

NYS Gaming Commission - Public Meeting Transcript

March 25, 2024 1 p.m.

633 3rd Avenue, 37th Floor Board Room, New York, NY

Executive Director Robert Williams: N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are necessary to afford the Commission an ability to establish a quorum and undertake action.

This present meeting of the Commission is now called to order. This meeting is being conducted in New York City and we had video at one point in Schenectady, which is now gone out, but all the Commissioners that will be participating will be here in Manhattan today, so it doesn't affect any concerns relative to open meetings.

Ms. Secretary, please call the roll.

Kristen Buckley

Commissioner

- John Crotty
- Sylvia Hamer
- Peter Moschetti
- Brian O'Dwyer
- Marissa Shorenstein
- Jerry Skurnik

Chairman O'Dwyer: Minutes of the Commission meeting conducted on December 4, 2023 have been provided to the members in advance. At this time, I'd like to ask the members if there are any edits, corrections, or amendments. Ms. Secretary, please let the record reflect the minutes were accepted. Now I call on our Executive Director for his report.

Robert Williams: One of the most substantial projects being considered by the Commission regards the additional licensing process to consider and award the remaining commercial casino licenses authorized under the state constitution. I'd like to take my time today to discuss the process and the various requirements that must be navigated by the bidders.

The statute lays out two substantial checkpoints before the Gaming Facility Location board can consider an application: an applicant must have local zoning approval and approval of their local Community Advisory Committee. The statute sets forth no deadlines for when zoning and Community Advisory Committees approval must be obtained, but careful readers of the State Financial Plan or the Metropolitan Transit Authority capital Budget will note that licensing revenues are not booked until Calendar Year 2026.

Thus, the process remains ahead of schedule. As we have previously discussed at Commission meetings, the City of New York is in the process of considering a textual amendment to their zoning code, which would allow licensed commercial casino gambling as a permitted right by use by right. Functionally, the proposed zoning change would allow up to three gaming facilities in select commercial and manufacturing districts, with the facilities considered compliant with zoning if they have been licensed through the state process.

This process is long underway, having been formally commenced on November 27th of 2023. Procedurally, the City Planning Commission considered a Gaming Facility Text Amendment as Calendar Item Number 4 at their public meeting on March 20th, 2024, just last week and approved the proposal with amendments. Functionally, that means that the New York City Council has 65 days from March 20th to consider and vote on the amendment.

Even assuming an affirmative action by the City Council, not all potential bidders will be able to avail themselves of the text amendment. There are four known projects that require navigation of the New York City Uniform Land Use Review Procedure, which is more commonly referred to as ULURP. These projects have specific requirements that are not governed by the text amendment, such as mapping changes, grading, or revocable consent to construct over streets. While it is my understanding that each of these four are deep into various stages of the ULURP process, I've been informally advised that navigating the ULURP process will extend through the second quarter of 2025.

Accordingly, a substantive question staff have considered is how long should the Gaming Facility Location Board give applicants to obtain their zoning approvals, especially considering the length of the ULURP process. While there has been much written about the zoning and CAC requirements, there is third requirement that will implicate timelines that has not been widely discussed publicly, and that is the state Environmental Quality Review Act or SEQR process. Under the state law, most distressed discretionary land use actions are subject to the state Environmental Quality Review process.

With any proposed casino gaming development it is likely unlike or certainly unlikely that any proposed bid would be other than a Type 1 action requiring

SEQR. I believe that all parties considering making an application understand that they will be required to navigate an environmental review process.

Practically, the SEQR process is lengthy with the purpose to identify any potential adverse environmental effects of proposed actions, assess their significance and propose measures to eliminate or mitigate significant impacts. This SEQR process requirement ties neatly into the city ULURP processes. As I mentioned earlier, there are four projects navigating ULURP, which as a discretionary land use action considered by the City Planning Commission, requires the navigation of the city Environmental Quality review process. Under the law, when an agency proposes to directly undertake or approve a Type 1 action, it must conduct a coordinated review if more than one agency is involved. And I can confirm that we have been in frequent contact with the New York City Planning Department. Additionally, the Commission has been added as an involved agency in several other SEQR processes.

For the purposes of clarity, for those projects where the city of New York or a properly qualified local agency has not sought designation as a lead agency, the Commission will undertake that role.

So what does this mean for timelines?

At present the Request For Applications contains language that triggers an application filing within 30 days of the posting of Round Two Questions and Answers. Practically, it makes little sense to trigger the RFA filing as a substantial completion of the SEQR or ULURP processes are unlikely to conclude before the first quarter of 2025. And the environmental review processes for routinely see projects substantially amended or altered during the process. Additionally, each bidder has a continuing duty to update their application over time.

Any changes necessitated by environmental review would trigger an amendment. In fact, the establishment of an early RFA application filing would require continual update of all market-based responses and all financial answers will likely have to be modified over time. Time. This would pose an administrative nightmare as additional or subtracted pages from a large application would have to be carefully seeded or culled.

To give perspective, when the applications came due in 2014, we had discussions with building management to ensure our floors had appropriate weight capacity to accommodate the submitted materials. There were hundreds of thousands of pages of records. While we are mostly digital now, the integration and deletion of pages is even more challenging than with paper records because you have to integrate that digital record into existing digital records.

Additionally, at the time of application, applicants are required to make certain representations regarding the ability to fully fund a proposal. The encumbering of money while in advance of when a determination on licensing is made could substantially increase the cost of access to the capital markets, which could have an unintended impact of causing a reduction in the size and scope of a proposal. As substantial completion of the state seeker or city seeker processes are unlikely before the first quarter of calendar 2025 ends, coupled with city Planning's advisement that the four applications in ULURP are unlikely to begin to emerge until late in the first quarter of 2025, it seems a timeline.

Would be constructed that: uses 2024 to process environmental review, allows a reasonable time for New York City based applications to emerge from the ULRP process, which will benefit the state by ensuring a more fulsome, robust roster of applicants and envisions an establishment of Community Advisory Committees in mid-2025, all of which would find a convergence of the zoning approvals, CAC considerations and environmental review completion by late summer 2025, allowing for a gaming facility location board decision in late 2025. Resulting in a Commission license consideration before the end of 2025, achieving a license fee nearly one year prior to its booking by both the state and the MTA.

Of course, the Gaming Facility Location board is likely to meet in the couple next coming weeks to formally consider the timeline I laid out. Staff believes the timeline accommodates existing statutory requirements for SEQR and allows sufficient time for local zoning approvals, which will enable the best, most comprehensive plans for commercial casino development.

Lastly, today I want to as redevelopment of Belmont Park has been an item of substantial interest to Commission members, please be informed that the franchise Oversight Board has scheduled a meeting this upcoming Thursday to consider, among other things, approval of the Belmont Park renovation project SEQR for that project. And a loan and repayment agreement that would govern the project for those interested, the meeting will be webcast. It's a web address, is located on the franchise Oversight Board website and the meeting begins at 8:00 AM.

Chair O'Dwyer: Sir, thank you. Commissioners. Any questions? I have a couple. So, I as I understand it. The consideration of the timeline is because we are required to follow the legislative requirements as set forth in the statute. Is that correct?

Robert Williams: Yes, that is correct.

Chair O'Dwyer: So that absent those requirements, probably could have been done a little bit faster, but we're reading enough about that this is. Certain

complaints about the timeline. Had we not those had those legislative requirements, this could have been done a whole lot faster.

Robert Williams: Well, perhaps it could have been. If you look at the 2014 and 2015 processes, both of them didn't require a Community Advisory Committee and it required the zoning to be a little bit different than the ULURP process that we have here, so both of those were able to be navigated in a much shorter time frame than we're looking today, but those are existing statutory requirements and those have to be abided by as well.

Chair O'Dwyer: Thank you. N.Y.S. Racing, Pari-Mutuel Wagering and Breeding Law § 104.19 authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that regard, the Commission will from time-to-time promulgate rules and rule amendments pursuant to the State Administrative Procedure Act.

Today we have one rule for adoption consideration, and two rules for proposal consideration.

Mr. Williams will outline the first Item.

Robert Williams: For Commission consideration is the adoption of amendments to the lottery prize payment and subscription rules intended to improve the claims process and clarify practices and interpretations.

First, the amendments propose to change guaranteed "for life" payouts to a specific annual amount rather than being obligated to reconcile and adjust for a final year payment. This would reduce the administrative costs of oversight and should minimally increase the annual amount for a claimant. Staff also propose to limit the Lottery subscription program to individuals by eliminating provisions relating to subscriptions by groups. This will ensure that only New York residents can directly purchase a lottery ticket. It will not affect the claiming of a lottery prize by a group.

The proposed rules also make explicit that a subscription is void if payment for the ticket is rejected for non-sufficient funds and to reserve authority to suspend a subscription in the event of suspicious transactions.

The proposed amendments would also clarify responsibilities to ensure that all statutory offsets against either past-due support or public assistance benefits are satisfied by requiring prizes of \$600 or more to be presented directly to the Commission for payment, rather than allowing them to be paid at a licensed lottery sales agent location. Current regulations authorize lottery sales agents to pay prizes of \$600 or less while offset language requires lottery prizes of \$600 or more be

reviewed. Corresponding amendments to thresholds pertaining to lottery courier services are also proposed.

Finally, other amendments would codify existing practice of allowing a claimant to direct payment to a bank account, allow delivery of a prize by means other than the United States Postal Service, add a regulatory reference to the statutory offset for past-due State tax liabilities, and make technical stylistic edits to sections relating to prize payments and subscriptions, such as adding titles to subdivisions, improving word choices and using Department of State style conventions.

No comments were received.

Staff recommends that the Commission adopt this rulemaking.

Chair O'Dwyer: Commissioners, any questions on the adoption?

Commissioner Crotty: I notice your jackpot friends are the Courier services made it into the bill.

Robert Williams: Yeah, we're that's one of the requirements of what we're changing for the standard also affects the Courier services.

Commissioner Crotty: I want to reiterate my complete opposition to their existence and our regulation of them.

Chair O'Dwyer: So noted, may I have a motion to adopt this rule?

Commissioner Skurnik: So moved.

Commissioner Hamer: Second

Chair O'Dwyer: All in favor.

Aye, motion carries.

Robert Williams: For Commission consideration, as a proposed consensus rulemaking to update our address from 1 Broadway Center and selecting. To 354 Broadway in Schenectady, our address appears in 15 different sections of rules. Additionally, staff proposes elimination of an unnecessary subdivision and lottery rule. 5000.4 staff recommends that the Commission authorize the proposal of this consensus rulemaking.

Yeah. I apologize for the narrative. I don't seem to have a narrative here, but let me at least try to wing it. So for Commission consideration as a proposed change to the

existing harness whipping rules. The idea is to try to clarify some of the operation of the rules by making it more consistent both in their application combining the whipping rule along with kicking and taking your foot out of a stirrup and setting forth a penalty schedule that is consistent and without discretion. So that whipping rules, whipping and kicking penalties would be a penalty of seven days, while others will have a progressive increase in the number of days and the number of the amount of different fines that are imposed relative to it. This is something that came to our attention and some discussions that I've had with Commissioner Peter Moschetti and Commissioner Chairman Brian O'Dwyer, relative to the number and frequency of certain violations that we've seen relative to that.

Chair O'Dwyer: Let me ask that this be put over till the next meeting. Commissioner Moschetti isn't here and I also. Frankly there are discussions that I need on the proposed staff I think they are inadequate. We need to have a fuller discussion on this.

Robert Williams: For anyone who's interested in seeing at least what the staff had proposed, it's in. Our public meeting. Book. So that's something that's up online that anyone can take a look at, and if they have any questions, concerns, etcetera, that gives us another month at least to prepare address and resolve any of those concerns.

Chair O'Dwyer: Yeah. Yeah. And I would like to, you know, these are obviously these are rules that affect the industry and if I'm certainly willing and anxious to hear from the industry and for everyone who might be affected, it's their to their. As to their viewpoints on this.

Robert Williams: If you would like, I can reach out to the Standardbred Owners Association, whose chief is the president of the United States Trotting Association. And get his opinions. What we've tried to do with a substantial amount of the rule is follow the USDA. Model rule and and try to have some conformity relative to that, but our penalty structure is different than what the USDA proposed.

Chair O'Dwyer: Yeah, I think every anybody who would like to discuss this is it's an important rule. It's a, it's a deviation from what we've done for many years and it bears a lot of discussion. So by the next meeting. I think we'll have put that offer and ask for other people's opinions as well.

The next item of scheduled business regards adjudications. Today, we have six matters for adjudication. Mr. Williams?

Robert Williams: On June 26, 2023, the Bureau of Licensing issued a Notice of License Suspension to Asim Convenience Corp. at 1404 96th Street in Brooklyn. The notice informed Asim of a license revocation for failure to pay a tax or engaging in conduct that constitutes a fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the state lottery. Specifically, the licensee was found to be in possession of untaxed cigarettes. A hearing was conducted on October 10, 2023 and

December 19, 2023, and the Hearing Officer issued a report on March 1, 2024, recommending that the license be suspended as set forth in the Notice of License Suspension.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations.

Robert Williams: On April 20, 2023, the State Steward at NYRA issued violation notices to Norman C. Follett and Alexander Kazdan, fining each \$2,000 for transferring the claimed horse Microscope to a different trainer prior to 30 days from the date of the claim, in violation of Commission Rule 4038.4. Such Rule provides, in relevant part,

"If a horse is claimed the horse shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date of the claim."

Each of Follett and Kazdan requested a hearing. The matters were consolidated, resulting in a hearing being conducted on July 26, 2023 and September 28, 2023. The Hearing Officer issued a report dated January 18, 2024, recommending that the Commission find no violation by either and impose no penalties against either.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations.

Robert Williams: On April 20, 2023, the State Steward at NYRA issued a violation notice to Thomas S. Lamarca Jr., fining him \$2,000 for transferring the claimed horse Irish Honor to a different trainer prior to 30 days from the date of the claim, in violation of Commission Rule 4038.4. That Rule provides, in relevant part,

"If a horse is claimed the horse shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date of the claim."

Lamarca requested a hearing, which was conducted on October 12, 2023. The Hearing Officer issued a report dated January 18, 2024, recommending that the Commission find no violation and impose no penalties.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations.

Robert Williams: On June 11, 2023, the State Steward at NYRA issued a violation notice to Thoroughbred trainer Todd Pletcher, suspending him for 14 days and fining him \$2,000 for an overage of the nonsteroidal anti-inflammatory drug phenylbutazone in the horse Capensis, which was found in the horse after the 10th race at Saratoga Racecourse on July 30, 2022, in violation of Commission Rules 4043.3(a)(26) and 4043.4.

Pletcher requested a hearing, which was conducted on November 9, 2023.

The Hearing Officer issued a report dated January 31, 2024, recommending that the penalties be imposed as had been determined by the State Steward and that the horse be disqualified from the race and any share of the purse from such race.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations.

I note that this penalty is enhanced, as this phenylbutazone overage occurred within one year of Mr. Pletcher's meloxicam positive, which adjudication was finalized on December 4, 2023.

Robert Williams: The State Steward at NYRA imposed a 14-day suspension on then-apprentice jockey Jaime A. Torres for careless riding of the horse Wondergirl in the 2nd race at Belmont Park on July 3, 2023, in violation of Commission Rule 4035.2(d).

Torres requested a hearing, which was conducted on July 28, 2023, August 25, 2023 and September 22, 2023. The Hearing Officer issued a report dated February 12, 2024, recommending a finding of a violation and a 14-day suspension as the penalty.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations.

Robert Williams: On November 15, 2023, the Bureau of Licensing issued a Notice of License Revocation to 7721 SM Deli & Grocery, Inc. at 4902 Church Avenue in Brooklyn. The notice informed 7721 SM of a license revocation for engaging in conduct that constitutes a fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the state lottery. The notice also stated that the action was taken because the owner of record had been arrested and charged with Possession of a gambling device, in this case a slot machine.

7721 SM requested a hearing, which was conducted on January 10, 2024. The Hearing Officer issued a report on February 14, 2024, recommending that 7721 SM's license be revoked.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations.

As all of you have heard, I have previously raised concerns regarding Thoroughbred trainer Stephen Asmussen and the stables' action regarding his employees. Specifically, late last year, we heard that his stables had entered into a consent finding an order in the US Department of Labor proceeding, which ordered his stable to pay over \$200,000 in unpaid workers reimbursements, and civil penalties. To gain a bit of insight into this action I urged our staff to exchange correspondence with Mr. Asmussen's attorney who provided a vigorous defensive explanation. Recently, however the Commission was informed that Mister Asmussen's racing stable had been adjudicated liable by a federal District Court in Kentucky for wage and hour violations totaling more than \$480,000 in actual and liquidated damages. The most concerning part of this judge's finding was that that basically shortchanging of his workers was willful on the part of Mr. Asmussen. Because of that, I have informed the general counsel of this we have referred that for his determination and to take whatever actions they deem appropriate. He will be coming back to this Commission with his report and his determination or his recommendation this Commission as to what actions, if any, we would take.

I must say that over the course of the years we have as a Commission been very, very concerned, as we should be, about trainers and how they deal with their equine athletes or horses. I think we should be equally concerned with and are as the trainers and the and training stables as to how they treat their employees. And this is a situation that we take very, very seriously. And we look to whatever adjudications that are appropriate in the future once we get the general counsel's report.

I want to commend a couple of people. One I want to commend Commissioner Skurnick for going out and doing his work in terms of explaining the process that we're going through in terms of the casino licensing, I've listened to him. He was able to take a very complicated process and with his inevitable good, good grace and style, break it down and make it to understandable to all that were there and it was. It's important that that the public have some confidence in this and I want to thank Commissioner Skurnik for his work on that. It's very, very important.

I want to also commend our staff for again the work that they're doing on the casinos, which is really difficult and has been taking up a lot of their time,

particularly our Executive Director as we well know, working on other matters for the governor and the state of New York. And it has been not easy.

Finally, I want to note that in terms of the Lotto. that the Mega Millions jackpot is \$1.1 billion tonight. And nobody on the Commission was able to buy a lottery ticket, so the Commissioner Hamer this job is just cost you a billion dollars. The Powerball is \$800 million but as we will talk about it later on sales for the jackpots that in this particular run up for the Mega Millions has put in \$40 million into New York State public schools, Powerball, \$32 Million for New York State public schools, that would otherwise would not happen and the jackpot. sales for the small businesses that sell our tickets \$7,000,000 on Mega Millions, 5.4 and Powerball. Shots from the arms for many of these businesses. So, you know, congratulations to all on that.

Unless there's any other business coming before the Commission, I'll take a motion to adjourn. So moved, thank you.

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