

MINUTES

OREGON RACING COMMISSION NOVEMBER 15, 2001

The Oregon Racing Commission met on Thursday, November 15, 2001, at 1:30 p.m. for their regular meeting in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair; Tom Towslee, Lisa Metcalf Jeff Gilmour and Todd Thorne. Agenda items were discussed in the following order with resulting actions:

1. Approval of October 18, 2001, Minutes

ACTION: MOTION(Gilmour) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

2. Election of Commission Vice Chair

ACTION: MOTION(Gilmour) Elect Tom Towslee and Vice Chair.

VOTE: 5 Aye, 0 Nay

3. Request by Ohio TAB, Ltd. to Sell One Percent of Its Interest in America Tab, Ltd. to Northfield Park Associates

Todd Bowker, America Tab, was present to answer any questions. Steve Barham recommended approval. He did state that one of the things in the selling of interests in America Tab that the commission should always look for is the issue of the operating agreement. There should be some documentation that any operator coming into partnership with America Tab has see the operating agreement submitted to the commission and accepts it in total.

ACTION: MOTION(Towslee) Approve sale of one percent of Ohio TAB Ltd. interest to Northfield Park Associates.

VOTE: 5 Aye, 0 Nay

Mr. Bowker then provided a quarterly report. During the third quarter they handled nearly \$8 million which is a substantial increase over the amount handled when they were located in Ohio. They continue to grow every month and have created in this calendar year nearly 6100 new accounts. They have made their first round of source market fee payments. Regarding streaming video, yesterday the links for their first four channels were put up. With the demise of The Racing Network it's a lot more difficult to watch racing on television. They also changed their primary credit card processing company to Bank One.

4. Distribution of Oregon Greyhound Breeders Trust Bonus Awards

Steve Barham recommended approval.

ACTION: MOTION(Gilmour) Approve distribution of bonus awards.

VOTE: 5 Aye, 0 Nay

5. OGA Request for Kennel Bonus from Proceeds of Real Estate Sale and Held Retirement Funds - continued from 10/18/01

Dick Gage submitted additional information since the October meeting regarding this request which was included in the commissioners' November meeting packet. The question was raised as to whether or not the OGA had considered adding these funds to purses for the next season. Mr. Gage stated it had been discussed, however, there is a possibility that some of the

people that raced at MGP and earned that money this past season will not be returning next season. Based on that reasoning they decided to issue it this year. Steve Barham stated as he see it the OGA took a pro active approach when it appeared they could have some budget problems. Luckily the problems ended up not being as bad as they had originally thought. As far as the bonus back versus the hold over for purses until next year, it would appear that could be somewhat identified with how the money was gained. The sale of the real estate and the withholding of the retirement program is maybe a different issue. The commission needs to remember in greyhound racing people do not run for set purses as in horse racing. In horse racing a horse is entered for a certain purse. In greyhound racing all purses are on a point basis which is based on the handle for that week. As a result, the dollar amount per point can change week to week. Mr. Barham stated he feels the OGA has looked at the matter and has come up with what they consider the best way to disburse the funds at this point in time. For that reason he recommends approval of the request with the understanding if, as they go through consolidating activities in their organization, there is other money needing to be dealt with someway the commission needs to look at that. Nothing on this request should cause the commission to act on any future requests in any certain way. Vice Chair Towslee asked if any of these funds were being used to address the issue of declining simulcast handle, in other words, to market or promote their own product with the idea that the simulcast handle would be increased. In response, Mr. Gage said he didn't believe the use of OGA funds could help to increase the handle on simulcast horse racing because short fields are primarily the cause of the low handle.

ACTION: MOTION(Thorne)

Approve request.

VOTE:

4 Aye (Gilmour, Metcalf, Thorne, Walters) 1 Nay (Towslee)

6. Portland Meadows Race Meet Report

Before receiving the report, Chair Walters stated the lawyer at Stoel Rives who was doing the work for Magna Entertainment has left the firm which means he is no longer recused from acting on issues having to do with Magna.

Following is a transcript of Art McFadden's report:

McFadden: First, regarding the permitting process, I'm sure you're all curious as to how our project is coming along. Secondly, our dealings with the EPA. I take it this letter was part of your packet? Do you recognize it? So, if I can read just one sentence from it to alert you and the audience to some of our problems with the EPA. This is a letter to David Allnutt from Scott Daruty and here is the first sentence of the second paragraph: "Section 27 of the Consent Decree contains two new best management practices." That's what kind of burns us up. I wish they'd told us this before we had the horses on the grounds and we could have argued it out then, but we're continuing to negotiate this. To continue the sentence: "Specifically, Section 27 requires that the BMPs utilized by MEC include 'discontinuing the use of hotwalkers at the Facility' ". This is preposterous, I mean that's the only word for it. "...and 'allowing no more than 600 horses on site at any one time' ". Incidentally, the 600 got reduced to 550 this morning. We had an hour and one-half conference call with the EPA and, of course, that also is preposterous. Also the foundation and rationale for these additional proposals which was basically a telephone conversation that I and four members of the HBPA had with David Allnutt a month ago or so, six weeks ago I believe, wherein I said we were urging them to hurry up and make a decision because we either had to go to Grants Pass or not go to Grants Pass, but the horsemen were in limbo and it was a very bad deal. I made the comment that we're losing stables daily and certainly weekly. We had 1100 applications, 900 approvals and we had lost two or three of those stables and we were losing more. This morning he made an argument that my statement meant that we only had 600 horses left to come to Portland Meadows, so therefore, why

are you arguing? This is the sort of thing we're running into with the EPA. So, I'll start with that, and I'd like to make it a brief report. Those are probably the toughest two that I just mentioned.

For the benefit of the audience that doesn't know how important this is, the Consent Decree that Scott Daruty and David Allnutt are negotiating right now is probably going to be a 25 page document, and the heart of it is the promises that we're going to do in these BMPs. This is part of the Decree.

Walters: BMP meaning best management practices?

McFadden: Best management practices. This very, very important. It's not something we can just jump over. The horsemen recognize that and we've got their cooperation and approval of what we've done so far, and now we're tailoring it to be included now in the Consent Decree so it's very, very important. I believe there's 10 BMPs. The two that I just mentioned are difficult, we're having a difficult time with. The others that came up this morning -- covers on the carts, they asked us to keep the carts covered when it was not raining. That's something we never offered and never thought about and we're going to work that out, and I don't consider that to be too important. These others are not important either. The disposal and the timing of the removal of the wood chips on the hotwalkers is very important. They want the BMP to read once a month. Carl and I at the noon hour worked out the cost of this, and this is the cost to the horsemen incidentally, it's not fair to pass this on. It's a cost to us also. We have to remove them and then we have to pay for the removal just like any garbage removal product, and the cost we came up with was \$45,000 a year if we did every hotwalker every month. We have approximately 75 hotwalkers on the grounds and 5½ months plus another month of pre-meet, so this is an expensive item and we're trying to negotiate that because it really doesn't help the environment that much to remove these clean chips. It shouldn't be as important to the EPA as they think it is.

Good news I think that came about this morning was they did not bring up the question of timing, which leads me into my second report. I was concerned, and I have been for quite awhile as soon as I truly learned last week that we're not going to make that February 15th completion date. There's no question about it, we're not going to make it. So I've really been alarmed and I've talked to Scott a number of times and Bub Loiselle used the phrase "substantial progress" and that sort of thing, and I suppose we're okay because it didn't come up at all this morning. We had a somewhat confrontational telephone conference this morning. I don't know if Mr. Barham has told you or not that the commission was invited to participate in this conference this morning and the EPA did not want Steve to listen in.

Towslee: Who specifically made that request?

McFadden: Scott.

Towslee: No, who said we could not be there?

McFadden: Oh, David Allnutt.. I understand why. I think it might have been a tactic on Scott's part. I'm wondering if he expected David to permit Steve to listen in. In a negotiation sometimes we get argumentative, and I don't know if they wanted to have...

Walters: The concern, Art, obviously, is that the EPA is telling the public and telling the Racing Commission one thing when we have them on the telephone and saying we've been working on all these things and what's Magna been doing; and then they come out and they tell Magna 600 horses and no hotwalkers, which is, to say preposterous is a gentle word for that sort of a requirement at horse race track. I guess I have a great deal of concern that the EPA is trying to bait and switch on these issues. Realizing that you have to be circumspect, do you have a comment on that?

McFadden: I'll mention the sequence. David Allnutt suggested the telephone conference because time was a wasting and we weren't going. It seems like the BMPs are the most difficult negotiation that we have. He suggested to Scott that it be done Thursday morning. Scott said okay let me think about that and I'll get back to you. Scott called Steve next and said are you okay for Thursday morning for 9:30 a.m. Then he called David back and said okay, I got Art McFadden and Steve Barham in

Oregon and we know who the people were in Seattle and then David is in Washington, DC, and he said I'd prefer not to have Steve Barham. So, that's the sequence.

Walters: Did he say why?

McFadden: I was not privy to the telephone conversation between Scott and he. That's how it came down.

Walters: Where are you as a result of this telephone conference today? You said that they said well, if you don't like 600 how about 550.

McFadden: He started out with 550 and then I said, where in the world did you get that number, and then he reminded me of my words back at a call we had six weeks ago from the HBPA trailer and we did say something like we're losing horses every day and he took that to mean well, you don't need any more than 550. He actually halved it. He told me this morning, well, you said you had 1100 approvals and you're going to lose half of them. I did not say that and I told him I didn't say that, and he said that's how we came up with the 550 and we think that will be helpful to get it through DOJ. He's always indicating that he has people above him that have to approve this in the Department of Justice. I think I've put it in its worst light. We seem to have made good progress this morning. Bub Loiselle as always was sane and reasonable and helpful.

Towslee: So the 600 number, they came up with that based on a misinterpretation of what you told them. That isn't a number that they just pulled out of thin air, is that right?

McFadden: That's right. That's where he said he got the number because I said we only had... He said you're only going to have 550 by the time you get open, so that's all you need.

Towslee: So how'd they get the 600? They graciously gave you back 50 horses?

McFadden: It's the other way around, Tom. They took 50 away from us. This letter says 600 and this morning they started out at 550.

Walters: Do you fee as if you made any progress with them today discussing about how nonsensical, which I guess is another general word, it is to say that because you were in danger of losing horses you ought to put a cap on the number of horses you can have?

McFadden: That's the way it happened. We have a major investigation this coming Monday. Two or three guys from the Seattle office and one from Washington, DC, it's not David Allnutt, it' Mr. Fred Phillips, is coming to visit us next Monday and see how we're doing. We look pretty good. With the cooperation of the horsemen, with the hiring of additional 5 or 3 people just to take care of these matters. Scott made the (unintelligible) for us this morning and as usual he did a good job, and I think we made a lot of progress. I just want to mention we do have a problem with the EPA and I just wanted to tell you about it. Also, I want to talk about permitting. David blamed the mail, which I can understand the mail in DC I imagine is going pretty slow now days, but they only got the final engineering plans the first week of November. We are behind in the permitting process, too. I spent a day with David Evans and Associates, our engineers and planners, and as we all remember we had two or three different ways to accelerate the permitting process when we got the help from everybody, the horsemen and all the politicians pretty much volunteered to jump in and help us with our problem to get Portland Meadows open to save the 850 jobs and to save the industry in Oregon. Everybody cooperated as much as they could, and part of that cooperation we had three or four tracks to Vera Katz to try to accelerate the process. Well, we really can't accelerate the process. It turns out that the main reason we can't is it's codified that they have to go through hoops. You just can't take a shortcut. The law doesn't permit it. We've discovered recently that the City of Portland has also required us to put a 10% investment in the facility when out of code compliance area. This is brand new to all of us. We take our \$600,000 project on the backside then we have to spend another \$60,000 on the frontside, and we said, sure we'll do it. But then they said where's your plans? Well, we didn't have any plans. We don't even know what we're doing on the frontside, and this came up just a few weeks ago. Just this last Tuesday I provided some old plans for parking lot area which is the area they were interested in improving because that's out most out of compliant area at Portland Meadows and it looks like we'll get those plans in to the city planning and permitting

department quickly. By law the permit must be acted on within 120 days. Here's what we've done. The conceptual plan has been submitted for some weeks, perhaps a month now, and our planners have had pre-app meetings and we've got a very friendly relationship with the staff, they know what we're doing and they're awaiting our plans. It's not going to take 120 days, but we were advised by our professionals that it might be a mistake to come at Mayor Katz from these different angles from Senator Smith's office and the other two tracks that we had offers for, because number one, Vera might say I can't do this, we might put Vera in a tough spot, and number two, the planners who might be there longer than Vera they might resent that. So, all we're doing is getting it moved to kind of the top of the pile and at this point anyway we have chosen not to solicit this extra help that was offered. Again, it's not possible because the process is codified by law. They will not permit shortcuts. Mayor Katz has the power to urge the six member staff to hurry, but this request could go either way. It could help but then again it might not help, so we've decided just to go with it the way we're doing it with these pre-app meetings, and we're making what I think is good progress. Oh, one other thing. I've got to get back to the EPA. They have to approve our plans before we submit them to the city. We still haven't submitted them. The 120 day bell hasn't rung yet but we're working on it right now with these pre-app meetings so that when we do get them in we'll have quite a head start. I just found out this morning and I think Scott just found out this morning that now David is requiring a topographical map of the area which we didn't provide. That's something new to us, we didn't know we had to provide it. So, when they come down Monday we're going to find out what other items they need and we're going to have one of the David Evans engineers on hand. But at the last minute we haven't got the EPA to approve these plans, so we haven't formally submitted them to the city yet to start the process. So, we're way behind.

Walters: When do you expect to have the plans to EPA?

McFadden: Oh, the EPA had them in the first week in November.

Walters: But apparently they didn't have everything they say they needed.

McFadden: Right. I just got back today with this one additional request and perhaps there's going to be others. The topographical map I imagine, I don't know how long that would take to put together.

Walters: Does their potential approval of the plans, is that dependent on agreement on the best management practices or are those independent tracks, Art?

McFadden: Independent.

Walters: And to the people at the city understand the urgency of getting this through?

McFadden: We have these professionals. They have a whole permitting department down at David Evans and they tell me they do. I haven't been personally involved with the city officials on that. I was a lot more concerned last week than I learned this morning because it doesn't seem to be too important to the EPA. It seemed a few days ago that it was. They said hey, you can't open unless you get a completion date by January 1st. The horsemen came up with an alternative plan of February 15th and we'll take the horses off. That was okay with them and I thought the completion date was a big deal but I have this sense that maybe it isn't.

Walters: They're rather clear where I was sitting here recused. The rather clear statement by Bub Loiselle I understood was what he wants is good faith effort and that he has prosecutorial discretion as to whether or not he comes after you folks. I gather from what you were saying that his attitude is pretty much the same as it was.

McFadden: Yes. We all feel that we're not on their watch list, but Scott is a lawyer and he has his bosses to protect and he wants to make sure there's no possibility that they're going to come in close us down and cause all the problems that we dread.

Towslee: Was Bub Loiselle involved in this?

McFadden: Yes, he was.

Towslee: Did you get any indication from him that his position is changing from what heard during the conference call in October?

McFadden: No, I did not. He sided with David on one issue today. Scott was arguing the matrix formula and David said you've got one chance out of a million to get that changed, and Bub said I agree with that. He came in hard on that one, and outside of that he was basically, I'm generalizing totally here, but he was basically on our side.

Walters: The matrix formula being...

McFadden: The penalty formula. Scott made a very good point that they gave us these BMPs and all of a sudden they're adding new ones. So Scott said well, if you're going to argue the old ones, they're changing the old ones, so Scott brought out one of the old ones, too, the matrix formula, and we had no success in getting that changed. It just seems to be difficult to get this resolved.

Walters: You have said several times, Art, that you're not going to make February 15th.

McFadden: It's possible, but I don't think so.

Walters: So, then what?

McFadden: I got a real good feeling because nobody brought it up. Nobody asked us about it and they know that we're proceeding and they know we're working hard on these plans. I get the sense, and that's all it is, that I think I heard Bub use the phrase "substantial progress" in that telephone conference, and they will see that. We'll be underway on February 15th, I don't think there's any question about that, it's just there's no way we're going to be done. The horsemen have made this promise that they'll move off if we're not done, and I don't think we're going to be held to that, that's my prediction.

Towslee: By underway you mean you've actually dug something up or whatever it is...

McFadden: By February 15th, yes.

Towslee: You will have removed something.

McFadden: Yes, that's my prediction.

Towslee: You'll be beyond the exchanging paper.

McFadden: Correct. I had a lady at David Evans tell me she would bet it would be in the area of 60 days, and that puts us mid to late January. We'll be, but then it's a 60 day completion contract. Completing it by February 15th just seems to be not possible.

Gilmour: Could I ask a question before we move on? On the first page the real concern that I had for one was the discontinued use of the hotwalkers. Then you mentioned the chip removal.

McFadden: Yes. That's one of our BMPs.

Gilmour: So, there is a compromise working out that you keep the hotwalkers if the chips are moved?

McFadden: No. We are working out the details of each of the BMPs. There will be chip removal, there will be some sort of...

Gilmour: Well, you see where I'm going.

McFadden: The issue is the definition of the phrase "storm event", and we have agreed to put the horses in when we have a storm event because it's draining off of the hotwalker and there could be some manure, and we've agreed to that.

Gilmour: Most people don't want their horses out when it's extremely bad weather anyway on their hotwalker.

McFadden: Well, if you've worked a horse out on the racetrack and you need to cool him out you just have to put him on, but we, with a half an hour's warning, we haven't worked the details of our program out, but we started out agreeing to that. Then they came down that it started on rainy days. Thanks to Bub he realized that doesn't make much sense, it rains all the time in Portland, so we got that rainy days moved to storm event. Well, then the storm event got moved to run-off, any day that it runs off the hotwalker, and that's kind of less than a storm event. Then all of a sudden two weeks ago we got no hotwalkers. That's the progress of this.

Gilmour: Yeah, but I was wondering how it worked in with the chips because I'm assuming you're talking about chips under the hotwalker.

McFadden: Yes, we are. We had said we will remove them when they're soiled and they came back to us and said that you will remove them once a month.

Walters: Excuse me, Commissioner Gilmour. The question that he's asking is how does it make any sense for the EPA to be saying you've got to... (tape flipped sides and missed rest of sentence) That's the question he's asking.

McFadden: Yes, those two things have to be combined. That's correct. Well, first of all, we're going to have hotwalkers and we're going to be defining storm event, that's coming. We're going to have chips and we're going to have hotwalkers but this preposterous proposal, which I think you have in the letter, which just came in three or four days ago that we remove the hotwalkers. That's true, Commissioner Gilmour, those two, if that happens then the chip issue is moot.

Gilmour: And I moved it to the next step, which was beyond this letter, that you could have hotwalkers if you removed the chips which wasn't in writing. So, when you start talking about removal of chips I assumed that you were still going to have hotwalkers.

McFadden: Well, I see your point. The battleground over hotwalkers is really, that's it. That's the meet. If we don't have hotwalkers we don't have a race meet. The horsemen can't afford to hire four guys to walk hot horses when the machine...

Walters: What sense in the world does it make to have four guys walking horses out in the rain anyway. The point is that the horses are producing waste and it's raining.

McFadden: You might be interested to know we have made the offer we'll just put them in, and if it rains real hard we'll put them in and they'll sit in the stall, and if they don't get out that day and the sun comes out in the afternoon they can take them out later. There is a sensible logical way to do this in Oregon and removing the hotwalkers is not the answer. For your information, they don't have hotwalkers at Churchill Downs or Arlington Park. Some tracks do it but we can't do it in Portland, OR.

Walters: If we had \$50,000 allowance races we wouldn't have to do it either.

Metcalfe: And, Art, you've discussed also the possibility of putting a liner under the hotwalkers so that you don't have to remove the chips and nothing goes into the dirt?

McFadden: That's interesting, no we haven't, Commissioner Metcalfe. That hasn't come up.

Metcalfe: Maybe you and I can talk after the meeting a little bit about we do that since we use that all the time.

McFadden: They're worried about the run-off, though.

Metcalfe: There is no run-off. The chips absorb all the fluid.

McFadden: Oh. Even in a hard rain?

Metcalf: There'll be some puddles out there. Let's talk about that after the meeting.

McFadden: Well, that issue has not come up.

Metcalf: I guess I find it so frustrating with the EPA especially having talked to David Allnutt myself. We share your frustration, and if there's anything we can do to help with this man. He seems to be the cog in the wheel here.

McFadden: I don't think you can help because he doesn't seem to have a boss. The people in Seattle seem to defer to him and then he talks about the Department of Justice and that's ephemeral. We just can't find anybody there. There's always somebody up above him but we don't know who these people are.

Walters: Obviously you're keeping Steve Barham apprised of what's going on. My own view it would be helpful, except you're going back east aren't you, wondering whether you could be out at this meeting with the EPA folks when they come out next week.

Barham: No, back east is on the 10th of December.

Walters: Okay. I think it makes sense for you to be there.

McFadden: Are you available Monday morning, Steve?

Barham: It sounds like I am.

Walters: He is now. And obviously there needs to be a continuing communication with Steve and so Steve can continue to advise us about what's going on. We'd like to know what plans have been submitted, when they have been submitted, when you get your clock running with the city and what your discussions are with the city on the timeline, do they understand the urgency of moving this along. I agree, I'm certain you have to jump through the hoops. The question is how fast they can be jumped through, and that, I think, is partly at the discretion of the planning folks. If they understand the urgency and are as cooperative as you suggest I would hope they could drastically accelerate that process.

McFadden: I don't know if Steve has passed this on to the commission. The reason Scott is not here this morning is that he's expecting a baby any day now, and he offered to telephone conference up here but both Scott and I and Steve thought this would be just as good.

Walters: The reason the phone is sitting there is in case we had any questions that we felt we had to ask Scott. Given your report I don't feel the need, but if other commissioners do I'd be willing to do so. That's why the phone's there. Other questions or comments on this part of the Portland Meadows report?

Carl Wilson then reported the race meet was now in full force. The scheduled opening weekend of October 20 and 21 was postponed one week and those days have been rescheduled, so they do have 81 performances scheduled for the meet. Customers seem to be pleased with the changes that have been made in the facility. The new racing surface has been excellent, and through this past Monday after having conducted 85 races with 665 starters and many training days there have been no breakdowns attributable to the racing surface. Horsemen have reported horses are not as sore as in the past and are getting racing fit faster than expected. There are currently 773 race horses on the backside. In comparing 8 performances this year to 11 last year, the live Oregon handle for total is down 10% but the average per performance handle is up 23%. The total simulcast handle is down 5% which is a continuing trend for both horses and greyhounds. Field sizes have been good considering the lateness of getting horses on the backside for training. Race distances will be increased as

horses become fit. On November 17th the champion thoroughbred "Knight Cover", who won many stakes races, will be given to Kathy Mayo who rode him on many of those races. December 15th will be Oregon Championship Day. On the greyhound side, Mr. Wilson reported there are only 38 greyhounds in the adoption kennel where normally at this time of year there are usually over 100. The adoption groups have been very active in their placement of greyhounds.

7. Final Order by Default for Angela R. Almond

ACTION: MOTION(Towslee) Approve Final Order by Default for Ms. Almond with modifications noted by Raul Ramirez, AAG for the commission.

VOTE: 5 Aye, 0 Nay

8. ODS Technologies, L.P. dba TVG Third Quarter 2001 Oregon Hub Activity Report

Roger Nyquist reported the handle for this quarter was more than a 190% increase over the same quarter last year. They are currently operating in eleven states with one or two more to come on line in January.

9. Confirmation of Next Commission Meeting - December 20, 2001

Due to scheduling conflicts it was decided to change the December meeting date to Friday, December 21, 2001.

There being no further business, the meeting was adjourned.