



# Franchise Oversight Board

## MINUTES

Board Meeting  
January 10, 2017

State Capitol Building, Room 131  
Albany, New York

### I. Call to Order/Quorum Establishment

The meeting was called to order at 3:10PM 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  
Lee Park

NYRA staff in attendance:

Christopher Kay, President and Chief Operating Officer  
Joseph Lambert, Chief Administrative Officer and General Counsel  
Gordon Lavalette, Chief Financial Officer  
Jim Kozak, Vice President of Facilities

Christopher Greenidge, Assembly Program and Counsel  
Aubree Heydrick, Assembly Program and Counsel  
Nick Niedzwiodoh, Politico New York

## **II. Consideration of Board Minutes, Meeting of August 25, 2016**

Mr. Newman identified a necessary correction on page four of the minutes. Mr. Newman's suggestion for the system New York cities should use is called negotiated acquisitions and is written out as negotiating acquisitions in the minutes.

*ACCEPTED, AS AMENDED*

## **III. Financial Reviews**

### **A. 2016 Third Quarter Financial Results**

Mr. Williams suggested to dispense with the discussion since this meeting would be reviewing NYRA's operating budget which includes a significant discussion of calendar year 2016 results.

### **B. Resolution 17-01 – 2017 Capital Budget**

Mr. Williams stated that Racing Law Section 212.8A(iii)A requires that the Franchise Oversight Board review and make recommendations concerning the annual operating budgets of such franchise corporation. Additionally, 212.8A(iii)G requires the Franchise Oversight Board receive, review and approve or disapprove capital expense plans submitted annually by the franchise corporation.

Mr. Lavalette explained for 2017, NYRA's budgeting operating income from racing operations had a surplus of 2.1 million. The handle budget was prepared considering numerous variables including weather, historical platform trends, industry trends, racing calendar and field size. Mr. Lavalette stated each meet was budgeted independently and also compared to a prior five-year average to leverage historical data.

Mr. Lavalette stated NYRA has used a conservative approach in preparing the 2017 budget. The impact of this conservative approach is also shown in reduced handle and associated pari-mutuel revenue. Total handle for 2017 is budgeted to decrease two percent compared to 2016 handle with a similar reduction in net wagering revenue. Operating expenses declined slightly as a result of reductions in telephonic communications expense, repairs and maintenance costs and other operating expenses offset by increase in labor costs.

Mr. Lavalette discussed that NYRA is not budgeting bad debt expense for Nassau OTB since they will be receiving statutorily required payments in 2017. NYRA's non-operating expenses, compared to 2016, are less due to the increased capital spending offset by lower income tax expense.

Underlying the 2017 budget are several strategic initiatives, including investing in new venue technology and a CRM application, to improve the overall technology infrastructure. In addition to this, NYRA will continue to develop and leverage NYRA live broadcasts, market and promote growth for NYRA Bets and focus on managing expenses.

Mr. Williams inquired about the potential increases in union labor costs and asked what contracts have expired and what will expire this year. Mr. Kay stated a contract involving mutuels expired on December 31, 2016 and NYRA was able to negotiate a three-year agreement with the union. Mr. Kay explained there were six different unions that have their contracts expiring in 2017 and would provide a list of all six.

Mr. Williams asked about savings relative to maintenance and repair, and if the savings is a benefit out of appropriate repairs as opposed to deferred maintenance. Mr. Kay confirmed that is correct and explained that some repairs have been reduced in terms of the fact that NYRA now has a more modern stall.

Mr. Williams questioned if NYRA has gathered any information in regards to the additional rest during the Aqueduct meet and what the implications have been relative to reducing the winter racing dates. Mr. Williams also questioned if NYRA adds additional days into the winter meets if the weather is fine and horse population is there. Mr. Kay stated that NYRA had a plan to eliminate an entire week in March to give the horse population a chance to be revived and because field size in March tends to drop tremendously compared to January and February.

Mr. Williams asked if NYRA had anything new to share relative to developments that they anticipated would improve results in the Stars and Stripes and Belmont Stakes racing or is it just continuing to build expectation. Mr. Kay explained that it's the latter and that people are getting the idea that this is a far different racing experience than they have been exposed to in the past.

Mr. Williams inquired about how much the salary increase is attributable to collective bargaining requirements and what NYRA's FTE headcount is in comparison to last. Mr. Kay stated labor costs are the most significant factors especially considering several of these union contracts are coming up for negotiation in 2017 and will be budgeted accordingly. In regards to NYRA's nonunion FTE, it is believed to be around the same. Mr. Williams questioned the horse transportation expense and the efforts to attract Japanese based horses. Mr. Williams asked if that part of the expense is

included in that budget or if it's something relatively new to the discussion. Mr. Kay stated it was relatively new and there's a certain amount of money accounted to recruit horses in the SVP of Racing Operations budget.

Mr. Williams asked how NYRA is doing relative to simulcast export to Japan. Mr. Kay responded it was a work in progress. Mr. Williams questioned the decrease in telephone and communications discussion and asked if this was a phased decline and NYRA's attempt to push people to more self-service or mobile platform. Mr. Kay explained that nyra.com and NYRA Bets allows people to watch in high definition on electronics and the traditional way of wagering is declining across the country.

Mr. Williams inquired about the increase in digital advertisements. Mr. Kay stated it's an overall strategy to get more data on customer and pinpoint how to most effectively communicate with them. Mr. Kay also echoed what Mr. Lavalette mentioned earlier about NYRA's plan with VenueNext and that it should be live starting with the Belmont Stakes race.

Mr. Newman inquired about the state law concerning what defines an exempt employee for when overtime gets paid, and if there are any NYRA employees who are paid overtime and if this has been factored into the preparation of the budget. Mr. Kay responded that there are employees who have been paid overtime for years and that was used as a foundation for the budget. Mr. Lavalette stated that their payroll department is aware of this law and it was factored in.

Mr. Newman inquired about the nonunion employees having no pension. Mr. Lavalette confirmed that was correct. Mr. Newman then inquired about having no defined contribution plan and Mr. Lavalette stated that was the 401k and that the organization contributes to that. Mr. Newman asked if that is in active employee benefits rather than pension expenses and Mr. Lavalette confirmed that was correct. Mr. Newman expressed his astonishment with the 14.7 million versus 4.9 million figures with the same number of employees.

Mr. Newman asked how NYRA covers the other 10 million in non-operating expenses. Mr. Lavalette stated with operating funds from the business. Mr. Newman stated that if NYRA is covering 10 million to cover that, then the 2 million surplus NYRA had is really an 8 million deficit. Mr. Kay suggested that they could meet at some point to go over these numbers because it is not an \$8 million deficit. Mr. Lavalette suggested that he could reconcile the cash flow separately. Mr. Williams asked if they would like to get with Mr. Newman about his concerns offline. Mr. Kay confirmed that he would.

Ms. Garvey questioned the note in the overview about an average 3 to 5 percent increase due to insurance but then an overall 9 percent increase based on something related to worker's comp. Mr. Lavalette explained that because of an over payment due to worker's comp classifications, NYRA was issued a refund. This refund was a onetime thing that drove costs down in 2016.

Mr. Towne questioned was the cause of the reduction in bad debt was. Mr. Kay stated that because of a deal negotiated in late March, NYRA is not having a Nassau OTB bad debt in the budget. Mr. Towne asked in regards to insurance, if NYRA looks for increasing their retentions. Mr. Kay answered yes. Mr. Towne asked about utilities and if NYRA looked at any solar interest. Mr. Kay stated they have but it would not be for 2017 but for the future.

Mr. Williams questioned that NYRA reported a carryover from previous years and that this year looks smaller than they actually really are because NYRA is carrying forward another \$8 million. Mr. Kay confirmed that was correct and that as mentioned before, the process delays some of these things. Mr. Lavalette mentioned that as they finish the year end numbers, that number might grow.

Mr. Williams asked NYRA to highlight some of the recent upgrades relative to Aqueduct. Mr. Kay stated there have been numerous significant upgrades over the last couple of years that included creating Longshots, upgrading the general areas on the second and third floors and adding a horseman's lounge on the third floor. Aqueduct also provides a small area for owners to sit right above the paddock at the finish line.

Mr. Williams questioned if the barn area construction are upgrades or routine maintenance and if NYRA could detail any initiatives that are relative to the conditions of the back stretch workers. Mr. Kay answered that they have looked at the windows to determine whether or not need ones needed to be installed and in some cases also include restrooms to try to provide updated living conditions. Mr. Kay also stated the upgrades are mostly routine maintenance to the barns.

Mr. Williams inquired about the heating and cooling enhancements for Belmont and asked exactly what NYRA is aiming for. Mr. Kay informed the board that NYRA is focusing on very targeted areas such as where they have their horse players and some of the owners. Mr. Williams asked for information about NYRA's experience with all-weather surface. Mr. Kay responded that the pony barn has provided meaningful data for NYRA and it had reduced the dust. The trainers have also expressed satisfaction with the all-weather surface.

Mr. Williams asked what the process was for which barns are selected for renovation. Mr. Kay explained that it is in part to the condition of the existing barn. Some of the barns were not properly built and it does not make sense to repair and renovate some of the barns.

Mr. Williams questioned if NYRA dedicated any money for an environmental consultant or anything relative to that. Mr. Kay answered that he has a certain budget that can be used for consultants.

Mr. Williams also asked about the tree and landscape improvement and if there was a tree analysis or professional study that has been undertaken relative to that. Mr. Kay stated that all the information about which trees would be removed and replanted and identified all dead, diseased and dangerous trees.

Mr. Williams questioned the new track cushion at Aqueduct and the new safety rail at Belmont and what NYRA was doing in this year's capital plan as it relates to health and safety of exercise riders and jockeys. Mr. Kay expressed the importance of the safety rail, especially for the exercise jockeys. Mr. Kay informed the board that the New York Thoroughbred Horseman's Association is providing a list for NYRA to review to see if there are any other ways to ensure safety.

Mr. Williams inquired about the Floral Park easement from early last year and if NYRA has received any update regarding that. Mr. Kay responded that he has not heard anything about whether that is going forward or not.

Mr. Williams mentioned the \$4.5 carryover to Belmont which shows a tremendous additional amount of capital improvement that is planned. Mr. Williams questioned when NYRA would start moving forward with the removal of tent and start construction for a more permanent structure at the pavilion. Mr. Kay stated that NYRA is trying to determine things such as appropriate size based off of the data generated in the past and NYRA would come to the board for approval before the RFP process. Mr. Williams asked what constitutes a junior box and how individuals access that and if this is a reduction of clubhouse seating that this will replace. Mr. Kay answered there is an opportunity for junior suites. This is an attempt to attract younger people and creates an area for a group to sit together in chairs or sofas. There will also be a food and beverage area above it that would be conducive for attracting a younger audience.

Mr. Williams inquired about the narrative that mentioned complete refurbishments of 10 additional dormitories at Saratoga. Mr. Kay explained that six have already been renovated and four more that are planned to be renovated in 2017 for a total of 10. Mr. Williams asked significant the renovations are at Saratoga. Mr. Kay answered that they have renovated dorms every year since 2013 so that they are all the

same and NYRA has been able to reduce the construction costs and times.

Mr. Towne asked why NYRA is using copper roofs and not something less expensive. Mr. Kay explained the importance of this historical building and there is copper in certain places. Mr. Towne asked if it's the historic issue that raises the price to copper? Mr. Kay confirmed that was correct.

Mr. Newman questioned if the list of projects grouped into categories were going to be bid out in those groups or are they being bid out individually or is it different depending on which category it is. Mr. Kay stated they bid them out separately. Mr. Lavalette confirmed they were separate projects.

Mr. Newman asked what NYRA's definition of capital is. Mr. Lavalette answered they use a strict accounting definition. Mr. Newman stated he thought the strict accounting definition was five years and \$10,000 or something similar to that. Mr. Newman stated his issue is there are numerous items he does not regard as capital expenditures. Mr. Lavalette stated when they capitalize projects, it is based on whether the asset is improved and has a certain life.

Mr. Newman asked what the state's definition of capital is. Mr. Williams answered he did not know off the top of his head and suggested there should be a better definition as to what should be contained within a capital plan and what should not. Mr. Williams stated this is something they can work on over the course for 2018. Mr. Newman stated that he thinks they should be required to follow the State definition of capital as long as the State is overseeing this process.

Mr. Towne stated that he would still like to know what repairs and maintenance are projected to incur during the year regardless if they are capitalized or not. Mr. Newman responded that in his mind the maintenance items should be moved to the regular expense budget. Mr. Towne replied that he would like them broke down in the current fashion so you have a clear understanding of what maintenance issues are arising. Mr. Towne suggested having them classified within repairs and maintenance and capital expenditures as they currently are, just separated out. Mr. Newman agreed that was fine.

Mr. Williams explained that everyone is governed by a variety of different documents that may have some definitions or some inclusions that may be defined different than the way its defined in statute. Mr. Williams suggested that for capital year 2018, it would make sense to start looking at this so everyone can arrive at mutually accepted definitions and categorizations.

Mr. Newman suggested that the resolution should include another therefore to note that the capital definition will be looked at. Mr. Williams asked that assuming a memorialization is included, to have a motion to accept the resolution. Mr. Newman inquired about approving this capital, but does the board never approve the expense budget. Mr. Williams explained that under the statute, it is simply an approval of the capital budget and not the expense budget.

*BOARD RESOLUTION 17-01  
ON A MOTION BY: Mr. Towne  
SECONDED BY: Mr. Rabito  
APPROVED: 5-0*

#### **IV. Miscellaneous Reviews**

Mr. Newman stated he was looking for a resolution on the expense budgets where either the expense budget is prepared in a way that makes it clear. Mr. Williams stated that NYRA has already agreed to sit with Mr. Newman and discuss their differences. Mr. Newman stated that they said that months ago and still have not sat with him. Mr. Kay stated he would gladly sit with him with KPMG and asked for the chairman to join. Mr. Williams stated that Mr. Lowenstein would work with them to get a date scheduled.

##### **A. Executive Compensation**

Mr. Williams stated that the recent law section 207.1B allows NYRA to establish compensation committee to fix salary guidelines for such guidelines to be consistent with an operation of other first class thoroughbred racing operating in the United States. There were no questions or discussion about executive compensation.

##### **B. Export List**

Mr. Williams stated there was a comparative chart detailing the third quarter calendar year 2016 and the third quarter calendar year 2015. Mr. Towne asked what has been done to try to increase the export. Mr. Kay answered that they just entered into some agreements effective December 31<sup>st</sup> and they have been able to make certain appreciable benefits to NYRA in the last couple of years.

Mr. Williams questioned that one contract in particular seemed to have gone up rather significantly and what the reason for that was. Mr. Kay explained the organization has become more engaged in Saratoga.

##### **D. Single and Sole Source Exceptions**

Mr. Williams stated the Franchise Oversight Board is required by law to review and approve all purchasing policies pursuant to subdivision six of section 208 of the racing law. Mr. Newman questioned why they hired Deep Blue Communications to fix the repairs when they were the provider that the failure occurred with. Mr. Kay stated that NYRA is trying to upgrade their Wi-Fi at Saratoga and even more Wi-Fi coverage will be needed with the implementation of VenueNext. Mr. Newman inquired about the failure he was reading. Mr. Lavalette stated existing equipment was maxed out and produced a failure and it was not Deep Blue that caused a failure.

Mr. Williams asked about the replacement for Windstream on an emergency basis due to a breach of their service agreement and if there was any litigation existing or forthcoming. Mr. Lambert answered that they are examining their options but they needed to replace them with another vendor. Mr. Williams asked how long they had to make those decisions. Mr. Lambert answered that they are making those decisions now and in the meantime trying to get in new vendors.

Mr. Newman inquired about the replacement vendor and how they were selected. Mr. Kay stated that the new chief information officer is intimately involved in these particular areas and that he does not want to get into great depth in a public meeting regarding what he's done. Mr. Williams asked for a description of the failure and how quickly it had to be remedied. Mr. Kay stated he could not and there are certain things delegated to the CIO. Mr. Lambert explained they had to terminate them and also get somebody in place quickly. Mr. Williams stated that the question is what is the urgency of it and how NYRA ended up with them. If the information is not readily available, Mr. Williams suggested that the CIO contact the members who have interest in this topic.

Mr. Towne expressed his concern about communications to the board which are going to be open to public record pending litigation and should share this information after this is all concluded and they recover whatever can be recovered.

Mr. Newman inquired about why there was only one response from the six bids that were sent out regarding the hiring of a search firm for senior level executives. Mr. Kay stated he could not answer why the others did not bid because that calls for speculation. Mr. Williams touched base on a previous topic discussed and asked if NYRA has done any post bid consultation when they received very low responses. Mr. Williams asked if it was okay to reach out to Mr. Lambert and talk about potential solicitation examinations in the context of what the bidding procedures are.

## **VI. Report of the Chair**

Mr. Williams briefly touched upon an active New York state budget for 2016-17 that allowed Resorts World New York City to host video lottery gaming machines that were previously authorized for Nassau Regional Off-Track Betting Corporation. Mr. Williams explained that in exchange for that hosting, Resorts World received a capital award allowance and is required to construct a hotel resort and convention center valued at a minimum of \$300 million. Mr. Williams confirmed that to date, there is no development plans for consideration and if a proposal is presented, material will be circulated to members.

Mr. Williams also briefly talked about the recent activity regarding the proposals for redevelopment or development on land at Belmont and the Franchise Oversight Board's role in any such plan. There were only four bids received for the two real estate development parcels and they all had some relative limitations and concerns. This past December, Empire State Development notified the four bidders that it had ceased the RFP process in order to consider other economic develop and job creation opportunities beyond the scope of the original request. Mr. Williams stated Mr. Lowenstein will circulate any relevant material should there be anything that's proposed regarding these particular parcels. Mr. Williams asked if there are any other requests of any statutory information that's outstanding for NYRA. Mr. Lowenstein stated that NYRA is current on all their filings.

**IV. Old Business**

No old business was discussed.

**V. New Business**

No new business was discussed.

**VII. Adjournment**

The meeting was adjourned at 4:28 PM.