

NORTH DAKOTA RACING COMMISSION

Live and Telephone Meeting

**Bismarck Public Library, 515 N 5th Street, Lower Level, Room A, Bismarck, ND
Thursday, August 30th, 2012 – 10:00 a.m. (central time)**

MINUTES

Call to Order: Chairman Jim Ozbun called the meeting to order at 10:07 a.m.

Present: Chairman Jim Ozbun, Commissioner Andy Maragos, Commissioner Steve Hartman, Commissioner Tom Senftner, Commissioner Ray Trottier, Racing Director, Winston Satran, Legal Counsel, Bill Peterson and Administrative Staff Officer, Helen Tessmann.

Others Present: Michael Weiss, Debbie Eisenhauer, John J. Ford, Mike Cichy, Ron Klein, Leon A. Glasser, John Bubel, L.J. Harsche, Avery Erfle, Wendy Reuer, Wes Heinert, Jad Breiner, Scott A. Horst, Richard Nevins, Gail Hrdlicka and Sally Dasinger.

AGENDA

1. **Approval of Minutes – May 24th, 2012 Meeting**
2. **Director's Report**
 - Mad Scramble Wager and Fee
 - Hearing before the Administrative Rules Committee – September 13th
3. **Statistics – 2012 Fargo Race Meet**
 - Condition Book
 - News Media Support
 - Thank you to Avatar Ventures, I.B.N., John Ford, sponsors and supporters
 - Planning for the 2013 race meet
 - NDSU's barn rental
 - Payments for TIF loan and payment to Fargo-Moorhead Economic Development
4. **Hearing Jim Fleming, Trainer and Karen Glasser, Owner**
5. **Director's Report - Compliance Investigator's Work – 2012 Live Race Meets**
6. **Emergency Fargo Track Repair**
7. **Review and approve critical appointments at race tracks**
8. **Outriders' Complaints Concerning Jockeys**
9. **Maintenance Responsibilities on Track Equipment**
10. **Newsletters to Legislators**
11. **New Service Provider License Application**
12. **Year to Year General Handle Report Comparisons**
13. **State Tax Law Revision**
 - Division of breakage funds
 - May 17th meeting with the Tax Department – review of proposed tax law
14. **Medication and Racing Consortium's Questionnaire**
15. **Jockey Club's Request – Equine Injury Database**
16. **Lien Games Racing and CHRIMS**
 - Totalizer interface with ATG Sweden
17. **Canterbury Park and Mystic Lake's Agreement – How does it affect North Dakota?**
18. **Revised Code of Conduct to be signed by Commissioners and Staff**
19. **2013-2015 Budget Submission to OMB**
20. **Audit of 2011 Breeders' Fund Awards**
 - Debbie Eisenhauer, CPA
21. **Resolution of Jerry Gourneau's 2008 Ruling**
22. **ND Horsemen's Council Issues or Recommendations**

23. **Any other business, which may PROPERLY come before the commission**

24. **Adjournment**

1. **Approval of Minutes – May 24th, 2012 Meeting**

Previously, all Commissioners received the May 24, 2012 meeting minutes to review.

A motion was made by Commissioner Senftner and seconded by Commissioner Maragos to accept the minutes of May 24, 2012 meeting as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

2. **Director's Report**

-Mad Scramble Wager and Fee

Director Satran reported that prior to the Fargo Meet, Watch and Wager wrote a letter requesting permission to perform tests on the mad scramble wager. Director Satran sent a copy of that request to inform Horse Race North Dakota.

First weekend of racing the first test was performed. Some computer problems were found. The computer system was coordinated through CHRIMS to Typhoon, the Australia system. The second weekend another test was performed, testing wagers were put in and the system worked fine. It was a satisfactory test.

The next step includes contracting with a racetrack to conduct four weekends of racing this fall with the mad scramble. Then all North Dakota ADWs will be invited to have live wagers into the Mad Scramble. If it passes those tests then they will proceed to start to work out contracts with racetracks to perform with the Mad Scramble.

- Hearing before the Administrative Rules Committee – September 13th

Nine months ago, a process was started to charge an additional fee for the use of the Mad Scramble. That has gone through the Administrative Rules procedures. The Attorney General Office's has reviewed it, the Commission has approved it, had the public hearing and written comments, and back to the Attorney General's office for approval and it is now ready to go before the Legislative Administrative Rules Committee on September 13, 2012 for a 1.25% fee on the Mad Scramble. If approved, it will go into effect October 1st, 2012.

Director Satran addressed an issue which he felt was harmful to racing in North Dakota that being that a couple people approached him at horse racing in Fargo and they said they heard that he was against horse racing. He explained that if that is the message that is going to go before the legislators then that is a negative for horse racing in North Dakota.

Director Satran presented numerous activities that showed how he has been working hard to promote horse racing in North Dakota. This also included enumerated steps involved in getting racing up and running at the North Dakota Horse Park in Fargo, North Dakota this past summer.

Director Satran encouraged the horsemen to come before the Commission later this fall when he presents his letter for employment and asked for proof or evidence on how he is against horse racing.

Chairman Ozbun stated that the Commission wants horse racing to be successful in North Dakota. Commissioner Senftner stated that if anyone thinks Fargo would have happened without Director Satran he asked that they raise their hand and explain. No one responded.

Leon Glasser stated he did not feel that a public scolding was needed. Commissioner Senftner and Director Satran explained this needed to be placed on public record to show the legislators that Director Satran does support horse racing and that the rumors need to stop.

Commissioner Maragos commented that he will be attending the hearing in the legislature as a Commissioner rather than as a legislator and will be there to dispel any rumors if that question arises.

Michael Weiss, Track Manager for the 2012 Fargo meet, wanted to comment for the record that the reason he was at the Fargo meet was Winston asked him and wanted someone with more experience running a race meet, wanted the track in the best possible shape and a successful meet. Winston was there for him and supported him all the way for the meet.

3. **Hearing Jim Fleming, Trainer and Karen Glasser, Owner**

Director Satran stated in confirming with the Attorney General's office a new procedure has been introduced and asked the Commission to postpone the hearing until a later date and until the conditions of the letter are worked out.

A motion was made by Commissioner Maragos and seconded by Commissioner Trottier to table the hearing. Roll Call was taken: Maragos-Y, Trottier-Y, Hartman-Y, Senftner-Y, and Ozbun-Y. The motion passed.

4. **Statistics – 2012 Fargo Race Meet**

- Condition Book (not addressed)
- New Media Support – (see #23)
- Thank you to Avatar Ventures, I.B.N., John Ford, sponsors and supporters (see #2, #6, #23)
- Planning for the 2013 race meet.

Director Satran recommended that in October Horse Race ND (HRND) needs to start planning with the Racing Commission for the 2013 races. There were many, many last minutes adjustments trying to get ready for the race meet. He has talked to some of the board members and they are more than willing to start planning this October for next year.

- NDSU's barn rental

If there are some proposals that HRND wants to produce to NDSU, NDSU would be willing to look at them but you can't do that next June and that needs to be done this fall.

- Payments for TIF loan and payment to Fargo-Moorhead Economic Development
Someone needs to have some communications with the City of Fargo and Economic Development. A plan is needed on how that is going to be done and who is going to do that.

5. **Director's Report - Compliance Investigator's Work – 2012 Live Race Meets**

Director Satran reported that this year a Compliance Investigator was hired for the first time. He also reported on the notice that was sent to the horsemen on the hiring of an investigator. The

investigator conducted shake downs and inspections of the barns and vehicles. The investigator provided reports on horse accidents for insurance purposes. He monitored wagering sites and reported modifications will need to be made. Director Satran suggested to start planning for an investigator each year and actually increase the duties.

6. **Emergency Fargo Track Repair**

When the State Steward arrived, he walked around the track and there were two areas for emergency track repairs. Director Satran explained the repairs that were necessary.

A motion was made by Commissioner Maragos and seconded by Commissioner Senftner, to pay Northern Improvement's bill, dated July 31, 2012 for \$470 for the repairs from the Promotion Fund. Roll Call was taken: Maragos-Y, Senftner-Y, Hartman-Y, Trottier-Y, and Ozbun-Y. Motion passed.

Chairman Ozbun added that NDSU's horses are causing the problem on the track and that would be another reason for HRND to possibly get a better rate on the usage of the barns for the races.

Commissioner Senftner and Michael Weiss, Fargo Track Manager, thanked the volunteers for getting the track and grounds in Fargo ready for the race meet. Director Satran added whoever had the idea to use Cass County inmates' help that was a wonderful idea.

7. **Review and approve critical appointments at racetracks**

Director Satran reported that one of the things that came up this year and reported by the State Steward was that the Racing Secretary who worked both Belcourt and Fargo was also appointed as an Association Steward and this causes too many conflicts of interest. Director Satran read the **69.5-01-03-05 Single Official Appointment**.

Director Satran reported on the poor job done this year by the Racing Secretary with one example being lost horses' papers. He encouraged the associations to work with the Commission in hiring individuals. The Director can seek references on the individuals before hiring. Last minute appointments cannot be made.

8. **Outriders' Complaints Concerning Jockeys**

Director Satran received a letter from an out rider who had complaints about the jockey, Carmichael. Director Satran had checked Mr. Carmichael's record which had similar complaints and asked for authorization to write a letter to Mr. Carmichael with a warning of improper actions and that he is on notice. Legal Counsel, Bill Peterson explained the disciplinary procedure that could to be taken by the Commission against a licensee.

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to allow Director Satran to write a letter to Michael Carmichael. Roll Call was taken: Senftner-Y, Hartman-Y, Trottier-Y, Maragos-Y, and Ozbun-Y. The motion passed.

9. **Maintenance Responsibilities on Track Equipment**

Director Satran reported a "no race" was called due to starting gate's failure. Director Satran explained the possible causes of failure and the problems caused by a "no race". He pointed this out because both associations need to work on a plan for testing equipment.

A lengthy discussion was held by several participants at the meeting regarding several items such as having equipment checklists, money for repairs, inventory of stalls, charging a fee for use of the equipment, insurance on equipment, moving of equipment, the history of the track equipment back to 2002 and calling local authorities if items are not returned.

Director Satran requested both tracks to spell out in the promotion fund requests the cost for moving equipment and the cost for maintenance on equipment.

John Bubel, representing Fair Circuit, stated they plan to have a meeting and will write a letter to ORDA requesting all missing stalls be returned and report back to the Commission.

10. Newsletters to Legislators

Director Satran report that previously Commissioner Maragos had suggested the Commission send newsletters to Legislators prior to the next session to educating of the organizations, businesses and people dealt with, handle, etc. Two newsletters have been sent.

Director Satran then discussed the year to year handle report. Director Satran stated that last year there was \$112 million in the handle. So far this year (the first quarter- January - March) there is \$41,825,132 in handle. The handle should go up to between \$150--\$160 million, however, due to the racing costs, we are going to need handle at around \$250 million. The focus is to capture gambling that is already going on and not creating more gambling.

Director Satran thanked Commissioner Maragos for the suggestion. It was decided to post the newsletters to the NDRC website.

11. New Service Provider License Application

Michael Weiss, President of PariBet, LLC presented a Service Provider & Account Deposit Wagering application to be licensed in North Dakota. Mr. Weiss gave the background and history of the company. PariBet, LLC will be a computer system wagering company. Director Satran asked questions and Mr. Weiss answered questions regarding any plans of expansion, funding for the company, and CHRIMS auditing. Director Satran explained that Mr. Weiss had previously gone through the TRPB background check while with Avatar Ventures. Director Satran added that Mr. Weiss has one of the best reputations in the racing game.

A motion was made by Commissioner Maragos and seconded by Commissioner Hartman to issue a service provider license to PariBet, LLC and to note that the background check has taken place. Roll Call was taken: Maragos-Y, Hartman-Y, Trottier-Y, Senftner-Y, and Ozbun-Y. The motion passed.

12. Year-to-Year General Handle Report Comparisons

(See agenda item #10)

13. State Tax Law Revision

Director Satran stated the current tax law terminates June 30, 2013 and presented changes to the tax law to the commissioners. (A draft was handed out to the Commissioners.)

- Division of breakage funds
- May 17th meeting with the Tax Department – review of proposed tax law

He explained on wagering on live horse racing is a tax one-half of one percent to the three special funds and one-half of one percent to the general fund and it is also on simulcast wagering. Director Satran suggested that the simulcast wagering be taxed on the same amount as the account deposit wagering. As an incentive, it was suggested to set a tax limit. If a company pays in more than \$400,000 in taxes, then Racing Commission taxes would be suspended but they would keep paying into the General Fund. It is a proposal for everybody to consider.

Director Satran suggested each year a limit on breakage. He suggested that the taxes on account deposit wagering would be left the same as before. Director Satran added one thing to look at is or the reality is that we have not had enough money for racing because the last tax law passed cut from 100% of the breakage amount to the Promotion Fund to 20%. To ask the account deposit wagering companies to pay the expenses for racing in Fargo is unfair.

Legal Counsel Bill Peterson stated that any proposed agency bills need to be filed by the beginning of December.

A motion was made by Commissioner Senftner and seconded by Commissioner Trottier to proceed with producing a formal draft of legislation which will be brought back to the Commission. Roll Call was taken: Senftner-Y, Trottier-Y, Hartman-Y, Maragos-Y, and Ozbun-Y. The motion passed.

Chairman Ozbun asked the horse men how they felt about the amount going to the Promotion Fund from breakage. Discussion was held and no action taken.

14. Medication and Racing Consortium's Questionnaire

15. Jockey Club's Request – Equine Injury Database

Director Satran explained that the US Jockey Club is seeking a formal commission's approval to reporting all racehorse injuries to the Jockey Club. Director Satran explained the Commission has provided this information in the past and sees no reason not to continue. RCI wants approval, from all its membership, for them to form committees to address Equine Welfare and Rider Driver Safety and Welfare. Director Satran suggested the Commission supports both requests.

A motion was made by Commissioner Maragos and seconded by Commissioner Senftner to make a formal declaration to support the Equine Database by the Jockey Club and support RCI's developing committees that address the Equine Welfare and Rider Driver Safety and Welfare. Roll Call was taken: Maragos-Y, Senftner-Y, Hartman-Y, Trottier-Y, Ozbun-Y. The motion passed.

Break: 11:50 am to 12:00 pm

16. Lien Games Racing and CHRIMS

-Totalizer interface with ATG Sweden

Mr. John Ford, President of BAM software which provides software for Lien Games, gave some background on ATG in Sweden. BAM has developed a platform to submit directly to ATG on Lien Games' behalf. Mr. Ford said a question came up as to whether ATG, in order to accept wagers

from Lien Games, needs to be licensed in North Dakota. He explained ATG is a governing entity in Sweden to operate and promote racing in the US and their government charter prohibits them from obtaining such a license. Mr. Ford also explained that he doesn't believe that ATG is a tote company, ATG does not meet the criteria to be considered a tote company, and ATG does not provide services in North Dakota. ATG is in the technology business and a betting operator.

Mr. Ford was before the Commission to get confirmation that they can proceed with wagering directly in the ATG's pools.

Director Satran stated that Mark Thurman of CHRIMS and John Ford had approached him on the issue if ATG needed to be licensed in North Dakota. Contact was made with Sweden on this matter. ATG allows American companies to wager into Sweden. Director Satran reported these wagers need to be audited and CHRIMS has worked out an agreement with ATG that CHRIMS will get the auditing information directly from ATG.

A motion was made by Commissioner Maragos and seconded by Commissioner Hartman to approve the process that any company that is dully licensed by the Racing Commission, and has met ATG's requirements and the Commission receives certification from ATG on the ADW, without the need of ATG being licensed as a tote company in North Dakota. Roll Call was taken: Maragos-Y, Hartman-Y, Trottier-Y, Senftner-Y, and Ozbun-Y. The motion passed.

17. **Canterbury Park and Mystic Lake's Agreement – How does it affect North Dakota?**

Director Satran reported that Canterbury Downs has signed an agreement with Mystic Lake. Mystic Lake Casino will pay \$80 million to Canterbury Downs over the next 10 years. Horsemen in Minnesota are looking at a North Dakota location to provide racing for their second tier of racing. Director Satran stated discussions are just beginning and would like to continue these discussions. This could be a substantial business that would start to grow in North Dakota.

18. **Revised Code of Conduct to be signed by Commissioners and Staff**

Director Satran explained that when the last state audit was completed, the auditor suggested updating the Code of Conduct which has now been done. Director Satran asked the Commissioners to sign the new revised Code of Conduct.

19. **2013-2015 Budget Submission to OMB**

For the 2013-2015 budget proposals, the Director Satran informed that all state agencies were requested to submit an optional 3% reduction budget. To meet the 3% optional reduction budget request, the budget item of annual membership fees was removed. It is hopeful the optional budget will not be necessary.

12:30 PM Commissioner Maragos left the meeting.

20. **Audit of 2011 Breeders' Fund Awards**

- Debbie Eisenhauer, CPA

Debbie Eisenhauer reported on the audit of the 2011 Breeders' Fund allocation of points and the disbursement of funds for the live race meet held at Chippewa Downs, Belcourt, ND. (No races were held in Fargo, ND.) All funds were correctly calculated and disbursed with the exception that an additional \$2,143.57 had to be paid out due to the misinterpretation of Rule 69.5-01-09-10. A total of \$95,286.80 was paid out for the 2011 racing season.

21. **Resolution of Jerry Gourneau's 2008 Ruling**

This issue has been resolved and the fine paid.

22. **ND Horsemen's Council Issues or Recommendations**

Scott Horst requested the amounts for the three special funds (which were provided to him after the meeting.) He asked if the late fee of \$1,000 for entering a foal in the fund could be lowered and how could that come about. Director Satran stated it must be changed in the administrative rules and this will not be completed by the end of the year. For this year the Racing Commission could look out and adopt late payment fees similar to the Jockey Club's. Scott Horst thanked the Commission for everything that has been done.

Jad Breiner of Horse Race ND thanked the Racing Commission, Mr. Weiss, Mr. Ford and the horsemen for helping put on an excellent race meet.

Commissioner Senftner thanked Wendy and the Fargo Forum for the coverage this year. It was outstanding and it meant a lot.

Chairman Ozbun seconded Commissioner Senftner's and Jad Breiner's comments and also thanked Director Satran, Mr. Weiss, the Commissioners and everyone else who helped with both meets making a successful year. The Fargo's coverage was perfect.

23. **Any other business, which may PROPERLY come before the commission**

There was no other business.

24. **Adjournment**

Commissioner Ozbun requested the meeting be adjourned.

A motion was made by Commissioner Senftner and was seconded by Commissioner Trottier to adjourn the meeting. It was adjourned at 12:40 PM.