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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts
4MCAR§§15.001-15.050

SUPPLEMENTARY STATEMENT OF NEED AND REASONABLENESS

Proposed Rules 4MCAR§§ 15.017 and 15.034

The Minnesota Racing Commission has submitted to the hearing examiner both written and oral support for the need and reasonableness of proposed 4MCAR§§ 15.017 and 15.034. The rules set forth factors which the Commission must consider as it makes statutorily mandated determinations before issuance of a Class A or Class B license. That written support is contained in the Statement of Need and Reasonableness generally and most specifically at pages 16 and 17; oral support was submitted through the testimony of Robert C. Hentges, rulemaking consultant to the Commission at the public hearing December 15, 1984, on the above-captioned rules.

The public interest, integrity of racing, public safety, health and welfare will be best served by allowing and encouraging Class A and B license applicants to summon all possible ingenuity and creativity in preparation of horseracing proposals for Commission consideration. Such an atmosphere will maximize the liklihood that racing in Minnesota will offer the highest quality facilities, equipment, management, personnel and systems for the enjoyment of citizens. Licensee integrity and successful performance in a timely manner will be ensured. Proposed 4MCAR§§ 15.001-15.050 enable establishment of such an atmosphere.

It is necessary, however, to limit the discretion of the Commission in its decisions whether to issue Class A and B licenses. Unbridled discretion could deny due process by failure to inform license applicants of the basis of Commission decisions, deny equal protection by allowance of arbitrary decisions and violate the mandate of Minn. Stat. ch. 14 that the Commission promulgate statements of general application and future effect as rules.

Proposed rules 4MCAR§§ 15.017 and 15.034 limit the discretion of the Commission.

Minn. Stat. §§240.06 subd. 4 and 240.07 subd. 3 restrict the discretion of the Commission in license issuance only to the extent of requiring the Commission to make four determinations: That the applicant (1) will obey applicable laws and rules; (2) will not create a competitive situation which will adversely affect racing and the public interest; (3) will not adversely affect public health, welfare and safety; and (4) is financially able to operate a racetrack or, in the case of a Class B applicant, is fit to sponsor and manage racing.

Rules 15.017 and 15.034 place additional restrictions on the discretion inherent in a governmental licensing process and allowed by the statute. The rules require that the Commission consider 12, or in the case of Class B applications 10, specific factors when making the four statutorily mandated determinations. Certainly, it could not be argued that proposed 15.017 and 15.034, if they stopped at this point, would grant the Commission discretion; they restrict discretion.

Having done so, proposed 15.017 and 15.034 go on to provide applicants with an idea of the types of facts which evidence the factors specified. This serves as an aid to applicants. The listings do not grant discretion to the Commission. The Commission's discretion is limited by the mandate that it consider specified factors. The suggestion of facts which may evidence those factors does not add to, subtract from or alter in any way the factors.

No person can forsee all of the myriad facts which may evidence integrity, financial ability or the other factors the rules mandate that the Commission consider.

Morever, the Commission lacks statutory authority to limit the facts the Commission will allow as evidence of the factors. Chapter 240, for example, requires the Commission to determine whether an applicant for a Class A license is financially able to operate a racetrack. The Commission could not refuse facts evidencing financial ability even if it wished to do so. Such an action not only would lack statutory authority, but it also would violate a statutory mandate.

If the "but not limited to" language in rules 15.017 and 15.034 with reference to facts evidencing the factors the Commission must consider is found inappropriate, the Commission has two choices.

First, the Commission might delete the language and add an "other facts relating to..." item to the listing of possible

evidence for each factor. This would eliminate any offending language.

Second, the Commission might simply delete the listings. This would leave only specific determination factors in the rule. Nobody could argue that such a rule grants discretion. However, the rule would be less useful to applicants.

Proposed Rules 4MCAR §§15.035 B., 15.003E., 15.020E., 15.004 and 15.021

Proposed 4MCAR §15.035B. requires a Class A or Class B license applicant to make its "best effort" to provide all information required to be disclosed. The standard is made expressly applicable to the disclosures required by 4MCAR §§15.003E., 15.020E., 15.004 and 15.021 for purposes of clarity.

Specific written support for the "best effort" standard was submitted by the Commission at pages 19 and 20 of the Statement of Need and Reasonableness. Oral support was included in the Hentges testimony at the public hearing.

Information with regard to Class A and B license applicants and their proposals is essential if the decisions of the Commission with regard to issuance of licenses are to protect the public interest, integrity of horse racing, public safety, health and welfare. Only with sufficient information can the Commission ensure integrity, financial strength and high quality facilities, equipment, management, personnel and systems. Information is the raw material of the Commission's effort to carry out its responsibilities.

The "best effort" standard is necessary to maximize the information the Commission receives. A "reasonable," "competent" or even "diligent" effort would bring less information to the Commission. A "best effort" standard not only will provide the Commission with sufficient information, but also will result in applicants informing the Commission why they are unable to provide information required and documenting their efforts to do so.

The standard is objective and defined in the cases cited at pages 19 and 20 of the Statement of Need and Reasonableness and elsewhere in common law. The standard is at least as objective and adequately defined in common law as "reasonable," "diligent" and other standards which might be used.

Arithmetic precision is not possible, nor wise, in the human process which 4MCAR§§ 15.001-15.050 propose to regulate.

Absent an express standard, the proposed rules might well require an applicant to provide all required information if "possible" and mandate denial, revocation or suspension of a Class A or B license or imposition of a fine if an applicant fails to meet that standard. See, 4MCAR §15.043.

A "best effort" standard, thus, is more reasonable than a higher "possible" standard.

Proposed 4MCAR §§15.017, 15.034, 15.043, 15.044, 15.047

Proposed 4MCAR §§15.017 and 15.034 provide that the Commission "may" issue a Class A or Class B license after making specified determinations in consideration of listed factors. Minn. Stat. §240.05 subd. 3 provides that the Commission is not required to issue any license.

Proposed 4MCAR§15.043 provides that false or misleading information in a Class A or B license application, omission of required information or substantial deviation from representations in an application is "cause" for denial, revocation or suspension of a license or imposition of a fine. Proposed 4MCAR§15.044 provides that the Commission "may" impose a $1,000 a day penalty for delay in completion of a horseracing facility. Proposed 4MCAR §15.047 provides that the Commission "may" order Class A and B licensees to make necessary security modifications.

Minnesota and other states recognize the validity of prosecutorial discretion. These rules require it.

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts
4MCAR§§15.001-15.050

STATEMENT OF NEED AND REASONABLENESS

GENERAL

Minn. Stat. §240.03 empowers the Minnesota Racing Commission to regulate horse racing in the state in order to ensure racing is conducted in the public interest, to take all necessary steps to ensure the integrity of racing, to issue licenses, to supervise pari-mutuel betting on horse racing and to conduct necessary investigations and inquiries and compel the submission of information, documents and records it deems necessary to carry out its duties.

Minn. Stat. §§240.01-240.29 mandate or authorize the Commission to promulgate a wide variety of rules. Section 240.23 specifically authorizes the Commission to adopt rules governing any aspect of horse racing or pari-mutuel betting which in the opinion of the Commission affects the integrity of racing or the public health, welfare or safety.

Minn. Stat. §240.27 subd. 1 authorizes the Commission to exclude from racetracks persons who have been convicted of felonies, been disciplined or denied a license by a racing authority or who are threats to the integrity of horse racing. Minn. Stat. §240.27 subd. 5 authorizes a racetrack to eject or exclude any person who is a threat to racing integrity or public safety.

Minn. Stat. §240.28 subd. 2 authorizes the Commission to restrict betting by licensees to protect the integrity of racing.

The repeated statutory references to "integrity" in pari-mutuel betting and horse racing, the "public interest" and "public health, welfare or safety" reflect a legislative intent

and public sentiment that the Commission act to ensure the financial strength and good character of Class A licensees who construct, own and operate horseracing facilities and Class B licensees who sponsor and manage races as well as the high quality of facilities, personnel and systems for humans and animals.

The Commission intends to meet its responsibility.

The Commission believes proposed rules 15.001-15.050 are necessary to the integrity of pari-mutuel betting and horse racing in Minnesota, to the public interest and to public safety, health and welfare. The Commission submits that the rules are necessary to ensure that Class A and B licensees are financially strong, possess good character and will construct, own, operate, sponsor and manage facilities, equipment, personnel and systems adequate to safe, healthful, enjoyable, comfortable and honest pari-mutuel betting and horse racing which is successful financially and as a matter of sport and recreation. The Commission further submits that the proposed rules must be promulgated in order that an applicant for a Class A or B license may know the nature of the business it seeks to enter, the application procedure and criteria for issuance of licenses. The rules are necessary, therefore, to intelligent application for Class A and B licenses.

The Commission believes the proposed rules are reasonable, because they are customary in pari-mutuel betting, horse racing and other industries. The burdens are not undue. Compliance has been obtained in other jurisdictions, while successful entrance into and participation in the industries has not been deterred. A Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Pari-mutuel Horse Racing in Minnesota was published in the State Register on September 12, 1983. 8S.R.482. The Commission also noticed at that time two Public Meetings to Hear Statements of Information and Comment Prior to Drafting of Rules. 8S.R.48 The Commission retained a rulemaking consultant on September 28, 1983. The consultant in writing directly solicited rules recommendations and obtained copies of pari-mutuel betting and horseracing statutes, rules, uniform rules, standards, policies, forms and procedures from governmental regulators throughout the United States and Canada as well as individuals and organizations participating in the horse and racing industries in Minnesota and the nation. The Commission and its Rules Committee have invited potential Class A and B license applicants and other interested individuals to participate in ruledrafting work sessions and to make comments at any time.

Many regulators, private individuals and organizations have made significant contributions to the substance and form of the rules now proposed.

CLASS A AND B LICENSES

Minn. Stat. §240.05 subd. 3 clearly expresses a legislative intent that the Commission is not required to issue any license. Minn. Stat. §§240.06 subd. 4 and 240.07 subd. 3 provide that the Commission may issue Class A or B license if it determines that the applicant will act in accordance with all applicable laws and rules and will not adversely affect public health, welfare and safety and that the license will not create a competitive situation which will adversely affect racing and the public interest. Section 240.06 subd. 4 requires the Commission to determine that a Class A applicant is financially able to operate a racetrack, and section 240.07 subd. 3 requires a determination that a Class B applicant is fit to sponsor and manage racing.

Minn. Stat. §§240.06 subd. 1 and 240.07 subd. 1 provide further evidence that the Legislature intends the Commission to require complete disclosure of participants in applications for Class A and B licenses, ensure the financial strength and good character of the applicants and require pari-mutuel and horseracing facilities, equipment, management, personnel and systems of high quality.

First, the subdivisions require disclosure of an applicant and all its officers, directors and shareholders as well as those of any holding companies. Moreover, the subdivisions permit the Commission to require disclosure of persons holding direct, indirect or beneficial interests of any kind in the applicant or a holding company, whether the interest is financial, administrative, policymaking or supervisory.

Second, the subdivisions mandate statements of the assets and liabilities of applicants. Section 240.07 subd. 1 further requires a $500,000 bond from Class B applicants conditioned on payment of fees, taxes, purses, pari-mutuel payouts and other money due.

Third, the subdivisions require applicants for Class A and B licenses to submit affidavits setting forth that no officer, director or other person with a present or future direct or indirect financial or management interest in the applicant is in financial default to the state, has been convicted of or is charged with a felony, is connected with an illegal business, has been found guilty of fraud or misrepresentation in connection with racing or breeding, has been found guilty of a serious violation of a horseracing, pari-mutuel betting or other gambling

law or rule or has knowingly violated a Minnesota racing law or rule.

Fourth, section 240.06 subd. 1 requires Class A applicants to submit detailed plans and specifications of an applicant's track, buildings, fences and other improvements.

Two other provisions offer especially strong evidence of legislative intent that the Commission focus on the financial strength and character of Class A and B license applicants. Minn. Stat. §§240.06 subd. 3 and 240.07 subd. 2 mandate a comprehensive background and financial investigation of applicants for Class A and B licenses and sources of financing. The investigation must be conducted by the Commission or the Minnesota Department of Public Safety Bureau of Criminal Apprehension. Access is afforded the Commission to all criminal history information which the Bureau of Criminal Apprehension compiles on applicants and licensees.

Minn. Stat. §§240.06 subd. 6 and 240.07 subd. 5 further evidence the concern of the Legislature over full disclosure of participants in Class A and B applicants and licensees as well as the financial strength and character of the participants. The subdivisions mandate disclosure of changes in directors, officers or other persons with a direct or indirect financial or management interest and changes in ownership of more than 5 percent of shares. The subdivisions also require submission of the Minn. Stat. §§240.06 subd. 1 and 240.07 subd. 1 affidavit regarding finances and character.

Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 7 provide for revocation or suspension for one year of Class A and B licenses for violation of a law, order or rule which the Commission believes adversely affects the integrity of horse racing in Minnesota and indefinite suspension of a license if the Commission believes an officer, director, shareholder or other person with a direct, indirect or beneficial interest is inimical to horse racing or if the person's financial strength or character cannot be certified in the affidavit required by Minn. Stat. §240.06 subd. 1 or 240.07 subd. 1.

Minn. Stat. §240.27 provides that the Commission and representatives may inspect a licensee's premises, books and records at any time to ensure financial strength, integrity and high quality of facilities, equipment, management, personnel and systems.

The Commission submits that these statutes render the proposed rules 15.001-15.050 necessary.

CLASS A LICENSE APPLICATIONS

4MCAR§15.001 requires identification of an applicant for a Class A license. It is necessary that the Commission know who is applying for a license. The name, address and telephone number of the applicant is basic and minimum identification data as is the name, position, address, telephone number and authorized signature of an individual to whom the Commission may make inquiry. Therefore, the proposed rule is reasonable.

Subsection A. identifies the license sought.

Subsection B. ensures that the affiant is authorized to speak for the applicant.

Subsection C. is necessary to make clear that a Class A license is a privilege, not a right, and that the burden of proving qualifications for a license is on the applicant. The subsection obtains the applicant's recognition of and agreement with those legal principles.

Subsections D. and E. are necessary to protect the state of Minnesota, its employees, Commission members, staff and agents from attempts to prevent inquiry into the finances, character or other qualifications of applicants or impose liability on the state, officials, employees and agents for embarrassment or other harm which may result from application for a license. Subsection E. requires applicants to accept the risk of harm and expressly waive any claim.

Subsection F. requires affiants to represent the truth of the contents of applications. It is necessary to make the applicant accountable for the contents of the application.

Subsection G. is necessary to obtain applicants' recognition of and agreement with possible sanctions pursuant to Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 7 and proposed 4MCAR§15.043.

Subsection H. is necessary to provide a basis in contract law to compel applicants' compliance with Minn. Stat. ch. 240 and existing and future rules of the Commission.

Subsections I. and J. are necessary to identify the affiant and date the affidavit.

4MCAR§15.002 requires an affidavit of the applicant. The proposed rule reflects the mandate of Minn. Stat. §§240.06 subd. 1 and 240.07 subd. 1 that application for Class A and B licenses be made on forms the Commission prescribes.

The requirement that the chief executive officer or a major financial participant in an applicant for a Class A license serve as affiant is necessary for at least four reasons. First, an individual significant in the ownership or operation of the applicant can most appropriately bind it. Second, such an individual is most knowledgable regarding the applicant and the truth of the contents of the application. Third, he or she will be most harmed by denial, revocation or suspension of a license or imposition of a fine and, as a result, has the greatest incentive toward submission of a complete and accurate application and compliance with its representations. Fourth, the chief executive officer or a major financial participant possesses ability to obtain completeness, accuracy and compliance.

The proposed rule places no undue burden on applicants. It is customary in pari-mutuel betting and horse racing and has been used successfully in other jurisdictions. Therefore, it is reasonable.

4MCAR§§15.003 requires disclosure of the ownership and control of Class A license applicants.

Subsection A. provides for identification of the type of organizational structure of an applicant. The Commission needs this information in order to determine what ownership and control data is required.

Subsections B., C. and D. set forth information required in applications by individuals, corporations and other organizations, respectively, with regard to ownership and control. Subsection E. provides that all individuals with ownership or voting interests in an applicant be disclosed. Subsection F. requires disclosure of control of the applicant other than through ownership or voting interests. Subsection G. requires disclosure of any agreements or understandings an applicant has entered into regarding ownership or control, subsection H. requires disclosure of persons receiving compensation from the applicant and subsection I. requires disclosure of an applicant, director, officer, other policymaker or owner or controller of 5 percent or more of an applicant who holds or has held a license or permit to own and operate a horseracing facility or conduct racing or gambling.

Many provisions of Minn. Stat. ch. 240 identified and explained above necessitate complete disclosure of who owns or controls Class A license applicants.

The Commission cannot assess the financial strength or character of applicants without knowledge of all persons who own or control the applicants. Financial strength and good character

are essential to the integrity of horseracing and protection of the public interest. They are necessary to public safety, health and welfare and to ensure that applicants will comply with laws and rules.

Chapter 240 requires financial statements and affidavits setting forth that holders of financial and management interests are of good character and mandates an investigation to ensure financial strength and good character. The statute also requires a determination that an applicant is financially able to operate a racetrack. Revocation or suspension of a license is statutorily authorized for violations which affect the integrity of horse racing as well as suspension of persons with an interest in an applicant who are inimical to horse racing or are not financially strong and of good character.

Chapter 240 requires disclosure of persons with any interest in an applicant. Changes in interest also must be disclosed.

This proposed rule, therefore, provides for necessary disclosure of ownership and control.

Securities documents and tax returns are especially important to an understanding of the ownership and control of applicants.

The proposed rule is reasonable for at least two reasons. First, applicants already compile much of the required information for other purposes; indeed, a great deal of it is public. Second, the required ownership and control disclosures are customary and obtained in pari-mutuel betting, horse racing, cable television and other industries in Minnesota and elsewhere. The disclosure requirements have not impeded entrance into and participation in industry.

No undue burden is imposed.

4MCAR§15.004 requires disclosure of character information relating to persons with ownership or control interests in applicants or with management responsibility.

Subsection A. requires disclosure of charges of crimes involving fraud, money, other property or interference with justice. Subsection B. requires disclose of involvement in civil proceedings relating to business practices; subsection C. involvement in disputes over business licenses; subsection D. proceedings over horseracing, gambling, alleged unfair labor practices or discrimination; subsection E. actions against a regulator of horse racing or gambling; subsection F. bankruptcy; subsection G. failure to satisfy a judgment, decree or order; and

subsection H. delinquency in filing a tax report or remitting a tax.

Good character of applicants is necessary to the integrity of horse racing and protection of the public interest. It is essential to public safety, health and welfare and to ensure that applicants will comply with laws and rules.

The statute specifically requires affidavits setting forth that holders of financial and management interests are of good character of mandates an investigation to ensure good character. Revocation or suspension is statutorily authorized for violations which affect the integrity of racing as well as suspension of persons with an interest in an applicant who are iminical to horse racing or are not of good character.

Minn. Stat. §§240.06 subd. 1 and 140.07 subd. 1 mandate that applicants submit affirmative action plans. These provisions evidence legislative concern over human rights in pari-mutual betting and horse racing. The concern is reflected in the requirement of subsection D. for disclosure of accusations of discrimination.

The proposed rule provides for disclosure of information necessary to determine character.

It is reasonable for at least three reasons. First, the rule is narrowly focused on character evidence relevant to pari-mutuel betting and horse racing. It requires disclose of incidents involving fraud, dishonesty, financial actions, handling of money and other property, business and labor practices, discrimination, bankruptcy, horse racing, taxes, gambling and compliance with laws and rules. These are all relevant to operation of a racetrack.

Second, the proposed rule expressly requires only the best effort of an applicant to disclose. It recognizes that in the case of a large publicly held corporation, for example, an applicant may not be able to provide all the requested information.

Third, the rule is customary in horse racing, pari-mutuel betting, cable television and other industries. The information is obtained successfully, and entrance into and participation in industries has not been impeded.

It imposes no undue burden.

4MCAR§15.005 requires disclosure of improvements and equipment at horseracing facilities. The Commission must know what an applicant proposes in order to determine whether the

integrity of horse racing, public interest and safety, health and welfare will be well served.

The requested information is necessary so that the Commission can determine whether pari-mutuel betting and horse racing at the facility will be safe, healthful, comfortable, enjoyable, honest and successful financially and as a matter of sport and recreation.

The statute specifically requires submission of detailed plans and specifications of the track, buildings, fences and other improvements.

Subsection A. requires a description of the location of the facility; subsection B. a site map showing nearby roads; subsection C. identification of types of racing proposed; D. description of the racetrack; E. stabling; F. grandstand; G. detention barn and walking ring; H. paddock; I. jockey and driver quarters; J. pari-mutuel tote; K. parking; L. perimeter fence; M. other security improvements and equipment; N. starting, timing, photo finish and photo-patrol or video equipment; O. Commission work areas; and P. public transportation.

Minn. Stat. §240.06 subd. 8 requires a horseracing facility to include work areas for Commission members, officers, employees and agents. Subsection O. reflects that requirement.

The proposed rule is reasonable. It requests information concerning only racetrack improvements and equipment which an applicant will typically provide. The disclosures are customary in pari-mutuel betting and horse racing and are obtained successfully in other jurisdictions without impediment to applicants. It imposes no undue burden.

The rule recognizes equipment providers may not be known at the time of application and requires their identification only "if known" in subsections J., M. and N.

4MCAR§16.006 requires disclosure of an applicant's development plan.

The information is necessary to a Commission finding whether an applicant and application are financially sound. Will the applicant be able to do what it says it will on the timetable the applicant proposes?

The information also is necessary to a finding with regard to the quality of the proposed facility. Is it feasible for the applicant to provide the quality of facilities and equipment it proposes on the schedule it sets forth?

The information is necessary to findings in relation to the scope and scale of the project, its dollar value and resulting effects on the community.

These findings are necessary, in turn, to the statutorily required Commission determinations with regard to the integrity of horse racing, public interest, safety, health, welfare and the financial ability of the applicant.

Subsection A. requires disclosure of the total cost of the facility, distinguishing between fixed and estimated costs. Subsection B. requires a breakdown of fixed and estimated costs, subsection C. documentation of fixed costs, D. a development timetable, E. schematic drawings, F. copies of any contracts and performance bonds relating to design and construction professionals and G. information on the status of site acquisition.

Timely completion of a pari-mutuel and horseracing facility in the Twin Cities area is essential to the public interest, integrity of horse racing and public health, safety and welfare for several reasons. Among them are first that, in view of the strong support of pari-mutuel betting and horse racing in the 1982 state election, it is important that the employment, public revenues, sport and entertainment provided by the facility become available as soon as possible. Second, a long license application and issuance process will be fertile ground for improper attempts to influence the Commission.

Third, at present several strong potential applicants are interested in the Twin Cities license. The strong potential applicants and competition maximize the liklihood of a successful facility. Predicted interest rate increases, loss of investor, lender and other commitments or other causes may eliminate strong potential applicants and weaken competition.

The Governor and Commission hope a Twin Cities facility will commence operation in 1985.

The disclosure required by subsection D. of a facility completion date will provide the Commission with information it needs to determine whether an applicant's facility will be completed in a timely fashion.

The rule is reasonable for several reasons. It places no undue burden on applicants, because applicants will prepare the requested information for prospective lenders and others in any event. The rule specifically recognizes applicants may not have design and construction professionals under contract at the time of application nor performance bonds in place; the rule requests copies of "any" contracts or bonds.

The rule requests schematic drawings. Chapter 240 mandates that detailed plans and specifications of the track, buildings, fences and other improvements accompany an application for a Class A license. Schematic drawings and text will cost an applicant approximately 15 percent of total design fees and will convey the scale and relationship of components of the facility, size of rooms, placement of doors and so forth. The drawings will not provide elevations, information on construction materials, description of mechanical systems and other data. A requirement of drawings sufficient to commence construction would cost applicants approximately 75 percent of design fees for what could be a $35 to $40 million project. The requirement of schematic drawings is reasonable.

4MCAR§15.007 requires disclosure of financial resources.

Subsection A. requires an audited financial statement, subsection B. disclosure of the sources and certainty of equity and debt financing and subsection C. a description of sources of additional funds if needed.

The statute expresses the clear legislative intent that the Commission act to protect the integrity of horse racing, public interest, safety, health and welfare. The statute specifically requires the Commission determine that an applicant will comply with all applicable laws and rules. It mandates that the Commission determine whether an applicant is financially able to own and operate a racetrack and requires a statement of the applicant's assets and liabilities. It requires a comprehensive financial investigation of applicants and sources of financing.

These statutory requirements render the proposed rule necessary.

An audited financial statement is necessary to ensure the reliability of the statement.

Financial strength is important not only at the time of application, but beyond. The Commission is greatly concerned over the financial "staying power" of applicants. Will an applicant be able to survive adversity if it occurs? The disclosure of sources of possible additional funds as mandated by subsection C. is necessary to the Commission's conclusion with regard to "staying power."

The rule is reasonable. It places no undue burden on applicants, because they must prepare the information for prospective lenders and others in any event. The rule is customary and successful in pari-mutuel betting, horse racing, cable television and similar industries.

4MCAR§15.008 requires disclosure of an applicant's financial plan.

Subsection A. requires disclosure of financial projections for the development period and first five years of racing. An applicant must base projections separately on the number of racing days and types of pari-mutuel betting the applicant requires to break even and an optinum number of days and betting. The Commission does not commit itself to assignment of racing days or designation of permissible types of betting. The subsection requires disclosure of the assumptions on which projections are based and support for the assumptions, profit and loss projections, cash projections and projected balance sheets. Subsection B. requires an accountant's review report of the financial projections.

The proposed rule relating to financial strength is necessary for the same reasons 4MCAR§15.007 is necessary. The accountant's review report is necessary to ensure the accuracy of projections.

The development period and first five years of racing is the period over which the financial viability of the applicant most likely will be determined.

The rule is reasonable. It imposes no undue burden, because a financial plan is required of applicants by prospective lenders and others. The elements of the plan are typical. The rule is customary in pari-mutuel, horse raging, cable television and other industries. It has been applied successfully.

4MCAR§15.009 requires disclosure of compliance with law and the status of governmental actions required or caused by applicants' proposed facilities.

Subsection A. requires disclosure of the status of government actions to make road improvements a facility will necessitate, and subsection B. disclosure of the status of public utility improvements. Subsections C. and D. request information regarding the status of required governmental approvals of the facility. Subsections E. and F. seek the status of environmental review. Subsection G. requires disclosure of compliance with laws governing the facility.

The integrity of racing, public interest, health, safety and welfare render the rule necessary. Laws which provide for road and utility improvements, require governmental approvals or otherwise apply to a racetrack serve to protect the integrity of horse racing, public interest, health, safety and welfare. Compliance with those laws, necessary approvals and other government actions ensure that protection.

The rule is necessary to provide the Commission with information it requires to conclude that an applicant will be able to develop and operate a facility successfully in the manner and when it proposes to do so.

Further, chapter 240 mandates that the Commission determine whether an applicant will comply with applicable laws. The rule is necessary to provide the Commission with information it needs to make that determination.

The proposed rule is reasonable. It imposes no undue burden. It requires only disclosure of the status of compliance, approvals and actions otherwise required.

4MCAR§15.010 requires disclosure of the management of applicants' facilities.

Subsection A. requires disclosure of an applicant's management plan, subsection B. disclosure of managers and their qualifications, subsection C. contractors who provide management services and their qualifications and D. memberships in horseracing organizations. Subsections E. through J. require disclosure of the applicant's plans for security; human and animal health and safety; marketing, promotion and advertising; concessions; training of personnel; and discrimination, equal employment and affirmative action.

The integrity of horse racing, public interest, health, safety and welfare are dependent upon the financial, sports and recreational success of an applicant. The proposed rule will provide the Commission with information it needs to determine whether an applicant will be successful. Nothing is more important than competent and honest management to the success of a horseracing facility.

Chapter 240 specifically authorizes the Commission to exclude from racetracks persons who have been convicted of felonies, been disciplined or denied a license by a racing authority or are threats to the integrity of racing. The statute also authorizes a Class B licensee to eject or exclude from its premises any person who is a threat to the integrity of racing or public safety. The proposed rule requires disclosure pursuant to subsection E.3. of security measures which enable the Commission and the racetrack to detect such persons.

Several problems have arisen in pari-mutuel betting and horse racing with regard to concessions. The disclosure required by subsection H. is necessary to enable the Commission to determine the quality of the concessions, financial arrangements and the character of the operators.

The statute requires submission of affirmative action plans by applicants. Subsection J. implements the statutory provisions.

The proposed rule is reasonable. It requires disclosure only of management plans, personnel and systems relevant to pari-mutuel betting and horse racing. The rule imposes no undue burden, because the requested disclosures are of information applicants will obtain and prepare in any event to plan operation of its racetrack, determine and support economic feasibility, hire personnel and for other purposes. The disclosures are customary in pari-mutuel betting and horse racing and required successfully elsewhere.

The rule recognizes through use of the phrase "to the extent known" in C. and H. that an applicant may not have entered into agreements with management consultants or concessionaries at the time of application. Use of "any" in reference to management consultant contracts in C.5. recognizes the same reality. The use of "to the extent known" and "any" is further evidence of the reasonableness of the rule.

4MCAR§§15011-15.014 require disclosure of effects of applicants' horseracing facilities on the community. Rule 15.011 requests an applicant's plans to promote horse racing and to educate the public with regard to racing and pari-mutuel betting. Rule 15.012 requests information with regard to economic impact, including employment, purchases, public and private investment and tax revenues; ecological impact; energy conservation and alternative energy sources; and social impact. Rule 15.013 requires disclosure of support and opposition, and rule 15.014 effects on competitors in the horseracing industry.

The disclosures required by the proposed rules are necessary to the Commission is mandated determinations with regard to the public interest, integrity of horse racing, public health, safety and welfare.

The Legislature further indicated its intention that the Commission consider these public impact issues when legislators required in Minn. Stat. §240.06 subd. 2 that the Commission, prior to issuance of a Class A license, conduct a public hearing and request comments from the affected local government and regional commission. Minn. Stat. §240.06 subd. 5 prohibits issuance of a Class A license to operate a racetrack where barred by local zoning ordinance.

The Commission believes it is very important to the public interest that commissioners consider what an applicant will do for or to the community as the Commission decides whether to issue a license which will benefit the applicant.

Effects on the community are especially important in the case of the Twin Cities area horseracing facility, because subdivision 5 of section 240.06 allows only a single Twin Cities racetrack. The statute creates a situation of economic advantage for Class A and B licensees in the Twin Cities.

Economic benefits from pari-mutuel betting and horse racing in the forms of employment, purchases, investment and taxes were focuses of the public debate over racing which preceded its legalization in Minnesota.

Proposed rule 15.014 reflects the requirement of the statute that the Commission determine issuance of a Class A or B license will not create a competitive situation which will adversely affect racing and the public interest.

Proposed rules 15.011-15.014 are reasonable. The rules do not require any substantive action by an applicant; they simply require reporting of actions taken for other reasons and the impacts of the actions. The rules require disclosures of information which an applicant will compile in any event for its own planning, promotion and defense of its horseracing proposal, responses to inquiries, compliance with environmental review laws and other purposes.

The rules impose no undue burden.

4MCAR§15.015 requires disclosure of persons who assist with preparation of applications. The rule is necessary so that the Commission can judge the reliability of the application and make inquiry. It is reasonable because it imposes no undue burden.

4MCAR§15.016 requires identification of and authorization and waiver of claims for release and use of data on applicants; partners, directors, officers or other policymakers of an applicant; holders of 5 percent ownership or control interests in applicant; and management personnel or consultants.

The identification requested includes full name, business and residence addresses and telephone numbers, last five residences, birthdate, place of birth, Social Security number if an individual is willing to provide it and two references.

The authorization and waiver asks an individual to approve release of information, recognize the potential use of the date and release suppliers and users of the data from liability.

The statute mandates that the Commission conduct, or request the Bureau of Criminal Apprehension to conduct, a compre-

hensive background and financial investigation of the applicant and sources of financing. The Commission has access to criminal histories compiled by the Crime Bureau.

The Crime Bureau in its expertise and experience has informed the Commission that a full name, current addresses, telephone numbers, last five residence addresses, date and place of birth, Social Security number and two references are important to the success of a comprehensive personal and financial investigation. Federal law allows requests, but prohibits demands, for Social Security numbers.

Chapter 240 requires applications be on forms prescribed by the Commission. The rule's requirement to that effect reflects the statute.

The rule is reasonable because it embodies the customary content and procedure of Crime Bureau authorizations and waivers. Those authorizations and waivers have been used successfully for many years in Minnesota investigations.

The rule does not require identification of and authorization and waiver by all individuals disclosed as having ownership, control or management interests pursuant to proposed rules 15.003 and 15.010 B. and C. and concerning whom character information is requested pursuant to 15.004. Proposed rule 15.016 does not apply to a disclosed individual who is not a policymaker or manager unless the person owns or controls at least 5 percent of the applicant.

It would be impractical to obtain detailed identifications, authorizations and waivers from perhaps thousands of individuals with some ownership or control interest in an applicant. An exhaustive investigation of thousands by the Commission or Crime Bureau likewise would be impractical. The rule does not require it and, as a result, is reasonable.

Minnesota law protects the non-public nature of certain proprietary and security data.

The rule does not impose an undue burden.

4MCAR§15.017 sets forth factors the Commission must consider as it makes the statutorily mandated determinations regarding the issuance of a Class A license.

Consideration of the factors in the rule is necessary to the statutory determinations for the reasons specified above in this Statement.

Criteria also are necessary so that the Commission's decision whether to issue Class A license will not deny due

process by failing to inform applicants of the bases of decision, deny equal protection by allowing arbitrary decisions or violate the mandate of Minn. Stat. ch. 14 that the Commission promulgate statements of statewide application and future effect as rules.

The proposed rule is reasonable because the criteria are relevant to determinations which the statute mandates the Commission to make. The rule imposes no new burden on applicants; it simply utilizes the information disclosed pursuant to proposed rules 15.001-15.016. It ignores none of the data requested.

4MCAR§§15.018-15.034 provide for the contents of applications for Class B licenses to sponsor and manage horse racing as well as criteria for the Commission's decisions whether to issue Class B licenses.

The provisions of the proposed rules are similar to rules 15.001-15.017 with five exceptions.

First, the proposed Class B rules do not include a rule similar to 15.006 providing for disclosure of applicants' development plans. Class B applicants will not construct pari-mutuel and horseracing facilities; they will conduct races.

Second, rule 15.023 requires disclosure by a Class B applicant of the terms and conditions of the agreement authorizing the applicant to use a pari-mutuel and horseracing facility. Does the applicant have a facility at which it can conduct races?

The rule is conceptually similar to rule 15.006 G. requiring disclosure by a Class A applicant of the status of acquisition or lease of a site for its racetrack. Does the applicant have a place to construct and own a facility?

Third, rule 15.026 requires disclosure of compliance with laws and the status of necessary government approvals. The rule does not include the provisions of comparable Class A rule 15.009 requesting disclosure of the status of governmental actions with regard to road and public utility improvements and the status of environmental review. Those provisions apply only to construction of a facility as a practical matter.

Fourth, proposed rule 15.027 requires disclosure of Class B applicants' management plans. The rule does not include the request of comparable Class A rule 15.010 for disclosure of the real estate and construction experience of managers, because managers of Class B licensees do not deal with those issues.

Rule 15.027 H. does require disclosure of applicants' plans for the conduct of racing, I. requires disclosure of plans for purses and J. plans for pari-mutuel betting; Class A rule 15.010 does not require these disclosures. Class B licensees are, while Class A licensees are not, responsible for these activities.

Fifth, rule 15.029 requires disclosure of the impact of Class B applicants' proposed activities on the community. It does not include the requests of comparable Class A rule 15.012 for disclosure of investment caused by an applicant, energy conservation or alternative energy sources, ecological impact or social effects.

Developers and owners of racetracks may cause those impacts on the community; conductors of horse races will not.

The commission's hopes and concerns with regard to Class A and B licensees are similar. Chapter 240 sets forth the same requirements and restrictions for Class A as it does for Class B license applications with three minor exceptions.

First, the statute requires the Commission to determine a Class A applicant is financially able to operate a racetrack, while the statute requires a Class B applicant to be fit to conduct horse races. The Commission construes fitness to include at least financial strength, good character and high quality facilities equipment, management, personnel and systems. These are important factors in Class A licensing as well.

Second, chapter 240 indicates a legislative concern over the effects of pari-mutuel betting and horse racing on the community by requiring public hearings, consultation with local and regional governments and compliance with zoning ordinances before Class A licenses are issued. The statute requires public hearings before issuance of Class B licenses.

Third, the statute requires Class A licensees to provide work areas for the Commission in the racetrack facilities. It does not require Class B licensees to do so.

The support specified above for the need and reasonableness of Class A rules supports the Class B rules as well. The support for Class A development plan rule 15.006 supports Class B facility use authorization rule 15.023.

It is necessary for rule 15.022 to require disclosure of racetrack facilities and equipment by Class B applicants even though Class A applicants do so. Minn. Stat. §240.06 subd. 4 provides that a Class A license remains in effect until revoked, suspended or relinquished. Minn. Stat. §240.07 subd. 7 provides a Class B license is valid for one year. Further, a Class B

license may be sought initially for a horseracing facility some time after a Class A license is sought. The result is that if the Commission is to update its knowledge of the facilities and equipment at a racetrack after issuance of a Class A license, it must look to the Class B licensee for that information.

It is customary for pari-mutuel and horseracing regulators to require disclosure of facilities and equipment by conductors of races annually.

A variety of difference relationships are possible between Class A and B licensees at a track. Indeed, Minn. Stat. §240.07 subd. 7 recognizes an entity may hold both a Class A and a Class B license. Thus, it is reasonable that the rules ask Class A and B applicants for the same information relating to facilities and equipment, management and financial plans and other issues. Each will respond as applicable depending upon whether the Class A or B licensee is responsible for a particular improvement or activity. For example, a Class A or B licensee may be responsible for or operate concessions. The financial plan of a Class A applicant may include rent received pursuant to lease, while a Class B applicant's financial plan may include paid.

4MCAR§§15.035-15.043 provide procedures for application and issuance of Class A and B licenses.

Proposed rule 15.035 A. requires Class A and B applicants to submit disclosures in printed or typewritten form on 8½ by 11 inch paper and photographs of three-dimensional exhibits. The requirement is necessary so that Commission members and representatives as well as the public can review an application easily. It also aids comparison of applications and discourages submission of irrelevant information. It imposes no undue burden.

Subsection A. also requires identifying headings in disclosures and numbered or lettered attachments and exhibits. This is necessary so that commissioners and representatives can understand applications. The subsection imposes no undue burden.

Rule 15.035B. requires an applicant to make its best effort to provide all information requested by applicable questions.

"Best effort" is active effort in good faith. Western Geophysical Co. v. Bolt Associates, 584 F. 2d 1164, 1171 (2d Cir. 1978). It is more than mere competence or due diligence. InreHeard, 6 B.R. 876,884 (Bkrtcy. W.D.Ky. 1980). "Best effort" takes its meaning from circumstances, with consideration of the

capabilities, abilities and opportunities of the maker. Bloor v. Falstaff Brewing Co., 454 F. Supp. 258, 266 (S.D.N.Y. 1978).

The Commission must protect the public interest, integrity of racing, public health, safety and welfare. Financial strength, good character and high quality of facilities, equipment, management, personnel and systems are especially important. Information with regard to applicants and proposals is essential to the Commission in carrying out its responsibility. In view of that, the Commission must set a high standard for efforts of applicants to provide requested information.

The requirement of best effort is reasonable, because it imposes no substantive requirement; it mandates no additional facility, equipment, management, personnel or system at a racetrack. Further, subsection B. recognizes an applicant may be unable realistically to gather and provide some information which is requested. A publicly held applicant, for example, may not be able to determine to a certainty without great difficulty whether any of its thousands of shareholders have filed for bankruptcy. The subsection does not demand the impossible.

Rule 15.035 C. requires an applicant to submit only relevant information. This is necessary to keep the workload of the Commission and its representatives to review applications manageable. It also encourages focus by the Commission and representatives on determinations the Commission must make and factors it must consider. The subsection aids comparison of applications.

Subsection C. imposes no burden.

Rule 15.036 requires that all application materials be assembled as a single package. This is necessary to prevent a Commission member or representative from overlooking an element of an application.

The rule also requires an original and 20 copies of applications. This is necessary so that the Commission, its representatives and the public, all of whom must or have a right to inspect and review applications, have access to the documents.

The rule does not impose an undue burden.

Rule 15.037 requires a Class A or B license applicant to submit $10,000 at the time of application to cover the costs of investigation.

Chapter 240 requires a comprehensive personal and financial investigation by the Commission or Crime Bureau of applicants and sources of financing. Access to criminal

histories is provided. The statute authorizes the Commission to charge applicants fees to cover investigation costs.

The Crime Bureau estimates a typical investigation will cost approximately $10,000. Neither the Commission nor the Crime Bureau can absorb the costs of investigation through existing appropriations.

Pre-investigation submission of the fee is necessary to ensure payment.

The rule is reasonable. Provision is made for prompt refund of any portion of the $10,000 which is not used to cover the cost of an investigation. Payment by certified check or bank draft, common forms of payment readily obtainable, is permitted. Provision for a billing investigation costs in excess of $10,000 shows that $10,000 is not a figure selected to cover the most costly investigations. Only a single fee is required of entities applying for Class A and B licenses at the same time.

An applicant unable to submit $10,000 is not likely to possess the financial strength to operate a racetrack or conduct horse races successfully.

Rule 15.038 requires the Commission to designate an individual to clarify Class A and B license application requirements upon request of potential applicants. The rule is necessary to provide for clarifications in a timely manner and to ensure consistent construction of requirements.

The rule imposes no burden outside the Commission.

Rule 15.039 prohibits Commission consideration of substantive amendments to applications after submission.

This is necessary to prevent a "bidding war" among competing applicants after submission of applications. Applicants would be tempted in such struggles to promise more than feasible in order to win a license. "Bidding wars" could lead to issuance of a license to an applicant who was unable to operate a horse-racing facility or conduct races successfully. That would not well serve the public interest, integrity of racing, public safety, health or welfare.

The application process also needs finality at some point.

Any provision for error correction could lead to attempts to place substantive amendments before the Commission under claim of error in application. The uncertainty, expense and delay of litigation most certainly would follow. Thus, the rule is reasonable.

A ban on substantive amendments to applications after submission has been imposed successfully in the cable television industry. Provision has been made unsuccessfully for error correction.

Rule 15.040 establishes application deadlines. Subsection A. requires submission of applications for the single Class A license in the Twin Cities area within 14 days after the rules become effective.

Opening of the Twin Cities pari-mutual and horseracing facility in 1985 is necessary for the reasons specified above in support of the need for rule 15.006. If a racetrack is to be open in 1985, it must be open by July 1 to allow at least a minimum of racing for the year. Practice and testing of the facility require completion by June 1. Construction will consume at least 14 months, which means issuance of a license and commencement of construction no later than April 1, 1984. Good fortune will be needed for these rules to become effective as early as March 1. That leaves two weeks for submission of applications if two weeks are to remain for Commission review and decision.

The 14 days for applications is reasonable.

Minnesota voters approved pari-mutuel betting and horseracing more than a year ago in early November 1982, and chapter 240 was enacted last spring. Work of the Commission on these rules began in August. Draft rules and reports on the progress of rulemaking have been sent to all known potential applicants for a Class A license in the Twin Cities area throughout the course of drafting proposed rules. Several potential applicants have participated in work sessions of the Commission Rules Committee and meetings of the full Commission regarding rules since at least early October. The Commission proposed these rules on November 5, and they were published in the State Register November 14. The Minnesota Administrative Procedures Act prohibits substantial change in the proposed rules without additional proceedings, so significant change is highly unlikely.

The content of additional rules which the Commission will propose in coming months to implement chapter 240 with regard to details of facilities, equipment, management, personnel and systems regulation as well as the actual conduct of races are predictable. Rules of New Jersey, Michigan, Illinois, Florida, California, Kentucky and other states are commonly looked to for guidance on these issues. States with pari-mutuel betting and horse racing already have rules in place, and the rules vary little from state to state. The National Association of Racing Commissioners has promulgated uniform rules which are followed.

Thoroughbred, standardbred and other organizations have established standards for various aspects of horse racing. Races will not be recognized and supported unless the standards are met.

As a result, potential applicants as a practical matter have known since early November at the latest all the "rules of the game" for Class A license applications and the nature of the business potential applicants may seek to enter. Indeed, some potential applicants are well along in preparation of applications.

Proposed Rule 15.038A. also establishes January 15, 1984, as the earliest deadline possible for submission of applications for the Twin Cities Class A license. This ensures a minimum time for preparation of a license application and supports the reasonableness of the subsection.

Subsection A. also requires sealed applications. Support of the need for this provision has been specified above with regard to prohibition of substantive amendments in rule 15.039. A "bidding war" must be prevented. The requirement of sealed applications imposes no burden.

Rule 15.040 B. provides that a deadline will be set for submission of applications for Class A licenses outside the Twin Cities area only if two or more proposed racetracks proposed would complete significantly with each other.

The statute does not limit the number of Class A licenses issued for the rest of the state as it does in the seven-county Twin Cities area. However, if the racetracks of two or more applicants outside the Twin Cities area would compete significantly for bettors, spectators, employees, horses and in otherways, a "bidding war" must be prevented for the reasons specified in support of the need for rule 15.039. This rule imposes no undue burden.

Rule 15.040 C. requires submission of Class B license applications at least 160 days before commencement of horse races.

A deadline is necessary to give the Commission time to conduct statutorily mandated personal and financial investigations. The Crime Bureau has informed the Commission that 160 days is sufficient. Most persons employed at a racetrack must obtain Class C occupational licenses pursuant to Minn. Stat. §240.08 before commencement of racing. Sufficient time must remain after issuance of a Class B license for that licensing to occur as well.

Minn. Stat. §240.14 subd. 1 provides generally that the Commission must assign racing days to licensees for up to three years before July of the year before the first assignment year.

Racing days will be assigned after that date to entities whose licenses are issued after that date. Subdivision 2 of section 240.08 requires a public hearing before assignment of racing days. The Commission needs time, as a result, to assign racing days to a Class B licensee before commencement of racing.

The rule is reasonable. Customarily states set deadlines, several earlier than subsection C. provides. The deadlines are imposed successfully.

Further, Class B applicants must make preparations for racing several months in advance of commencement in any event in order to attract horses and for other purposes. The applicants must know some time in advance of racing whether a license will be issued and what racing days will be assigned.

No undue burden is imposed.

4MCAR§15.041 requires the Commission to provide an applicant for Class A or B license an opportunity to make an oral presentation to the Commission before it decides whether to issue a license.

The rule is necessary as a matter of fairness to an applicant who may be seeking authorization for a project involving tens of millions of dollars and who may have spent many hours and a great deal of money to prepare an application.

The rule also makes clear that if the statutory mandated public hearing provides applicants an opportunity to make the presentation required by the rule, a second opportunity to make a presentation is not necessary.

The rule imposes no burden outside the Commission.

4MCAR§15.042 provides that the Class A and B license fees mandated by Minn. Stat. §240.10 must be paid before a license is effective and that a license is void if the fee is not paid within 10 days.

The rule is necessary to ensure the license fees are received in a timely manner. Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 8 provide for revocation of Class A and B licenses for willful failure to make payments required by the statute. However, it is more difficult to revoke a license once issued than to deny it, willfulness is a very high standard and a revocation proceeding, even if successful, cannot ensure payment of fees in a timely fashion.

Revocation will be a remedy for non-payment of the Class A fee of $10,000 a year in the second and subsequent years of a Class A license.

The rule is reasonable. It provides for a refund to a Class B licensee in the event the number of racing days requested exceeds the number of days on which races are actually conducted.

License fees are customarily paid in advance. A licensee who does not possess the financial strength to pay a licensee fee in advance will have difficulty operating a racetrack or conducting horse races successfully. The fee is a small element of total costs a licensee faces.

4MCAR§15.043 provides for denial, revocation or suspension of a Class A or B license or imposition of penalties for false or misleading information in an application, omission of required information or substantial deviation from representations in an application.

The public interest, integrity of horse racing, public health, safety and welfare require that the Commission make every effort to ensure the financial strength and good character of Class A and B licensees and the high quality of facilities, equipment, management, personnel and systems. Complete and accurate information in applications and compliance with representations in applications are essential to success in that endeavor.

Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 6 provide for revocation of a Class A or B license for intentional false statement in an application. Those subdivisions also authorize revocation or suspension for rules violations which the Commission believes adversely affect the integrity of racing. Minn. Stat. §240.22 authorizes the Commission to establish by rule a schedule of fines for violation of the Commission's rules. The Commission intends to do so. The statute also empowers the Commission to promulgate any rule it believes necessary to protect the integrity of horse racing or the public health, safety or welfare.

Regulators of pari-mutuel betting and horse racing in other states inform the Commission that civil fines are the most effective enforcement tool in the industry.

The rule is reasonable. It is in use successfully in other states.

4 MCAR§15.043 imposes sanctions for delay in completion of a horseracing facility. It authorizes revocation, suspension and imposition of a penalty of $1,000 a day against a Class A licensee if the facility is not substantially completed within 30 days of the date stated in the license application.

The rule is necessary for the reasons specified in support of requirement of a completion date in rule 15.006. The Commission must make every effort to prevent delay in completion.

The rule is reasonable. Sanctions for delay in completion are customary in state contracts in Minnesota, and the penalty in the rule is not unusual. Class A licensees probably will provide for delay in completion of the facility in agreements with its contractors. The rule allows a 30-day delay in completion without sanction. A typical force majeure exception is provided.

4MCAR§§15.045-15.050 are rules which may place significant burdens upon Class A and B licensees after a horse racing facility is completed and in operation and racing is under way. The Commission believes they should be proposed at this time to alert potential applicants to the burdens as soon as possible.

Rule 15.045 requires Commission approval of modifications of a horseracing facility and provides sanctions against Class A or B licensees for failure to obtain approval.

The rule is necessary to prevent destruction of the effectiveness of the Commission's review and determinations with regard to facilities and equipment at the time of license issuance.

The rule is reasonable because approval of facility modification is required successfully in other states. Further, the rule establishes a threshold of $10,000 to avoid approval of insignificant modifications.

Rule 15.046 requires Class A and B licensees to maintain adequate security.

The rule is necessary because of security is vitally important to the ongoing success of a horseracing facility. It protects the financial strength of pari-mutuel betting and horse racing and ensures the good character, health, safety and welfare of spectators, bettors, jockeys and divers, horses and all other participants. It protects facilities and equipment.

The rule is reasonable because it is customary.

Rule 15.047 requires Class A and B licensees to make security modifications ordered by the Commission. The rule also provides sanctions.

Excellent security is essential for the reasons specified in support of rule 15.046. The state of the act of security also changes quickly, greatly and constantly. As a result, it is

necessary that the Commission possess an ability to require modifications.

The rule is reasonable because it is applied successfully in other states.

Rule 15.048 requires medical services. Subsection A. requires a first aid room, subsection B. a physician and nurse on duty while horses races, C. a nurse while horses exercise and D. an ambulance for humans while horses race or exercise.

The rule is necessary to health and safety. Thousands of spectators will attend races, and scores of jockeys and drivers as well as others will ride or otherwise be near horses. Injuries to persons on or near horses are common.

The rule is reasonable because it is customary. The rule also requires equipment and staff only during times of probable need.

Rule 15.049 provides for care of horses. Subsection A. requires individual box stalls, B. a security fence surrounding stables, C. stabling and training facilities available at least three weeks before the first race meeting for a species at a track in any year, D. a mounted outrider during exercise periods and E. a horse ambulance.

The rule is necessary to the health, safety and comfort of horses. It is important in order to attract horses to a horse racing facility. Thus, it is necessary to the integrity of horse racing and the public interest.

Subsection E. also shields spectators and bettors from the sight of crippled animals.

The rule is reasonable. It is applied in other states successfully.

Rule 15.050 requires Class A, B and D licenses to submit all contracts and subcontracts to the Commission for approval. It also requires inclusion of affirmative action plans and Commission decisions or contract approvals within 30 days.

Minn. Stat. §240.19 mandates that the Commission require approval of contracts and inclusion of affirmative action plans. It is necessary to apply the rule to subcontracts as well to prevent circumvention.

The 30-day deadline for Commission decisions ensures a quick turnaround and, as a result, minimizes the burden on licensees.

An issue remains which the Statement of Need and Reasonableness must explore. Minn. Stat. §14.115 requires consideration of small business in rulemaking if rules may directly affect small businesses. See subdivision 7(b) of section 14.115. It is possible, although unlikely, that some Class B applicants and licensees will be small businesses as defined in subdivision 1.

The Commission believes Section 14.115 does not apply to Class B applicants and licensees, because subdivision 7(c) provides that the section is inapplicable to service businesses regulated by governmental bodies for standards and costs. That is the role of the Commission in regulation of the sponsors and managers of horse racing.

The Commission has considered, however, ways to minimize the impact of these rules on small businesses. The rules do require compliance and reporting and do establish deadlines as well as design and operational standards. However, the rules implement statutes, and establishment of less stringent rules, alternative rules or exemptions for small businesses would be contrary to the general mandate of chapter 240 that the Commission protect the public interest, integrity of horse racing, public safety, health and welfare in pari-mutuel betting and horse racing and contrary to the requirements and objectives of other provisions of the chapter.

As a result, subdivision 3 of section 14.115 does not require the Commission to incorporate less stringent provisions, alternatives or exemptions for small business into these rules.

All potential Class B license applicants, large or small, have been directly notified of these rules. See section 14.115 subd. 4(c).

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

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John H. Daniels Jr	Minnesota Racing Comm	1201 Marquette, Suite 330, MPLS	333-7100	✓	
Byron E. Starns	Leonard, Street & Deinard	National City Bank, 1200 510 Marquette, MPLS 55402	339-1200		✓
Joseph T. O'Neill	O'Neill, Burke & O'Neill	800 NW Center Saint Paul, Minn 55101	227-9505	✓	✓
Bruce D. Malkerson	Popham, Haik, Schnobrich	4344 IDS Center Mpls. Mn. 55402	333-4800	✓	✓
Krista L. Sanda	MN. Racing Comm	2001 Killebrew Dr Mpls 55422	853-6261		✓
Kathleen Henning	Farmington Race Assn.	13200 Henning Cr Prior Lake 55372	445-2177		✓
David Johnson		2019 21st Ave So. #N16 Mpls. Mn.	—		✓

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December 22, 1983

Mr. George Beck
State Hearing Examiner
Administrative Hearings
3rd Floor Summit Bank Building
310 South 4th Avenue
Minneapolis, MN 55415

Proposed Rules of the Minnesota Racing Commission

Dear Mr. Beck:

I. Introduction

The purpose of this letter is to introduce additional testimony why the proposed rules of the Minnesota Racing Commission as amended by them on Wednesday, December 14, 1983, and as introduced into the hearing record on Thursday, December 15, 1983 should be approved by you as submitted. As you may recall, I testified before you on December 15, 1983 in full support of the rules as proposed and the January 15, 1984 application date.

My clients, Mr. Brooks Fields, Jr. and Mr. Brooks Hauser have formed a new company called Minnesota Racetrack, Inc. and with Scottland Inc. and The Santa Anita Companies have formed a joint venture to build, own and operate the racetrack in the City of Shakopee if they are awarded the Class A and Class B license. Hopefully, the Minnesota Racing Commission will award the licenses to us in the spring of 1984 so that racing can commence in 1985.

II. My clients and their consultants find the proposed rules as amended to be reasonable in all respects.

The testimony submitted herein is based upon my eleven years of practice as an attorney representing numerous political subdivisions of the state of Minnesota and applicants before administrative bodies. My testimony is also the result of a detailed analysis of the proposed rules on my own behalf and with my clients and their consultants.

Brooks Fields, Jr. and Brooks Hauser were born and raised in Minnesota and have been involved in numerous successful Minnesota operating businesses and real estate developments. Therefore, they are very knowledgeable about the financial analysis needed for such a project.

Scottland Inc., a Minnesota Corporation, has owned and developed the Valley Industrial Park in Shakopee, Minnesota since 1969. The Company and its wholly owned subsidiary, Scott Builders, Inc., have built and managed over 300 million dollars of construction and land development and fully understand how to build and manage a large development of this nature. The principals of Scottland Inc. are very experienced in the construction of complicated projects such as the racetrack and related facilities.

The Santa Anita Companies comprise two separate, but paired companies, Santa Anita Realty Enterprises, Inc. and the Santa Anita Operating Company.

The Santa Anita Companies today is one of the recognized leaders in the horse racing industry in the United States, as well as the world, having operated the world famous Santa Anita track for 50 years. The Santa Anita Companies have demonstrated the ability to successfully market horse racing during a period when some racetracks have experienced difficulty. The attendance at the track has grown through the years. The 1983, 89-day winter meet at Santa Anita led the nation with an average daily attendance of 32,014. The 1982, 27-day fall meet was second in national rank behind Santa Anita's winter meet with a daily average attendance of 28,822. Through good management and marketing, the fall meet has grown over 14 years from 14,000 daily average to the present daily average of 28,822.

The Santa Anita Companies have also been involved in many other businesses such as resorts, amusement parks and real estate development.

Much of our analysis of the proposed rules draws upon these years of successful track operations.

My clients have reviewed the proposed rules as amended and find them to be reasonable in all respects. However, we believed it was important not to rely just upon their analysis. Therefore, we have retained outstanding consultants with national reputations to assist us in the development of this project and the analysis of the proposed rules of the Minnesota Racing Commission.

To assist us in the analysis of the proposed rules relating to project design and structures, we have a collaborative effort of architecture, engineering, landscaping and interior design between the Minnesota firm of Hammel, Green and Abrahamson, Inc. (HGA) and the Ewing Cole Krause Sports Facilities Division of Ewing Cole Cherry Parsky (Parsky, Krause) which has offices in Illinois, Pennsylvania and New Jersey. HGA has worked on numerous sports and public facilities. The principals in Parsky/Krause have been involved in either the total architectural design and planning or alterations and additions on over 30 thoroughbred, standard bred and dog tracks worldwide. Principals from both firms have reviewed the proposed rules and find them to be reasonable in all respects as they relate to project construction.

The Minnesota firm of Barton-Aschman Associates, Inc. (Barton-Aschman) is providing all traffic and parking analysis and land use and environmental planning for the racetrack. In 1977, Barton-Aschman prepared the Stadium Location Evaluation report for the Metropolitan Sports Facilities Commission. Barton-Aschman has performed similar services for numerous major Minnesota projects such as Valley Fair Amusement Park, Orchestra Hall, University of Minnesota, and the Minnesota Zoo. Barton-Aschman has also provided land use and transportation services to numerous clients outside the Twin Cities Metropolitan Area. Some representative projects include: Transportation Services, 1982 World's Fair, Knoxville, Tennessee; Transportation System, Chicago World's Fair (planned

for 1992); Visitor Traffic and Parking Plan for John F. Kennedy Library, Cambridge, Massachusetts; Traffic Analysis for Proposed Theme Park, Howard County, Maryland; Traffic, Access and Parking for Proposed Multi-purpose Development, Miami Beach, Florida; Taft Theme Park Site Design, Kane County, Illinois; and General Land Use Plan and Environmental Impact Assessment, Berry's Creek Center, Hacensack Meadowlands, New Jersey. Principals from the firm have reviewed the proposed rules as amended and find them to be reasonable in all respects relating to traffic, land use and environmental concerns.

In addition, principals of the law firm of Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., who specialize in administrative law, including the undersigned, have reviewed the proposed rules as amended and find them to be reasonable in all respects.

III. The Racing Commission and its staff have afforded all parties procedural due process in the development of the proposed rules.

As an administrative law specialist, I have attended hundreds of hearings and meetings involving state, regional and local administrative bodies, including numerous hearings and meetings involving rulemaking. On behalf of my clients, I or someone on my behalf, have attended every Racing Commission meeting or Rules Subcommittee meeting, except one, since the formation of the Racing Commission. I have never before seen such an open and deliberative process. From the outset, the comissioners and their staff advised all interested parties of the procedures to be followed, welcomed input from all parties, made available drafts of proposed rules, and met on numerous occasions with all interested parties. The meetings were always conducted in a manner to make all parties feel comfortable with the process and in an atmosphere which encouraged input from all involved.

IV. The proposed amendments to the proposed rules concerning disclosures of corporate shareholders of a corporate applicant are reasonable in all respects and are necessary.

Prior to the promulgation of the proposed rules, I recommended several changes to the Rules Subcommittee at two of their meetings, concerning the proposed rules on disclosure of corporate shareholders of a corporate applicant. The proposed rules were promulgated without including those recommendations. Therefore, at two Rules Subcommittee meetings I again expressed my concerns and the members of the Subcommittee agreed that the proposed rules on that issue should be modified to reflect the realities of

publicly owned and traded companies and directed its staff to develop those changes. Those changes were completed by staff and approved unanimously by the Racing Commission at its meeting on Wednesday, December 14, 1983. No one spoke in opposition to those changes. At the hearing before you on December 15, 1983, Mr. Hentges, consultant to the Racing Commission, explained in detail the reasons for those changes. No one spoke in opposition to those changes.

I testified in support of them and believe you should find them to be reasonable in all respects for the following reasons:

1. The rules as originally proposed required that if Company A is an applicant, Company A must disclose all of its shareholders. That is reasonable as long as the applicant may provide computer printout lists or other lists which to the best of its knowledge is the most recent compilation of shareholders. However, many of those outstanding shares may be held in "street name" by investment bankers and brokers and it would be impossible to determine for whose benefit they are held. Some may be held in a "blind" trust. Of course, shares are traded daily and therefore the compilation will always be "dated", probably each day.

2. The rules as originally proposed also required that Company A must disclose all ownership or other voting interest in Company B, if Company B owns one or more shares of Company A. All of the above problems and realities apply to this disclosure also. Additionally, Company A has no leverage over Company B so Company B may refuse to provide information concerning its shareholders to Company A. This refusal may be the result of a fear of a corporate takeover by others; it may be against the law in some jurisdictions; it may be too onerous a task to complete (i.e. a 10 million share company).

3. In each case, the above requirements could apply to Company C which owns one share of Company B, then Company D, E, F, etc.

4. Moreover, if someone wanted to prevent Company A from obtaining a license, he/she could cause Company Z to buy one share of Company A, B, C, D, E, etc. and then refuse to disclose any information.

5. Even if most of the above information were obtained, the list of shareholders could be in the millions and no meaningful review would be possible.

6. Unless the shareholder (corporate or individual) owns a substantial direct or indirect interest in Company A, the information as to that shareholder is not even relevant because that shareholder cannot exercise any control over Company A.

7. Most (if not all states) recognize these realities and provide that the applicant must disclose ownership interests in excess of a certain percentage, such as 5%. They do not ask for disclosure of the shareholders of corporate shareholders of a corporate applicant.

8. Unless modifications were made to the rules to address the above problems, the Racing Commission would have eliminated thousands of potential investors and perhaps numerous applicants.

The Racing Commission listened to these concerns and the recommendations of the Rules Subcommittee and its staff in support of the changes, and adopted the change now reflected in the proposed rules.

V. The Inclusion of "Best Efforts" in the Rules is Reasonable.

It is reasonable that the proposed rules include the phrase "best efforts" in several locations. "Best Efforts" is a defineable standard by which applicants may conduct their activities and the Racing Commission can review the applications. It is not a vague standard in any way. There are many court cases interpreting the meaning of "best efforts", several of which are cited in the Statement of Need and Reasonableness.

Moreover, the proposed rules require much detailed information which is not mandated by statute and therefore the Racing Commission may provide the "best efforts" standard for such additional information.

The "best effort" standard is also reasonable in that it may be that some information may prove to be impossible to obtain because the disclosures of the information to the applicant by someone (so the applicant can disclose it to the Racing Commission) may violate state or federal law. The person from whom the applicant can only obtain the information may be unavailable or may refuse or fail to respond.

Any applicant obviously will do whatever the applicant can do to provide the information requested because of the potential adverse consequences with the Racing Commission, but no applicant should automatically be disqualified because certain information is not obtained because of factors beyond its control.

It is important to remember that the Racing Commission seeks this information so it can determine which project and licensees are best for the State of Minnesota. This can not involve a mechanical testing procedure or a set of rigid specifications as one might use in request for proposals to build a bridge for example.

VI. The Inclusion of "Including but not Limited to" in the Rules is Reasonable.

It is reasonable that the proposed rules include the phrase "including but not limited to" in several locations.

Again, the proposed rules require much detailed information which is not mandated by statute and therefore the Racing Commission may provide guidance to the applicant of what may be relevant and at the same time allow the applicant to submit other information relevant to the process but not specifically enumerated in the rules. As stated previously we are not building a bridge where the specifications are standard throughout the state and the country. The Racing Commission wants the best racetrack and operator possible for the benefit of the state and rightfully has encouraged applicants to be creative in their responses and should not arbitrarily exclude information which helps to ensure the best choice possible.

VII. Summary.

The rules as amended are in all respects reasonable and should be adopted as introduced into the record by the Racing Commission. The proposed deadline for applications of January 15, 1984 was reasonable and the nearest possible deadline date should be approved.

Very truly yours,

Bruce D. Malkerson

Bruce D. Malkerson

BDM/ks
3596j

AMOS S. DEINARD
SIDNEY LORBER
SIDNEY BARROWS
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
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DAVID N. COX
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GEORGE B. WYETH
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MARY BENJAMIN TREVOR
J. BRADFORD GOSS
DOUGLAS B. GREENSWAG

GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899-1969)

IRENE SCOTT
OF COUNSEL

RECEIVED
DEC 22 1983
ADMINISTRATIVE HEARINGS

December 22, 1983

Public Exh. No. B
File No.
Date

George Beck, Esq.
Hearing Examiner
Office of Administrative Hearings
Room 400
Summit Bank Building
310 South 4th Avenue
Minneapolis, MN 55415

Re: Proposed Rules of the Minnesota Racing Commission

Dear Mr. Beck:

This letter constitutes written comments on the proposed rules of the Minnesota Racing Commission ("Racing Commission") relating to Class A and B license application procedures and requirements which were before you for public hearing on December 15, 1983. These comments are filed on behalf of Minnesota Jockey Club, Inc. ("Minnesota Jockey Club"), an applicant for Class A and B licenses from the Minnesota Racing Commission for a facility to be located in Eagan, Minnesota.

SUMMARY OF COMMENTS

For the reasons detailed below, Minnesota Jockey Club feels that the Racing Commission has manifestly demonstrated the need and reasonableness of the proposed rules and supports fully their approval. In addition, Minnesota Jockey Club respectfully requests your finding that the Commission may shorten the time period for receipt of license applications after the effective date of the rules from the 14-day period prescribed

in Rule 4 MCAR § 15.040 to 5 working days or less. Finally, Minnesota Jockey Club has some comments in support of other rules which are set forth below.

THE RULES ARE NEEDED AND REASONABLE

The Racing Commission has clearly demonstrated the need for and reasonableness of the proposed rules governing Class A and B license application requirements and procedures. Obviously, the public interest and the express terms of the Racing Commission statute require the degree of disclosure of character and financial information required by the proposed rules to insure the integrity of horse racing in Minnesota. Detailed disclosure of facility plans, personnel, management plans, business plans and promotional activities contemplated by applicants is also needed to guarantee that the facility ultimately built will be the best possible facility and that the licensee has the financial and business ability to make it a viable operation.

THE RULES ARE NONCONTROVERSIAL IN REALITY

As Minnesota Jockey Club's representative stated at the hearing on the rules, the Commission has clearly fulfilled all applicable substantive and procedural requirements of state law with respect to its rule-making effort. In fact, Minnesota Jockey Club feels that the Racing Commission has gone far beyond the legal requirements and given parties interested in the rule-making process an unprecedented opportunity to participate in the formulation of and comment upon the contents of the proposed rules. The Racing Commission's rule-making process provided full public notice, free and full opportunity for participation and fair consideration of the views of all interested parties who chose to participate in the process. Indeed, the absence of any adverse comment on substantive provisions of the proposed rules at the hearing amply demonstrates that the rules are at the present time uncontested and noncontroversial. The only provision drawing comment at the hearing was the deadline for receipt of applications.

The only reason for the hearing and the necessity to proceed under the controversial rule procedure was the dissatisfaction of a single license applicant with a provision of Rule 4 MCAR § 15.050 setting a possible application deadline of January 15.

Attached as Exhibit 1 is an article from the December 15, 1983 Minneapolis Tribune in which a representative of this applicant is reported to have said that its objection to noncontroversial rule making was made solely because of the January 15 deadline contained in Rule 15.040. Of course, with the invocation of the controversial rule procedure, the January 15 deadline for filing of applications for Class A and B licenses is now moot because the effective date of the rules will be well after that date. The fact that elimination of the potential application deadline of January 15 was the only objective of the only party who had any objection to any aspect of the rules was amply illustrated by the failure of a representative for that organization to appear at the hearing and make any comment whatsoever upon the rules. Thus, in reality the rules currently before you for review are uncontested and noncontroversial.

THE APPLICATION DEADLINE

Minnesota Jockey Club respectfully requests a finding that the 14-day deadline for application filing after the effective date of the rules provided by Rule 4 MCAR § 15.040 is not required by law or needed and that a shorter period would also be reasonable. As its representative suggested at the hearing, Minnesota Jockey Club feels that the Racing Commission should be advised that it has the discretion to shorten the 14-day period to a period of 5 working days or less for a number of reasons. First, all of the interested parties in the application process have been on notice of the application disclosure and content requirements and the Racing Commission's desire for an early filing date since October, 1983. Thus, by the effective date of the regulations all interested parties will have had at least five months to organize and to complete preparation of appropriate application information. Further, it is inconceivable that a potential license applicant was not following the licensing process well before October, 1983. There was well publicized legislative activity preceding the approval of the constitutional amendment authorizing horse racing and pari-mutuel betting in Minnesota in November, 1982. Legislative action in 1983 to implement the constitutional amendment and the Governor's extraordinary efforts to complete appointments to the Racing Commission were also well publicized. The public policy goal enunciated by the Governor to begin horse racing in 1985 has

also been well publicized. The reasons articulated for this objective, to create new jobs as fast as possible and to begin the process of increasing state revenues from the pari-mutuel betting activities associated with horse racing as quickly as possible, clearly support a finding that an application deadline of less than 14 days is reasonable.

Minnesota Jockey Club has the following comments on specific proposed rules.

1. The Best Effort Standard of Disclosure.

The proposed rules imposing disclosure requirements for Class A and B license applicants impose a "best efforts" standard of disclosure. See 4 MCAR § 15.003(E) (at page 4), § 15.016 (at page 16), § 15.020(E) (at page 23) and § 15.033 (at page 34). Minnesota Jockey Club supports this standard of disclosure. Manifestly, there must be some standard for the guidance of applicants. Moreover, in the absence of a standard, the Minnesota Racing Commission will be handicapped in its decision-making process if applicants do not make the fullest possible disclosure of the information required by the application disclosure rules. Finally, the best effort standard is an objective standard which is ascertainable and can be applied. It is a standard which is well known in the common law.

2. Criteria.

A number of the criteria for the issuance of Class A and B licenses are further defined in terms of specific sub-categories preceded by the phrase "included but not limited to". See 4 MCAR § 15.017(A), (C), (E), (F), (G), (J), (L) (at pages 17 and 19) and 4 MCAR § 15.034(A), (C), (D), (F), (J) (at pages 35-37). It may be argued that this wording of the criteria rules grants the Racing Commission undue discretion in making its decision on the license applications. Minnesota Jockey Club feels that such an argument, if made, would be without support as a matter of law and contrary to sound public policy.

To begin with, the subcriteria which are identified are a limitation, not an expansion, of the Racing Commission's discretion. The legislature made clear that the Minnesota Racing Commission

was to have the broadest possible discretion in making its licensing decisions. For example, Laws 1983, Chapter 214, Section 5, Subd. 3, (codified as § 240.05, subd. 3) provides as follows:

> "It is the intent of the legislature that authority granted by law to the Commission to issue licenses not be construed as requiring the Commission to issue any license."

Moreover, the general powers granted to the Commission by Laws 1983, Chapter 214, Section 3 (codified as § 240.03) grant the Commission broad discretion to regulate horse racing "to insure that it is conducted in the public interest" and to "take all necessary steps to insure the integrity of racing in Minnesota". In view of this broad grant of discretion, the Racing Commission's criteria rules can be viewed only as a self limitation upon its broad discretion.

In fact, it could be argued in view of the statutory criteria for licenses in Laws 1983, Chapter 214, Section 6, Subd. 4, and Section 7, Subd. 3 (codified as § 240.06, Subd. 4 and § 240.07, Subd. 3) that criteria rules are not needed or required by state law. At the very least, the specific criteria which are limited by the subcriteria preceded by the phrase "included but not limited to" are legally sufficient in the absence of further subcriteria. The attempt by the Racing Commission to further define legally acceptable criteria through the articulation of a lower tier of subcriteria cannot be found to be an attempt to expand its discretion.

The articulation of subcriteria also promotes the public policy of informing applicants of the standards against which they will be judged. Because the criteria limited by sub-criteria would be independently sufficient, the listing of subcriteria is a further attempt by the Racing Commission to place all potential applicants on notice of the criteria it will apply in evaluating license applications. This type of rule making should be encouraged, not rejected, as a matter of public policy.

3. The Investigation Fee.

Minnesota Jockey Club also supports Rule 4 MCAR § 15.037 (at pages 37-38) which requires applicants to submit a $10,000 advance investigation fee to cover the costs of the investigation of applicants mandated by the Racing Commission statute. The Minnesota Jockey Club feels that the amount is reasonable and supported by the evidence produced by the Racing Commission at the hearing. In fact, the investigation costs for applicants may very likely exceed the amount of the advance payment particularly in those cases where there are a great number of parties with ownership or beneficial interests identified in an applicant's disclosures.

CONCLUSION

In conclusion, therefore, Minnesota Jockey Club urges you to prepare your report approving all of the proposed rules without modification and advising the Racing Commission that it can shorten the deadline for filing applications after the effective date of the rules to a period of 5 working days if it so chooses. We also urge you to complete your report as promptly as possible so that the application submission deadline can thereby be advanced. Thank you for your consideration of these comments.

Respectfully submitted,

LEONARD, STREET AND DEINARD

By Byron E. Starns
Byron E. Starns

BES/jm
Enclosure

cc: Robert Nardi, Esq.
Michael Miles, Esq.
Robert Hentges, Esq.
Mr. James Weiler

EXHIBIT 1

Minneapolis Star and Tribune

Thursday
December 15/1983 1Y

Although several homes in Coon ever been," Jewell said. Melanie Thornberg, Champlin, Wis.

Racing board postpones deadline for license bids

By Robert Whereatt
Staff Writer

A representative of the group that wants to build a horse-racing track in Blaine Wednesday forced a six- to 10-week delay in the deadline for submitting license applications to the Minnesota Racing Commission.

When members of the commission voted against giving potential developers a deadline extension to Feb. 15, Blaine representative Charles Weaver filed documents challenging the commission's proposed operating rules. A review of the rules brought about by his challenge will require the commission to delay the application deadline to about March 1 at the earliest.

Weaver said the Blaine group wanted time to line up alternative financing in case industrial revenue bonds could not be used to fund construction of a $42 million track complex. Congress has been considering curtailing the use of tax-free industrial revenue bonds.

The original deadline incorporated in the commission's proposed operating rules was Jan. 15. Weaver challenged the proposed rules and legally forced an extended public hearing on them.

Weaver acknowledged after the commission meeting that his group's only concern with the proposed rules is the Jan. 15 deadline. The complex rules spell out in 42 pages the conditions for getting a license to build and operate a track and all the information that must be submitted.

The maneuver means a six- to 10-week delay before the commission can accept applications and begin the process of deciding which site gets a license to build a track in the seven-county metropolitan area.

The postponement means that the already tight schedule to open a track in 1985 is tighter. Commission Chairman Ray Eliot already has said that a 1985 opening was improbable, although that was still his goal.

Weaver's Blaine group was not the only potential race-track developer that sought a deadline extension. Representatives of sites in Savage, Woodbury, Lino Lakes, Farmington and Hastings notified the board that they wanted more time to line up financing and get their proposals together.

Joseph O'Neill, an attorney for developers who have a site in Eagan, was the only person to tell commissioners that his group was ready to proceed and could meet the Jan. 15 deadline. "There really is a time to fish or cut bait," O'Neill told commission members.

After the meeting, a representative of a Shakopee site said his group also was prepared to meet the early deadline.

The commission considered amending its rules and extending the deadline to Feb. 15. That failed on a 4-4 vote. One member, C. Elmer Anderson, Brainerd, was absent.

After the one-month extension was denied by the commission, Weaver submitted seven letters signed by Minnesotans, challenging the rules. By law, that is the minimum number of challenges needed to send the proposed rules into a public hearing under a hearing examiner who will take testimony and write a report.

Public Exh. No. A
File No.
Date

CHARLES R. WEAVER
Attorney at Law

HOLMES & GRAVEN
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Telephone 612/338-1177

RECEIVED
DEC 21 1983
ADMINISTRATIVE HEARINGS

December 20, 1983

Mr. George Beck
Hearing Examiner
Office of Administrative Hearings
310 South Fourth Avenue
400 Summit Bank Building
Minneapolis, MN 55415

Re: Proposed Rules 4 M.C.A.R. §15.001 - 15.050

Dear Mr. Beck:

I am an attorney representing the North Star Racetrack Association ("North Star"). On December 15, 1983, you conducted a hearing regarding the adoption of 4 M.C.A.R. §15.001 - 15.050, the proposed rules to regulate horse racing in Minnesota. Minn. Stat. §14.15, subd. 1, permits written material to be submitted and recorded in the record for five working days after the date of the hearing. Pursuant to this provision, I am submitting for consideration this letter, which expresses the concerns of North Star over the proposed rules.

North Star is a non-profit corporation created for the express purpose of promoting the licensure of the metropolitan racetrack in the City of Blaine, located in Anoka County, Minnesota. No member of the Board of Directors of North Star has any direct financial interest in the proposed site and North Star is not a developer. In addition to North Star, the Anoka County Board also is promoting the Blaine site. To facilitate this purpose, the Board appointed a Blue Ribbon Commission ("Commission") to act as a liaison between the County and North Star. This letter also reflects the Commission's viewpoints on the proposed rules.

North Star and the Commission both have a long history of involvement in the promulgation of legislation and rulemaking regulating horse racing in Minnesota. Prior to the 1983 legislative session, both North Star and the Commission were extremely active in promoting the Blaine site. Every session of the committee considering paramutual legislation was attended by a North Star and Commission representative. On several occasions, these representatives testified before the committee. In addition, during the legislative session both groups made presentations to virtually every service group and unit of local government in the north metropolitan area.

North Star, the City of Blaine, and the staff of Anoka County have prepared all of the documents necessary for submission of the Blaine site proposal to the Metropolitan Council. Included in this report was all of the pertinent infrastructure information regarding the potential impact on various metropolitan systems

(highways, sewers, parks, open spaces, and airports) which may result from the construction of a racetrack on the Blaine site. After Governor Perpich appointed all of the members of the racing commission, a North Star representative attended the meetings of the racing commission along with the meetings of the rules committee. North Star actively participated in these meetings.

North Star and the Commission are generally pleased with the proposed rules and commend the drafters. However, both groups are very concerned about 4 M.C.A.R. §15.040 relating to the time of submission of the application for a Class A license. The rule as proposed reads as follows:

> 4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.
>
> Deadlines for submission of a Class A or B license application are as follows:
>
> A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on January 15, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;
>
> B. applications for Class A licenses to own and operate racetracks outside the seven-county metropolitan area are not subject to the deadline imposed by A. If the commission determines that applications will be submitted for Class A licenses to own and operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications;
>
> C. applications for Class B licenses must be submitted at least 160 days before the date on which the applicant proposes to commence horse races.

The deadline for the submission of an application for a Class A license could be as early as January 15, 1984. This deadline is too early for many applicants to meet. Evidence presented at the hearing indicates that 7 of the 9 prospective applicants for a Class A license would be unable to meet such a deadline. In addition, one of the two prospective applicants who stated that such a deadline could be met also indicated that it would prefer an extension.

Concern has been expressed that an extension of time until March 1, 1984, as requested by North Star, would interfere with the apparent goal of the Commission to open the racetrack by July 1, 1985. However, the Commission's own Statement of Need and Reasonableness regarding 4 M.C.A.R. §16.006, page 10, paragraph 5, states that "at present several strong potential applicants are interested in the Twin Cities license. The strong potential applicants and competition maximize the likelihood of a successful facility." In addition, the same Statement of Need and

Reasonableness, regarding §15.040, page 22, presumes that the earliest date for applications would be 14 days after March 1, 1984, and that submission by that date would be consistent with the proposed completion date of July 1, 1985. Therefore, the timetable for the racetrack development would not be affected if the time for application submission is extended until March 1, 1985. Indeed, it would appear that this was the date originally intended for the submission of Class A license applications. An inequitable, unjust result would occur if 7 out of the 9 applicants could not compete for a license simply because they could not meet an unreasonable time deadline.

North Star has been diligently pursuing the entire process for over one year and has successfully assembled a team consisting of a developer, an underwriter, engineers, architects, a general contractor, a financial feasibility consultant, and several other specialty consultants. Although it may be doubtful that this team will be able to coordinate the efforts of the 9 subcontractors who are currently preparing the application, I have been assured that the application will be ready for submission if the earliest date is extended until March 1, 1984. After the considerable investment in time and money of North Star and the 8 other competing applicants, have made regarding this license application it is only fair and reasonable that the time deadline be extended until March 1, 1984.

While we applaud the thoroughness of the proposed rule and we wholeheartedly agree that deadlines must be established and maintained for submission of the application, we ask that you seriously consider modifying the deadline for submitting applications from January 15, 1984 to March 1, 1984.

Sincerely,

Charles R. Weaver

CRW/bjm

Exh. No. 8
File No.
Date

HOLMES & GRAVEN
CHARTERED
470 Pillsbury Center, Minneapolis, Minnesota 55402
Telephone 612/338-1177

CHARLES R. WEAVER
Attorney at Law

December 13, 1983

James Weiler
Suite 400
United Labor Center
312 Central Avenue
Minneapolis, MN 55414

RE: Request for Public Hearing
Minnesota Racing Commission

Dear Mr. Weiler:

I represent the seven people whose letters are requesting a public hearing concerning the proposed adoption of rules by the Minnesota Racing Commission. Specifically, we have one major concern with the rules: the extremely short time period allowed for the submission of applications for the Class A license. Therefore, we are requesting a public hearing to provide an opportunity to contest the time period. However, if it is possible for us to reach agreement with you that the date be extended beyond that now provided in the rules, we will withdraw our request for the public hearing. Please contact me as soon as possible to let me know if there is a possibility of reaching such a compromise. In the absence of an agreement, we wish to proceed with our demand for a public hearing.

Thank you for your assistance. I look forward to hearing from you.

Sincerely,

Charles R. Weaver (pl)

Charles R. Weaver

CRW:jes

Enclosures

November 16, 1983

James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

I have been told that the State Racing Commission is trying to pass rules for the operation of horseracing without a public hearing, that a scheduled hearing will be canceled if no one requests in writing that it be held.

This is my request that the public hearing be held.

Sincerely,

Robertsen A. Strothers
5525 Dundee
Edina, Minn.

Robertsen A. Strothers
5525 Dundee Road
Edina, MN 55436

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Center
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, and the notice of intent to cancel hearing if fewer than seven persons request a hearing.

This is my request that the hearing be held as scheduled on December 15th and 16th.

Very truly yours,

Carl F. Nelson

Carl F. Nelson
8420 County Road 10
Waconia, Minnesota 55387

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

It has been brought to my attention that a scheduled public hearing to consider rules governing horseracing in the State of Minnesota will be canceled unless seven or more persons request a hearing be held.

I am writing to request that this letter be considered as my request that the hearing be held.

Yours truly,

Lyle M. Jensen

Lyle M. Jensen
4625 Bassett Creek Lane
Minneapolis, MN 55422

November 16, 1983

Mr. James Weiler, Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

D. J. Cassin
4400 Gilford Drive
Edina, MN 55435

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

Regarding the Notice of Hearing and Intent to Cancel the hearing in the matter of the Adoption of Rules governing Minnesota Racing licensure, I request that the Public Hearing scheduled for December 15th and 16th be held. I believe that rules for pari-mutuel horseracing are important enough to warrant all possible public input.

Sincerely,

Joan Gilchrist
1001 Second Street N.W.
Waseca, Minn. 56093

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

I request that the public hearing for the adoption of rules governing licensing for Minnesota Racing be held on December 15 and 16, 1983, as scheduled.

I find it incongruous that the State would attempt to establish rules for pari-mutuel racing without a public hearing.

Sincerely,

Steward O. Mercer
9845 E. Green Lakes Trail
Chisago City, MN
55013

Steward O. Mercer
9845 E. Green Lakes Trail
Chisago City, MN

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

Pursuant to the notice issued by Mr. Ray Eliot, Chairman of the Minnesota Racing Commission, I hereby request that the public hearing on the Proposed Adoption of Rules of the Minnesota Racing Commission be held.

Sincerely,

Warren White

2821 Copperfield Circle
Wayzata, Minn. 55391

December 14, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

Kathy Brehm
3920 Skyview Road
Minnetonka, MN

December 14, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

Mary G Dobbins

Mary G. Dobbins
3719 Columbus Avenue So.
Minneapolis, MN 55407

December 14, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

Janet Smith

Janet Smith
535 West Sandhurst Drive
Roseville, MN 55113

Exh. No. 15
File No.
Date

Minnesota Pollution Control Agency

December 12, 1983

DEC 13 1983

Mr. James Weiler
Project Administrator
United Labor Center, Suite 400
312 Central Avenue
Minneapolis, Minnesota 55414

Dear Mr. Weiler:

The Minnesota Pollution Control Agency (MPCA) staff has reviewed the proposed Rules of the Minnesota Racing Commission governing class A and B licensing and has several suggested changes to the rules to offer for your consideration. We believe that the suggested changes serve to clarify the rules and do not involve a substantial change in the proposed language.

The suggested changes are as follows:

1. 4 MCAR §15.005B and 15.022B

   We recommend that the phrase "including ones affected jurisdictions determine must be built to handle traffic" be added at the end of the existing language in both of these sections. The operation of a racetrack will involve substantial increases in traffic, likely necessitating roadway improvements so that congestion and air quality problems do not result. It is, therefore, important to note all improvements that are necessary due to the project, not just those that are currently proposed. Issuance of MPCA's indirect source permit is contingent upon documented commitment to all improvements necessary to insure no adverse air quality impacts.

2. 4 MCAR §15.005K and 15.022K

   We recommend that the phrase "and for those working at or visiting the facility"be added after "public" on line two. A facility of this nature will include large numbers of employees and other personnel associated with the horses. Parking needed for these people, as well as the people attending the racing events, must be provided and must be taken into account in any analysis of impacts and MPCA permitting.

Phone: 296-7799
1935 West County Road B2, Roseville, Minnesota 55113-2785
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3. 4 MCAR §15.017F

Two changes are suggested here. The first is the addition of "as determined by the affected jurisdictions" after "improvements" in number 1. The rationale here is the same as that for the change suggested in 4 MCAR §15.005B and 15.022B. The second is the addition of "construction" between "ownership" and " and" in number 3. This change is intended to take into account the fact that the MPCA indirect source permit is required for construction of the facility.

Thank you for the opportunity to comment on these proposed rules. Please feel free to call me if you have any questions on these comments or would like to discuss them.

Sincerely,

Deborah R. Pile

Deborah R. Pile
Director
Office of Planning & Review

DRP:es

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
4344 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
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STEVEN G. HEIKENS
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GREGORY L. WILMES
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2660 PETRO-LEWIS TOWER
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SUITE 802-2000 L STREET N. W.
WASHINGTON, D. C. 20036
TELEPHONE AND TELECOPIER
202-887-5154

December 6, 1983

Minnesota Racing Commission
Rules Subcommittee
312 Central Avenue
Suite 400
Minneapolis, MN 55414

Re: Proposed Rules

Dear Commissioners:

At the last two rules subcommittee meetings, we expressed concern that the proposed rules for Class A and Class B should be modified to reflect the realities of any publicly held and traded company which might be an applicant or which may own one or more shares of a company which is an applicant. We believed that these concerns were to be addressed in the next draft of the rules. Apparently, they were not.

The rules as proposed then and now require that if Company A is an applicant, Company A must disclose all of its shareholders. That is reasonable as long as the applicant may provide computer printout lists or other lists which to the best of its knowledge is the most recent compilation of shareholders. However, many of those outstanding shares may be held in "street name" by investment bankers and brokers and it would be impossible to determine for whose benefit they are held. Some may be held in a "blind" trust. Of course, shares are traded daily and therefore the compilation will always be "dated", probably each day.

The proposed rules also require that Company A must disclose all ownership or other voting interest in Company B, if Company B owns one or more shares of Company A. All of the above problems and realities apply to this disclosure also. Additionally, Company A has no leverage over Company B so Company B may refuse

to provide information concerning its shareholders to Company A. This refusal may be the result of a fear of a corporate takeover by others; it may be against the law in some jurisdictions; it may be too onerous a task to complete (i.e. a 10 million share company).

In each case, the above could apply to Company C which owns one share of Company B, then Company D, E, F, etc.

Moreover, if someone wanted to prevent Company A from obtaining a license, he/she could cause Company Z to buy one share of Company A, B, C, D, E, etc. and then refuse to disclose any information. Even if most of the above information were obtained, the list of shareholders could be in the millions and no meaningful review would be possible. Unless the shareholder (corporate or individual) owns a substantial direct or indirect interest in Company A, the information as to that shareholder is not even relevant because that shareholder cannot exercise any control over Company A.

Most (if not all states) recognize these realities and provide that the applicant must disclose ownership interests in excess of a certain percentage, such as 5%. They do not ask for disclosure of the shareholders of corporate shareholders of a corporate applicant.

We believe that a reasonable rule for Class A and Class B licenses would provide for 1) disclosure of all shareholders of the applicant; 2) disclosure of all shareholders who own 5% or more of a company which owns 5% or more of the shares in the corporate applicant.

If the Racing Commission wants disclosure of the shareholders of any company which owns 5% or more of a company which owns 5% or more of the shares in the corporate applicant, then the corporate applicant should use its "best efforts" to obtain that information which I believe should entail sending a letter requesting that information to the President of such company with an affidavit of mailing attached to the letter which is made part of the application.

Unless modifications are made to the rules to address the above problems, the Racing Commission will have eliminated thousands of potential investors and perhaps numerous applicants.

The proposed rules in this regard are unreasonable and do not promote the interests of the State of Minnesota.

If the Racing Commission believes that that much detail is necessary, then it should require such or similar disclosures from all mortgage holders, bond holders or other debt holders because each has the limited potential of influencing the applicant and if there is a default, each may in fact own the racetrack.

In summary, I ask that the rules subcommittee give direction to staff to address these concerns and suggest some additional language at the next subcommittee meeting.

Very truly yours,

Wayne G. Popham

WGP/jf
cc: Racing Commission
Mr. Jim Weiler
Mr. Mike Miles
Mr. Robert Nardi
Mr. Robert Hentges
3520j

Jamb architects
43 S. LAKE ST. FOREST LAKE, MN. 55025

9 December, 1983

DEC 12 1983

Minnesota Racing Commission
Suite 400
312 Central Ave.
Minneapolis, MN 55414

Members of the MN Racing Commission:

It was brought to my attention that the Racing Commission is considering a January 1 deadline for the Class A racetrack license applications, which are not yet available. I feel that this date would not give our site representatives adequate time to prepare an application.

When the license applications are issued by the commission, we would like to have a minimum of two months to submit. I understand that other sites are requesting a date of May 1, and I would certainly support this request.

Please contact me as soon as the applications are available, and inform me of the final application deadline.

Sincerely,

JAMB ARCHITECTS

Joanne Gallaher

Joanne Gallaher

WOODBURY CENTER

A Minnesota Limited Partnership

1365 Englewood Avenue | Tel: 612 / 644-8281 | St. Paul, Minnesota 55104

December 9, 1983

DEC 10 1983

Mr. Ray Elliott
Chairman, Minnesota Racing Commission

At a meeting of the Rules Committee on Tuesday, December 6, 1983, Mr. Hentges advised that the process of accepting applications could occur as early as January 15, 1984. Commissioner Daniels asked for comments from those of us in attendance on the matter.

I stated that we had been advised that the indicated date for applications would be March 1, 1984, and that we were proceeding on that basis in formulating all aspects of our proposal for the Woodbury site.

I wish to advise you and the other members of the Commission that a date earlier than March 1, 1984, would not allow us adequate time to properly complete our proposal and may therefore place the viability of our proposal in jeopardy. I believe there are other site developers who are also basing their plans on a March 1, 1984, date.

Our plans will call for completion of the project in time for a 1985 racing program. Our site requires minimal site preparation and no major road or interchange construction so we have the advantages of time and cost in that respect.

I sincerely hope that no change from the indicated date of March 1, 1984, will occur and will look forward to the Commission action on this matter by December 13, 1983.

Very truly yours,

Ronald A. Signorelli
General Partner

CITY OF HASTINGS L STOFFEL
100 SIBLEY ST
HASTINGS MN 55033 13AM

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MINNESOTA RACING COMMISSION
312 CENTRAL AVE ROOM 400
MINNEAPOLIS MN 55414

HASTINGS COMMITTEE REQUESTS THAT THE DATE FOR APPLICATION BE EXTENDED TO APRIL 30, 1984.
LOU STOFFEL, MAYOR CITY OF HASTINGS

17:09 EST

MGMCOMP

DEC 14 1983

5241 (R 7/82)

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS