



Franchise Oversight Board

MINUTES

Board Meeting
August 16, 2016

State Capitol Building, Room 131
Albany, New York

I. Call to Order/Quorum Establishment

The meeting was called to order at 4:15PM by the Chair, Mr. Williams. Establishment of a quorum was noted.

Members Present:

Robert Williams, Chair
Elizabeth Garvey, Member
Steven Newman, Member (participated via bilateral videoconference)

Board staff in attendance:

Steven Lowenstein, Secretary and Administrative Officer
Kendra Rubin, Counsel

NYRA staff in attendance:

Christopher Kay, President and Chief Operating Officer
Joseph Lambert, Chief Administrative Officer & General Counsel
Gordon Lavalette, Chief Financial Officer

Public in attendance:

Carolyn Dunderdale, NYS Office of General Services
Christopher Greenidge, New York State Assembly
Lee Park, NYS Gaming Commission
Jimmy Vielkind, Politico

II. Consideration of Board Minutes, Meeting of June 27th, 2016

ACCEPTED: 3-0

III. Resolution Consideration

A. Resolution No. 16-04 – Approval of the Final Generic Environmental Impact Statement for NYRA Saratoga Race Course Redevelopment Plan

Mr. Williams provided an overview of the Generic Environmental Impact Statement (GEIS) for the redevelopment project at NYRA's Saratoga Race Course. Mr. Williams provided a timeline of events leading up to the proposal of the Final GEIS. Mr. Williams noted that acceptance of the Final GEIS is just one step in the process and is not the final approval of such project.

*BOARD RESOLUTION 16-04
ON A MOTION BY: Ms. Garvey
SECONDED BY: Mr. Newman
APPROVED: 3-0*

IV. Financial Reviews

Mr. Kay introduced NYRA's new Chief Financial Officer, Gordon Lavallette and shared Lavalette's background and work history and how NYRA can benefit from his experience.

Mr. Lavallette explained that overall NYRA delivered results that exceeded budget expectations. NYRA had operating income from racing operations of \$5 million, \$1.9 million better than budgeted and slightly down from last year.

Mr. Newman stated the reduction in race dates for the quarter race days was by design. Mr. Kay confirmed NYRA had two less race days by design. Mr. Williams pointed out that NYRA stated there was a strategic reduction in race days in their quarterly submission. Mr. Newman expressed concern with how the information is being presented and stated that the VLT revenues should be presented after all NYRA expensed, operating and non-operating. Mr. Kay respectfully disagreed with Mr. Newman and explains that NYRA has brought in accountants from KPMG to address this issue in the past. Mr. Newman asked that the Board direct NYRA to change the presentation. Mr. Williams

stated he will inform members Towne and Rabito and a discussion will take place relative to the presentation.

Mr. Lavallette stated that the highlight of the quarter was Belmont Stakes Day. The handle was the highest for a non-triple crown totaling \$102 million, beating the 2012 record of \$99.9 million. Operating income from Belmont was \$9 million, a \$1.6 million decrease compared to last year. Excluding Belmont Stakes Day, Q2 handle was up 5.2% compared to budget and 6.6% higher than last year. Pari-Mutuel revenue was up \$1 million compared to budget and \$600 thousand lower than prior year. This increase over budget was driven by higher export revenue impacted by higher ADW platform wagering and the slight decrease was attributed to fewer race days.

Mr. Williams asked what the reason was for changes in the import host fees. Mr. Kay explained that a larger portion of their contracts had been re-negotiated in the second quarter. Mr. Newman inquired about the steps that have been taken to hopefully continue to grow internet revenues. Mr. Kay stated that NYRA has taken a different marketing approach and they launched a national ADW, NYRA Bets, with a better website. NYRA also began broadcasting live races on a national sports network, which is helping people become more aware of racing and wagering.

Mr. Lavallette stated operating expenses were \$39.7 million, \$1.8 million lower than budget and \$500 thousand lower than last year due in large part to actively managing labor costs. Mr. Williams questioned the reason for the decrease in labor expenses. Mr. Kay explained NYRA is operating more efficiently and have put in performance metrics to evaluate employees and NYRA is not replacing certain people as they leave. Ms. Garvey asked how many attritions NYRA has in that way. Mr. Kay responded that he would have to look into that.

Mr. Kay noted that NYRA is looking into upgrading their IT platform, particularly their software, to improve efficiency. Capital improvements made to the barns have shown a significant decrease in the cost of maintenance. Mr. Williams questioned if the half a million dollars lower in maintenance for operating expenses was a direct result of some of those programs. Mr. Kay confirmed that it was.

Mr. Lavallette mentioned the strategic changes during 2016 which included the reduction in race days. By reducing race days, field size increased to 7.8 compared to 7.4 in the prior year. NYRA spent \$10.7 million on capital improvements in Q2. Mr. Williams asked what was behind the quarter million dollar decrease in the outside services expense. Mr. Kay explained that consulting, which includes legal fees, were lower as past issues are resolving and work is being in-sourced. Mr. Newman inquired about the increase in bad debt expense. Mr. Kay stated it is a result of Nassau OTB. Ms. Garvey asked if the debt was solely attributable to the Nassau OTB or if there are other components. Mr. Kay explained the Nassau's bad debt is the primary

factor. Mr. Newman questioned if it is recoverable when Nassau OTB and Genting implement their agreement. Mr. Kay believes it is and reported that NYRA's accountants recommend that NYRA reserves the bad debt.

Year to date, total handle of approximately \$1.1 billion is \$39 million higher than budget and \$57 million higher than 2015. Operating loss for racing operations of \$4.3 million compared to \$8.5 budget loss and a \$6.1 million loss in the prior year.

Mr. Newman suggested NYRA provides an analysis that goes by race day instead of total race days. Mr. Kay explained that a per day race analysis could be influenced by factors such as weather which is why NYRA produces this information more or less on a meet basis. Ms. Garvey mentioned NYRA has exceeded their budget even without a Triple Crown and strategically reducing race days, but is still outperforming. Ms. Garvey questioned what NYRA attributes that performance to. Mr. Kay stated traditionally field size had some correlation, NYRA is focusing on making Saturdays into bigger event days, and that broadcasting the races live will draw more attention. Ms. Garvey explained that a comparison of Saturdays from 2016 versus 2015 for the per day race analysis would be beneficial. Mr. Kay stated he would provide that information in a different context that includes both strategic planning and other factors such as television.

Mr. Williams asked about the substantial increase in marketing and advertisement expenses for the quarter. Mr. Kay explained that this is the beginning part of the marketing to make people aware of NYRA and induce people who are betting on different platforms to bet with NYRA.

Mr. Newman questioned if there has been an analysis performed to determine if there is any impact from Islandia approving the Suffolk OTB VLT facility. Mr. Kay answered that if Genting has done an analysis, they have not shared it with NYRA. Mr. Newman suggested we ask what percentage of their business comes from Suffolk and eastern Nassau to get some picture of what the impact might be.

Mr. Newman asked how long KPMG has been performing NYRA's audit. Mr. Lambert responded four to five years. Mr. Newman stated its best practice to change firms every five or six years and asked if NYRA has an internal audit function and who it reports to? Mr. Kay responded that NYRA does and it reports to their General Counsel and to the audit committee.

V. Miscellaneous Reviews

Mr. Williams asked about the merit increases received. Mr. Kay explained that performance evaluations are made twice a year and reviewed by him and the compensation committee and organization and merit increases are based off of the performance reviews. Mr. Newman complimented the improvements in the performance of NYRA.

Mr. Williams noted large increases in revenues in the Export list and asked if that is due in large part to the renegotiations of contracts as mentioned earlier. Mr. Kay confirmed it is and explained that the quality of NYRA's racing is bringing more activity. Mr. Newman asked why a number of them declined. Mr. Kay answered that he does not know. Ms. Garvey asked if this was a reflection on handle and not necessarily contractual agreements. Mr. Kay said that it was.

Mr. Williams explained that NYRA shall submit a capital plan this October for the five year period commencing January 2017 and requested that NYRA briefly identify the processes being used to develop the new capital spending. Mr. Kay explained there are two very different issues, Upstate and Downstate. In regards to Saratoga, NYRA is trying to determine the sequence of what can be done and when. The downstate plans are an interesting challenge considering NYRA operates as a reorganization board that is supposed to be for a temporary period of time and the plans for the future of Aqueduct and Belmont could have a long term effect. Mr. Williams asked if there was anything that prevents the reorganization board from entertaining any long term development and if the statute states that they cannot take certain actions. Mr. Kay stated there is nothing that prevents any long term development and in the meantime the training tracks are being widened and a new clocker stand is being built. This creates greater capacity for training operations and stalls at Belmont. The first new dormitory has been opened and it is anticipated that the second dorm will open in Q1 of 2017.

Mr. Williams asked if the widening of the training track has a potential effect on the safety for the horses. Mr. Kay answered that NYRA believes so and they are very pleased with the training track operations and safety. Ms. Garvey questioned who regulates the capacity of the training track. Mr. Kay stated NYRA tries to work with the trainers and they are seeing more trainers using the main track for training purposes. Ms. Garvey inquired about disputes between trainers about times and capacity and if the expansion is NYRA's reaction to this, or if it was part of the overall capital plan. Mr. Kay stated it was undertaken for the overall capital plan.

Mr. Williams asked the status of the previously discussed concept of utilizing an alternative for a synthetic surface. Mr. Kay explained that they have not delved further into that just yet.

Mr. Williams questioned the cancellation of the third dormitory at Belmont and if it was permanently cancelled or if it will resurface in the future. Mr. Kay answered that it is temporarily cancelled. Until the second dorm is opened, NYRA cannot assess the demand for dorm three.

Mr. Williams explained NYRA submitted a memorandum illustrating a desired firm for which NYRA sought to utilize a Single or Sole Source Exceptions and

that the company had met the threshold necessary to utilize the exemption provided in the purchasing policy procedures. Ms. Garvey questioned if the patron will have the ability to use the integrated platform. Mr. Kay stated this is a great tool for guests. Guests will be able to pay for and transfer tickets, save parking spots, order and pay for food and beverage, address security issues and provide numerous other ways to enhance the experience at the track, all while receiving credit for the loyalty program. Ms. Garvey asked if the vision was that a patron would only need a smart phone to enjoy a day at the track. Mr. Kay confirmed that was the vision. Ms. Garvey inquired about the back of house purposes and if this will help understand buying patterns, marketing patterns and things to tailor it so there is significant interaction with the back offices as well as patrons. Mr. Kay states that there are a lot of data points that will be able to be determined that they do not have now. Ms. Garvey asked if those data points would be available regardless of whether an individual is utilizing the platform. Mr. Kay stated that was correct because of the new point of sale system. Mr. Newman commented that in the future, NYRA should consider partnering with a company that could develop a platform based on exactly the needs of NYRA which might have been cheaper. Mr. Williams mentioned that a large measure of discussion relative to this company was speed to market. Mr. Kay stated not only speed to market but that they have the patents.

Mr. Newman questioned what was paid for Morrisville Auxiliary Corporation last year and if it was the same, an inflationary increase or something more. Mr. Kay stated he did not know the answer to that but was under the impression that what was paid is based on the number of tests conducted. Mr. Williams confirmed NYRA paid on the per test basis and that this is an estimated number of annual tests and there probably wouldn't be much of a change, if any. Mr. Newman asked who the Meadowlands use and how much they pay. Mr. Williams stated he did not know but NYRA is utilizing Equine Drug Testing and Research laboratory which is a reputable laboratory that New York contracts with on a continual basis since the mid-1970s. Mr. Newman questioned if we know if this is a competitive price. Mr. Williams explained from the Gaming Commission experience, a large number of both private and public entities were surveyed and they found that Morrisville is both competitive and below the average market price. Ms. Garvey asked if the Gaming Commission has ever looked out of state. Mr. Williams explained they have looked out of state but are required by statute to utilize an entity within New York as a Certified Equine Studies Program. Mr. Newman asked if that requirement would hold if the price was twice as much. Mr. Williams answered yes, that is statutory.

Ms. Garvey asked if the Titan Sculpture for the Triple Crown trophy was done prior or if it will be revisited on an annual basis with respect to that contract. Mr. Kay explained that it will only be in existence once. It is a statue that is in the final stage of being completed and all three tracks will share the cost. Mr. Williams asked if the previous Triple Crown trophy was given to the family of American Pharoah and if NYRA is now without a trophy. Mr. Kay answered

yes. This is for one trophy and there has been a price negotiated if an additional trophy is needed. Ms. Garvey asked if the trophy would potentially be the same design. Mr. Kay explained there is a mold that is used for reproduction of the same sculpture. Mr. Williams inquired about the cost being lower because of the mold and not \$174,700. Mr. Kay stated it would be. Ms. Garvey questioned if that amount represents one-third. Mr. Kay explained that the \$174,700 is total amount.

Mr. Newman expressed a similar question about Tiffany, explaining that they are exceptional but so are others. Mr. Kay talked about having a couple of different silversmiths, and Tiffany is one of them.

Mr. Newman asked if NYRA ever goes back to the firms who do not bid and ask why they never bid. Mr. Kay stated he would go back and ask the people in the procurement department about that. Mr. Williams explained that at the Gaming Commission, the contracts unit will go back to companies where something look anomalous and asked if something was done incorrect in the solicitation on a random basis.

VI. New Business

Mr. Newman requested that NYRA look into how many years KPMG has been conducting the audits and provide that information at the next meeting.

VII. Old Business

There was no old business to discuss.

VIII. Report of the Chair

Mr. Williams had nothing formal to report. Mr. Williams expressed his gratitude to the staff in the Office of General Services, Associate Landscape Architect Carolyn Dunderdale and associate counsel Maureen VanDoren who had been so helpful in enabling the Franchise Oversight Board members and staff and understanding the responsibilities as they relate to the State Environmental Quality Review Act processes for NYRA Saratoga Race Course Redevelopment plan.

IX. Adjournment

The meeting was adjourned at 5:27 PM.