

Minutes of the Members Meeting of the Franchise Oversight Board held on June 30, 2011 at 1:00 P.M., Conference Room 131, State Capitol, Albany, New York

Members Present:

Robert Megna, Chair
Gordon Medenica, Member
John Crotty, Member via video conference
Richard Aurelio, Member via video conference
Steven Newman, Member via video conference

Seth Agata, Governor Counsel
Ellen McClain, NYRA via video conference
Patrick Kehoe, NYRA via video conference
Christian Goode, CFO, Resorts World New York (Genting)
Colin Au, Strategic Advisor for Genting
Michael Speller, President Resorts World New York (Genting)

The Chair called the meeting to order at 1:08 pm and asked the Members of the Board to identify themselves for the record. Following introductions the Chair noted that the Board had a quorum.

The Chair proceeded to the first item on the agenda, the approval of the draft minutes for the last board meeting. He stated that the minutes from the last meeting were still in process and he asked the Secretary to ensure that the final minutes for the prior meeting be available for board adoption at the next meeting.

The first item on the agenda was approval of the first amendment to the Aqueduct sublease between Genting New York LLC and the New York Racing Association and the Chair asked Mr. Seth Agata of the Governor's Counsel Office to present this item to the Board.

Mr. Agata briefly explained that the Resolution addresses the use of the third floor space in the building itself and those uses were described in the MOU, the sublease, as well as Genting New York's RFP response. Mr. Agata explained that it is contemplated that Genting would be granted access for development of the third floor space of approximately 100,000 square feet to expand the VLT premises into areas not currently being used by NYRA. The third floor will be completed as a multi-function area which can be used for year-round indoor events, in order to increase patronage to the facility.

Mr. Aurelio asked Mr. Agata if the shared space agreement covers areas of the building not specifically defined in the MOU and Mr. Agata confirmed that this agreement does cover those areas. Mr. Medenica further explained that the MOU provided a rough outline regarding the areas of Aqueduct that would be used by the VLT operator and NYRA but that within the MOU it was always understood that their control

of many common areas within the Aqueduct footprint would have to be resolved as the project developed and the successful vendor negotiated these issues with NYRA.

Mr. Aurelio inquired as to whether the floor space for common areas or future development areas were now being expanded beyond the original plans contemplated by the MOU and Mr. Medenica indicated that these were not expanded.

Mr. Aurelio then asked if the floor space afforded Genting pursuant to this agreement represented an increase in space beyond the original VLT award. Mr. Medenica responded that the original MOU understood that the utilization of common areas required negotiations between the successful VLT vendor and NYRA and that the sublease recognizes that the proportion of floor space controlled by each party shall be adjusted per agreement by those two parties.

Mr. Aurelio inquired as to whether this space sharing arrangement includes the parking areas as well. Mr. Medenica indicated that the parking areas are part of a future mixed used development area and that while Genting and NYRA may use this area currently and in the short term for patron parking, the ultimate utilization of the parking areas will be a State determination.

The Chair asked if there were any other questions and moved for the adoption of Board Resolution 11-02, entitled "Review and Approval of First Amendment to Sublease Agreement between Genting New York and NYRA." Mr. Medenica offered the motion, seconded by Mr. Aurelio and the motion was adopted unanimously.

The Chair then moved on to the next item on the agenda; approval of Resolution 11-03 entitled "Review and Approval of LIPA Easement at Belmont Park Racetrack." Mr. Megna again asked Mr. Agata to give a short presentation on this issue.

Mr. Agata explained that this is an easement sought by the Long Island Power Authority (LIPA). He explained that it was a very small encroachment on the back of the property, behind the back parking lot area in Belmont that has not been fully developed yet, abutting the Long Island Rail Road measuring 50 feet by 50 feet enabling LIPA to service a rectifier station. He further explained that the easement falls within the Board jurisdiction as stewards of the property on behalf of the State.

Mr. Aurelio suggested it would have been helpful to have a map that could show exactly where that easement is and inquired as to the impact upon the property should the easement be granted. After additional discussions involving the Chair it was decided that this item was not time sensitive and therefore would be tabled for consideration at the next meeting thus affording members the opportunity to review maps and diagrams related to the request.

The Chair then announced that the next item on the agenda was Resolution 11-04 entitled "Review and Approval of Correction Deed for Aqueduct Racetrack." The Chair asked Mr. Agata to present the item to the Board. Mr. Agata explained that when the conveyance of ownership of the Racetrack to the State from NYRA was completed in 2008, it was done without the benefit of a survey via a quick claim deed from NYRA. At the time of conveyance, it was understood and agreed at that the time that the Office of General Services would engage an independent engineering and land surveying firm to prepare a survey so that a corrected deed could be prepared. Mr. Agata continued that the deed before the Board today was prepared by Chazen Engineering and Land Surveying Company and was very accurate consistent with the metes and bounds description of the property that was quick claimed by NYRA. Further, he indicated that this precise survey helps clarify and give very specific metes and bounds descriptions with regard to the property and that similar correction deeds are under development for the Belmont and Saratoga tracks. A representative from the Office of General Services was present and explained that the deed description provided in 2008 was merely what NYRA believed the property to be. As a result of the survey company's work, two small parcels on 114th Street were determined to be inadvertently omitted from the quick claim deed and were now recognized in the corrected deed as parcels belonging with the racetrack property.

The Chair asked the members if they had any additional question and hearing no questions he sought a motion to approve Board Resolution 11-04. The motion was offered by Mr. Medenica, seconded by Mr. Newman and the motion was adopted unanimously.

The Chair then indicated that representatives of the Genting New York would now make an informational presentation regarding their plans for the Aqueduct VLT facility. The substance of the presentation is contained within the handout provided to Members by Genting and attached to these minutes. During the presentation Members inquired as to the anticipated level of net win per machine per day and the Genting representatives indicated that the start-up figure was expected to be \$380. In the course of Genting's presentation Genting staff noted that the net win at Yonkers Raceway was estimated to be \$340 per machine. Mr. Newman asked if the Yonkers number was accurate as he recalled the figure to be much lower. The Chair indicated that in fact at inception Yonkers net win was closer to \$200 per machine but has steadily grown to the \$340 per machine level and that last year Yonkers provided \$540 million to the State. Members also inquired as to whether the State or Genting would receive revenue proceeds from ancillary events or activities and the Genting representatives indicated that while Genting would be entitled to these revenues, the State would benefit through increased sales tax revenues. Members also inquired as to the level of cooperation/collaboration Genting planned to undertake with the Yonkers Raceway VLT facility. Genting staff responded that they planned to work with, rather than against Yonkers, such that State revenues may be maximized. At the conclusion of Genting's presentation Mr. Au, Genting's strategic advisor presented Genting's vision for additional development at the Aqueduct site, including construction of a major convention facility with square footage between one million and two million square feet with no public subsidy Upon conclusion of Mr. Au's comments, the Chair thanked Mr. Au and the rest

of the Genting representatives for their presentation and comments. Additionally, Mr. Medenica indicated, with respect to Mr. Au's comments, that discussions of additional development at Aqueduct were premature at this point because the State has not made a decision about how it will go about leasing out those mixed-use development parcels that would be involved in such development.

The Chair then moved on to the next discussion item on the agenda regarding NYRA's sole source and emergency procurement contracting practices. The Chair reminded Members that in 2010 the Members had approved NYRA's procurement guidelines and, at that time, expressed concerns regarding the level of internal controls in place to ensure the appropriateness of exemptions for sole source and emergency contract procurements. Further, the Chair stated that in response to those concerns Members had expressed a desire that a reporting mechanism be developed to inform the Board regarding NYRA's utilization of these exemptions. The Chair then called upon NYRA General Counsel, Mr. Patrick Kehoe to discuss what reporting and control measures NYRA has in place with regard to these exemptions.

Mr. Kehoe stated that NYRA has an emergency policy, which was approved by the Oversight Board on February 10, 2010 and that NYRA is in compliance with that policy. Mr. Kehoe offered that on an annual basis NYRA asked its audit firm, UHY, to perform a compliance audit to ensure NYRA's adherence with the procurement policies and that those audits showed NYRA to be in full compliance.

The Chair indicated to Mr. Kehoe that the Board's desire was for a periodic report listing out the contracts secured under the exemptions. After discussion between the Chair, Members and Mr. Kehoe it was agreed that NYRA would provide such a listing to the Board on a quarterly basis.

The Chair moved to the next item on the agenda, discussion of the NYRA 2011 Operating Budget. The Chair asked Ms. Ellen McClain to provide a brief overview of the Budget. Ms. McClain noted that NYRA had to submit a revised 2011 Budget in light of NYCOTB's bankruptcy and closing. The revised 2011 Budget reflects NYCOTB's closing. The Chair made the suggestion that since one of the Board's charges is to review and make recommendations regarding the Budget, it would be helpful for NYRA to submit the Budget prior to having it reviewed and accepted by the NYRA Board. Ms. McClain stated the timeline for submission of the NYRA Budget to their Board and that any review by the FOB would have to occur ahead of the NYRA Board review schedule. The Chair suggested to Mr. Kehoe that the NYRA Board could authorize the CFO to submit a preliminary budget to the FOB and allow for the review prior to NYRA's Board adoption. Mr. Kehoe replied that he would take the suggestion back to the NYRA Board and try to find some reasonable accommodation for the FOB's review process.

Following discussion of the timeline for submission and FOB review of NYRA's Operating Budget, the Chair asked Ms. McClain to provide an overview of the budget

document. Ms. McClain stated that the budget projects \$275 million in gross revenue, representing a 48% increase in on-track revenue that is consistent with recent trends. She continued that the revenue outlook also reflects an anticipated decline resulting from NYCOTB's closure and assumes VLT revenues will begin September 1st. Ms. McClain explained that they assumed \$300 per machine, which were average numbers for 2010. Mr. Newman noted that in the preceding Genting presentation, Genting staff had indicated a start date of October 1 rather than September 1 as assumed in NYRA's Revised Budget and that Genting would have a better idea of the VLT start date by late July. Mr. Newman also expressed concern regarding NYRA's assumed net win level. The Chair acknowledged Mr. Newman's concerns and offered that NYRA fiscal staff would benefit from ongoing discussions with Division of Budget Revenue forecasting staff, who have developed very accurate methods for estimating VLT revenues and that NYRA could then use the same revenue estimates that the Division of Budget develops and uses. She continued that they would be able to forecast VLT revenue over time. The Chair added that the Lottery Division and the Budget Division have devoted an enormous amount of resources to forecasting net machine income so that information could be shared to assist NYRA in developing their budget documents. Ms. McClain explained that their Budget reflects \$10 million in purses from VLTs, which would be affected if the VLT facility were delayed in opening. She added that there is potential for NYRA to make a profit if they are able to re-capture some of the OTB handle.

Mr. Newman asked if the pension expense is a defined-benefit plan. Ms. McClain answered that that was correct and that the 401k is the retirement benefit for administrative and non-union staff. She added that the defined-benefit plans are only for union staff.

Mr. Crotty asked if Ms. McClain could provide more detail on potentially becoming profitable aside from the VLT subsidy. Mr. Crotty stated that handle has been declining for a long time as well as an interest in horse racing. Mr. Crotty asked what NYRA's plan was to accelerate cost declines to get horse racing profitable without the subsidy. Ms. McClain replied that the key to becoming profitable would be in re-capturing OTB handle and capitalizing on real estate such as Belmont Cafe and Aqueduct, which is open all year.

Mr. Crotty asked if compensation had increased by over 5 percent. Ms. McClain explained that they are employing more mutuel clerks than before mainly because on-track business has increased by 40 percent. Mr. Crotty asked if NYRA could provide a breakout of the difference between people and any raises provided for in the Budget. Mr. Crotty asked for the status of a document that NYRA promised would provide executive salary for their staff as well as salaries for comparable racing operations. Ms. McClain stated that she thought that information was delivered to the Board previously. Mr. Kehoe added that NYRA didn't necessarily have an issue with providing this information but that the process of providing the information had become political in that it is disseminated to the public and used to disparage NYRA, which may damage the franchise long term. Mr. Medenica stated that NYRA never fully embraced the post-bankruptcy culture and that while NYRA is a non-profit, it is essentially a ward of the

State. Mr. Medenica continued that NYRA runs a business that cannot be profitable without a permanent subsidy from the State of New York so NYRA should be treated as a hybrid organization operating under the auspices of New York State. Mr. Kehoe agreed to provide the salary information as requested by the Board.

Moving from the discussion of executive salaries, Mr. Crotty asked if upgrades to the phone and internet operations are budgeted for in 2011. Ms. McClain responded that upgrades were planned for last year as well but were delayed due to a variety of issues. Mr. Newman asked if NYRA was coordinating with the OTBs to use the same telephone and internet systems. Ms. McClain responded that they are working toward using the same systems.

Mr. Crotty asked Ms. McClain and Mr. Kehoe about NYRA's business relationships with Advanced Deposit Wagering Companies (ADWs) including TVG and NYRA's plans to grow that revenue source. Mr. Kehoe indicated that NYRA's revenues from contracts with ADW's have increased by 50% over the past two years.

Mr. Newman asked about NYRA's contingency planning regarding the possible bankruptcies of the Nassau and Suffolk Off-Track Betting Corporations. Mr. Kehoe responded that the most effective way for NYRA to be prepared for these contingencies was to continue NYRA's efforts to strengthen its internet betting platforms. Mr. Newman asked Ms. McClain how long it would take NYRA to repay its outstanding \$25 million loan from Genting and Ms. McClain indicated that, based upon an estimated VLT revenue figure of \$300 net win per machine, NYRA would extinguish its Genting loan in approximately three and a half years but that specific details regarding the repayment have yet to be worked out between NYRA and Genting.

Mr. Crotty asked Ms. McClain and Mr. Kehoe how much money NYRA owes to the State in outstanding loans. Ms. McClain responded that the only loan outstanding at this time is a \$9 million loan provided by the State as a cash supplement during NYRA's bankruptcy. Mr. Kehoe added that the loan expires in 2012 and that the loan was secured by ancillary real estate properties that were sold to liquidate NYRA's IRS liability with residual money escrowed or used to fund NYRA's operations. Mr. Kehoe also indicated that prior loans and advances to NYRA by the State as well as the former Capital Investment Fund were liquidated as part of the settlement agreement that allowed NYRA to exit from Chapter 11 bankruptcy. Mr. Crotty inquired as to whether a summary document exists that lists the State debts liquidated via bankruptcy. Mr. Kehoe and Ms. McClain indicated that indeed such information existed and they agreed to provide it.

The discussion then turned to NYRA's phone betting platform. Mr. Kehoe explained that as a result of the New York City OTB closure NYRA's phone betting volume dramatically increased in a scalar fashion such that NYRA's existing phone betting operation was physically beyond its capacity and NYRA therefore outsourced this activity to US Off Track located in Oregon.

The Chair then pointed out that it was the position of the Governor and the State that NYRA should have made a more concerted and concentrated effort to locate these activities within the State. The Chair further stated that even if NYRA continues the existing contract with US Off Track, it was the view of the State that NYRA needed to expend every effort to ensure that the work associated with the contract is conducted in New York State. Mr. Kehoe stated that NYRA was working collaboratively with the Empire State Development Corporation and the vendor to identify a suitable location for a phone center within New York State.

Mr. Crotty then asked a series of questions regarding NYRA's revenues derived from television contracts. Mr. Kehoe and Ms. McClain did not provide specific contract data but they did indicate that revenues declined under NYRA's new Belmont Stakes contract from levels received under its prior ESPN contract. Mr. Kehoe did indicate that incremental revenues were being derived from a new contract with NBC/Versus for carriage of racing events from the Saratoga track and that television revenues overall were a consideration in NYRA's future revenue plans.

The Chair then stated his interest in an a statement made earlier by Ms. McClain that NYRA believes it can see a way to make its horse racing operations profitable and he sought more information. Ms. McClain responded that NYRA is currently on a path toward securing 30% of NYCOTB's customer base and that NYRA continues to make plans to capture more of that business. These comments resulted in additional discussions on this issue between and among the Members, Ms. McClain and Mr. Kehoe. At the conclusion of those discussions the Chair indicated that NYRA's plans for improving its long term profitability were important to both the State and the Board and that a fuller discussion of those plans should take place at the next meeting.

The Chair then asked if Members had any further questions for NYRA and Members asked several questions regarding consolidation of barns and other cost cutting plans. Mr. Kehoe indicated NYRA did not believe it could consolidate its barns at Belmont without compromising the track surfaces. NYRA staff indicated that additional cost reductions were challenging to realize due to existing union contracts.

The Chair then concluded discussions on the Budget and asked Mr. Agata to read a draft Resolution that incorporated the following items from the meeting's discussion.

- FOB would receive future NYRA budgets prior to their approval by NYRA's Board of Directors;
- NYRA would provide quarterly updates on its revenues and expenditures;
- NYRA shall annually submit its Executive salary information to the Board;
- NYRA shall immediately develop and submit to the FOB its comprehensive plan for growing its racing related revenues, including ADW revenues;
- NYRA shall submit revised and updated revenue projections to the Board prior to August 15, 2011.

Upon conclusion of Mr. Agata's reading of the draft Resolution, the Chair asked for a motion to adopt Resolution 11-05, the motion was offered by Mr. Medenica, seconded by Mr. Newman and the motion was adopted unanimously.

The Chair indicated that there was no further business to come before the Board and declared the meeting adjourned at 4:30 pm.