



Franchise Oversight Board

DRAFT MINUTES

Board Meeting
October 25, 2016

State Capitol Building, Room 131
Albany, New York

I. Call to Order/Quorum Establishment

The meeting was called to order at 3:08 pm 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)
Joseph Rabito, Member
James Towne, Jr., Member

Board staff in attendance:

Steven Lowenstein, Secretary and Administrative Officer
Kendra Rubin, Counsel
Bridget Conover
Lee Park

NYRA staff in attendance:

Joseph Lambert, Senior Vice President and General Counsel
Jim Kozak, Vice President of Facilities
Bill McCarthy, Director of Intergovernmental Relations
Daniel Ruzow, Whiteman Osterman & Hanna, Outside Counsel

NYS Office of General Services staff in attendance:

Michelle Reale, Counsel

Public in attendance:

Christopher Greenidge, NYS Assembly
Aubree Heydnick, NYS Assembly

II. Consideration of Board Minutes, Meeting of December 3, 2015

Mr. Newman identified a necessary correction on page two of the minutes. Mr. Williams suggested that we change the sentence to, “Mr. Newman inquired whether the reduction of race days”. Mr. Newman agreed.

ACCEPTED, AS AMENDED

III. Resolution Consideration

A. Resolution No. 16-05 – Approval of a SEQRA Findings Statement for the Final Generic Environmental Impact Statement.

Mr. Williams stated that the findings statement is a mandatory written document prepared following the acceptance of a Final Generic Environmental Impact Statement and provided an overview of the findings statement. Mr. Williams provided a timeline of events leading up to the acceptance of the Final Generic Environmental Impact Statement and the State Environmental Quality Review Act findings statement. Mr. Williams also noted that on page 3 of the resolution, the second ‘WHEREAS’ clause references Resolution 16-04 and should read ‘16-03’.

*BOARD RESOLUTION 16-05
ON A MOTION BY: Mr. Towne
SECONDED BY: Mr. Rabito
APPROVED: 5-0*

B. Resolution No. 16-06 – Approval of PSEG Long Island Easement

Mr. Williams explained PSEG Long Island seeks the right to privilege and easement on, over, under, across, through and along certain portions of land at Belmont Park to install underground electric feeder cables that will replace the current cables operated by PSEG. Mr. Williams explained the installation is necessary for the operation of Belmont Park and will not adversely affect racing operations.

Mr. Lowenstein explained the PSEG has requested that NYRA provide the easement in perpetuity, rather than the original 50-year term, as long as they continue to use the easement for the utility line. Mr. Rabito asked if this request was extraordinary or whether it was *pro forma*. Ms. Reale responded that perpetuity easements are granted as long as they are

used for a particular purpose. Mr. Williams questioned if the request language is consistent with the standard operations. Ms. Reale confirmed it was.

Mr. Towne asked which standards are applied when determining whether or not to grant the easement. Ms. Reale explained there are set standards and a utility easement is likely to go past the 50-year term. Mr. Williams clarified that requests for easement in perpetuity for utilities is common as long the use of the easement is maintained for the purpose in which it was originally sought.

*BOARD RESOLUTION 16-07
ON A MOTION BY: Mr. Rabito
SECONDED BY: Ms. Garvey
APPROVED: 5-0*

C. Resolution No. 16-07 – Approval of Long Island Railroad Easement

Mr. Williams explained that Long Island Railroad seeks the right to privilege and easement on, over, under, across, through and along certain portions of land at Belmont Park. The installation and maintenance of metering and switchgear equipment will provide secondary electrical services for the Long Island Railroad’s Bellaire Substation without adversely impacting racing operations.

*BOARD RESOLUTION 16-07
ON A MOTION BY: Ms. Garvey
SECONDED BY: Mr. Towne
APPROVED: 5-0*

D. Resolution No. 16-08 – Approval of NYRA to Increase The Procurement Threshold for Requiring Competitive Bidding from \$50,000 to \$100,000

Mr. Williams provided a brief overview of the Franchise Oversight Board’s authority to approve all NYRA’s purchasing policies. NYRA has requested to increase the thresholds determining the purchase method, specifically seeking to increase the threshold for discretionary purchases to \$99,999 and the threshold requiring competitive bidding from \$50,000 to \$100,000. Mr. Williams stated that the staff conducted a conference call over the summer and recommended the requested amendment be favorably considered by the board.

Mr. Newman asked if the state rules are \$50,000. Mr. Lowenstein and Ms. Garvey confirmed that was correct. Mr. Newman stated that since NYRA is a state overseen organization and should continue to follow similar rules until its situation changes. Mr. Newman suggested that

anything that is new should remain at \$50,000 and, if it is a renewal, there could be a possibility to modify the requirements in that case for that circumstance. Ms. Garvey echoed what Mr. Newman had stated. Ms. Garvey agreed that since NYRA still has a majority of governmental appointees on the board and is not a private entity, they should abide by state rules and consider a more narrowly tailored resolution regarding specific types of contracts rather than increase all thresholds to \$100,000. Mr. Williams stated he has no problem returning it to NYRA with a request for a more narrowly tailored resolution.

Mr. Towne expressed concern about NYRA feeling constrained in connection with the entertainment issue being capped at \$50,000 and that \$100,000 was lower than requested which made it impossible to contract with popular acts that would draw more people to the track. Mr. Towne suggested NYRA submit a narrow resolution to address this issue. Mr. Rabito suggested tabling it and making the resolution more narrow as well. Mr. Newman stated there is something called negotiating acquisition and provided a brief overview. Mr. Williams explained that it would be returned to NYRA and will ask them to provide additional information. Mr. Williams asked Mr. Newman if he would work with NYRA and answer any questions they might have relative to the negotiating acquisition language that is being used. Mr. Newman stated he would. Mr. Williams explained the board would table the resolution and consider it, perhaps, at a future meeting.

IV. Old Business

No old business was discussed.

V. New Business

Mr. Newman stated he read that the U.S. Environmental Protection Agency and U.S. Attorney for the Eastern District of New York had sued NYRA for dumping horse manure in the storm sewers in Jamaica Bay. Mr. Newman questioned the status of the lawsuit and if there are any similar situations at Belmont or Saratoga. Mr. Kozak provided an overview of the issue that arose regarding the improper disposal of the horse manure. Mr. Kozak explained that wash pads were installed at both Belmont and Saratoga. As of mid-August, the project was completed and compliant, passing an inspection by the EPA. Mr. Kozak reiterated that the wash pads were not installed at Aqueduct when they were installed at the other two tracks because NYRA was under the impression that all waste water was going to a combined system and not a storm water system.

Mr. Towne asked if Aqueduct had not been compliant with CAFO since 2006. Mr. Kozak answered yes. Mr. Towne questioned if there was any fine levied and paid in connection to this action. Mr. Kozak explained there was a \$130,000 fine imposed and a remediation plan to plant 62

trees as part of the storm water management. Mr. Kozak also stated that there had been a certification from an engineer that the waste water was going to a combined system. Mr. Towne asked if the engineer was a NYRA employee or employed by another agency. Mr. Kozak answered it was a NYRA engineer. Mr. Towne suggested that in light of what was spent on the fine, it might be worthwhile for NYRA to periodically employ an outside environmental engineering firm to ensure continued compliance. Mr. Kozak explained that NYRA is currently doing that. Mr. Towne asked if the NYRA engineer was still employed. Mr. Kozak responded that he was not.

VI. Report of the Chair

Mr. Williams stated there was nothing formal to report.

VII. Adjournment

The meeting was adjourned at 3:38.