

NEW JERSEY RACING COMMISSION
WEDNESDAY, OCTOBER 23, 2013
“RENAISSANCE DINING ROOM”
FREEHOLD RACEWAY
FREEHOLD, NEW JERSEY

A meeting of the New Jersey Racing Commission was held on Wednesday, October 23, 2013, in the Renaissance Dining Room of Freehold Raceway located in Freehold, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Michael J. Arnone, Commissioner
Pamela J. Clyne, Commissioner
Anthony G. DePaola, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith Nason

The following were absent:

Manny E. Aponte, Commissioner
Anthony R. Caputo, Commissioner
Peter J. Cofrancesco, III, Commissioner
Peter T. Roselle, Commissioner

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the “Open Public Meeting Law,” and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

WHEREAS in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, be it resolved that consistent with the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning a final determination, regarding the June 19, 2013, public hearing and related record, which final determination of the Racing Commission is subject to review and approval by Acting Attorney General John J. Hoffman, on the following agenda items, all relating to the application of the New Jersey Sports & Exposition Authority and Freehold Raceway Off-Track Racing, LLC, for an off-track wagering license for a facility to be sited in Gloucester Township, Camden County, New Jersey.
2. Legal advice concerning the application of the NEW JERSEY SPORTS & EXPOSITION AUTHORITY, made pursuant to the “Off-Track and Account Wagering Act” (N.J.S.A. 5:5-127 et seq.) and the rules of the New Jersey Racing Commission (Chapter 74 of the New Jersey Administrative Code), for the issuance to the NEW JERSEY SPORTS & EXPOSITION AUTHORITY of an off-track wagering license, which off-track wagering facility is to be located at the following premises within Gloucester Township: 1300 Blackwood Clementon Road, Clementon, New Jersey 08021. See N.J.S.A. 5:5-130, 5:5-131, 5:5-132, 5:5-133, 5:5-134; See also N.J.A.C. 13:74-2.1.
3. Legal advice in connection with the related application of the NEW JERSEY SPORTS & EXPOSITION AUTHORITY and FREEHOLD RACEWAY OFF-TRACK, LLC, referenced in agenda item 3 below, consider whether FREEHOLD RACEWAY OFF-TRACK, LLC, is qualified to hold an off-track wagering license pursuant to N.J.S.A. 5:5-133b, N.J.A.C. 13:74-4.1, and any other applicable law.
4. Legal advice subject to a determination that FREEHOLD RACEWAY OFF-TRACK, LLC, is qualified to hold an off-track wagering license, consider the applications of the NEW JERSEY SPORTS & EXPOSITION AUTHORITY and FREEHOLD RACEWAY OFF-TRACK, LLC, made pursuant to the “Off-Track and Account Wagering Act” (N.J.S.A. 5:5-127 et seq.) and the rules of the New Jersey Racing Commission (Chapter 74 of the New Jersey Administrative Code), for the assignment or transfer to FREEHOLD RACEWAY OFF-TRACK, LLC, of any off-track wagering license issued to the NEW JERSEY SPORTS & EXPOSITION AUTHORITY pursuant to agenda item 1 above, to establish and operate an off-track wagering facility at the following premises within Gloucester Township: 1300 Blackwood Clementon Road, Clementon, New Jersey 08021. See N.J.S.A. 5:5-130; N.J.S.A. 5:5-133b, N.J.A.C. 13:74-4.1, and 13:74-5.1(a), (b).

5. Legal advice subject to a determination to approve the transfer or assignment of said off-track wagering license from the NEW JERSEY SPORTS & EXPOSITION AUTHORITY to FREEHOLD OFF-TRACK WAGERING, LLC, in connection with the further application of FREEHOLD OFF-TRACK WAGERING, LLC, as set forth in agenda item 5 below, consider whether PENN NJ OTW, LLC, an entity 100% owned by PENN NATIONAL GAMING, INC., is qualified, pursuant to N.J.A.C. 13:74-4.2(a), (b) and (c), to perform the functions subject of a contract or agreement authorizing it to conduct or operate (that is, to design, develop, construct, finance and operate) the Gloucester Township off-track wagering facility for licensee FREEHOLD OFF-TRACK WAGERING, LLC, and to act as the agent of FREEHOLD RACEWAY OFF-TRACK, LLC in all off-track wagering matters approved by the Racing Commission.
6. Legal advice subject to a determination to approve the transfer or assignment of said off-track wagering license, from the NEW JERSEY SPORTS & EXPOSITION AUTHORITY to FREEHOLD RACEWAY OFF-TRACK, LLC, and further subject to a determination that PENN NJ OTW, LLC is determined qualified pursuant to agenda item 4 above, consider the additional application of FREEHOLD RACEWAY OFF-TRACK, LLC, pursuant to N.J.S.A. 5:5-133b and N.J.A.C. 13:74-4.2(a), (b), (c), for approval for its entering into a contract or agreement authorizing PENN NJ OTW, LLC, an entity 100% owned by PENN NATIONAL GAMING, INC., to conduct or operate (that is, to design, develop, construct, finance and operate) the Gloucester Township off-track wagering facility for licensee FREEHOLD RACEWAY OFF-TRACK, LLC, and to act as the agent of FREEHOLD RACEWAY OFF-TRACK, LLC, in all off-track wagering matters approved by the Racing Commission.
7. Other legal advice and/or status of pending litigation.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise her ethical duties as a lawyer and/or matters involving pending or anticipated litigation."

Commissioner Keegan motioned to adopt the resolution to adjourn. Commissioner Clyne seconded the motion. The Commission then adjourned to Executive Session.

The Commission ended the execution session and Commissioner Keegan moved to reconvene the public session. Commissioner DePaola seconded the motion and the Commission concurring, the public session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE SEPTEMBER 18, 2103 COMMISSION MEETING

Commissioner DePaola made a motion to approve the public and executive minutes of the September 18, 2013 public meeting. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE APPROVED ATLANTIC CITY CASINOS TO PAY A FEE IN EXCESS OF 6 PERCENT TO SANTA ANITA RACETRACK FOR THE BREEDERS CUP RACES AND ALL RACES CONDUCTED ON BREEDERS' CUP DAY PURSUANT TO N.J.S.A. 5:12-201B

Commissioner Keegan motioned to approve the request of the Atlantic City casinos subject to Commission Schedule E. Commissioner DePaola seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE FOLLOWING HANDICAPPING CONTEST:

Favorites at Woodbridge handicapping contest on Monday, October 14, 2013.

Commissioner DePaola motioned to approve the ratification granted Favorites at Woodbridge. Commissioner Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE FOLLOWING HANDICAPPING CONTEST:

Winners Bayonne Simulcast Series Challenge on Saturday, October 26, 2013.

Commissioner DePaola motioned to approve the Winners Bayonne handicapping contest. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER A FINAL DETERMINATION, REGARDING THE JUNE 19, 2013, PUBLIC HEARING AND RELATED RECORD, WHICH FINAL DETERMINATION OF THE RACING COMMISSION IS SUBJECT TO REVIEW AND APPROVAL BY ACTING ATTORNEY GENERAL JOHN J. HOFFMAN, ON THE FOLLOWING AGENDA ITEMS, ALL RELATING TO THE APPLICATION OF THE NEW JERSEY SPORTS & EXPOSITION AUTHORITY AND FREEHOLD RACEWAY OFF-TRACK RACING, LLC, FOR AN OFF-TRACK WAGERING LICENSE FOR A FACILITY TO BE SITED IN GLOUCESTER TOWNSHIP, CAMDEN COUNTY, NEW JERSEY:

1. Consider the application of the NEW JERSEY SPORTS & EXPOSITION AUTHORITY, made pursuant to the "Off-Track and Account Wagering Act" (N.J.S.A. 5:5-127 et seq.) and the rules of the New Jersey Racing Commission

(Chapter 74 of the New Jersey Administrative Code), for the issuance to the NEW JERSEY SPORTS & EXPOSITION AUTHORITY of an off-track wagering license, which off-track wagering facility is to be located at the following premises within Gloucester Township: 1300 Blackwood Clementon Road, Clementon, New Jersey 08021. See N.J.S.A. 5:5-130, 5:5-131, 5:5-132, 5:5-133, 5:5-134; See also N.J.A.C. 13:74-2.1.

2. In connection with the related application of the NEW JERSEY SPORTS & EXPOSITION AUTHORITY and FREEHOLD RACEWAY OFF-TRACK, LLC, referenced in agenda item 3 below, consider whether FREEHOLD RACEWAY OFF-TRACK, LLC, is qualified to hold an off-track wagering license pursuant to N.J.S.A. 5:5-133b, N.J.A.C. 13:74-4.1, and any other applicable law.
3. Subject to a determination that FREEHOLD RACEWAY OFF-TRACK, LLC, is qualified to hold an off-track wagering license, consider the applications of the NEW JERSEY SPORTS & EXPOSITION AUTHORITY and FREEHOLD RACEWAY OFF-TRACK, LLC, made pursuant to the “Off-Track and Account Wagering Act” (N.J.S.A. 5:5-127 et seq.) and the rules of the New Jersey Racing Commission (Chapter 74 of the New Jersey Administrative Code), for the assignment or transfer to FREEHOLD RACEWAY OFF-TRACK, LLC, of any off-track wagering license issued to the NEW JERSEY SPORTS & EXPOSITION AUTHORITY pursuant to agenda item 1 above, to establish and operate an off-track wagering facility at the following premises within Gloucester Township: 1300 Blackwood Clementon Road, Clementon, New Jersey 08021. See N.J.S.A. 5:5-130; N.J.S.A. 5:5-133b, N.J.A.C. 13:74-4.1, and 13:74-5.1(a), (b).
4. Subject to a determination to approve the transfer or assignment of said off-track wagering license from the NEW JERSEY SPORTS & EXPOSITION AUTHORITY to FREEHOLD OFF-TRACK WAGERING, LLC, in connection with the further application of FREEHOLD OFF-TRACK WAGERING, LLC, as set forth in agenda item 5 below, consider whether PENN NJ OTW, LLC, an entity 100% owned by PENN NATIONAL GAMING, INC., is qualified, pursuant to N.J.A.C. 13:74-4.2(a), (b) and (c), to perform the functions subject of a contract or agreement authorizing it to conduct or operate (that is, to design, develop, construct, finance and operate) the Gloucester Township off-track wagering facility for licensee FREEHOLD OFF-TRACK WAGERING, LLC, and to act as the agent of FREEHOLD RACEWAY OFF-TRACK, LLC in all off-track wagering matters approved by the Racing Commission.

5. Subject to a determination to approve the transfer or assignment of said off-track wagering license, from the NEW JERSEY SPORTS & EXPOSITION AUTHORITY to FREEHOLD RACEWAY OFF-TRACK, LLC, and further subject to a determination that PENN NJ OTW, LLC is determined qualified pursuant to agenda item 4 above, consider the additional application of FREEHOLD RACEWAY OFF-TRACK, LLC, pursuant to N.J.S.A. 5:5-133b and N.J.A.C. 13:74-4.2(a), (b), (c), for approval for its entering into a contract or agreement authorizing PENN NJ OTW, LLC, an entity 100% owned by PENN NATIONAL GAMING, INC., to conduct or operate (that is, to design, develop, construct, finance and operate) the Gloucester Township off-track wagering facility for licensee FREEHOLD RACEWAY OFF-TRACK, LLC, and to act as the agent of FREEHOLD RACEWAY OFF-TRACK, LLC, in all off-track wagering matters approved by the Racing Commission.

Executive Director Zanzuccki indicated that staff has prepared a proposed motion concerning this matter, and at this time staff would recommend that if a Commissioner agrees with that motion, make that motion at this time.

Commissioner Keegan stated that all of the Commissioner have received the motion and would appreciate it if the Executive Director would read the motion. Commissioner DePaola seconded the motion.

Executive Director Zanzuccki read the following motion on behalf of Commissioner Keegan:

The matter before us concerns an application for a license to establish a new off-track wagering facility in Gloucester Township, New Jersey. The proposed otw facility is to be located at 1300 Blackwood-Clementon Road, at an existing building which, prior to its closure, operated as the “Stone Grille” bar and restaurant.

Because initial otw licenses must by law first be issued to the New Jersey Sports & Exposition Authority, the Authority is the applicant for the license, who we refer to as “A Applicant.” It is further proposed that the Authority will assign or transfer the license to Freehold Raceway Off-Track, LLC, who we refer to as FROT. Because FROT is intended to ultimately hold the license for the otw, it also filed an application for the license, and we refer to FROT as the “B Applicant.” If FROT is granted a license, pursuant to N.J.A.C. 13:74-4.2, and as a result of a contractual arrangement, FROT proposes to engage Penn

National Gaming, Inc./Penn NJ OTW, LLC to conduct and operate the otw facility for it, and to act as its agent in all Racing Commission approved off-track wagering matters.

Penn NJ is an entity controlled by Penn National, which hold a 50% interest in Pennwood Racing, Inc. The remaining 50% in Pennwood is held by Greenwood Racing, Inc. Pennwood is the parent of F.R. Park Racing, L.P., which owns and operates the Freehold Raceway. F.R. Park Racing is the parent of FROT, which, as I said, is the “B applicant” in the matter before us. FROT, in addition to being the “B Applicant,” is presently licensed as the operator of the Toms River otw facility.

The Commission, here today, will be deciding each of the five matters set forth in our public meeting agenda concerning this matter, including: whether to approve the issuance of an otw license for Gloucester Township to the Authority; whether to approve the assignment or transfer of that license from the Authority to FROT, and whether to approve the entry into of the contract which would allow Penn National/Penn NJ to conduct or operate the off-track wagering facility for FROT. In rendering a determination today, I would note that, by law, we are required to submit such to the Attorney General for review and approval, and the decision of the Attorney General constitutes a final decision with regard to this matter.

As required by law, following the advertisement for a public hearing on these applications in various newspaper publications, the Commission conducted a public hearing in Gloucester Township on June 19, 2013. At that time, we resolved to leave the hearing record open for two purposes. First, to allow additional time for the submission of written comment by the public, until June 26, 2013. Second, to allow additional time for FROT to address certain matters related to its proposed engagement of Penn National/Penn NJ, which I will discuss in detail shortly. Following the receipt of FROT’s supplemental submission, the hearing record was closed on August 27, 2013.

In connection with today’s agenda items regarding this matter, we have been provided with materials by staff. These materials include those items previously provided to the Commission in anticipation of the June 19th public hearing, a transcript of that hearing, the public comment received following the conduct of the hearing, and FROT’s supplemental filing as I just mentioned. We also conferred with Racing Commission legal counsel as appropriate.

At the time of the public hearing, both the Authority and FROT presented evidence in support of the grant of the license, and the other relief sought. Additionally, comment was offered by public officials and citizens.

On behalf of the Authority, Ralph J. Marra, Sr., Vice President of Governmental & Legal Affairs to the Authority, relied upon the Authority's written otw license "Application A," as filed with the Commission. Mr. Marra, through his testimony, acknowledged the Authority's desire and intent to immediately transfer any issued license to FROT. Mr. Marra further indicated that the Authority fully supports FROT's application, and also represented that the Authority would rely upon the presentation of FROT at the public hearing.

Following Mr. Marra's comments, FROT made its presentation, in supplement to its written otw license application filed with the Commission. FROT confirmed that its upstream parent, FR Park Racing, will conduct 110 live harness racing dates this year. FROT further noted that, if granted the otw license, the facility would be called "Favorites at Gloucester Township." FROT noted that such license would be the second otw license it will hold, the first being for the operational Toms River otw facility. FROT added that, through its Toms River otw operation, it generates revenue for purses and other aspects of the horse racing industry, and it explained that the issuance of the license it now seeks for Gloucester Township will enhance those desirable purposes.

State Senator Donald Norcross testified in support of the application, as did David Mayer, Mayor of Gloucester Township. Senator Norcross described the proposed facility as "a plus" to Southern New Jersey, described the proposed plan for the facility as "fabulous," and commented that Gloucester Township is "a great place to do business." Gloucester Township's Mayor testified that the otw facility will generate jobs, and will further serve as a catalyst for further economic development along the Blackwood-Clementon Road corridor.

Francis E. McDonnell, General Counsel for Greenwood, as well as a Director and Officer of Pennwood, testified that FROT, and related entities, are in compliance with the industry participation agreement, which governs the development of otw facilities in this State. He further testified that FROT, and its related entities, have officers and directors who have unblemished records in the corporate world, have no noteworthy derogatory backgrounds, that each entity is financially stable, and neither has ever had an issue with loss of license for regulatory suitability or related reasons. Mr. McDonnell also correctly noted in his testimony that FROT, throughout the period it has held the license for the Toms River otw facility, has not had any incidents which would potentially impair such license. Mr. McDonnell, through his testimony, contended that FROT therefore satisfies the suitability standards of the Off-Track & Account Wagering Act, and the Commission's rules, for an otw license.

FROT further offered the testimony of Howard Bruno, General Manager of the Freehold Raceway, at the public hearing. Mr. Bruno correctly noted that FROT's application included detailed information, required by the Commission's rules, concerning the physical plan, proposed hours of operation, space relationship between gaming and non-gaming related amenities, number of jobs expected to be created as a result of the facility, the type of food and beverages to be available, the internal control procedures for the facility, and a signed certified statement concerning the truth and accuracy of FROT's comprehensive application.

FROT further offered the testimony of Karin Ashford, who is Vice President of Legal and Business Affairs of Penn National, which as I indicated earlier, is the upstream entity of Penn NJ, and is proposed by FROT as the operator for the otw facility. In addition to its 50% interest in the New Jersey racing operations through Pennwood, which interest includes the Freehold Raceway and Toms River otw facility, Ms. Ashford testified that Penn National is a highly regulated entity throughout the country, as it owns and operates or has ownership interests in twenty-nine gaming and racing facilities in nineteen jurisdictions. Ms. Ashford, through her testimony in support of FROT's contention that Penn National meets the Commission's suitability standards, also represented that Penn National has not experienced any incidents which would disqualify it from Racing Commission approval.

In terms of Penn National/Penn NJ's entering into an agreement with FROT pursuant to N.J.A.C. 13:74-4.2, and particularly for Penn National/Penn NJ to operate the proposed otw on behalf of FROT, Penn National's Vice President testified that it is well-qualified to function in such role. Ms. Ashford further explained, as set forth in the related agreement between the parties, that Penn. National will be fully funding and shall capitalize all costs associated with the planning, construction, and operating of the otw facility for FROT.

Also at the public hearing, Christopher McErlean, who served as the presenter of evidence on behalf of FROT, provided detailed facts to establish that FROT's immediate parent is in compliance with statutory live racing requirements, and that the location of the proposed otw would not be inimical to the interests of other planned or existing off-track wagering facilities or to a racetrack. Mr. McErlean also presented schematics and other evidence to establish the sufficiency of the physical plan for the otw, which is to consist of 16,000 square feet. Mr. McErlean's presentation reflected the contents of FROT's written application, petition and other supporting documentation, and included a broad array of information as concerns seating, dining facility amenities, race viewing features, money room features, patron safety considerations both within and outside the premises, including the security and surveillance equipment plan for the facility. Mr. McErlean further testified

that FROT anticipates that the construction will take about three months following the securing of all final approvals for the facility.

Importantly, Mr. McErlean testified that the new facility will create approximately 40-50 jobs, and that total revenue for the facilities first year of operation is estimated at \$4.5 million. In terms of the benefit to accrue to the racing industry overall, Mr. McErlean estimated \$1.2 million will be generated for New Jersey purses annually, and that the otw will generate \$22-25 million in annual handle.

Following FROT's presentation, members of the public were provided opportunity to comment. Kevin Bucceroni, William Hamer, Joe Crispi, and Richard Rosetti each offered comment in favor of the proposed otw. Mr. Bucceroni commented that the facility will be "a tremendous anchor" for Blackwood-Clementon Road, and that "it will feed other businesses." Mr. Hamer supported the application, indicating that otw business should be maintained in New Jersey, as opposed to the State losing business revenues to Pennsylvania. Mr. Crispi commented that the facility will not only promote jobs, but will bring the area "back to life again." Mr. Rosetti commented that the proposed otw "will bring money into the township."

As I noted earlier, at the conclusion of the hearing, the Commission determined to leave the public hearing record open for the limited purposes of receiving written comment from the public, and to receive additional information from FROT.

Following the hearing, the Commission received 3 written comments from: Michael Russo, Paul J. DiBartolo, and a joint written comment from State Senator Fred H. Madden, Assemblyman Paul Moriarty, and Assemblywoman Gabriella M. Mosquera. With the exception of the comment filed by Mr. DiBartolo, these comments supported the proposed otw. Mr. DiBartolo's negative comments were not directed to the otw facility, but rather expressed the opinion that he learned of the June 19th hearing after-the-fact, and felt that more advance notice for the hearing should have been given. Mr. Russo commented that there is a lot of local interest in the facility, and that the facility will offer an alternative to horse race fans in the area who currently travel to Philadelphia to wager. The Senate and Assembly representatives commented favorably, noting that the proposed otw will draw many people from South Jersey and the Philadelphia area, will create new jobs, will increase local property and sales tax revenues, and will enhance the competitive posture of New Jersey racetracks with other jurisdictions. Although one of these comments was received shortly after the advertised filing deadline for the receipt of such comment, as part of this motion, I propose that the Commission relax the filing deadline, and consider the comment. I believe that this enhances the public review process, and achieves a fundamentally fair result.

Let me now address the specific relief sought.

The Authority, through its application, has in my estimation, by clear and convincing evidence, demonstrated that it is qualified to receive the initial license in this case. The Authority has been issued four initial otw licenses in the past, and although it has previously conducted an otw operation itself, each of those four licensees is presently the subject of an approved assignment or transfer. In this case, the Authority proposes to assign or transfer the issued license to FROT. As I conclude that the Authority is well-qualified to receive the license, and as the Authority must pursuant to N.J.A.C. 13:74-2.1 receive the license before it can be further assigned or transferred, I move that the license be issued to the Authority.

Turning now to the qualifications of FROT to hold the off-track wagering license pursuant to N.J.S.A. 5:5-133b, N.J.A.C. 13:74-4.1, and other applicable law, I believe that FROT has demonstrated this by clear and convincing evidence. As required by our rules, the Commission conducted an investigation into the qualifications of FROT to receive the license from the Authority, which concluded that FROT is qualified to hold such license. Clearly, FROT and its employees are qualified in all aspects to hold the license, as contemplated by N.J.A.C. 13:74-2.1 and N.J.A.C. 13:74-5.8. This finding is, of course, supported by the fact that FROT already possesses an otw facility license, and has successfully operated the Toms River otw facility without noteworthy incident. In this case, I particularly note that FROT proposes that Penn National/Penn NJ perform certain defined functions in connection with the otw facility, under a related amended operating agreement. Since FROT is well-qualified and well-suited to operate an otw facility itself, it is certainly qualified to conduct oversight responsibilities with regard to such an appointee. Accordingly, and for each of these reasons, I propose through this motion that the Commission find FROT to be qualified to hold the off-track wagering license, subject to the conditions set forth in Schedules A and B.

I also conclude, and through this motion propose, that the application for the transfer or assignment of the otw license to FROT be approved, which will allow for the establishment of the otw facility in Gloucester Township. FROT has demonstrated, by clear and convincing evidence, that it is in compliance with the terms of the industry participation agreement related to off-track wagering, and further, that its parent, F.R. Park Racing, is in compliance with the minimum race date requirements of N.J.S.A. 5:5-156. FROT has shown to my satisfaction, again by clear and convincing evidence, that the proposed otw facility will constitute a first class establishment, which will comport with the Act and the Commission's rules in all respects. It has thus been demonstrated that the physical plan for the facility, its location, the space relationship between wagering and non-wagering related amenities, the internal control procedures for the facility, as well as the dining amenities for

the facility, all meet or exceed our regulatory requirements and standards. FROT has shown that the plan and specifications for the proposed facility, including its size, seating capacity, parking and services to be offered reflects appropriate standards of quality, and that the plan and specifications of the facility promote maximum comfort and safety for patrons and the efficient operation of the facility, as well as viewing of simulcast races by patrons in a comfortable manner, which is not obtrusive to the additional amenities offered. FROT has additionally demonstrated, again by clear and convincing evidence, that the establishment of the otw facility at its proposed location will not be inimical to the interests of another planned or established otw facility, or to a State racetrack, and is not in an area zoned residential. FROT has also shown, as a result of the amended operating agreement which calls for sufficient financing for the project to be provided by Penn National/Penn NJ, that the requirements of N.J.A.C. 13:74-2.1(h)1 have been met. Further, approval is consistent with the public interest, as an otw facility in Gloucester Township will enhance the local economy, create jobs, and provide a recreational opportunity to our citizenry. Approval is also consistent with the best interests of racing, as a second otw facility in the southern region of our state will foster our competitive position with the Commonwealth of Pennsylvania, and generate additional revenues which inure to the benefit of New Jersey racing. Since FROT in my estimation is well-qualified to hold the license, and has proposed a plan for a viable otw facility which will comport with the Act and our rules, I move that the Commission approve the transfer of the license from the Authority to FROT subject to compliance with the conditions set forth in Schedules A and B.

Last, let me now proceed to items B4 and B5 to the public agenda.

The proposed plan for this otw facility calls for Penn National/Penn NJ to exercise the broad responsibilities of designing, developing, constructing and financing, in addition to operating, the otw. To achieve this, the parties or their authorized related entities, entered into an initial operating agreement prior to our conduct of the public hearing. Based upon the terms of that initial operating agreement, viewed in context of the totality of the circumstances present, the Commission perceived that FROT would not thereunder maintain sufficient oversight responsibilities with regard to the proposed otw, and with regard to its underlying otw license. While we understood that Penn National, the parent of Penn NJ, is financing the project, and to protect its investment and the return in the project, desired to maintain virtually unfettered control and decision making over the proposed facility, we felt that the broad scope of the operating agreement, coupled with the lack of sufficient oversight to be maintained by FROT incident thereto, would approach the equivalent of an unintended, but nevertheless de facto assignment by FROT, of any issued otw license. FROT's bestowment of such a level of authorities on Penn National/Penn NJ, which go well beyond conducting or operating of the otw facility on its behalf, coupled with

the lack of any meaningful oversight responsibilities of FROT as the proposed license holder, in our estimation required change to the operating agreement for this transaction to pass regulatory muster. We therefore determined to leave the record open to allow FROT, in cooperation with Penn National/Penn NJ, opportunity to address our concerns. The hearing record was closed on August 27, 2013, consistent with our instructions to the Racing Commission Executive Director, following FROT's responsive filing of what is described by the parties as "Amendment No. 1 to the Operating Agreement."

Before I specifically address whether Penn National/Penn NJ is qualified to perform the functions subject to the amended operating agreement, let me first say that, when viewed in the context of our New Jersey rule structure, the labeling of this industry agreement as an "operating agreement" is a misnomer. This is because, by and through that agreement, FROT seeks to authorize Penn National/Penn NJ to perform duties, which while permissible, exceed the management services type relationship specifically contemplated by N.J.A.C. 13:74-4.2. This rule allows for Commission approval of the retention, by an otw licensee, of a person or entity to operate an otw facility on its behalf. The rule further allows such an operator to act on the otw licensees behalf, in its operation of an otw facility, to implement continuing Racing Commission approvals concerning the operational otw facility during the license year. Through the amended operating agreement, on behalf of FROT, Penn National/Penn NJ, in addition to conducting the operational aspect of the otw facility, is to be responsible for the design, development, construction and financing thereof. Although these functions exceed what is specifically contemplated by N.J.A.C. 13:74-4.2, an otw licensee may properly engage vendors and consultants in this regard, and there is no reason that Penn National/Penn NJ cannot assume such functions provided that : the Commission demonstrates that Penn National/Penn NJ is qualified to perform such functions; and provided that the underlying agreement between the parties, when viewed in the context of the totality of the circumstances present, does not result in FROT's unauthorized assignment of its Commission otw license to Penn National/Penn NJ.

I do believe that Penn National/Penn NJ is qualified to perform each of the responsibilities set forth in the operating agreement, and so move. Penn National, Penn NJ's parent, is not new to our State, as it has previously been found to be qualified to hold a 50% interest in Pennwood, which ultimately owns the Freehold Raceway and Toms River otw facility. Penn National is a financially sound publicly traded gaming entity, with interests in gaming properties in many states, and has successfully and directly developed and operated otw facilities in the Commonwealth of Pennsylvania. Further, in connection with the application now before us, Penn National was investigated by the Commission, and I conclude that, as supported by our investigative findings and the overall record, that the company has demonstrated, by clear and convincing evidence, that it and its employees are

qualified to perform each of the functions required through the amended operating agreement. Based upon the record, I further conclude that Penn NJ, which is a newly formed entity controlled by Penn National, is consequently also qualified to perform each of these functions. Accordingly, subject to the conditions set forth in Schedules A and B, I move that Penn National/Penn NJ be found to be qualified consistent with N.J.A.C. 13:74-4.2 to conduct and operate the otw facility on behalf of FROT, and to act as FROT's agent in all off-track wagering matters approved by the Commission. I further conclude that Penn National/Penn NJ is qualified to perform the additional functions set forth in the operating agreement, as I have described, including serving as a financial qualifier to the otw facility by virtue of its capital investment therein, and also propose such approval incident to this motion.

Based upon my review of the entire record, including the amended operating agreement, I believe that, subject to the imposition of the conditions in "Schedule B," the concerns presented by the original operating agreement have been satisfied. Although I thus advocate a conditional approval as to FROT's ability to enter into and proceed with the operating agreement as amended, certain cautions and caveats are warranted, and I therefore include them within this motion. First, FROT is to be the otw license holder, and neither FROT, Penn National, Penn NJ, Pennwood, Greenwood, or any affiliate, shall represent or create the impression that any entity or person, other than FROT, is the otw license holder. Further, under the circumstances here present, FROT must have the opportunity to review, as well to approve or disapprove, proposed decisions of significance relating to the otw facility, which include but are not limited to proposed significant decisions relating to the conduct and operation of the Gloucester otw facility. An otw license holder cannot delegate ultimate responsibility in such regard to another person or entity, and the need for this requirement is particularly crucial in a unique case as this, where an otw licensee seeks to vest very broad and far-reaching responsibilities in another. I propose this as a condition to any approval, notwithstanding anything in the amended operating agreement which may be interpreted to the contrary.

In terms of what I mean by decisions of significance, I will say that significant decisions certainly do, in addition to aspects of the actual operation of the otw facility, encompass aspects of the design, development, construction and financing of the otw, and I was pleased to see, in the amended operating agreement, that FROT has in fact approved the development plan for the proposed otw facility. While I offer this general guidance, as to the nuances of what constitutes "significant decisions", both Penn National and FROT are in the business of successfully building-out and operating otw's, and based upon the record before us, they each profess to be, and are in fact, experts at doing so. Each can therefore distinguish significant decisions from insignificant ones, each is familiar with our

rules, each understands that we require real and meaningful oversight, and of equal importance, each must understand one of our regulatory purposes here involved. That regulatory purpose is to insure that, should a potential conflict arise in the decision making related to the Gloucester otw, between what is in the best interests of Penn National/Penn N.J. as financier of the project or otherwise, and what is in the best interests of Pennwood/FROT as the otw license holder, that Pennwood/FROT has real and sufficient opportunity to insure that the responsibilities of Penn National/Penn NJ to it are met. From a regulatory perspective, and from this Commission's perspective, it is the obligation of Penn National/Penn NJ to act under the amended operating agreement in FROT's best interests, and it is FROT's responsibility as the otw license holder, to insure that Penn National/Penn NJ acts in its best interests and the best interests of New Jersey racing.

Let my fellow Commissioners take notice, as I do, that an operator approved and licensed by the Commission, pursuant to N.J.A.C. 13:74.4.2, works for the otw licensee, and this is regardless of whether or not monetary compensation is present. It would not only run afoul of the purposes behind the rule, but in my estimation legitimate business protocol, for an appointed operator to make decisions in furtherance of its own business interests or that of its parent, where those very decisions would be detrimental to the otw licensee's business interests, or the otw licensee's interest in preserving the privilege of otw licensure. This is not to say that I fear that Penn National/Penn NJ would purposely act contrary to Pennwood/FROT's best interest, and violate the regulatory responsibilities it has to FROT, which arise either from its appointment as an operator, or from the broader duties bestowed upon it under the operating agreement. In proposing the conditions set forth in "Schedule B" to my fellow Commissioners, the goal is to achieve the best environment to foster expected regulatory compliance with our rules, imposed conditions, the intent thereof, and to insure that the mechanism to achieve FROT's oversight responsibilities concerning the Gloucester otw facility, is clear, unequivocal and effective.

Accordingly, subject to the conditions set forth in Schedules A and B, I move that agenda item B5 also be approved.

In concluding these motions, let me add that, in advocating the conditional approval of each of the related agenda items, I considered as a positive factor the overwhelming public and local governmental support surrounding this application.

Finally, in the event my fellow Commissioners agree with these motions, I further move that the Commission authorize the Executive Director to prepare and issue a "Final Determination and Order," reflecting our decision, which shall then be presented for review and approval consideration to Acting Attorney General John J. Hoffman, consistent with the criteria set forth at N.J.A.C. 13:74-2.1(l).

This concludes Commissioner Keegan's motion. A roll call of the Commission indicated that all Commissioners voted yes to the motion. The Executive Director stated that a copy of this motion, along with Conditions A and B will be made available to the licensees following the meeting, and are appended to these minutes. The action taken by the Commission on this item will also be posted on the Commission's web site.

AGENDA ITEMS FOR DISCUSSION AND INFORMATION

The Executive Director acknowledge receipt of a letter from Mike Tanner, Executive Vice President, United States Trotting Association, regarding proposed model medication rules. The Executive Director indicated that this letter was widely circulated to the industry last month when the USTA took the position to reject the Association of Racing Commissioners International's proposed model medication rules, and withdraw its membership from the Racing Medication and Testing Consortium. Commissioner Abbatiello stated that the Harness Horsemen International and the S.B.O.A. of New Jersey also rejected the proposed medication rules.

In light of what is occurring on a national level in regard to medication rules, the Executive Director indicated that there has been an informal discussion among Commissioners that it may be worthwhile to re-establish a veterinary committee to obtain more insight into medication issues and to share information in a better and more convenient way, and to provide the Commission with guidance on certain matters. The Executive Director noted that this matter is not on the agenda for formal action, however, Commissioner Clyne would like to make some comments in regard to the veterinary committee. Commissioner Clyne stated that she is interested in being on the veterinary committee and asked that the matter be placed on the November agenda for approval. Executive Director Zanzuccki recommended that the committee contain members from each segment of the veterinary community to provide the broadest viewpoint on matters facing racing, as well as regulatory veterinarians on staff, along with Commissioners. Commissioner DePaola recommended Commissioner Clyne be appointed as chairperson of the veterinary committee.

Ellen Harvey, who indicated she is employed by the USTA, asked that the record reflect that Phil Langley, and not Mike Tanner, prepared the letter to the ARCI rejecting the proposed medication rules.

There being no further discussion or comments from the public, Commissioner DePaola moved that the meeting be adjourned subject to the provisions of the "Open Public Meeting Act." Commissioner Clyne seconded the motion and it was approved unanimously.

ATTEST:


