VIRGINIA RACING COMMISSION

October 21st, 2009

10700 Horsemen’s Road

New Kent, VA 23124

Commencing at 9:36 a.m.

COMMISSION MEMBERS:
Peter C. Burnett, Chairman
Mark T. Brown
David C. Reynolds
Clinton Miller

COMMISSION STAFF:
Victor I. Harrison, Executive Secretary
David S. Lermond, Jr., Deputy Executive Secretary
Kimberly M. Carter, Office Administrator

ATTORNEY GENERAL'S OFFICE:
Amy K. Dilworth
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MR. BURNETT: Good morning. We'll open our regular meeting for the month of October.

The first item on our agenda is the approval of the minutes from our September meeting. I would comment that they appear to be the shortest set of minutes I've ever seen in the Racing Commission.

Did you all have a chance to look at them to see if there's a page or two missing or what's going on?

MR. BROWN: I move to approve.

MR. BURNETT: It's been moved to approve. Do we have a second?

MR. REYNOLDS: Second.

MR. BURNETT: It's been moved and seconded. All in favor indicate by saying aye.

         Note: (Aye.)

         MR. BURNETT: Motion carries unanimously.

The record should reflect that we are now four commissioners. Mr. Ferguson submitted a letter of resignation shortly after our last meeting, and therefore, until the governor fills the fifth slot, we will be a commission of four.

The next item of business is commissioners comments. Gentlemen, any comments?
MR. BROWN: I've got something I want to take care of. It's a little off the agenda.

MR. BURNETT: Well, it's a good time to do it.

MR. BROWN: This is under the Breeders Cup for Standardbred Subcommittee. I just want to make a statement. Based on the recommendations of the Breeders Fund Standardbred Subcommittee, I move that the Commission approve the following expenditures from the standardbred purse into the Virginia Breeders Fund for calendar year 2009.

Number one, $50,000 to the VHHA for the administration of the standardbred portion of the Breeders Fund. Number two, $150,000 to partially fund the VA-bred stakes races to be held at Colonial Downs November 7th, and approximately $14,000 per year in breeders awards, which is consistent with last year's total for these awards.

Now, the one thing I would like to point out is --

MR. BURNETT: What was that last number?

MR. BROWN: 14,000.

MR. BURNETT: Thank you.

MR. BROWN: I'm sorry.

The one thing I would like to point out is last year we had approved a higher number for the
stakes itself, but with the economic things the way they are, some of the monies just aren't available to bring that number up to 240 like we had, but we still are going to have to be racing at the same numbers, the VHHA is going to put the money in there to make up the difference. So I'd move that we approve this. Any questions?

MR. BURNETT: I don't claim to be a parliamentarian, but I'm wondering whether we need to go through any motion to add that item to our agenda since there is some formality to that expenditure, put it on the agenda to be heard without objection, hear your motion. How about a friendly amendment to your motion that it be included -- that it be added to the agenda --

MR. BROWN: That will work.

MR. BURNETT: -- for the purpose of being heard today? Do we have a second?

MR. REYNOLDS: Second.

MR. BURNETT: It's been moved and seconded that this matter, the expenditure from the Virginia Harness Horsemen Association Breeders Fund be put on the agenda today for consideration and that $214,000 be approved from that fund for the purposes set forth by Mr. Brown. Is there any further discussion
about it now?

I do have a question.

MR. BROWN: Sure.

MR. BURNETT: Is the money on hand presently?

Is it available?

MR. BROWN: Yes, it is. Correct.

MR. BURNETT: In prior years, we've approved about $240,000 for these same purposes?

MR. HARRISON: Last year we did, right?

MR. LERMOND: That's correct.

MR. BURNETT: Any other questions or comment?

MR. HARRISON: Well, yeah. I kind of want to apologize for not including a document in with your folder for this.

MR. BURNETT: It's all right. We're getting it done.

MR. HARRISON: It came on the agenda, then we took off, and it stayed off there.

MR. BURNETT: Are we ready to vote on it? All in favor indicate by saying aye.

Note: (Aye.)

MR. BURNETT: Motion carries unanimously.

Thank you.

The only comment I wanted to make was how shocked I was by the recent foal report of the
Jockey Club. They characterized it as a corrected
foal report. I hadn't seen the one that was wrong,
and I don't know if it had anything to do with
Virginia, but if memory serves me, they reported
that Virginia had something in the nature of
120-some mares bred and 52 live foals reported in
Virginia, which is, I think, down from something
like a thousand foals 25 years ago.

It's a pretty sad statement of where we are.
It's a national problem, but if you carry those
numbers forward, you're probably looking at 25
Virginia-breds getting to the races, and perhaps 12,
14, or 15 horses actually breaking their maiden and
winning, and then out of that bunch maybe one or two
allowance horses, and if you're lucky, one stakes
horse. That's where the statistics are going to
carry you, I think.

I wondered whether -- I'll just make this
observation, whether it makes sense for us with
Glenn's help to start looking at the number of foals
that are, for lack of a better term, nurtured in
Virginia. I think a lot of our friends in the
legislature and elsewhere could draw the conclusion
that what we're doing isn't much worth it for 25
horses making it to the races, but I suspect there's
many times that number of horses that are foaled elsewhere and brought back to Virginia. I think Mr. Evans is a good example of that. He breeds 55 to 75 foals a year. I think the majority of them hit the ground in another state and are brought back here to be raised.

So most of the economic benefit of raising those horses is in Virginia. It might make some sense for us to be talking about a number of young horses or foals that are raised before they move on to their careers here in Virginia, give it a little bit more oomph for what we do, for what that's worth. Anyway, that's my comment.

Any other comment?

Not hearing any, we'll move on to the executive secretary's report. Mr. Lermond?

MR. LERMOND: Good morning, Mr. Chairman, fellow commissioners.

MR. BURNETT: Good morning.

MR. LERMOND: I'm going to ask you to recall the March meeting of 2009, and also if you can turn to Tab 2 of your notebooks.

During that meeting, the Commission voted to adopt amendments to Chapter 60, particularly the fee schedule, into the notice of intended regulatory
action stage of the regulatory process. This is basically the very first step of the normal regulatory process in Virginia.

Since that time, the regulatory wheels have slowly turned and they've been -- the action has been reviewed by DPB, the Secretary of Commerce & Trade, and also the governor's office. Once the governor's office reviewed it, then we were able to publish it in the Virginia Register, which was published on August 17th, and that started a 30-day public comment period which ended on September 18th during which time no comments were received.

Today what I would like to do is, one, have you approve these -- this action to the next stage, which is the proposed stage, and in doing so we wanted to make one minor change and that is to include grooms and hot walkers in with the group of people that would pay $25 as opposed to 50.

People among the staff, two of my fellow stewards, in fact, commented that they thought that $50 for a groom or hot walker might be a little excessive. I think in Maryland there's a lesser charge for them as opposed to owners and jockeys, and all of us on the staff talked it over and we just thought that we'd like to make that one
amendment to the original action just to kind of
take care of those people a little bit if we could.

MR. BURNETT: Can you give us some sense of
what the overall economic impact is of reducing
that -- what would have been 50 to 25, how many
grooms and hot walkers do we license every year?

MR. LERMOND: In calendar year 2008, there
were 432 grooms and hot walkers that were licensed
or renewed, and that's out of a total of 4,800
licenses issued and renewed.

MR. BURNETT: So --

MR. LERMOND: Roughly 10%.

MR. BURNETT: So if my math is right, a little
better than $22,000 at 50 bucks would be generated
from the 432 and by cutting it in half, it would
knock it down. So it's a reduction in what you
would otherwise collect of about 10 or $11,000. Is
that fair?

MR. LERMOND: That's correct.

MR. REYNOLDS: What was it before?

MR. LERMOND: It's been $10.

MR. BURNETT: So instead of increasing from
$4,320 revenue on that particular item, from that to
22,000, you want to increase it to about 10 or
11,000. Is that fair?
MR. LERMOND: That's a fair statement.

MR. BURNETT: When is the last time there was any increase? There's never been an increase.

MR. LERMOND: There has never been an increase since pari-mutuel wagering started in Virginia.

MR. BURNETT: So it started in 1998 at the price that it's at right now?

MR. HARRISON: I think we issued our first license in 1996.

MR. BURNETT: Ninety-six.

MR. BROWN: Mr. Chairman?

MR. BURNETT: Yes, sir.

MR. BROWN: What is -- what are the going rates in Maryland, New Jersey, Pennsylvania? I mean, is that -- are we in line? Are we still much lower or --

MR. LERMOND: This will bring us in line with those surrounding states. Generally, it's $50 a year. Kentucky is a hundred. Maryland has -- I'm not sure about grooms. This is the schedule I have for the owners, trainers, drivers.

MR. BURNETT: Any other questions of Mr. Lermond?

I have one. I recall in March that there were substantially more regs that were put in front of
us, and what you brought back to us today under Tab 2 is the only item that you're suggesting be changed from what was presented to us in March.

MR. LERMOND: That's correct. The only thing that's not here today is the big chart of schedule -- of fees, which was how the old regs were worded, where you actually went to a chart and it would say night watchman, hot walker. So rather than have that big chart, we just thought we'd put it into verbiage.

MR. BURNETT: Okay. All right. Any further discussion on this item?

MR. BROWN: No, sir. Everything is in line.

MR. BURNETT: Do we have a motion to approve?

MR. REYNOLDS: So move.

MR. BURNETT: Chair seconds. Any further discussion?

All right. All in favor indicate by saying aye.

Note: (Aye.)

MR. BURNETT: Motion carries unanimously.

Anything further on this issue, Mr. Lermond?

MR. LERMOND: No, sir. Thank you.

MR. BURNETT: Thank you.

MR. WEINBERG: Just a point of clarification.
The next step is for the Commission to schedule hearings on these regulations?

    MR. BURNETT: I think so, but I'll defer to Mr. Lermond who has been carrying that water for us.

    MR. LERMOND: I don't think we're required to have a hearing, but being at the proposed stage, there's still one more chance that we can change anything further before it goes to the final stage, along with the 60-day public comment period, and it will go through the same folks that looked at it the first time as well.

    MR. WEINBERG: Okay.

    MR. BURNETT: Is there any preference that there be a -- or request to having a hearing? There may be some benefit to that.

    MR. WEINBERG: Well, that's -- maybe I'm preempting myself. Maybe I should talk to staff first, but at the time these were proposed we expressed some concern that they looked to expand the universe of those subject to permit, which I understand is not the intent. I just think there is a better -- more consistent way this opening paragraph could be phrased to refer to the other aspects of the regulation that identifies specifically who needs a permit.
This opening paragraph could be read to increase the number of people who need permits, because each person connected with a racetrack, directly employed doesn't necessarily match up to who is identified in the regulations that requires a permit.

MR. BURNETT: I'm recalling the discussion of wanting to shrink the universe as opposed to expand it.

MR. WEINBERG: I'm just looking to maintain the status quo, which I think is the intent.

MR. BURNETT: Right. There was some discussion about whether or not we need to be licensing restaurant workers. Is there anything about our -- from a process standpoint that if we bring this back to a hearing, changes are offered that we think are meritorious and we vote to make those changes, does the process start all over again? How does the -- our desire to change something affect the time line with respect to getting them all approved?

MR. LERMOND: We can certainly change -- we have one more chance to change it, and that's when it goes from the proposed stage to the final stage. So as long as the changes aren't huge, there
wouldn't be a problem. I would suggest we can get
the rules committee together possibly to discuss
this and maybe a couple other things that we had on
the back burner and get this squared away and make
whatever changes we need to and submit it as final.

The problem is I just want to get this going
and continuing in the process, because there's a
fear that if it's not so far along in the process
when a new governor comes on, then you would run the
risk of having to go back to the proposed stage. So
I just would like to keep it rolling, but there's
still plenty -- there's still an opportunity to
change this if we need to.

MR. BURNETT: Commissioner Miller?

MR. MILLER: Well, I was going to say that
part of the purpose for the public comment period is
for the very thing Jim pointed out. Everyone makes
their comments for the proposed rules and
regulations. They suggest the need for the hearing,
further discussion, et cetera, et cetera, before we
reach the point of saying this is the final
regulation. So we're going through the process.

MR. WEINBERG: Right. I just wanted to make
sure we were all clear that we have sort of one more
bite before we make --
MR. MILLER: We could change it 180 degrees before it comes up as a final regulation.

MR. BURNETT: I guess my question was whether that starts -- in essence, starts the process again by going back to the governor's office to look at what we suggest are the changes, et cetera, et cetera.

MR. LERMOND: They will look at the changes in the final stage. The same parties will look at it one more time.

MR. BURNETT: Okay. Good.

MR. LERMOND: I agree with Mr. Miller. Had we had some comments during that comment period that may have -- you know, we would have then considered a meeting or, you know, something of that nature. Again, I think the rules committee could look at this.

MR. BURNETT: Well, let's plan on moving it along expeditiously for the reasons you say and providing another opportunity for comment in a public hearing, so we can put our final approval on it as quickly as possible.

Great. Thank you.

Anything else on that subject? Mr. Harrison?

MR. HARRISON: We took a serious look at
the -- some of the security and controls in the paddock area on race day. We did a walk through, and we met with Pat Kelleher. I was wondering if Pat and/or Joe could speak to some of the changes that we made recently.

MR. RONEY: Mr. Chairman, we went and discussed the changes in the paddock along with Dr. Harden last week, and we felt that there was too much access to the paddock, and it was getting a little out of control. This is something we've talked about doing for a couple years now.

So we finally got together. We took the bull by the horns, and we went over and did a walk through of the paddock and did some rearranging with the entrance of the horses coming down the path. They now enter through the lower half of the paddock, and that's the only way they can enter.

In addition to that, we started to screen their badge. We instituted that. We're not making them carry their badges right now. We're just trying to get them use to it. When they come into the paddock, they're going to get scanned. So we scan their badges. We have a time they come in. Obviously, we can't scan them when they go out because there's too many entrances to go out of.
So the horsemen are happy about it, the way they're coming into the paddock. There's less confusion. There's less traffic. There's just some grumbling about scanning the passes, and why I have to wear my badge. So we're trying to get them instituted to do that. So that seems to be working really, really well. So between Colonial Downs and the Commission, I feel more comfortable and so does Doc Harden about the security and the access to the paddock.

MR. BURNETT: Great.

Any comment further, Pat?

MR. KELLEHER: As Joe said, we all met and got together and I think we were able to -- there's still some other things that we are planning on changing. We can't make a great big change with two weeks, you know, two and a half weeks left in the meet, but right after this we'll again revisit some of the things that we've discussed, and there are some other issues that we need to work on together that we're going to continue to work toward, the security of the gates and everything else, to try to make sure we sure everything up.

MR. BURNETT: Great.

MR. HARRISON: We appreciate you working
towards a common goal. It's a good feeling. We have the same interest at heart here.

MR. BURNETT: It's nice that despite a minor inconvenience that the horsemen are supportive of it. It sounds like it's a more orderly arrangement, and it just helps everybody to do what they need to do to make things go smoothly.

MR. HARRISON: Right. There was a safety issue. There was some jogging of horses going on on the path leading on the other side of the paddock/receiving barn that goes out to the racetrack. So this puts an end to that, too, and also there was a slight window there where some -- a horse that had already been in the paddock could actually make its way back to his own stall, and then come back to the paddock. So that door has been closed completely now.

MR. BURNETT: Good.

MR. HARRISON: Happy about that.

MR. BURNETT: Good.

All right. Anything further from the executive secretary's report?

MR. HARRISON: No, sir.

MR. BURNETT: Stakeholders, Colonial Downs and their update from the 2009 meet.
MR. STEWART: I'll give you sort of a brief update on how the harness meet is moving along. We've completed 25 days through yesterday. If you look at the attendance, and it's a little misleading because the last two years we had the New Kent County Fair in there, but if we were to normalize it, take out the fair, we're averaging 356 people. A year ago, we were averaging 344 people. So I guess we're up people.

The handle, betting at the track on the live product is down about 11 percent, if you sort of do the same normalization, taking out the effect of the fair.

The signal sales are down about 30 percent. There's probably two things going on there. TrackNet continues to boycott our product. I don't think that's the major reason why that number is down. I think it's more reflective of the overall economic situation.

MR. BURNETT: I don't know if this is the time to ask it or not, but we had a discussion at the last meeting, and you weren't here, Ian, about Lasix administration, and I understood there was going to be -- there was a regular weekly meeting between the horsemen and stewards and other vets.
Mr. Chalk, will you give us an update?

MR. CHALK: We did have a meeting, and it's pretty near the same for the rest of this year, but we made arrangements for the party that was having trouble getting their horse up there, that the vet goes to their barn to ensure that their horse gets Lasix in a timely manner.

The thing that we're really up against is we can't just say this year we got four vets, so we can let all the vets go to each barn because if those vets don't come back next year and we make the lady that does the Lasix for us mad and she doesn't come back, then we're left in the cold next year.

So what we've done for next year is we -- through Mr. Harrison and everything, we've asked the racing secretary when they unlock stalls next year, to leave three stalls where the -- at the end of the barn there, barn one, so that they have them to put those horses in until they get their Lasix, and the vet will be right there for everybody to get their Lasix. If there's anybody that needs re-accommodating, we'll try to please them that way.

MR. BURNETT: It sounds like --

MR. CHALK: I apologize for not giving you that information before the meeting.
MR. BURNETT: No. That's great. That was a jointly worked out --

MR. CHALK: Yes.

MR. BURNETT: -- arrangement, and everybody is seemingly satisfied with it?

MR. CHALK: Of course, you have some people, the lady who wrote the letter, she may not be pleased yet, but you can't accommodate everybody.

MR. BURNETT: The operative word is yet. You'll get there.

Anything further on the update with Colonial Downs harness meet?

MR. STEWART: No, not with the harness meet.

MR. BURNETT: Any additional business from Colonial Downs?

MR. STEWART: Well, I do have a couple comments to make.

MR. BURNETT: Good.

MR. STEWART: I'd like to spend a couple minutes this morning talking about the state of racing in Virginia.

Racing in Virginia is dependent upon pari-mutuel wagering that provides money for the races. There may be other models out there to provide this money such as sponsorships or sportsmen
putting up the money, but until those models are
adopted, pari-mutuel racing is basically what we
have, and the state of Virginia racing is,
therefore, tied to the state of pari-mutuel wagering
in Virginia.

Unfortunately for Virginia, the vast majority
of that pari-mutuel wagering takes place on races
run outside of Virginia. As you know, the track
must pay a royalty to the track that we take the
wagers on. This is called a host fee or a signal
fee. Colonial Downs pays these fees without any
contribution from the horsemen. This is an
extremely significant expense for Colonial Downs.
The total signal fees paid by Colonial Downs was
just shy of five million dollars in 2008.

To put this in even more perspective, a one
percent increase in this fee from say three percent
to four percent will cost Colonial Downs one and a
half million dollars. It will put us in the
negative in that situation.

Now, a significant portion of our handle comes
from the TrackNet affiliated tracks. I believe
you're familiar with TrackNet as it is the very same
organization that I've discussed extensively in
conjunction with account wagering.
One of TrackNet's other functions is to negotiate the signal fees that we will pay in our OTBs. They negotiate with Colonial Downs through our membership in the Mid-Atlantic Cooperative. The Mid-Atlantic Cooperative is a fine cooperative of Mid-Atlantic tracks in Maryland, Delaware, Pennsylvania, and New Jersey, which was formed a couple years ago to provide a counterbalance to the market power of the large exporting tracks, and so far it's been fairly successful. Quite frankly, if it had not been for our membership in the Mid-Atlantic Cooperative, we would have probably been out of business already.

Without discussing the specifics, I can tell you this morning that TrackNet's proposal to the Mid-Atlantic Cooperative calls for significant increases in signal fees. These increased costs will have significant financial costs to the track.

Now, this comes at a time when our OTB handles are shrinking at an alarming rate. The first 19 days of October show among other things, Vinton's handle is down 41 percent; Alberta's handle is down 36 percent; Martinsville's handle is down 31 percent; Scott County is down 38 percent. The Richmond area handle is down significantly as well.
Broad Street is down 15, and Hull Street is down nine. And for the year, for example, Broad Street is down over 20 percent, Hull Street is down over 14 percent. The really scary thing to me is no one really knows what the bottom is.

It's clear what TrackNet has in mind. They intend to extract the maximum possible from Virginia through whatever means necessary. This is not new. Their actions and tactics follow a predictable pattern. They're only willing to negotiate from a position of overwhelming strength. Their strategy is to take customers out of our OTBs, make them account wagering customers, pay us a minimal return on that ADW handle that does not even approach their fair share of the cost of live racing. Live racing is what allows them to operate in Virginia. While at the same time eroding our margins in the OTBs through ever increasing host fees. They're willing to engage in whatever tactics are necessary including boycotting our live product in order to force an agreement to their advantage.

I've pretty much pointed out over the years how vulnerable Virginia racing is to the potential actions of the exporting states since Virginia is fueled by importing simulcasting. Now, it's
wonderful to envision a national solution to this basic import/export divergence of interest among the states, the racetracks, and the horsemen. However, really, that's a luxury we no longer have. Steps need to be taken now to protect our industry.

ADW providers in this state must bear their fair share of the cost of live racing. Colonial Downs cannot bear this cost alone because it happens to have an OTB pari-mutuel wagering model instead of an ADW pari-mutuel wagering business model. The ADW companies cannot be allowed to take an inexpensive ride on our racetrack out there. Oligopolies such as TrackNet cannot be allowed to simply impose a cost structure on our OTB network where, once again, Colonial Downs bears the full burden.

Finally, we must look at live racing realistically. State after state and track after track are reducing dates and cutting purses. They are simply responding to the economic conditions of the state of the industry. We must do the same in order to survive. When we look at the thoroughbred purse money likely to be available for 2010 and spread that over 40 days, we really will no longer be able to kid ourselves that we're offering a high quality thoroughbred program.
If you've spent any time here during the harness meet and looked at the numbers, you know we've kind of reached a point where we can't really go on like this. The truth is the pie is shrinking, and unfortunately, everybody is not going to be able to keep their same size share.

MR. BURNETT: If I might comment. I'm not going to accuse you of stating the obvious because it's a lot of detail to this, but I think in the general scheme of things, it's consistent with my earlier comments about foal production and where we're being carried nationally and in some ways in a more extreme sense here in Virginia.

There's no disputing the pie is shrinking. There's no disputing that everybody is going to take a hair cut at one level or another, and I think you would agree that it pushes us back into the very position that we've been trying to get out of; that is, fighting over who gets what size piece of pie and with the pie even smaller, that makes it even more difficult.

I infer from what you say that you may have some regulatory or statutory solution to this export/import dilemma, which I think that we've seen coming for a long time. It's a very difficult
problem, and we're not the only state this way, but
the importing states who sell primarily a simulcast
product are in many ways at the mercy of the
exporting states, and the horsemen end up in two
worlds where they promote the notion that there
ought to be a higher host fee for the sale of their
product.

That may be very helpful to horsemen and purse
structures and even tracks themselves in the
exporting states, but then it comes around and bites
their fellow horsemen in the importing states, and
the best I've ever been able to come up with as any
kind of solution is that there be some type of
formula that, of course, would require some level of
uniformity nationally that would recognize a number
of days that folks are importing and the number of
days that folks are exporting in any given state and
that there be some divvying up of rate or the pie or
however, that that would work.

I am not so naive as to believe that that's
going to be happening any time soon even with the
effort to start a national compact, particularly
when the leaders of that effort are blighted, we'll
have a compact as long as they don't have to change
their ways.
So I don't want to prattle on about it, but I would like to hear any further thoughts you have on the solution side of life here as to what, if anything, there is that this body or our legislature or anybody else for that matter can do to help this difficult problem.

MR. STEWART: Well, I think, you know, solutions are always challenging. We've talked about ADW. That's one of the reasons we have 10 percent lost there. That only addresses part of the problem. The other problem is, as you point out, you have the exporting states and the importing states. The exporting states want more, which leaves the importing states with less. It's the issue as to which is more important, the manufacturer of the product or the market for the product. We happen to be the market.

So from our standpoint, we have to stand up for ourself and say we cannot afford to continue to -- I don't know quite the right word is, but money cannot all float back to the exporting states. Otherwise, there won't be any here any racing here in Virginia.

MR. WEINBERG: I mean, one way to put some specificity on that, a number of states have caps on
host fees. If you look at how we specify who gets what in our statutory scheme, we leave that component out of the equation.

One could question, well, why do that? You just heard that it costs the racetrack five million dollars a year, which is about half of the purse account, it seems like a significant number. Maybe it should be part of the formula.

MR. STEWART: I mean, I'm a believer in expanding the pie. That's why we've invested in the EZ Horseplay platform, the kiosks. I think that is the ultimate solution, but until we get to the solution, we have to survive the experience.

MR. BURNETT: It's an interesting dichotomy or adjusted position of on the one hand wanting as much freedom from regulation to be able to, you know, be flexible and do what you want to do, et cetera, et cetera, and negotiate your best deals and all the things that a free market enterprise brings, and on the other hand, needing some level of protectionism, if you want to call it that, from a regulatory environment. And then, of course, there's a minor potential that the legislature in it's attempt to help you ends up just mucking things up, and I don't have an answer for that.
I wonder -- what's coming into my head is whether there's any opportunity for states that are similarly situated to Virginia to band together in any way. It's not a -- it shouldn't be anymore adversarial than it needs to be, but it might bring some balance to the negotiation if the heavy weights that have year-round constant exporting and can essentially dictate what the terms are had on the other side all of the little states banded together in some fashion that would bring some balance to that equation.

MR. STEWART: I think that's the Mid-Atlantic's Cooperative objective. We've been very fortunate, I really believe that, to be part of that. I think the scary thing about the whole thing is you look at places like Kentucky, which is clearly a horse racing state, a powerful state, and they're screaming that they have to have slot machines in order to survive. So it's -- you know, it makes it challenging for everybody else. They need more.

MR. BURNETT: Well, it strikes me we need more fans, and more -- which generates more handle. I don't know who said it, that we were -- whether it was that fellow that you know in New York, Vic, or
the article I was reading in Final Turn of Bloodhorse this week that just give it a few more years and our average age 65-year-old fan is going to be in the nursing home where he or she can't make a bet, and then where are we.

I'm not sure that the traditional product is that appealing to the younger bettor and that may be at the root of the problem in this ocean of slot machines helping us. It's helping on the other one hand with a pretty healthy Band-Aid for the short-term, but I think you are in the long haul wiping out racing fans that are in the crossover going the wrong way.

MR. STEWART: I think slot machines are an interesting issue, because certainly if it would come to Virginia that would benefit the horse racing industry, but I think what people are going to find over time is that in order to have a slot machine, you don't need a horse. You just need electricity.

MR. BROWN: You're going to see a lot more of that.

MR. BURNETT: A lot more of that.

MR. STEWART: For those that, you know, benefit from it, may find, you know, it's a short-term solution over a longer period of time.
MR. BROWN: It's a temporary fix. That's the problem.

MR. BURNETT: Well, besides our all being sympathetic with each other on the problem that we all have here in Virginia, do you have any suggestions on what direction and what remedial efforts we might be able to take regardless of size?

MR. STEWART: I don't this morning. It was more of a -- I guess my opinion piece, my editorial. I'd be happy to bring more detail, more potential solution over the next couple meetings. I don't think this issue is going to go away.

MR. BURNETT: It might become more severe.

Vic?

MR. HARRISON: Mr. Chairman, I think Ian's comments and Jim's comments are spot on. I think that while I didn't necessarily support the 10% source market fee in the code, I certainly understand why it's in there and the discussion today really points to that, but from my vantage point, the single most important issue in this industry today is the issue of retainage. So that's our pie. That is the pie. The 20% that's taken out of every wager to pay off the racetracks, to pay off the state, to pay off the vendors, to pay the
breeders, to pay the owners, that formula has to be calculated. It has to work for importing states and exporting states.

So what I've been -- you know, I do a fair amount of blogging in the course of a workweek, and I've been -- I'm trying to draw people's attention to this issue. I think what we could do, maybe Peter and I could come up with a creative letter to go out to industry leaders calling for some sort of a summit or a meeting or a gathering of some of the brightest minds in our industry to tackle the problem. Otherwise, we're just going to snipe each other out of existence.

It's going to be the haves versus the have nots. There's going to be guerrilla warfare. It's going to be alliances formed. It's a mess. I hate to say it, but it seems like an industry on its way out. If there's anything we can do to save it, we should.

So all I can suggest right now is perhaps we get together and craft a letter that's to the point and filled with the passion that we have and see where that gets us.

MR. BURNETT: Can I add more of a question to your observation that it's the retainage? It seems
that the retainage is what fluctuates. If it's an on track dollar, and I'll just use a blended rate, it's 21-cents. If it's an ADW dollar, it's something else. If it's, you know, a simulcast dollar, it's a little different. It depends on what money is being spent, where it's being spent, and on what product, but the one constant is that we have essentially the population of Virginia spending about 200 million dollars, just to pick a number, in handle per year. That's what we have to offer to the racing world --

MR. HARRISON: Right.

MR. BURNETT: -- is 200 million dollars worth of betting. That's the constant. What we're all fussing about -- legitimately, and I don't mean to diminish it, is whether or not we should be getting 40 million dollars of that 200 for putting on our races and sticks and bricks and ADW, and that's what should stay in Virginia to be spread around among everybody or whether it should be 20 million or five million or whatever that number is.

And what we're watching is that 25, 30 years ago, it would have been 40 million dollars easy, plus concessions, et cetera. Today, and over the last 20 years, we've watched the trend go from that
40 million dollars, if some had their way, moving more to like 12. And that's what's eating us up. It eats up the horse people. It eats up the folks that have to support and build these fine facilities, and I'm not sure where all that money is going, but it's clear that we're trying to accomplish more with less money. The one thing we have to offer out there that's a constant is 200 million dollars worth of business.

We need to find a way to maximize the value of that to those outside of the state of Virginia that want to pay a whole lot less for it than we think it's worth. Is that a fair way of looking at it?

MR. STEWART: I think you're right. I think that's exactly right. The constant is there's 200 million dollars of business. How are we going to divvy that up? What's the fairest way to divvy it up that reflects the relative values that everybody brings to the table?

MR. REYNOLDS: Mr. Chairman? To me, that's still not addressing what you've laid out. The industry is declining on a national basis, it's declining here, and it's going to continue to do so. It's a very dramatic situation, and we have to come up with dramatic answers. We have to come up with
something very significant.

That discussion to me was how to divide the pie again. You're going back to how do you increase the pie. Slot machines are one way and we all have doubts about that, concerns about that, and I personally don't believe that would politically fly in the current environment. So what are the other things that dramatically we can do? The only one I see is expansion of the OTBs and whatever. We really need to focus on the big issue, big dramatic changes in that, and how can we do that. When you talk about developing ideas about it, I would suggest we really focus on the big ones.

MR. STEWART: I don't disagree. I think the one opportunity that's still out there is to fully penetrate the market and how do you best do that, but at the same time, you have to make sure that all your efforts don't go forgotten because the money you're taking in the front door is going out the back door.

MR. BURNETT: It's the old model of paying attention to revenues or costs. Both sides of that equation need attention. I would think that the great minds that you might solicit to give us advice would probably agree on one thing, and that is that
racing is headed in the direction of kind of a Wal-Mart approach, that you need a lot more volume at a lot lower margin if you're going to make it, because the margins are going down. It's just the nature of the beast and with the Betfairs of the world -- literally the rest of the world, not us, but Betfairs, I don't know what their take is, but anything close to 20% is very low, that we need to be in the wholesale business in racing, and the only way that we're going to survive is by generating a whole lot more volume at a much lower cost.

I go right back to what Commissioner Reynolds said. I think the answer that we've all come up with in our particular -- today's environment in this state is aggressive expansion of the ADW activity. I don't know how -- I can't think of anything else that is close enough to us, that's available to us, that has a potential to generate anything. I don't know whether it's premature to -- for you all to talk about it at all, but I think the potential for the site in Innsbrook illustrates progress in that direction.

MR. STEWART: Yeah. I think that's -- that could be very successful. You know, you're still limited by the same issues in that that will be a
licensed OTB. I think the -- obviously, we would like to take the account wagering concept to the bars and restaurants.

MR. BURNETT: Isn't that an opportunity to do just that? It seems to me to the extent that the OTB in its traditional form is altered considerably because this is now a rental location, it's part of another ongoing establishment, and just because the OTB component might be closed on a Sunday or a Monday or a Tuesday or for a couple of days as you've done at some various locations, the ADW activity remains available there. Now you got the same SWF light, if you will, that we're talking about in other locations.

To me that's kind of a nice easing into that notion in a neighborhood where there won't be any accusations of seedy activity. There won't be any sense that people are stumbling around trying to find a partner on a two-dollar ticket and that kind of nonsense, and that it might get sufficiently engrained that if you open another that didn't have a SWF formality to it but was not that far away, it would just be a shrug. You know, they got one down the street. Here's another one.

That pace could pick up such that now you
start crossing lines where there's no longer the referendum, which I don't believe is necessary, for ADW activity. Just from a political standpoint and a public acceptance standpoint becomes a shrug, and from the standpoint of those who enjoy the activity and hopefully younger folks that use phones and other screening devices and the like take greater interest and up goes the volume.

MR. STEWART: Yeah. I think that's essentially the road we're headed down.

MR. BURNETT: Anybody else got any great solutions for us here?

MR. REYNOLDS: No great solutions, but can we look forward to discussing this thing next time and looking at potential solutions on the large scale?

MR. STEWART: Sure. I'm happy to talk about those kinds of alternatives.

MR. REYNOLDS: All right.

MR. BURNETT: I don't know whether from a business planning standpoint it's in your interest or not to be identifying and announcing potential sites, but it might be helpful and maybe a little bit encouraging and inspiring for those of us on the periphery if we did some modeling as to where certain numbers of sites and certain amounts of
handle volume might take us. I know we're now on
the revenue side of the discussion, and I don't mean
to take away from your concern about the cost side.

The Commission has some concern about the cost
side, because I think part of the political equation
here is adequate regulation or at least the
perception of sufficient regulation that the public
is being adequately protected. There's no way
around the fact that it's going to cost the
Commission some money to do that supervision and
whether or not that half percent on a traditional
ADW model works in a public venue remains open.

That's the question we have, and I think we
need to do some modeling, Vic, in terms of what kind
of supervision we might anticipate providing in a
SWF-like environment. I think that's something that
when the questions come up or whether we
preemptively go talk to folks in jurisdictions where
these might be that we have a plan as to what
supervision is going to be.

I might add, I sent an e-mail to Vic about it
this week because a friend of mine went to the
Mormon Park steeplechase races, and his 14-year-old
son kept bugging him about wanting to go over to the
man with the chalkboard and make a little wager.
The father said, number one, that's illegal. He's not supposed to be doing that. Number two, you're only 14. He's never going to take your money. He's not going to let you do that. The son just kept bugging his dad and bugging his dad, and about the fourth or fifth race, he says all right. Just go over there and find out what I'm telling you. The kid runs over there with a couple bucks, made a bet, and lost his money, which may be what promoted dad to send me an e-mail and say, hey, is that legal or what?

Our view is that it's not, but it's interesting that -- I'd be willing to guess that one or more members of the Commonwealth attorney's office or the Commonwealth attorney himself are probably at those races, but so what? Again, get a SWF or one of those ADW machines that's very carefully regulated by all of us and the world is coming to an end. So I don't know how to answer that question.

Anything else on that subject, folks?

Anything further, Ian?

MR. STEWART: I don't.

MR. BURNETT: Would any member of the public like to address the Commission?
Seeing none, we need to set our next meeting. I understand that one or more of us are available but not all of us on the 17th, 18th, or 19th. I'm available any one of the three days. Whatever the rest of this group would like to do is fine by me.

MR. BROWN: I'm in the same boat, the 17th, 18th, 19th, whatever.

MR. MILLER: The nineteenth is good for me.

MR. BURNETT: Bad for you. The 18th is bad for Vic.

MR. HARRISON: And for Jim.

MR. BURNETT: And for Jim.

MR. MILLER: How about the 17th?

MR. BURNETT: Is that a Monday?

MR. HARRISON: Tuesday.

MR. BURNETT: Somebody has a bad day on that Tuesday.

MR. MILLER: Well, I do, but --

MR. BURNETT: What about a week earlier?

MR. REYNOLDS: Let me look at my busy schedule.

MR. BURNETT: It would be the 10th, 11th, or 12th. It would be the Tuesday, Wednesday, Thursday of the prior week.

MR. REYNOLDS: The 10th or the 12th is good
for me.

MR. BROWN: Good for me.

MR. BURNETT: Shoot for Thursday the 12th, how does that work for you, Vic? I haven't consulted you at all about that.

MR. HARRISON: I can make that morning, and Dave is here regardless.

MR. LERMOND: That's fine.

MR. BURNETT: Well, I'm anticipating we might have a fairly interesting discussion about where we're trying to go with these SWFs.

MR. HARRISON: Thursday wouldn't be good for me, that Thursday. Wednesday or Tuesday would be fine.

MR. LERMOND: Maybe we should go back a week from the third to give everyone more time to come up with their solutions.

MR. MILLER: Let's try the 10th.

MR. BURNETT: I think I can do that. I never know when you say back or forward.

MR. LERMOND: The 25th.

MR. BURNETT: Now, you're in the week of Thanksgiving.

MR. BROWN: We've had this problem before.

MR. REYNOLDS: Can we do Tuesday, the 17th?
MR. BURNETT: We would be missing a couple of our more important --

MR. HARRISON: The 17th Clinton was bad on.

MR. MILLER: Let's try the 17th. I'll try to make it. I may be able to change something. If I don't make it, it won't be the end of the world.

MR. BURNETT: It might be.

MR. MILLER: Seventeenth, is that all right with everyone?

MR. BURNETT: The 17th we'll try for.

MR. BROWN: Let's go with it.

MR. BURNETT: All right. We'll go with that.

To my knowledge, there's no need for a closed meeting.

Do we have a motion to adjourn?

MR. REYNOLDS: So move.

MR. BURNETT: Second. All in favor, aye.

We're adjourned.

Note: The proceedings concluded at 10:32 a.m.
CERTIFICATE

VIRGINIA:
COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on October 21st, 2009, New Kent, Virginia, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the meeting and other incidents of the hearing herein.

Given under my hand this 29th day of October, 2009.

________________________________________________________________________

Melissa H. Custis, RPR
Notary Public for the State of Virginia at Large

My Commission expires:
March 31, 2011