

MINUTES

OREGON RACING COMMISSION APRIL 20, 2000

The Oregon Racing Commission met on Thursday, April 20, 2000, at 1:30 p.m. in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Laura Fine, Vice Chair; Richard Reid and David Price. Chair Steve Walters and Commissioner Tom Towslee were excused. Agenda items were discussed in the following order with resulting actions:

1. Approval of March 16, 2000, Minutes

ACTION: MOTION(Reid) Approve minutes as submitted.
VOTE: 3 Aye, 0 Nay, 2 Excused

2. HBPA 2000 Salem Race Dates Request

Dick Cartney requested 11 days of racing at the Oregon State Fairgrounds in Salem beginning August 19 and running five weekends on Saturdays and Sundays through September 16 and 17. They will also race Monday, September 4, Labor Day. Last year they raced 19 days. Steve Barham recommended approval subject to receipt and approval of a race meet application and subject to having an agreement with Oregon State Fair to run the race meet.

ACTION: MOTION(Reid) Approve the race dates request subject to receipt and approval of a race meet application and an agreement with Oregon State Fair.
VOTE: 3 Aye, 0 Nay, 2 Excused

3. Oregon Greyhound Association 2000-2001 Budget

Jack Bennett stated the budget is pretty much redundant with last year's budget. The health insurance costs have skyrocketed and will probably be raised about 20%. Fifty people are currently covered. They have added one extra week to the added purse which extends for seven weeks instead of six. Steve Barham stated the ORC had received a letter from the OGBA attorney regarding the amount of money being spent on adoption and benefit expenses by the OGA. The OGBA feels some of those amounts should be reduced and put into racing related expenses. Mr. Barham recommended the commission approve the budget as submitted.

ACTION: MOTION(Price) Approve the OGA budget as submitted.
VOTE: 3 Aye, 0 Nay, 2 Excused

4. Oregon Greyhound Breeders Association 2000-2001 Budget

Vince Bruno brought the commission's attention to a note received from Homes for Hounds thanking the OGBA for providing their organization with a new dog truck. He also noted a request by their farm inspector for an increase in salary which has been approved by the OGBA board of directors. There are sixteen farms needing to be inspected and Dick Gage, the OGBA inspector, is doing fourteen of them. They are planning on four inspections per farm per year.

ACTION: MOTION(Price) Approve the OGBA budget as submitted.
VOTE: 3 Aye, 0 Nay, 2 Excused

5. New Portland Meadows Update

Mike Dorough reported the handle is continuing the recent trends in that the greyhound simulcast is off 6%, live instate is still off 15% and exports are up. Overall, with the horse simulcast up, greyhound simulcast down and live down, they are currently down a total of 2.6%. Their attendance total is up over 10%. They have been affected by the earlier start of Emerald Downs, resulting in fields that have been reduced and difficulty in filling races. The Portland Mile is scheduled for Saturday, April 22nd.

6. Greyhound Channel, Inc. Update

Request by Greyhound Channel, Inc. for Approval of Operating Plan Adjustments

It was decided to cover both of these items at the same time. Regarding the update, Ben Hayes stated they began accepting accounts on April 7th. Tony Fasulo is currently in negotiations with several tracks to add to their menu as well as bringing in additional states. They have started accepting wagers in various states including Florida.

Regarding the operational plan, during the accounting and auditing procedures leading up to the opening of the hub and also entering into contracts with various tracks they became aware the source marketing model they had didn't take into consideration all the bettor and host track types that are across the country. Some jurisdictions don't allow account wagering but the track does simulcast their races. Others accept account wagering but they don't broadcast out their races. As a result, Greyhound Channel, Inc. did a comprehensive source marketing model that takes into consideration some of these variables. They have raised the host track fee from 7% to 8%. Finally, they have found it very difficult to obtain information from the tote with respect to coming up with a formula on how to pay source marketing fees, for example for Oregonian wagers. The tote does not provide them with sufficient data to do that. As a result, they looked at the data and tried to come up with a flat fee that was as close as possible to what they believe the fee will be to make it more simple in the process. The material in their packets is a model they would like to follow.

Steve Barham stated the model is a good one to try to take care of some of the problems they have identified, and he recommended approval of the operating plan adjustments.

ACTION: MOTION(Reid) Approve the source marketing model proposed by Greyhound Channel, Inc.
VOTE: 3 Aye, 0 Nay, 2 Excused

7. Adoption of Temporary Rule OAR 462-200-0305 - Criteria for the Commission for Authorizing Receiving Tracks

In the process of reorganizing the formatting of the Racing Commission administrative rules into what is known as Rules 2000, the rule dealing with criteria for the commission for authorizing receiving tracks was inadvertently omitted. Currently, this rule is in place under the old formatting through April 30, 2000 and then it goes away. Adopting this temporary rule will insure the continuation of the existing rule beyond April

30th until the permanent rule can be adopted. Notice for adoption of a permanent rule has already been sent under the new rule format. Steve Barham's recommendation was to approve the temporary rule in order to maintain the status quo. The permanent rule consideration will take place at the May meeting.

ACTION: MOTION(Price)
VOTE:

Approve adoption of the temporary rule.
3 Aye, 0 Nay, 2 Excused

8. Tillamook County Fair 2000 Race Meet Application - August 10, 11 and 12

Steve Barham stated the application for these dates is their normal race date schedule. He recommended approval of the application with delegation of authority to the executive director for final approval of officials and the bond amount.

ACTION: MOTION(Reid)
VOTE:

Approve the application and recommended delegation of authority to approve officials and bond amount of \$2000.
3 Aye, 0 Nay, 2 Excused

9. Proposed Orders

Prior to taking action on the cited proposed orders, Vice Chair Fine stated the legislature during the 1999 session ordained that boards and commissions would no longer be conducting their own hearings. The hearings are now delegated to a panel of professional hearing officers. The good news is the hearings panel has delegated the Racing Commission hearings to two specific hearing officers whose names are Susan Teppola and Bob Goss. They have already met with Steve Barham and have been to Portland Meadows in order to make themselves more knowledgeable about what goes on in the racing industry. Once the greyhound season begins they will pay a visit to Multnomah Greyhound Park. Prior to taking action on these proposed orders, Steve Barham suggested the commission may want to go into contested case session for deliberation on the orders.

Vice Chair Fine suggested tabling action on these orders for the time being and moving on to the race dates requests from New Portland Meadows and The Cummings Group. Following action on the race dates requests, she suggested the commission take a break to go into contested case session and then reconvene to take action on the orders.

10. The New Portland Meadows 2000-2001 Simulcast and Live Race Dates Request The Cummings Group 2000-2001 Simulcast and Live Race Dates Request

Vice Chair Fine asked the representatives of each group to come forward one a time and present information to the commission regarding their requests. Following their presentations the commission will determine what action they wish to take. Steve Barham stated neither group presented a race meet application, however, NPM did submit a check for \$8000.

New Portland Meadows (NPM) - Brian Ferryman, NPM; David Brown, counsel for NPM

Mr. Ferryman stated they were requesting 80 days of racing beginning with simulcasting on October 18, 2000 and concluding April 29, 2001. Plans are to run Thursday and Friday evenings at 5:35pm and Saturday

matinees. They will continue to offer the same simulcast horse tracks they have traditionally offered as well as the best greyhound tracks around the country. Purses will be similar to what they have been in the past. The stakes schedule will accompany the full application. At the end of this meet their contract with the HBPA expires. They have had meetings with HBPA leadership and are confident that they will have another agreement in place prior to the next race meet.

In regard to the EPA, Mr. Ferryman explained to the commission the water quality project they are undertaking on the backside. The project they have started is independent of any fine or claim that the EPA may levy against them. He then went on to outline the project. They are in the process of having engineering completed this week, and they should have the draft copy tomorrow. They have been told by their consultants that the training track will not be lost. Over the past several months they have had numerous meetings with agencies that will be overseeing the project including the Department of Agriculture representing the state of Oregon, Bureau of Environmental Services representing the city of Portland and Multnomah Drainage District who is responsible for the drainage in the area. All the agencies have been very cooperative and have approved the conceptual plans to this point. It is estimated the construction project will cost about \$1 million. When the engineers complete all the drawings they will continue to have meetings with these agencies, go through the permitting process and get approvals to move forward. Gene Ferryman believes that racing in Oregon is worth that cost, so they are moving ahead. Brian Ferryman presented a schematic of what the project is going to look like, explained in detail the work to be done, how the different types of water would be collected and directed to the appropriate locations, and answered questions from commissioners. When asked what the estimated timeline was for total completion of the project, Mr. Ferryman responded by saying there were several stages. If they go and put it into the city of Portland and allow them to do the things they need to do, it is going to take them quite a while. But, they have been advised by their engineers and consultants that they can work on the project in phases. All the guttering can be done without permit as long as it is within two feet of the building and ten inches above the ground, which means they can get started on that right away. In talking with gutter contractors they say it can take about a month to complete that work. Some of the excavation work can be done with a grading permit instead of waiting to go through the building department. They are working with the city to try to do this in a manner where they are ready to go in September.

Regarding the status of the barn area, Mr. Ferryman reported in March they were notified by the city of Portland fire marshal that no one can sleep in any of the tack rooms. Management along with the leadership of the HBPA had a meeting on the backside with the horsemen to inform them of the situation. The problem has been resolved, and he commended the HBPA leadership for their support in helping the horsemen understand the seriousness of the issue. The fire marshal could have shut down the track if the situation had not been completely corrected.

Regarding maintenance of the barn area, they have hired an engineer to do a survey of the barn area. NPM management is in the process of working with the city to go through the appropriate permit process to do the work on the barns. It appears they will need regrout all the loose blocks, and any walls that are tilting will need to be brought back within code. The NPM crew will be working on these repairs all summer long, and he anticipated the work would be completed by September.

The commission requested that in-depth reports such as the one given today be given to them each month at the regular commission meeting, to which Mr. Ferryman stated he would be happy to provide monthly status reports.

David Brown addressed the current status with the EPA. The EPA issued a notice at the end of last summer that NPM was a confined animal feeding operation and, as such, was required to control 100% of all discharge of water off of the site and that its failure to do so was a violation of the Clean Water Act. This involves surface water or rain water that falls onto the ground and drains downhill and into the drainage ditch. This is the way it has always been at NPM and is not an allegation that anyone is dumping anything or that anyone is opening a valve or that anyone is not following good practices. It is a situation that requires the construction project Brian Ferryman outlined in order to correct the problem. NPM has been working with the EPA immediately following receipt of the summons. In terms of the substance of the problem, the nature of it and the solution, the discussions have gone very smoothly. The part that hasn't gone well is the EPA's insistence that there also has to be a fine for the activity. What NPM has asked the EPA for is a settlement judge because NPM can't fight their "black box", the tool that is used by the EPA to set fine amounts. The people at the EPA with whom they have been dealing feel somewhat constrained by the outcomes from the black box. Mr. Brown stated that while no one ever wants to be a defendant in a lawsuit, the EPA bringing this action is the vehicle that will help NPM get a settlement judge so a penalty can be determined that is agreeable to both parties. He is hoping they can get the lawsuit resolved quickly but he doesn't think it should have a significant impact on the ability of NPM to operate next fall. When asked about a time line of actually getting to a settlement judge, Mr. Brown responded by saying when you file a complaint in the federal court system, you also submit a form of order for the judge to adopt on discovery. In this case, without the settlement judge process, the pretrial scheduling order calls for all discovery to be completed by August 12th. Their goal is to get the settlement judge procedure inserted and completed before the August 12th date. He went on to say that usually if both sides request a settlement judge it should happen very quickly. In discussing this with the EPA, the assistant U.S. attorney felt it was an excellent idea.

The Cummings Group (TCG) - Lonnie Craig

Mr. Craig began by presenting some key points that The Cummings Group feels are important to racing in Oregon. We need to:

1. Provide stabilization in racing so horsemen feel they can stay in this state.
2. Support the summer race meets.

3. Provide long-term racing to allow breeders to continue to produce an Oregon product.
4. Maintain racing at the Oregon State Fair. TCG currently has a rental agreement with OSF that would provide them with approximately \$800,000 per year in fees and capital improvements.

In terms of the date application, they are asking for up to 100 days of racing to be run in and out of the traditional simulcast window of 6-1/2 months. They first looked at their license application as a fall-back position if NPM was unable to continue racing. Because there are so many people depending on the continuation of a nonstop horse racing industry, they feel their dates request and future application merit the same review as any other.

Commissioner Price inquired as to whether or not they had contacted the city of Salem or neighborhood association to discuss with them the number of dates they were requesting and the potential impact that might have on the neighborhood due to the influx of people and traffic. Mr. Craig responded by saying the only person with whom he had had discussions was Mr. Scott who was on the Salem city council. He noted that the track currently operates during the winter months as a training track, so there is additional traffic in the area which has not drawn any complaints from the neighborhood. A question was raised about the \$800,000 and if it would be used for capital improvements. Mr. Craig explained that a percentage of that amount would be earmarked for capital improvements. One percent of the handle was for the rent, and one-half percent of handle was for capital improvements, specifically on the race track grandstand. The grandstand is usable, however, there is some work that should be done. In the past there was never enough money available to complete the work. Conducting their race meet would generate the funds to finally make the necessary improvements. When asked how long it would take to make the repairs, Mr. Craig responded by saying if they were granted a license, they would be able to complete the work before the weather turned bad. He went on to say the track has held up well during the winters while it has been used as a training track. It is a sand track, and they have not had any problems with washouts or mud. There was a question about the condition of the rail. Mr. Craig said over the past few years the rail has been an important issue. Since the state fair meet has been such a short meet and also because of the way it is constructed, the rail has always had the approval of the Jockeys' Guild. Regarding the improvements, Commissioner Reid asked if they received conditional approval would they be moving forward with making the improvements even though they still wouldn't know if NPM was going to run. Mr. Craig responded by say they were going to be helping the HBPA with the eleven day race meet in August and September. Fixing the leaks and putting in the doors in the grandstand would not be done for that meet. Upon receiving a license to simulcast and conduct a winter race meet the work would be completed. He went on to say it would only take about 30 days to weatherproof the bottom part of the grandstand. Mr. Craig completed his remarks by reading the following prepared statement: "We submit to the commission that you may be able to better assess and evaluate the various race meet

applications in June or July as the applicants will be better prepared to provide complete applications."

The HBPA was asked to address these race dates requests. Dave Benson stated the HBPA is currently under a contract with NPM that expires April 30, 2000. The HBPA has not had any direct meetings with NPM, stating they are currently under a contract that specifies what they have to do next, and they fully intend to abide by that agreement. They plan to present a proposal that everybody will be able to live with. The contract specifies that they enter negotiations for a new contract immediately on May 1. If they do not reach an agreement by the end of May, on June 1 it goes to binding arbitration. Their contract committee has met and are in the process of typing up the results from that meeting in preparation for their negotiations with NPM. Mr. Benson went on to say the HBPA has not had any direct meetings with NPM, stating they are currently under a contract that specifies what they have to do next, and they fully intend to abide by that agreement. They plan to present a proposal that everybody will be able to live with. Mr. Benson commented that it was safe to say the percentage of take-out for which they are currently running is the lowest in the nation, and it is their intent to increase that amount. At this time they don't know what the results of the negotiations will be, but they are hopeful that everything will be approved.

When asked if they had met with representatives from The Cummings Group, Mr. Benson replied they had not met specifically regarding TCG's proposed race dates request at the Oregon State Fairgrounds, however, they were aware of what they had done. TCG's initial contact with him was regarding if NPM did not run, would the HBPA support a race meet in Salem, at which time they said they would. When asked if it was their intention to negotiate with TCG simultaneously with NPM, Mr. Benson responded that it had never been considered. He reiterated that they were currently under contract with NPM and he didn't think it would be prudent to do anything until they no longer had a contract.

Dick Cartney agreed with everything Mr. Benson said and added that he thought it was very important for the commission to understand that from the standpoint of the horsemen it was very important to have some stability in this industry, whether it be NPM, TCG or any other entity wishing to conduct racing. For the last few years horsemen have not known where we were going to be from year to year. People make their plans well in advance regarding breeding, where they're going to race, whether they're going to move to another state or just decide to get out of the business. Mr. Cartney concluded by saying it would be greatly beneficial to their members to have some stability and to know where they're going to be able to race in the coming years.

Dave Nelson, OQHRA, read a letter from President Jimmy Glenn, Jr. which supported the dates request submitted by NPM.

In his assessment of the situation, Steve Barham stated part of the problems are a result of the uncertainty in racing. His understanding from Brian Ferryman's comments on the EPA project and the barn area repairs

was that the project timeline was some time in September. He did not, however, hear any comment regarding the lease and the issue of the property owners, which made it appear that that issue is still unresolved. In response to a question from Vice Chair Fine as to whether or not that would be something the commission would be clarifying at the time they were considering approval of an actual race meet application, Mr. Barham said it would have to be clarified to some degree because whoever holds a race meet license has to have control of a racing enclosure. While it would have been beneficial to have had that clarification today, he said that granting race meets dates is simply putting people on notice that this race meet can run.

In pointing out the problems at NPM, Mr. Barham went on to say there are countering issues or problems that he sees at the Oregon State Fair (OSF). Some of those issues are: (1) the agreement with TCG and OSF is a three-year lease agreement that is to be renegotiated each year; (2) the need to make modifications to the grandstand to make it usable during the winter months; (3) the race track surface; (4) sufficient stable area and barns to allow the horse population necessary to run the meet.

Mr. Barham stated it appeared that both of the requestors had a lot of things yet to do in order to gain approval for a race meet license, and, in his opinion, the commission really didn't have enough information at this point in time to preclude one over the other. Both of these race meets are located in separate metropolitan areas, and, based on statute, both of these race meets could conceivably be licensed. The practicality of approving both, however, could create a problem for both licensees in terms of having enough horse population and jockeys to run the meet. . Simulcasting is the real issue. The present commission rule states only one race meet can simulcast at a time.

Taking into account all of his previous comments, Mr. Barham said he would not recommend action today on any simulcast window. Instead, he recommended that the commission approve both of the requests for dates subject to the receipt and approval of race meet applications. Upon receipt of an application from NPM, they would need to address the issues of the racing lease, EPA project and status and ongoing movement in that area, and condition of the barns. While he thought the report by NPM was very helpful, it sounded like there was still some permit work needing to be done. Upon receipt of an application from TCG, they would first need to take him on a tour of the grandstand, the track surface, and the backside and then provide some assurances that each of those issues would be adequately maintained for a winter race meet.

Vice Chair Fine said she felt the commission had a historical institutional commitment to NPM, however, it could be outweighed by the commission's overall fundamental commitment to live racing in Oregon. She was inclined to grant the request for race dates to both applicants since, being in the preliminary stage, race meet applications had not yet been submitted by either NPM or TCG.

Commissioner Reid voiced concerns as to where the commission stood, either from a legal standpoint or from a moral standpoint, if race dates were approved for both NPM and TCG and then only one of them was granted a race meet license. Mr. Barham responded by saying that any time race dates are granted, they are granted subject to the receipt and approval of a race meet license.

Commissioner Price stated he didn't feel TCG had come forward today with enough solid foundation for the commission to grant them race dates. NPM had some issues, but it seemed to him that by granting both of them race dates today and then letting them go out into the world to wonder who would get the simulcast rights, that action would, in effect, stop both operations from doing anything. He reiterated that the HBPA had said they were willing to go forward and negotiate with NPM and that they hadn't contacted TCG. It seemed to him if TCG had had a viable application, they would have gone to the HBPA and said: This what we're willing to do; we don't want you to violate your contract, but we're here and we want to work with you. Commissioner Price said he was prepared to move to grant NPM the race dates and the simulcast, and if the commission could include a condition that if the issues of the lease, EPA and the barns aren't resolved, then NPM would not have a race meet. He ended by saying it was in NPM's best interest to get the conditions taken care of, and that TCG had nothing to lose by this action.

ACTION: MOTION(Price)

Grant NPM the race dates along with the simulcast window.

DISCUSSION:

Steve Barham said that if, in fact, the commission wanted to approve the motion, he would suggest they have a deadline date for the work to be completed. In explaining his reasoning for having a specific date, he cited the following example: If the EPA project instead of being completed in September was not going to be done until December, the commission would have created enough room and maneuvering areas to be able to implement an alternative plan that would allow live racing to continue at the scheduled time. The other alternative would be to continue to hope the repairs at NPM are completed as projected, and if not, the commission and the industry would be in a position where no one would be able to conduct a live race meet beginning the third week of October due to the lack of lead time. In that scenario the horsemen are left trying to figure out where to take their horses to race on short notice as well as the probability of not having live racing in Oregon until January.

Vice Chair Fine asked if he could articulate the concept of the deadline in a way that it could be incorporated into the motion. Mr. Barham suggested a September 1, 2000, date for the projects to be completed. There was adverse reaction from NPM to the September 1 date, stating they had said the work would be completed in September. In response, Mr. Barham said Mr. Craig had stated it would take TCG 30 days to get the work done at OSF to run their race meet. With that in mind, 30 days from the proposed October 20 start date would be about September 15. While Vice Chair Fine said she was not sure that all projects had to be completed in order for NPM to run a race meet, Mr. Barham said enough

projects would need to be completed in order for them to be able to have horses on the backside.

David Brown suggested if NPM could have its license application into the commission office in advance of the July meeting, and if it were to be approved in July or August conditional upon the work being done, the commission could then take final action at its meeting on September 21 which would be in the area of the time frame Mr. Barham is looking for. At that meeting NPM would either receive their license because all of the conditions had been met, or, they wouldn't be granted a license. NPM would either have all the projects completed by the September meeting or provide the commission with reasonable assurances that the work would be completed in time for the race meet to begin as scheduled.

Commissioner Price said he did not want a drop dead deadline, but he still wanted to have the ability to address matters if things come up. Vice Chair Fine asked if the commission could take away a window after it had been granted. Mr. Barham responded by saying the window would go away if a race meet license was not granted. Vice Chair Fine went on to say that even without the window going away the commission could still turn around and call someone up and give the dates to someone else if they wanted to renew their application at the commission's suggestion. Mr. Barham ended by reiterating his concern. He said he hoped everything worked out as proposed by NPM, but he also wanted the commission to be in a position to whatever they needed to do in order to provide continued support for the industry.

In his final comments Brian Ferryman said the commission would be able to judge for itself the status of the work in progress. When they saw the gutters on the barns in July they would know NPM was moving forward and doing the things they said they would do. He said they were committed to the project, and they weren't going to jeopardize their license and spend 1/2 to 3/4 million dollars and not be done or not have an alternative plan. If there was a delay due to bad weather, they couldn't control that. If, for instance, there was blacktopping needing to be done, they could take the appropriate steps to have it all done and run. Unless they run, they don't make any money to pay for the project.

Vice Chair Fine said for all the chaos that has been created, she really appreciated the existence of TCG and that they took the action they did because it forced the question. Better racing will be the result of their formation; it will either better racing by having created a more stable race site in and of itself or by having provided even further incentives beyond what they already had for NPM to get the job done. She appreciated the effort and said it would be nice to have Dick Cummings back in town. Vice Chair Fine then asked for the motion to be restated for the record.

ACTION: MOTION(Price)

Move that we grant NPM the race dates they have requested as well as the simulcast rights for those race dates. The commission will not set a time certain but, rather, the executive director will have the ability to go out during the summer and meet with NPM people to make sure things are going on course.

VOTE: 3 Aye, 0 Nay, 2 Excused

Vice Chair Fine suggested the commission take a break, and at the conclusion of the break the commission would go into contested case session to review the proposed orders from the hearing officer.

(The meeting was called back to order)

9. Proposed Orders

a. James E. Easley, Jr.

Recommendation of the hearing officer was that he be suspended for a minimum of six months through June 21, 2000 and until he provides the board of stewards with documentation of completion of the criteria required by the administrative rules.

ACTION: MOTION(Price) Accept the proposed order and direct staff to prepare the final order and to make the necessary grammatical corrections.

VOTE: 3 Aye, 0 Nay, 2 Excused

b. Keith A. Rough

Recommendation of the hearing officer was that the licensee be suspended for 365 days beginning with the original suspension date of January 25, 2000, but that the suspension be stayed pending continuation of drug and/or alcohol monitoring that meets the requirements of commission staff. In the event there is a positive test during that period or a violation of the alcohol rules, that the balance of the period would be served in suspension.

ACTION: MOTION(Reid) Adopt the proposed order and direct staff to make the final order and to prepare the final order and make the necessary grammatical corrections.

VOTE: 3 Aye, 0 Nay, 2 Excused

There being no further business, the meeting was adjourned.