betting LLC to conduct simulcast wagering for the racing year 2012.

Mr. Jones seconded. Next, all presented voted and the motion carried with a vote of ten in favor and one opposed, with Dr. Northrop being opposed. A copy of the written motion was ordered to be attached to the minutes, along with a copy of the list of requested racing dates and a calendar for racing dates requested for 2012.

Next, Mr. West reported in his October 17, 2011 cover memorandum provided in the agenda books, that the Equine Drug Research Council (the "EDRC") had approved the release of a request for proposal ("RFP") to fund research regarding the determination of betamethasone (a corticosteroid with anti-inflammatory and immunosuppressive properties) in equine plasma and urine and that HFL Sport Science, Inc. ("HFL") was the sole respondent to the RFP. Mr. West's memorandum outlined the specifics of the research. Dr. Scollay explained that the research was being conducted in collaboration with the Racing Medication and Testing Consortium ("RMTC"), and that Pennsylvania, California and Florida were also funding other similar research. She noted that the results of all the collaborative research would be used industry-wide. She stated that although corticosteroids provided therapeutic benefits in a horse, a potential for illicit use also existed. She stated that the data developed from this research would aid racing regulatory jurisdictions to better regulate these substances. The EDRC and staff recommended approval of HFL's bid. Mr. Bonnie offered a motion to approve the recommendation and Mr. Houston seconded. All present voted aye and the motion was carried. A copy of Mr. West's memorandum, the RFP and HFL's proposal were ordered to be attached to the minutes.

Next, John Veitch, the Chief Steward, gave his report for thoroughbred racing and addressed questions asked by the Commissioners. A copy of the report was ordered to be attached to the minutes.

Next, Rich Williams, Chief Judge, gave his report for standardbred racing. A copy of the report was ordered to be attached to the minutes.

Next, Dr. Bryce Peckham gave the veterinarian report for thoroughbred racing and addressed questions asked by the Commissioners. A copy of the veterinarian report was ordered to be attached to the minutes. Dr. Northrop again commended the staff veterinarians. A copy of each report was ordered to be attached to the minutes.

Next, Mr. Lamb presented his report and addressed questions asked by the Commissioners. A copy of the report was ordered to be attached to the minutes.

Next, Chairman Beck noted that the Administrative Regulations and Litigation Status Report and Priority Schedule was included for informational purposes. A copy of the report was ordered to be attached to the minutes.

Next, Ms. Underwood presented for informational purposes, a draft summary of the KHRC staff's highlights for September, 2011. Among the highlights were the following: 1) Mr. Nelson O'Donnell joined the staff as the Director of Licensing; 2) Mr. Chris Clark assumed the position as Director of Enforcement; 3) wagering on historical horse racing began at Kentucky Downs; 4) preparations for the 2011 Breeder's Cup at Churchill Downs; 5) Dr. Scollay was a finalist for the National Turf Riders and Broadcasters Joe Palmer Award for Meritorious Service for Racing; 6) KHRC staff made a presentation to the Lexington Occupations Committee; and 7) KHRC veterinary staff performed out-of-competition testing during the Grand Circuit at The Red. A copy of the draft September Highlights was ordered to be attached to the minutes.

Next, Ms. Underwood announced that effective November 16, 2011, she would be resigning her position as Executive Director of the KHRC. She discussed the many goals that had been set upon her appointment and that had now been accomplished. She commended and thanked the staff and Commissioners for their hard work and support over the years. Chairman Beck commended Ms. Underwood on her dedication to and efforts on behalf of the KHRC.

Next, Chairman Beck requested a motion to go into executive session, as permitted by KRS 61.810(1)(c), to deliberate on proposed or pending litigation matters. Ms. Lavin offered the motion and was seconded by Mr. Travis. All present voted aye and the motion was approved.

At the conclusion of the executive session, Chairman Beck requested a motion to return to public session. Ms. Lavin offered the motion and was seconded by Mr. Travis. All present voted aye and the motion was carried. The Commission returned to public session.

Next, Vice Chairman Farmer announced that the Race Day Medication Committee would hold a public meeting on November 14, 2011 at 10:00 a.m. in Frankfort. He stated the exact location would be announced.

Vice Chairman Farmer offered a motion to adjourn the meeting and Dr. Northrop seconded. All present voted aye and the motion was carried.