

Colorado Racing Commission
July 24, 2024
SPECIAL Meeting Minutes

Call to Order

The SPECIAL scheduled meeting of the Colorado Racing Commission (“Commission”) was held on Wednesday, July 24, 2024 via video conference provided by Zoom. The meeting was called to order at 9:30 AM.

Members Present

Tameka Sampson, Chair
Kjersten Davis, Vice Chair
Jeff Ruebel, Member
Jonathan Horowitz, Member
John Hammes, Member

Members Absent

None

Racing Staff Present

Donia Amick, Director of the Division of Racing Events
Janina Rivera, Executive Assistant to Division Director
Robert Dodd, Assistant Attorney General

DECISION ITEMS:

1. Receive and discuss information regarding Commission Order 240614. Decide whether information and documentation are sufficient for the 2024 Racing Season to begin as scheduled on 8/31/24 - Donia Amick, Director, Colorado Division of Racing and Shannon Rushton, Bally’s Arapahoe Park

Director Amick stated that the Division did receive a brief plan regarding the test barn from Bally’s Arapahoe Park on Tuesday, 7/23/2024 at about 4:30 p.m. and that the Division also licensed the Veterinarian.

Shannon Rushton, Executive Director of Operations/Director of Racing & General Manager at Bally’s Arapahoe Park stated that there is no way he can make the plan that was outlined by Senior Assistant Attorney for Arapahoe County, Robert J. Hill work by 8/31/2024. Mr. Rushton said several of the items listed on the outlined document were not discussed at the 5/22/2024 meeting between Bally’s Arapahoe Park and Arapahoe County. Mr. Rushton said the 5/22/2024 meeting was a verbal agreement between Bally’s Arapahoe Park and James McClain with Arapahoe County. He said the building inspectors agreed to allow them to turn the power off to the backside and once all permits were obtained then all power could be turned back on.

Mr. Rushton recommended that the Divisions staff could be moved to the racing office, and he would move the racing office staff to the grandstands because the racing office has not been red tagged by the county.

Chair Sampson commented that she was unclear of the miscommunication from May to mid-July. Chair Sampson stated that there were four things that needed to be addressed:

- Veterinarian getting licensed
- Plan for the test barn
- Consultation with South Metro Fire Department
- Agreement between Arapahoe County and Bally's Arapahoe Park on the backside issues

Shannon Rushton responded that the items outlined in the document received were not discussed at the 5/22/2024 meeting. Mr. Rushton stated again that the issue of the power getting turned off to the backside was agreed on in the meeting. Mr. Rushton also stated that he will not be proceeding with any use of generators.

Commissioner Horowitz commented that the Commission granted Bally's Arapahoe Park a license at the 6/12/2024 meeting with four requirements that Bally's Arapahoe Park had to comply with. Those requirements are as follows:

- a. Bally's shall receive approval and guidance from South Metro Fire on the use of generators on the backside / barns and other areas where electricity is permanently turned off by July 22, 2024;
- b. the Division and Bally's shall receive notification that the association's veterinarian is properly licensed;
- c. Bally's shall fulfill all the terms of its agreement with Arapahoe County Building Department, including providing the IMEG report; and
- d. Bally's shall provide an adequate plan to the Division, for the test barn and collection processing, sample storage, security, and chain of custody by July 22, 2024.

Commissioner Horowitz asked Mr. Rushton if letter a. of the order been fulfilled?

Shannon Rushton, responded with no because they have decided not to proceed with the use of generators due to fire issues.

Commissioner Horowitz asked Mr. Rushton if b has been fulfilled?

Shannon Rushton responded with yes.

Commissioner Horowitz stated that letter c. he believes is where the breakdown is and that the Commission was led to believe that there was an agreement but now Arapahoe County is stating differently.

Shannon Rushton said Arapahoe County said it was a misunderstanding.

Commissioner Horowitz asked Mr. Rushton if letter d. has it been fulfilled?

Shannon Rushton responded with yes.

Division Director Donia Amick mentioned that the requirement states an adequate plan, and the Division has not determined yet if it is adequate or not.

Commissioner Horowitz stated that he is concerned with receiving things at the very last minute and that he did not appreciate that Arapahoe County was not in attendance at this meeting.

Commissioner Ruebel expressed his concerns with Arapahoe County code enforcement making misrepresentations and also experienced them making demands that are of excess authority.

Vice Chair Davis commented that she agrees with Commissioner Ruebel but also extends the responsibility to Bally's Arapahoe Park as well.

Chair Sampson expressed her concerns as well and suggested the Commission go into executive session to seek legal advice.

Tom Downey, Attorney for Bally's Arapahoe Park commented that executive session would not be warranted just to receive legal advice. That can be done out in the open. Mr. Downey addressed the meeting between Bally's Arapahoe Park and Arapahoe County on 5/22/2024 and stated that the facility is "Grandfathered" in because of the certificate of occupancy in 1984. Mr. Downey continued to state that all work has been done coming out of the electrical box and not from the electrical box back. Therefore, no permits were needed according to code. According to Mr. Downey, Arapahoe County disagreed with his interpretation and stated that the facility needs to comply with the current code and not the code from 1984. Mr. Downey went on to state that they would comply with the recommendations made by Mr. McClain during the 5/1/2024 Commission meeting to turn off all power to the backside and to get a structural engineer report.

Chair Sampson asked AAG, Dodd for legal advice regarding discussion on item one.

AAG, Dodd recommended tabling item number one and moving on to agenda item number two.

Commissioner Horowitz made a motion to table agenda item number one. With a second motion made by Commissioner Davis.

Motion passed unanimously.

2. Bally's Arapahoe Park requests to waive the 30 (thirty) day race requirement per Section 44-32-603 C.R.S.--Bally's Arapahoe Park Staff

Shannon Rushton asked the Commission to consider the request to waive the 30 (thirty) day race requirement per Section 44-32-603 C.R.S. to be able to keep the off-track betting facilities (OTB) operating. Mr. Rushton stated that the dates would be 9/11/2024 through 9/11/2025 and in 2025 Bally's Arapahoe Park would run a race meet.

Chair Sampson asked Mr. Rushton, what dates have been confirmed for races in 2025?

Shannon Rushton responded that the dates would be in August, September and October of 2025.

AAG, Dodd recommended that a new race meet application would need to be done for 2025. AAG Dodd asked the Commission to review the statute which states a finding of an act of God and to determine if this is such in allowing a waiver for Bally's.

Chair Sampson stated that she finds the unforeseen circumstances as such when the misunderstanding took place between Arapahoe County and Bally's Arapahoe Park.

Vice Chair Davis asked Mr. Rushton to clarify his request and asked if the track will have zero (0) race days or one (1) or a couple race days.

Shannon Rushton responded that with the email received from Arapahoe County he can't make anything help for one (1) day.

Commissioner Horowitz stated that he feels there has to be a live meet for the horsemen and that the focus now needs to be on the statute C.R.S. Section 44-32-603 (3) that reads:

- (3) In order to promote live racing of horses throughout the state of Colorado, the commission, when determining the number and kind of race meets held and the dates and times of races held at race meets, may take into consideration the interests of the racing industry as a whole throughout the state but shall give particular consideration to the racing dates and times requested by or assigned to the following:
 - (a) In the case of class A tracks, other class A tracks; and
 - (b) In the case of class B tracks, other class B tracks.
- (4) The commission shall determine, consistent with all other provisions of this article 32, the total number of races conducted, and performances held during a race meet.

Commissioner Horowitz stated that the Commission needs to come up with something that promotes live racing in Colorado.

Chair Sampson suggested that the Commission draft correspondence to Arapahoe County encouraging them to participate in these meetings and to also keep them up to date on what is happening and what is needed.

Commissioner Horowitz asked, is there any framework to have live racing before 2025?

Shannon Rushton responded that his fear is not being able to use the test barn which is red tagged as of now.

Commissioner Horowitz asked if there was any mobile veterinarian unit?

Director Amick responded that there are about nine (9) rules that deal with the collection and some of those rules would need to be modified.

Senior Director Michael Phibbs stated the only way to lift the order on the test barn is to get a building permit which takes between 12 and 16 weeks to be received, reviewed and issued.

Kim Oliver, President of Colorado Horsemen Association (CHA) commented that this has been very frustrating for the horsemen. Ms. Oliver stated that the horsemen are the ones that will get hurt in all of the discussions.

Chair Sampson thanked Ms. Oliver for her comments.

Vice Chair Davis commented that she would like to see some sort of live racing associated with simulcast.

Commissioner Hammes stated that running a one (1), two (2) or three (3) day meet would not be good for the state of Colorado.

Mark McGregor, public member, commented that if there is not a thirty (30) day meet there probably won't be racing in Colorado again. Mr. McGregor also stated that it would not be beneficial to run a one (1) or two (2) day race. He went on to discuss the intentions of Bally's Arapahoe Park and whether they intend to sue over the "Grandfather" issue or to make the improvements for next year.

Commissioner Horowitz commented that he would like to know what the Division of Racing can do to promote live racing this year?

Director Amick suggested that the Division can create some working groups and stakeholder sessions.

Commissioner Sampson suggested tabling the decision regarding the change to the thirty (30) day requirements pending the following items:

1. Stakeholder meetings
2. Certified communication from the Commission to Arapahoe County emphasizing the impact of horse racing in the state
3. Monthly updates from Arapahoe park on a go forward plan for racing
4. Plans to support the equine industry and live racing in Colorado from all stakeholders participating in the meetings
5. Withdraw the current application and request a new live race meet application from Bally's Arapahoe Park

A second was made by Commissioner Davis on the motion.

Motion passed unanimously.

Senior Director Michael Phibbs asked if any of the Commissioners plan on attending the upcoming meetings and if so the Division will need to provide public notice of such?

Commissioner Howitz asked for AG Dodd's guidance.

Robert Dodd, AAG stated that if the Commissioners do plan on participating in the meetings that requirements do need to be met by the Division and notice needs to be given.

Chair Sampson stated that the Commissioners can attend but not speak at the meetings.

Commissioner Howitz asked if she said to not speak?

Senior Director Michael Phibbs asked the group to clarify that the focus was now on the stakeholder meetings and not on live racing?

Chair Sampson responded yes; the focus now is not on live racing it is on the stakeholder meetings.

Motion made by Vice Chair Davis to adjourn the meeting with a second made by Commissioner Ruebel.

Motion passed unanimously.

Adjournment

The July 24, 2024, SPECIAL meeting of the Colorado Racing Commission was adjourned at 12:03 p.m.

Minutes Approved by the Commission



Janina Rivera, Executive Assistant to the Director

I certify these minutes were approved by the Commission on the 4th day of September 2024.