

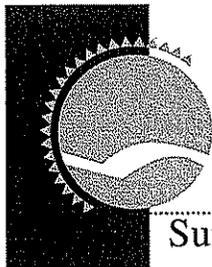
BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING

JANUARY 31, 2007

Reported by: SHERRI SANTMAN FISHER

Job #9-61709



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1 BE IT REMEMBERED that the above entitled matter
2 came on for hearing on the 31st day of January, 2007,
3 beginning at 10:33 A.M. at 6100 Guadalupe, Building E,
4 First Floor Auditorium, Austin, Travis County, Texas,
5 and the following proceedings were reported by SHERRI
6 SANTMAN FISHER, Certified Shorthand Reporter for the
7 State of Texas.

8
9
10 APPEARANCES

11
12 Commissioners: R. DYKE ROGERS
13 MICHAEL G. RUTHERFORD
14 JESSE R. ADAMS
15 TREVA J. BOYD
16 CHARLES L. "SONNY" SOWELL
17 DAVID G. CABRALES
18 ERNEST ANGELO, JR.
19 JIMMY ARCHER
20
21
22
23
24
25

1 CHAIRMAN ROGERS: Okay. Ms. Giberson,
2 could you call the roll, please?

3 MS. GIBERSON: Jesse Adams?

4 COMMISSIONER ADAMS: Here.

5 MS. GIBERSON: Treva Boyd?

6 COMMISSIONER BOYD: Here.

7 MS. GIBERSON: Kent Carter? Ernest
8 Angelo?

9 MR. ANGELO: Here.

10 MS. GIBERSON: Mike Rutherford?

11 VICE-CHAIRMAN RUTHERFORD: Here.

12 MS. GIBERSON: Sonny Sowell?

13 COMMISSIONER SOWELL: Here.

14 MS. GIBERSON: Jimmy Archer?

15 MR. ARCHER: Here.

16 MS. GIBERSON: David Cabrales?

17 COMMISSIONER CABRALES: Here.

18 MS. GIBERSON: Dyke Rogers?

19 CHAIRMAN ROGERS: Here.

20 We've got a quorum present, so we'll call
21 the meeting to order.

22 Before we begin, I'd like to introduce a
23 new Commissioner, David Cabrales, and I'd like to give
24 him an opportunity to say a word or two.

25 COMMISSIONER CABRALES: Thank you,

1 Mr. Chairman. I'm happy to be serving on this
2 Commission and I thank Governor Perry for giving me
3 that opportunity. I'm looking forward to getting to
4 understand the industry better and to learn about all
5 of the challenges that face the various components of
6 this industry now and into the future. And I hope that
7 I'm able to serve this Commission and the people of
8 Texas and all of the various industry components to the
9 best of my ability.

10 CHAIRMAN ROGERS: Thank you.

11 Okay. This is a period in the agenda
12 where we offer public comment. If there is anyone that
13 would like to address the Commission on an issue that's
14 not on the agenda, we would not be taking any action
15 upon it; but if you choose to, this would be the time
16 that you could do that.

17 Okay. We'll move to discussion,
18 consideration, and possible action on the following
19 matters: Budget and finance.

20 Ms. Curtsinger?

21 MS. HARRIS-CURTSINGER: Good morning,
22 Commissioners. We are now 33.33 percent through the
23 current 2007 fiscal year. The agency's projections
24 continue to hold true as you will see in the handout
25 provided in your packet.

1 Just a note on the session. We met with
2 the -- we have met with the LBB regarding our
3 legislative appropriation request and we also had a
4 Senate finance hearing yesterday. The LBB is
5 recommending the restoration of the 10 percent
6 reduction that we were instructed to include in our
7 LAR. Also the LBB has recommended an increase in
8 out-of-state travel for all agencies within Article 9.
9 This would mean an additional \$10,000 in budget
10 authority for our agency in out-of-state travel.

11 I'll be happy to answer any questions.

12 CHAIRMAN ROGERS: Commissioners, any
13 questions?

14 I like the little pie charts. Those are
15 swell.

16 MS. HARRIS-CURTSINGER: Thank you.

17 CHAIRMAN ROGERS: Thank you.

18 Okay. Mr. Neely, would you give us a
19 report on racetracks, please?

20 MR. NEELY: Good morning, Commissioners.
21 I'm pleased to give you an update on this printed
22 report. On January the 29th, which was Monday, the
23 Gulf inspection was resolved with the replacement of
24 some lighting issues there. Also the pari-mutuel
25 issues that are still outstanding are things that were

1 addressed in the rule proposals from the last meeting.

2 CHAIRMAN ROGERS: Okay. Any problems
3 that you need to make us aware of?

4 MR. NEELY: No, sir.

5 CHAIRMAN ROGERS: Any questions,
6 Commission?

7 Thank you.

8 MR. NEELY: Thank you.

9 CHAIRMAN ROGERS: I'd recognize Lila
10 Smith for a report on an online simulcast request
11 project just to bring us up to date.

12 MS. SMITH: Good morning, Commissioners.
13 I'm Lila Smith, a pari-mutuel audit administrator for
14 the Commission.

15 In August of 2006 we started a simulcast
16 request online project which was to automate the
17 submission and entry of the simulcast requests. After
18 many hours of planning, testing, and the assistance of
19 our field auditors, the simulcast coordinators at
20 racetracks, and the Texas Horsemen's Partnership, an
21 application was developed which allows for the online
22 entry, review, and, upon approval, the automatic entry
23 of simulcast contract dates and the rates table in our
24 database.

25 Prior to this time the simulcast

1 coordinator at each racetrack would fax all the
2 simulcast requests and review to the Austin office for
3 approval. For the year of 2006, there were 2,212
4 requests faxed to the Austin office and 2,212 reviews
5 faxed to the Austin office. The field auditor would
6 have to enter the race table manually for each of those
7 2,212 simulcast requests in our database which on the
8 average takes 69 separate database entries to enter one
9 of those race tables.

10 The Austin staff would have to enter each
11 simulcast request into a simulcast log. And in 2006
12 that was approximately 15,484 separate entries into a
13 simulcast log. Then they would have to double-check
14 the calculation of the distribution of the commissions,
15 approve the simulcast request, update the simulcast
16 contract dates in Oracle, and finally fax all of those
17 approvals back to the simulcast racetrack.

18 At the end of the year, because all
19 simulcast approvals expire, the process for approving
20 simulcast requests took five people seven days in the
21 Austin office to get all that done. Using this new
22 application, it took one person less than three days to
23 process the simulcast requests. There was no faxing.
24 There was no manual entry to the simulcast log and no
25 manual data entry into our database.

1 Additionally, this new application has
2 made it possible for the requesting, reviewing, and
3 approving of a simulcast request from anywhere there is
4 an Internet connection. This ability came just in time
5 for Corpus Christi Greyhound track.

6 As you know, the parent company for
7 Corpus Greyhound is in Florida. The decision was made
8 to have the simulcast request done in the corporate
9 office in Florida. With the new application, the
10 simulcast coordinator was able to send the contract via
11 e-mail to the auditor at Corpus Christi and fill out
12 the simulcast request online and he received the
13 approval online.

14 During the ice storm two weeks ago, only
15 two of my auditors could get to work, and that was Gulf
16 Greyhound and Corpus Christi. Retama needed a
17 simulcast request reviewed and approved. Steve Ross,
18 the simulcast director at Retama, was able to e-mail
19 the contract to the auditor at Gulf Greyhound. The
20 auditor at Gulf Greyhound was able to review it. And
21 the person sitting at their computer at home was able
22 to approve it. So life went on even with -- we weren't
23 shut all the way down.

24 The simulcast request online project has
25 lessened the mistakes made by a computer operator,

1 achieved a savings of manpower, and is more convenient
2 and has a lot fewer faxes. I would especially like to
3 thank Patricia Nalle, the director of our IT
4 department, Steve Ross, the simulcast coordinator at
5 Retama Park, and Scott Sherwood, simulcast coordinator
6 at Gulf Greyhound, for the generous time and feedback
7 they were willing to give us to make this application
8 come true.

9 Do you have any questions?

10 CHAIRMAN ROGERS: Is this a program that
11 you purchased or is this something someone developed?

12 MS. SMITH: We developed it. But we used
13 outside sources, but we developed the whole thing.

14 Yes?

15 COMMISSIONER BOYD: Good morning.

16 MS. SMITH: Good morning.

17 COMMISSIONER BOYD: And it's a secure
18 site.

19 MS. SMITH: Yes, it is.

20 COMMISSIONER BOYD: So we control who
21 gets in and out.

22 MS. SMITH: Yes, we do, with their
23 password.

24 COMMISSIONER BOYD: And when the review
25 happens, it happens online, correct?

1 MS. SMITH: Correct.

2 COMMISSIONER BOYD: And then who is it
3 that approves or denies the request?

4 MS. SMITH: There's -- Charla Ann has
5 designated several different people that can do that.
6 Sammy Jackson is one, Carol Olewin, myself.

7 COMMISSIONER BOYD: Great. I'm glad for
8 you all. Thanks.

9 CHAIRMAN ROGERS: Good. We need to keep
10 doing things that reduce our costs and whatever. I'm
11 sure that when we get a little later in the agenda,
12 there will be people who will be appreciative of other
13 things that we could do that would cut costs.

14 MS. SMITH: Thank you.

15 CHAIRMAN ROGERS: Thank you.

16 Well, I've got to tell you. That's the
17 first time I've heard anybody get any applause in the
18 seven or so meetings -- seven or so years I've been
19 here. So congratulations.

20 Okay. We will move to proceedings on
21 racetracks, discussion and consideration of possible
22 items on the following matters: I think we will take
23 up two items together, the escrowed purse account and
24 the ATB revenue.

25 Mr. Brown?

1 MR. BROWN: Good morning, Commissioners.
2 Can you hear me all right?

3 I'm happy to be up here and not a part of
4 a two- or three-hour marathon where we all embarrass
5 ourselves. The industry has reached an agreement on a
6 couple of things. And all the participants are to be
7 congratulated for a lot of hard work. Since the
8 September 27th Commission meeting, the industry has
9 held many, many meetings and phone conversations and
10 tried to come up with a way to distribute both the
11 accredited Texas-bred money as well as the
12 cross-species escrowed purse account money in a way
13 that would help everyone. And we think we've done
14 that.

15 So we have two agreements that I believe
16 you have copies of each in front of you; and I'd like
17 to report the results of those and maybe, if it's
18 appropriate, read the specific percentages into the
19 record that have been agreed to. And I'll start with
20 the allocation of the escrowed purse account under
21 321.509 amongst the tracks and the agreed splits
22 there.

23 Gillespie County Fair would get 1.6
24 percent; Lone Star Park, 27.18 percent; Manor Downs,
25 7.8 percent; Retama Park, 18.12 percent; and Sam

1 Houston Race Park, 45.3 percent.

2 The second component of the split in the
3 escrowed purse account is the allocation amongst the
4 breeds, and that's subject to this agreement that was
5 signed by all the racetracks and the breed
6 associations.

7 That split would be seven percent to
8 minor breeds, with three and a half percent of that or
9 half that amount going to Arabians and three and a half
10 percent to Paints. Of the remaining 93 percent, 77.5
11 percent would go to Quarter Horses and 22.5 percent to
12 Thoroughbreds.

13 And I should remark that what that means,
14 out of the escrowed purse account there would be an
15 additional \$504,574 that go to Quarter Horse purses and
16 an additional 60,000 that goes to minor breed purses.
17 Thoroughbred purses would be reduced by that amount --
18 or I shouldn't say reduced. The amount -- the sharing
19 of Thoroughbred purses would be reduced by that amount
20 versus the current percentages.

21 The industry felt it was important -- and
22 I think we heard from the Commission it was
23 important -- to look at a way to enhance Quarter Horse
24 purses, and this agreement certainly does that and in a
25 way that I think will be meaningful for the Quarter

1 Horse industry.

2 In addition to that, the third component
3 of all these agreements -- and it's in this same
4 agreement we just read those percentages from -- would
5 be an allocation of the accredited Texas-bred incentive
6 funds. Those percentages would be one and a half
7 percent to minor breeds with .98 percent of that going
8 to Arabians and .52 percent to Paints. The remaining
9 98 and a half percent would be split 66.67 percent to
10 Thoroughbreds and 33.3 percent to Quarter Horses.

11 Again, I think the entire industry has
12 worked very, very hard on this. We urge that the
13 Commission approve the percentages in both these
14 agreements. And I'd be happy to answer any questions
15 that you have.

16 CHAIRMAN ROGERS: Questions or comments,
17 Commissioners?

18 Thank you.

19 MR. BROWN: The only thing I would add,
20 this is for the year 2007 only, which I believe is the
21 only action you're looking at. And a part of this --
22 some of the variables will change next year as race
23 dates change, so it could be these percentages could
24 vary -- particularly amongst the tracks could vary
25 quite a bit next year when race dates -- when and if

1 race dates change.

2 CHAIRMAN ROGERS: Okay. Thank you.

3 MR. BROWN: Thank you.

4 CHAIRMAN ROGERS: I would entertain a
5 motion to -- there will actually be three motions here,
6 I think, involved. The first one would be to
7 distribute the escrowed purse account under Rule
8 321.509 in accordance with the two agreements before us
9 that were signed by the breed registries and the horse
10 racetracks. And those have been entered into the
11 record already. Would there be a motion to that
12 effect?

13 COMMISSIONER BOYD: I so move.

14 CHAIRMAN ROGERS: A motion made by
15 Commissioner Boyd.

16 COMMISSIONER SOWELL: Second.

17 CHAIRMAN ROGERS: Seconded by
18 Commissioner Sowell.

19 All in favor?

20 COMMISSIONERS: Aye.

21 CHAIRMAN ROGERS: The motion passes.

22 We'll move to an allocation among the
23 various breeds. I think the motion would be -- first
24 would be to rescind the allocation among the various
25 breeds of horses for accredited Texas-bred incentive

1 program revenue adopted at the September 27th, 2006
2 Commission meeting. Can I get a motion to rescind
3 that?

4 COMMISSIONER SOWELL: So move.

5 VICE-CHAIRMAN RUTHERFORD: Second.

6 CHAIRMAN ROGERS: Commissioned by
7 Commissioner Sowell -- I mean, made by Commissioner
8 Sowell, seconded by Commissioner Rutherford.

9 All in favor?

10 COMMISSIONERS: Aye.

11 CHAIRMAN ROGERS: The motion carries.

12 And then a motion to allocate the
13 Texas-bred incentive program revenue generated by the
14 simulcasts for 2007 among the various breeds of horses
15 in accordance with the two agreements before us that
16 were signed by the breed registries and the horse
17 racetracks. And we'll enter those agreements into the
18 record.

19 COMMISSIONER ADAMS: So move,
20 Mr. Chairman.

21 CHAIRMAN ROGERS: A motion made by
22 Commissioner Adams.

23 VICE-CHAIRMAN RUTHERFORD: Second.

24 CHAIRMAN ROGERS: Seconded by
25 Commissioner Rutherford.

1 All in favor?

2 COMMISSIONERS: Aye.

3 CHAIRMAN ROGERS: The motion passes.

4 I'd like to say thank you to all the
5 groups that got together to do this. I think that
6 this, I'm certain, wasn't easy. And hopefully it works
7 out better for everybody involved than where we were.
8 So thank you.

9 Okay. We need to move to an approval of
10 change in ownership of Retama Park.

11 Mr. Neely?

12 MR. NEELY: Commissioners, in November we
13 received a request from Retama Park for the approval of
14 change of ownership for the estate of Thomas A. Wolf to
15 his children, Richard W. Wolf, Thomas A. Wolf, Jr., and
16 Lucie W. Taylor. Their background information was
17 submitted to the Department of Public Safety on
18 November 29th. And on December the 8th we received a
19 positive report from DPS, so we recommend that those
20 changes be approved.

21 CHAIRMAN ROGERS: Commissioners, any
22 questions?

23 Okay. I would entertain a motion to
24 approve the requested transfer of ownership interest in
25 Retama Partners from the estate of Thomas Arthur Wolf

1 to Richard William Wolf, Thomas Arthur Wolf, Jr., and
2 Lucie Wolf Taylor.

3 COMMISSIONER ADAMS: So move,
4 Mr. Chairman.

5 MR. ANGELO: Second.

6 CHAIRMAN ROGERS: Moved by Commissioner
7 Adams, seconded by Commissioner Angelo.

8 All in favor?

9 COMMISSIONERS: Aye.

10 CHAIRMAN ROGERS: The motion passes.

11 Okay. We'll take up the next two items
12 together. One of those is approval of change of
13 ownership and approval of the management contract for
14 Valley Race Park.

15 Mr. Fenner?

16 MR. FENNER: Commissioners, we have
17 before you this contract which is separate from but
18 related to the license applications that will be coming
19 up before you at a future Commission meeting. Those
20 will be the applications for Webb County.

21 The reason it is related to that is that
22 there is an issue of one of the applicants having two
23 racetracks already, and the statute provides that you
24 cannot have more than five percent of more than two
25 racetracks.

1 This sales document would allow this
2 party to successfully perhaps gain a license for
3 Laredo, but this issue needs to be resolved. And in
4 order to process those applications in an orderly
5 fashion and to preserve as many options for you when
6 you take up those applications, I think it would be
7 good to go ahead and discuss these sales documents and
8 perhaps provide some guidance to the parties as to
9 whether or not you think that these contracts are
10 sufficient to bring them within the five percent rule
11 or statute.

12 So therefore, I don't intend to go into
13 the details of the contract right here. I believe
14 Mr. Bork is going to provide a little overview of the
15 terms of the contract. We do have a little bit of an
16 issue in that the parties regard some of the terms of
17 the contract as being proprietary, the sales portion;
18 so I don't think it probably would be prudent to
19 discuss the sales price, for example, the specific
20 price in public; but I think we can discuss, in general
21 terms, some of the elements of the contract.

22 Also the management contract, under our
23 statute, should be discussed in executive session; so
24 I'm going to request that we -- I've made a request to
25 the Chair that we go into executive session to discuss

1 the management contract. And then once we come out of
2 executive session, it's my hope that you would be able
3 to provide some questions to me and to the parties and
4 perhaps some guidance on what your thoughts about the
5 contract are.

6 CHAIRMAN ROGERS: Just one point of
7 question.

8 MR. FENNER: Yes, sir.

9 CHAIRMAN ROGERS: I know the management
10 of Valley Race Park considers the contract to be
11 proprietary. Are they considering this contract to be
12 proprietary just because it's a proposed or in current
13 negotiation or do they think it will be proprietary if
14 and when it comes for -- well, I mean, it's on the
15 agenda for actual approval. Are they -- is it your
16 position that it is proprietary, that a sales contract
17 of a track --

18 MR. FENNER: The sales contract?
19 Frankly, I have reservations or doubts that it is
20 proprietary. I think that it's a matter of a public
21 interest. However, the matter is pending before the
22 Attorney General. The other party has made a request
23 for those documents. We have followed the request of
24 the selling party here, Maxxam, and sent it to the
25 Attorney General's office for an opinion. We should

1 get a decision back on that within a few days so that
2 by the time this contract comes up for final approval,
3 we should have a definitive answer on that.

4 CHAIRMAN ROGERS: So for today, we will
5 consider the literal terms as being confidential for
6 today.

7 MR. FENNER: Yes, sir.

8 CHAIRMAN ROGERS: Okay. Everyone is
9 clear on that? Okay.

10 MR. FENNER: Okay.

11 CHAIRMAN ROGERS: Thank you.

12 Mr. Bork?

13 MR. BORK: Good morning, Commissioners.
14 My name is Bob Bork. I'm the president of Sam Houston
15 Race Park and Valley Race Park.

16 About seven years ago, on a trip to the
17 Valley, I went down to visit Valley Race Park which at
18 that time was shuttered and out of business for about
19 five or six years and I was intrigued by the area and
20 the facility itself. It was -- even though it hadn't
21 been in business for five years, it was in relatively
22 good shape. They had a caretaker that actually lived
23 on the grounds and was maintaining the property.

24 And I went back to our board of directors
25 and said, "You know, I look at this as a great

1 opportunity. I think it's something that we should
2 look into to expand our business and take a look at
3 it."

4 We went into negotiations with the owner,
5 who was from out of state; and we finally did purchase
6 the property and reopened it in the year 2000.

7 We've worked very hard working on Valley
8 Race Park and making it improve and watching it grow a
9 little bit every year and developing our relationship
10 not only in the City of Harlingen but even with the
11 greyhound industry. Of course, probably when I first
12 started down there, I was looked at a little
13 differently because I was perceived as a horse person,
14 which I've spent most of my career doing; but I think
15 I've proven to the greyhound people that I also can be
16 a friend to the greyhound industry. And we've done
17 well working carefully with them, particularly people
18 like Diane Whiteley, who's in the audience today, that
19 we do work closely with them in trying to make it a
20 success and it's become very important to us.

21 We do have a commitment to the City that
22 we made when we first went down there that we wanted to
23 see Valley Race Park grow and we know that the area is
24 a growing area and we have some -- we had some great
25 opportunities down there and, you know, watched it

1 continue.

2 Then along came Laredo. And while there,
3 we -- we were the ones that came to the Commission and
4 asked for an application period to be opened so that we
5 could apply for a license in Laredo. This created a
6 problem of the three-racetrack rule that we have. And
7 because of that, we've had to come up with a way of
8 divesting our interest in Valley Race Park so that we
9 would not be contrary to the way the rule is -- the law
10 is currently being interpreted.

11 So we've entered into an agreement with a
12 new owner to purchase the property from Sam Houston
13 Race Park and to give Sam Houston Race Park a
14 management agreement to maintain the property. That
15 was done on both sides because they liked the way --
16 the new owners liked the way that the property was
17 being managed and we have a lot of facilities at Sam
18 Houston that contribute to the management of that
19 facility.

20 A lot of our department heads at Sam
21 Houston contribute a lot of time and efforts to
22 maintaining that facility down there. In fact, our
23 track superintendent is down there today. Our mutuel
24 manager was down there for three days last week. Our
25 food and beverage manager spends time there. Our

1 general manager at Valley Race Park is our chief
2 financial officer at Sam Houston. So there's an
3 overlap of talent that goes both directions and works
4 very well.

5 We do all the simulcasting for them. We
6 do all the pari-mutuel betting for them. And we do all
7 the contracts for them. That same thing would happen
8 and continue with a new owner. And we do this with
9 other tracks currently. We also do simulcasting and
10 reconciliations of simulcasting for other tracks around
11 the country, including a track that's applying for a
12 license in Pennsylvania where we're going to have a
13 similar type management agreement. So there's
14 precedent to this type of management agreements,
15 including right here in the State of Texas there are
16 companies that have management agreements also.

17 I think it gives us the opportunity of
18 making sure that Valley Race Park continues to grow,
19 that we can maintain a relationship with the greyhound
20 industry as well as the horse industry, that as things
21 keep growing we have a new revenue stream that also
22 would help Sam Houston Race Park by giving this
23 management ability down to Valley Race Park and it has
24 no interference with Laredo Race Park if and when we
25 should be given that license there.

1 VICE-CHAIRMAN RUTHERFORD: Is the
2 Pennsylvania contract -- is it new? The management
3 contract that you have --

4 MR. BORK: No. In fact, Mr. Rutherford,
5 that's -- that's a harness track that's going to be
6 located outside of Pittsburgh. They have not been
7 even -- once again, they're in competition for a
8 license with another applicant. We're very confident
9 that our group is going to get the thing. It's totally
10 unrelated to Sam Houston Race Park other than the fact
11 that they wanted us to do their racetrack management
12 for them.

13 VICE-CHAIRMAN RUTHERFORD: Will you have
14 some ownership in that track?

15 MR. BORK: No.

16 CHAIRMAN ROGERS: I don't know whether we
17 want to ask questions here or whether we want to hear
18 from the other folks who are associated with this and
19 then come back and see what hasn't been answered. I
20 think that's how I'd like to do that, if that's okay.

21 MR. BORK: That's fine.

22 CHAIRMAN ROGERS: So I guess Mr. Fogel?
23 You might stay handy just in case we get
24 there.

25 MR. BORK: I just want to make one more

1 comment, if I could, on our interest in Laredo.

2 I've been in this business for 37, 38
3 years now, I guess, or quite a long time. One of the
4 reasons we wanted to get into Laredo was an opportunity
5 to build another racetrack. Knowing everything that
6 I've learned in this business, it just looked like the
7 perfect opportunity one more time to try to develop the
8 perfect racetrack and we're betting that an area like
9 Laredo that, again, is very rapidly growing and we
10 think that we've got a good architectural plan, we have
11 a good facility, we have a good track.

12 CHAIRMAN ROGERS: I think we may be
13 getting a little --

14 MR. BORK: Too far?

15 CHAIRMAN ROGERS: -- beyond where we
16 are. I don't think we want to have a hearing on how we
17 want to do the license or who we want to do it to
18 yet -- or for. But I appreciate your comments, but I
19 think we're probably a little far afield there.

20 MR. BORK: Okay.

21 CHAIRMAN ROGERS: Okay?

22 Mr. Fogel?

23 MR. FOGEL: Good morning, Commissioners.
24 My name is Don Fogel. I'm a lawyer from Houston. And
25 I represent Clear Lake Interests and its principal, Roy

1 Camberg, who are the proposed buyer of the dog track in
2 Harlingen. I wanted to introduce myself to the
3 Commission. I want to thank you for the opportunity to
4 participate in this process. And I appreciate the
5 guidance that you're giving us on what will be, I hope,
6 an acceptable way to structure this transaction.

7 We had a chance to meet with Mr. Fenner
8 and I know there are some questions that should be
9 addressed and I wanted to take this opportunity to do
10 that, respecting at the same time the confidentiality
11 concerns that Mr. Fenner articulated as well.

12 So forgive me. To some degree I'm going
13 to speak in generalities. And I apologize if those are
14 not sufficiently meaningful, but hopefully I can answer
15 any questions that you have.

16 The first -- the first matter I wanted to
17 address along those lines was the additional purchase
18 price under the stock purchase agreement. I wanted to
19 explain to you that that additional price is an attempt
20 by the buyer and the seller to deal with the difference
21 in value that both sides perceive in the event of a
22 legislative change.

23 And we're not saying that's the only way
24 to do it and we haven't reached the final details on
25 that, but we have set forth in the documents a proposed

1 structure and that structure is an effort to allocate
2 fairly or apportion fairly the opportunity that is
3 being sold. And the problem in that allocation is
4 whether that opportunity truly has value will depend
5 upon whether there is a legislative change. And what
6 we've done in there is structure the formula as it is
7 as an attempt to allocate that and to account for that
8 uncertainty.

9 Again, it's not the only way to do it.
10 It's the best way we could come up with and it's what
11 we came up with over negotiations for some period of
12 time.

13 The other item I wanted to address is the
14 management contract. And again, I appreciate that
15 that's confidential and I'll speak about it just in the
16 most general terms.

17 We like the way the track is run and we
18 want to see it -- that it continue to be run that way.
19 We think there are economies of scale, as Mr. Bork was
20 saying, with people from Houston involved in the track
21 here participating and directing activities at the
22 track in Harlingen. So that structure continuing
23 present management made sense to us; and we put
24 provisions in the agreement that if they don't continue
25 to run it as we expect it to be run, then they don't

1 get to continue to run it at all.

2 So -- and I don't think that will
3 happen. I don't mean that in a negative fashion. But
4 I do mean that we undertook to protect ourselves in
5 that aspect of the deal.

6 I'm available to answer any questions
7 that the Commission might have or I can wait for
8 others, of course, to speak as well.

9 CHAIRMAN ROGERS: I think we'll wait
10 until we hear from everybody; but we will have some,
11 I'm sure.

12 Mr. VanMiddlesworth?

13 MR. VANMIDDLESWORTH: Your Honor, I
14 signed up just in case there are any questions that
15 might raise a legal issue; but I don't have anything to
16 say. But to the extent you have questions, I'd be
17 happy to come forward.

18 CHAIRMAN ROGERS: I like that "Your
19 Honor" business. That goes right along with the
20 applause. I haven't seen that before. So thank you.

21 MR. VANMIDDLESWORTH: A whole new day.

22 CHAIRMAN ROGERS: Okay. David Susow?

23 MR. SUSOW: I also signed up for the same
24 purpose, in case there's questions that need to be
25 answered.

1 CHAIRMAN ROGERS: Okay. Mr. Moltz?

2 MR. MOLTZ: Good morning, Mr. Chairman,
3 Commissioners. I'm here on behalf of LRP Group, which
4 is one of the applicants in Webb County. And I don't
5 want to get into any of the -- anything about Webb
6 County. I think that's inappropriate here this
7 morning. I'd like to limit my comments here real
8 briefly to the Valley Race Park issues.

9 And on that, I'm not here to address the
10 merits of it. The truth of the matter is we know
11 absolutely nothing about it. Until about two minutes
12 ago, I didn't know who the purchaser was. We did
13 request the documents to allow us to participate in
14 this deliberation. We have not gotten them. I
15 understand the AG is considering our Public Information
16 Act request and Mr. Fenner informs me that we should
17 have an answer very shortly, although I will mention
18 that regardless of what the AG says, we believe we have
19 a legal right to participate in anything that's
20 relevant to Webb County and this will be relevant to
21 Webb County and we have a right to participate and have
22 all the information in front of us that the decision
23 makers have in front of them, which we, to this date,
24 have not had any opportunity.

25 So I'm not here to support nor oppose the

1 transaction. I know nothing about the transaction. We
2 just wanted to state for the record that we believe
3 that we have the right to participate and to have our
4 position known by the Commissioners, whatever that
5 position may ultimately be, which I can't tell you
6 right now what it would be. And again, I'll be here if
7 there's any questions. Thank you.

8 CHAIRMAN ROGERS: Thank you.

9 I think we'll go into executive session
10 under the Texas Racing Act, Article 179e, Section 6.03
11 of Vernon's Texas Civil Statutes to review this
12 management contract. When we come back out, then
13 possibly we will have some discussion of both the
14 management contract and the sales contract. So it is
15 presently 11:06. We're in executive session.

16 (Recess for executive session from 11:07
17 a.m. to 11:52 a.m.)

18 CHAIRMAN ROGERS: Okay. We'll come back
19 to order. It's about 11:51. We're coming back out of
20 executive session.

21 And I guess probably we ought to visit
22 with -- I'm not real sure who. I guess we would start
23 with Mr. Fogel. And I'm not sure exactly how to
24 address the comments, so I'll just start and then we'll
25 let other Commissioners chime in wherever they choose.

1 MR. FOGEL: Okay.

2 CHAIRMAN ROGERS: We discussed the
3 management contract in executive session and we had a
4 lot of questions about it. And we won't get into the
5 particular particulars other than to say that it
6 certainly appears to have more control than anything
7 close to an arm's-length transaction. And I would say
8 that we would not find that management contract
9 acceptable the way it is.

10 And since this is still proprietary and
11 confidential, I'm not sure that we want to say a lot
12 more about the management contract, although we may
13 have a lot to say about other issues.

14 MR. FOGEL: Perhaps then instead of
15 talking about this management contract, the one before
16 you, can you give us some idea of what an ideal
17 management contract is?

18 CHAIRMAN ROGERS: I'm not sure that we
19 can do that. I would say, though, that a management
20 contract needs to have some arm's-lengthness to it. It
21 needs to have some ability to terminate. Anything that
22 is the length of term this is, with the one-sidedness
23 that it is as far as who's in charge and who's in
24 control, probably would not meet the standard that we
25 believe the law to be on the five percent transfer.

1 MR. FOGEL: I understand that point.
2 Were there any other factors, any other areas of the
3 management agreement that caused particular concern?

4 CHAIRMAN ROGERS: Commissioners?

5 See, that's the primary deal is that if
6 it's going to be a management agreement with someone
7 that you have purchased something from, you should have
8 some control over whatever you purchased.

9 MR. FOGEL: A greater ability to
10 separate.

11 CHAIRMAN ROGERS: Uh-huh.

12 MR. ANGELO: Before getting into any of
13 the other details, that would have to be resolved or
14 there's no point in going further.

15 MR. FOGEL: I understand that as well.

16 CHAIRMAN ROGERS: Okay. And you're
17 welcome to ask us any questions that you like, but
18 we're a little bit captive because of what you're
19 requesting on the confidentiality.

20 MR. FOGEL: I understand we're hemmed in
21 by that and that's --

22 CHAIRMAN ROGERS: But you are able to
23 discuss this with Mr. Fenner in detail any time that
24 you choose to. And I think he understands the
25 sentiment of the Commission.

1 MR. FOGEL: That's a big help and I
2 appreciate it. Thank you. Should I sit down or do you
3 have questions on the --

4 CHAIRMAN ROGERS: I was waiting for the
5 applause, but I haven't heard it. So I guess you can
6 sit down.

7 MR. FOGEL: I wasn't expecting any.

8 CHAIRMAN ROGERS: Okay. I guess
9 Mr. Bork. And if you'd like to bring
10 Mr. VanMiddlesworth with you, that would be wonderful.

11 MR. VANMIDDLESWORTH: I'm required to
12 stay within 10 feet of him.

13 CHAIRMAN ROGERS: That's probably really
14 good advice.

15 MR. BORK: As soon as you start asking
16 legal stuff, he steps forward.

17 CHAIRMAN ROGERS: Well, I think I'd like
18 to just open this up to the Commissioners' comments on
19 the purchase and sale agreement since that's not
20 something that we have covered in anything other than
21 how it connects to the management contract.

22 But, Commissioners, do you have some
23 thoughts on this --

24 COMMISSIONER ADAMS: I'll start.

25 CHAIRMAN ROGERS: -- and/or questions?

1 COMMISSIONER ADAMS: Mr. Bork, I think
2 personally my concern regarding the sale is the
3 intent -- the intent of the Legislature in the passing
4 of the original statute that required that you not have
5 any more than interest in -- in two tracks. And so not
6 knowing yet what that intent was or not being able yet
7 to find it out, I have real concerns with this sale in
8 general in conjunction with the management agreement.

9 And so in that respect, I think that time
10 will help us with that part of it. At least I hope
11 time will help me with my decision. But I do concur
12 with what our Chairman has said and I think it was
13 unanimous as far as the management portion of it was
14 concerned. I just wanted you to know that I'm -- I
15 think I know what the legislators' intent was; and with
16 this much control in the management side, I don't know
17 that we haven't crossed the line of what the intention
18 was of the two tracks.

19 Did I make any sense at all?

20 MR. BORK: A little bit. You're saying
21 that -- and I'm trying to decipher exactly. You're
22 saying because of the intent with the sale and with a
23 management contract to go forward?

24 COMMISSIONER ADAMS: No. I am saying
25 that in my opinion, the intent of the legislature, when

1 they set up this no more than two tracks portion of the
2 statute, they meant that they didn't want to have --
3 they wanted public -- they didn't want there to be any
4 public --

5 VICE-CHAIRMAN RUTHERFORD: Control.

6 COMMISSIONER ADAMS: -- public vision or
7 public view that one particular group was taking over
8 or was controlling too much of pari-mutuel betting in
9 Texas. I think their intent was to keep it separated.
10 And this management agreement with as intense as it is
11 in conjunction with ownership of two other tracks would
12 be a problem in my opinion.

13 CHAIRMAN ROGERS: Commissioner Angelo?

14 MR. ANGELO: Mr. Chairman, to me, the
15 contract, the sale contract, is so one-sided on behalf
16 of the seller that it's very difficult for me to
17 believe that it doesn't conflict with this five percent
18 ownership problem.

19 MR. BORK: Well, our opinion on the
20 management contract is that it's very typical of --

21 MR. ANGELO: I'm talking about the terms
22 of the sale agreement, the sales contract.

23 MR. BORK: As far as the amount or --

24 MR. ANGELO: All the terms of it are so
25 one-sided on behalf of the seller that it just raises a

1 huge question with me.

2 CHAIRMAN ROGERS: About whether it's an
3 arm's-length deal or not?

4 MR. ANGELO: Right. Whether it's really
5 a sale.

6 MR. BORK: Well --

7 MR. VANMIDDLESWORTH: Would you like me
8 to --

9 MR. BORK: Yes.

10 MR. VANMIDDLESWORTH: Let me address, I
11 guess, a couple of things and then I'd be happy to
12 answer any questions. Let me back up to the management
13 agreement and then I'll get to your comments.

14 Management agreements, as you know, are
15 confidential. You have access to all of them. We only
16 have access to a few of them. But the management
17 agreement itself is fairly standard for what any
18 arm's-length management agreement or any management
19 agreement is going to say.

20 Any management company is going to want
21 to have discretion and control. And this is an issue
22 that was up -- came up in the Webb County case because
23 the manager there proposed to own -- for the LRP Group
24 proposed to own three -- or manage three racetracks.
25 I'm not going to get into that, but I -- those other

1 provisions say that the manager will have absolute
2 control and discretion in the marketing, direction,
3 maintenance, and management of the racetrack. And that
4 is pretty standard. And that's what we have. And
5 that's what's in existence for other racetracks where
6 there's been an arm's-length management agreement. If
7 they didn't do the management agreement with us, they
8 would have a similar management agreement that gave a
9 manager that kind of absolute control and discretion.

10 CHAIRMAN ROGERS: Well,
11 Mr. VanMiddlesworth, I guess my question in that and my
12 disagreement with that thought is that in any
13 management agreement that I think I would have with
14 anyone, I would have the ability to dismiss them if
15 they did poor performance. If it -- and in this, it
16 makes no real difference that I can find how they
17 perform as long as they don't do something illegal or
18 don't do it fraudulently. If they do a poor job of
19 managing this facility, there is not a method to --
20 that the owner can say, "You know, we don't want you
21 doing this anymore." That doesn't seem like
22 arm's-length to me.

23 MR. VANMIDDLESWORTH: I would -- I think
24 I'll respond to that. Maybe Mr. Fogel can respond to
25 that.

1 CHAIRMAN ROGERS: And we're a little bit
2 in an awkward spot here because this isn't the
3 discussion we -- I mean, I think really this probably
4 is going to gear more around the sales contract than
5 the management contract in the end; but we don't want
6 to violate what you're wanting on your management
7 contract. So you only open the door to where you want
8 to open it and then we will shut that wherever it needs
9 to be shut.

10 MR. FOGEL: I'll just give you a number
11 and a letter if I can find it. 11.01-B.

12 COMMISSIONER CABRALES: Of the
13 management -- proposed management?

14 MR. FOGEL: Yes, sir, page 16.

15 COMMISSIONER CABRALES: Now, are you
16 looking at the supplemental or at the --

17 MR. FOGEL: It's in the supplemental as
18 well, but I thought I was looking at the original.

19 COMMISSIONER CABRALES: I think it's on
20 page 15 on the original, Tab 7.

21 MR. FOGEL: I'm sorry. You're exactly
22 right. I was looking at the supplemental. It's in
23 both, but it's -- it's the same wording in both. But,
24 yeah, you're right. I'm sorry. But it's 11.01-B.

25 And that's what I had referenced when I

1 said we like the way it's being run; and if they don't
2 continue to run it that way, they won't be running it
3 anymore.

4 CHAIRMAN ROGERS: I guess I don't read
5 that that way.

6 COMMISSIONER BOYD: I don't either. I'm
7 sorry.

8 COMMISSIONER SOWELL: I don't think
9 anybody here does.

10 CHAIRMAN ROGERS: I don't think you read
11 that that it says if you don't do it right, we can
12 dismiss you or, if we're not happy with your
13 performance, we can dismiss you. I mean, I'm not a
14 lawyer; but that's not the way I read it.

15 MR. VANMIDDLESWORTH: I would refer you
16 also to the standards of performance which are set out
17 in Article 4 on page five and Article 5. And the
18 manager agrees to a fairly high standard of performance
19 in that and he also agrees to certain responsibilities
20 and what he will do.

21 Now, I think the intent was -- and we can
22 provide further information on this, but the intent was
23 if the manager did not meet that standard and was not
24 doing what is required in this that the owner could
25 terminate the manager without the manager's consent and

1 unilaterally. There's a point that there's an event of
2 default if the standards aren't being met.

3 Perhaps we should put that in a letter
4 and a brief. But I did want to say that that was --
5 what you described was not the parties' intention in
6 terms of the --

7 COMMISSIONER CABRALES: Can I ask you a
8 question, Mr. VanMiddlesworth?

9 MR. VANMIDDLESWORTH: Yes, sir.

10 COMMISSIONER CABRALES: Is there a
11 current management contract in existence between Valley
12 Park and Sam Houston?

13 MR. VANMIDDLESWORTH: I'm going to turn
14 to Mr. Bork on that.

15 MR. BORK: No.

16 COMMISSIONER CABRALES: But is Sam
17 Houston managing Valley Park right now?

18 MR. BORK: Yes. It owns it, too.

19 COMMISSIONER CABRALES: Right. It owns
20 it and manages it, but there's not a separate
21 management agreement.

22 MR. VANMIDDLESWORTH: There was --
23 because of the structure, there was to be -- there was
24 a management agreement submitted between Sam Houston
25 Race Park and Laredo Race Park in the Webb County

1 case. That you have, and you will find it very
2 similar.

3 COMMISSIONER CABRALES: Right. But
4 you're not operating under a management agreement right
5 now.

6 CHAIRMAN ROGERS: Are you -- you made the
7 comment that this is fairly typical for management
8 agreements. And I'm making this assumption. These are
9 fairly typical of management agreements that are based
10 on not common ownership and arm's-length transactions.
11 Is that what you're saying?

12 MR. VANMIDDLESWORTH: Yes. I think
13 it's -- in the Tesoros application, in the LRP Group
14 application, and the current Retama agreement, there
15 is -- in the words of Mr. Brown, who should know, that
16 there's close to absolute control over discretion over
17 the operation of those three racetracks. And when
18 asked if, in his view, there was any prohibition
19 against a manager having control of the operation, he
20 said no, that's standard and no prohibition on that.

21 So it would be news to us if the types of
22 management agreements that are in place throughout the
23 state vest in the manager some kind of more than five
24 percent ownership that would trigger that. I think
25 that would raise a number of problems in some pending

1 cases.

2 We don't think that's the case. We think
3 this is a standard management agreement. You know,
4 it's got its own bells and whistles; and we'll look at
5 that and address any concerns. But we do think that
6 Mr. Camberg is entitled to enter into, with Sam Houston
7 Race Park, the same kind of management agreement that
8 he would enter into if he were having Retama Management
9 Company manage it or somebody out of Florida do it,
10 that he's entitled to have those same kind of terms.

11 CHAIRMAN ROGERS: Mr. Moltz, did you have
12 something you wanted to say since your client got
13 mentioned in the process?

14 MR. MOLTZ: Yes, just briefly,
15 Mr. Chairman.

16 I believe the discussion that is going on
17 here -- and I'm not disagreeing with the
18 Commissioners. I don't really know what you're talking
19 about. I haven't seen any of these documents.

20 CHAIRMAN ROGERS: An honest man.

21 MR. MOLTZ: But I believe that the
22 discussions that have already taken place are an
23 example of communications going on regarding Webb
24 County cases that we have no meaningful participation
25 in. We don't know what's going on. We don't know what

1 you're talking about. The five percent rule is a Webb
2 County issue, not a Valley Race Park issue.

3 And I just want to note for the record
4 that we believe that Mr. Bork, Mr. VanMiddlesworth, and
5 Mr. Fogel are improperly communicating with the
6 Commissioners at this point. And you all do with that
7 what you will, but that's our position.

8 CHAIRMAN ROGERS: I would say that on
9 our -- Mr. Fenner?

10 MR. FENNER: I feel like I have to
11 address that issue about improper communication.

12 The sale of Valley Race Park is a
13 separate issue from Webb. I mean, it's no different
14 than, for example, the immediately preceding item which
15 was the transfer of ownership for Retama Race Park
16 which, you know, we routinely take care of without
17 having to go to the State Office of Administrative --
18 it's not a contested case. I just wanted some
19 clarification on the staff position on that.

20 CHAIRMAN ROGERS: Also, we do have on the
21 agenda some discussion of these applications just in
22 case --

23 MR. FENNER: Yes, sir.

24 CHAIRMAN ROGERS: -- this bled over
25 because it would have to kind of bleed over to have

1 this conversation. So it is Item F on our agenda.

2 MR. FENNER: That is correct.

3 MR. VANMIDDLESWORTH: I'm happy to turn
4 to the other part of the question with -- or --

5 CHAIRMAN ROGERS: I think the sale is
6 probably where we really probably should focus.

7 MR. VANMIDDLESWORTH: All right. And
8 your questions are legitimate. I think one aspect of
9 the sale is -- and this is -- and by the way, the
10 documents -- the initial letter agreement and documents
11 that were submitted back last April which outlined who
12 the buyer was, what the proposed terms were, were
13 provided previously to Mr. Moltz. He knew who the
14 buyer was. He knew what the initial terms were. He
15 has not seen the final documents or the draft of the
16 documents. But we've been talking about this deal for
17 quite some time. Mr. Camberg has been deposed by
18 Mr. Moltz's firm. And so there's a fair amount of
19 knowledge out there.

20 With respect to this transaction and the
21 sale, it is -- it is not a secret that Sam Houston Race
22 Park would be a lender and, as a result, they would
23 have the normal lender rights. If this was -- if Bank
24 of America was loaning the money, they would have some
25 restrictions on what could be done without Bank of

1 America's authority. That would not make Bank of
2 America the owner of the racetrack or the owner of the
3 license. It would make them a lender with the types of
4 things that lender -- types of provisions that lenders
5 typically get.

6 Sam Houston Race Park is a lender in this
7 case, and so the provisions in there relate -- many of
8 the provisions that may be troubling you relate to the
9 protection that any lender is going to want to make
10 sure that the loan is secured and that there isn't a
11 divestiture of it or a sale without the lender's
12 permission. And we all have that in our mortgages and
13 other loans that we get.

14 So whether Sam Houston were loaning the
15 money or Bank of America were loaning the money, you
16 would have those provisions -- some of those provisions
17 by the lender that are intended to protect the lender
18 and give the lender some say over things that might
19 jeopardize the loan.

20 And we can address those in more detail
21 and which of those we think are important. And, you
22 know, I do want to hear if there are any, if you want
23 to share with us, that are particularly troublesome for
24 you that we should look at. But that's the context in
25 which many of those provisions are in there. Many of

1 them wouldn't be in there but for the fact that we're
2 the lender.

3 COMMISSIONER CABRALES: I do have another
4 question on the purchase agreement. There's a division
5 of ownership interest. One company is getting a
6 certain percentage of the shares. The other company is
7 getting the balance of that. How is it contemplated
8 that the two parties that own this -- that would own
9 Valley Park are going to share in the profits or the
10 losses, the operating profits and losses of that Valley
11 Park entity?

12 MR. VANMIDDLESWORTH: I think it is in --
13 I may defer to Mr. Fogel, but I think it's in the same
14 percentages they're --

15 COMMISSIONER CABRALES: Both profits and
16 losses?

17 MR. FOGEL: Certainly with respect to
18 distributions.

19 COMMISSIONER CABRALES: What about
20 losses?

21 MR. FOGEL: Well, there's \$750,000 in
22 working capital that is put up in connection with this
23 transaction; and losses would first come out of that;
24 and then additional losses -- additional losses would
25 have to be financed by additional investment into the

1 entity if there are additional losses.

2 But there's \$750,000 to cover losses, if
3 there are any, for a substantial period going forward;
4 and in terms of additional losses after that, I don't
5 know that there's an express provision as to how
6 additional money would be raised.

7 COMMISSIONER CABRALES: And which of the
8 two entities is putting up that initial 700?

9 MR. FOGEL: The seller is putting up the
10 750.

11 MR. VANMIDDLESWORTH: If I understand
12 this right, the 750 is the working capital component of
13 the sale. The buyer is paying X for the purchase of it
14 which includes working capital which is in the
15 company. Is that a fair characterization?

16 MR. FOGEL: The working capital goes into
17 the company.

18 COMMISSIONER CABRALES: It's part of the
19 consideration of the transaction. It's 750 in working
20 capital thrown in with the track.

21 MR. FOGEL: Yes.

22 MR. VANMIDDLESWORTH: Other questions or
23 anything I should address in more detail?

24 CHAIRMAN ROGERS: Do we have any
25 comments, Commissioners?

1 MR. VANMIDDLESWORTH: Obviously we don't
2 have a final document and we are -- there's still some
3 negotiations going on. We'll talk with Mr. Fenner.

4 CHAIRMAN ROGERS: I would -- I'd give you
5 my view. This is just my opinion. It isn't anybody
6 else's. I'd love to be on the receiving end of this
7 deal. I've never seen one I thought was quite this
8 one-sided. And I'm just -- you know, I'm an old
9 country boy that just kind of does a little business
10 here and there. But I've never seen one quite like
11 this.

12 So from my perspective, this is not --
13 it's not arm's-length. It's not a real sale. And I
14 don't think it meets the criteria of what the law is on
15 the five percent. And without -- I don't think that it
16 takes a brain surgeon to see that.

17 So from my perspective at least, when
18 we -- part of the contingency of having consideration
19 on this next license -- and what we're trying to do is
20 to give you the benefit of that presently so that you
21 could come prepared for that because part of the deal
22 would be that Valley would have to be sold in order to
23 be considered for another license. And in order for us
24 to have the most options so that we would have the
25 ability to grant the license, should that be a

1 decision, I think you're going to have to do something
2 that makes this more of a real sale because I don't
3 think it meets the intent of the law personally.

4 And I don't know how everybody else feels
5 about that. I may be the only one feeling that way.
6 But when we bring this up for consideration next, if
7 this were the deal that were in front of us, I would
8 not consider this a real sale. So I just would say
9 that. I don't know that --

10 MR. VANMIDDLESWORTH: I appreciate your
11 candor.

12 CHAIRMAN ROGERS: I mean, I'm just being
13 as honest with you as I know how. I would not -- I
14 wouldn't be able to vote to consider you for something
15 else unless that were done in a different manner.
16 So -- and I don't know how anybody else feels.

17 MR. ANGELO: I think that's what I tried
18 to say with my remarks a moment ago.

19 COMMISSIONER SOWELL: Mr. Chairman, let
20 me just add that I think while there is no vote that
21 has been taken, we dealt with the management contract;
22 but unless I'm way off base, I think it was clear that
23 the consensus of this entire board was exactly as the
24 Chairman stated it.

25 MR. VANMIDDLESWORTH: I appreciate your

1 candor. We'll try to address your concerns and have
2 them addressed by the time we come back.

3 CHAIRMAN ROGERS: When we come back --
4 and I guess in our -- in our next meeting I think the
5 agenda will probably be to consider these applications
6 sometime in March. I think you would have to have that
7 addressed at that point and satisfactory in order to be
8 considered because we're not going to do something that
9 violates the Texas law. So I think that's kind of
10 where I would be at least.

11 COMMISSIONER CABRALES: Yeah. And just
12 to give you some idea of some specific guidance of my
13 own, just observations, I think the board of director
14 composition -- if the intent of this transaction is to
15 get within this five percent issue that we've got in
16 the statute, the areas where I've got some reservation
17 are I think that the board of director composition I
18 think needs to be looked at a little more carefully.

19 I think your Section 7 that talks about
20 certain matters requiring stockholder approval where
21 you've created an additional percentage point,
22 essentially requiring both owners to be unanimous on
23 those, I think is problematical in my mind.

24 I think with those things being there,
25 the management agreement raises some concern because of

1 the length of it, the unilateral nature in which the
2 options to extend it are able to be exercised. I think
3 the limited ability to transfer over to another vendor
4 to provide those services is a concern. And it
5 isn't -- I mean, I don't view -- obviously you're able
6 to cut as good or as bad of a deal as you want. The
7 question is if what the purpose is is to try to satisfy
8 that five percent rule and if we look at it from that
9 prism, those are the concerns that I have.

10 MR. VANMIDDLESWORTH: Thank you.

11 CHAIRMAN ROGERS: Any other comments?
12 Any questions?

13 MR. VANMIDDLESWORTH: Thank you,
14 Commissioners.

15 CHAIRMAN ROGERS: Thank you.

16 I'd like to go back a moment in the
17 agenda. I forgot something earlier when we were
18 talking about the escrowed purse accounts and the ATB
19 funds.

20 We talked about at an earlier -- this
21 would be directed to the staff, I guess. We talked
22 about earlier trying to come up with some more
23 objective guidelines on how those divisions should
24 happen so that in the event that we don't have a global
25 agreement in future time that we're able to make a

1 judgment on that that would be in the best interests of
2 the industry and it would be a little less blind man's
3 bluff and a little more focused on objective criteria.

4 And I would really ask you to begin that
5 facilitation process and bring in the players in that
6 to talk about that. And even -- I don't know if we can
7 have a formula, but something that is more objective
8 that can kind of be agreed to, leaving some discretion
9 to the Commission for extraordinary circumstances like
10 this year when maybe the race days got skewed totally
11 because of a change in schedule, but to get something
12 more objective so that we don't have what's gone on in
13 the industry the last two or three months. I think it
14 would be to everybody's best interests.

15 MS. KING: Yes, Mr. Chairman. That
16 sounds very good. We appreciate the encouragement down
17 that road. Thank you.

18 CHAIRMAN ROGERS: Okay. I guess we will
19 move to proceedings on rulemaking, discussion,
20 consideration, and possible action on the following
21 rules: Adoption of Section 309.8, racetracks' license
22 fees.

23 Mr. Fenner?

24 MR. FENNER: Commissioners, at the last
25 meeting, the subject of additional fees or revenue for

1 the agency came before you and some proposals for
2 increasing racetrack license fees. We came to you with
3 a staff recommendation and three different options.

4 The racing industry stepped up and
5 described their preference for one of those options
6 which you all agreed to publish in the Texas Register.
7 It has been published in the Register, in the December
8 29th issue. The 30-day comment period has concluded.

9 As of today, we have received two written
10 comments. We have a letter from Mr. Gavin Gadberry who
11 represents Saddle Brook Park in Amarillo. You have
12 that before you. We also have a letter from Mr. Mike
13 Vitek on behalf of Valley Race Park. You also have
14 that before you.

15 The staff has held several meetings, both
16 in person and over the telephone, with individual
17 tracks and with groups of tracks. As of yesterday, it
18 appears to me that there is not a preferable
19 alternative to what has already been published; so as
20 it stands right now, the staff would recommend the
21 adoption of the rule that was published in the Texas
22 Register.

23 CHAIRMAN ROGERS: Okay. Thank you.

24 I think we have some people to testify on
25 this issue. Mr. Vitek, would you like to start?

1 MR. VITEK: Good afternoon,
2 Commissioners. I'm here as the general manager of
3 Valley Race Park.

4 And we certainly understand the funding
5 issues facing the Commission. I apologize for the head
6 cold that I quite clearly am under. And we understand
7 the efforts that have gone into coming up with this
8 amendment. We participated in those. However, we just
9 wanted to state for the record and hopefully for your
10 consideration that we believe that the amendment as
11 it's currently stated disproportionately impacts Valley
12 Race Park.

13 And the reason is that it is a set amount
14 of an additional assessment for the annual license fee
15 for each of the greyhound tracks. However, Valley Race
16 Park runs a seasonal meet, from the day after
17 Thanksgiving to the first weekend of April, of about 95
18 days. And that compares -- of regular performances.
19 That compares to over 400 for Gulf Greyhound and well
20 over 300 for Corpus Christi.

21 And if the intent of the fee is to pay
22 for the costs of governance and the cost of regulation,
23 then clearly the cost of regulating Valley Race Park
24 would be much smaller than the other greyhounds. So we
25 would simply ask that you consider that the amendment

1 be modified to reduce the proposed annual fees to half
2 of the stated amounts for greyhound tracks that conduct
3 fewer than six months of live racing.

4 Thank you.

5 CHAIRMAN ROGERS: Any questions?

6 Okay. Mr. Gadberry?

7 MR. GADBERRY: Commissioner Rogers and
8 other Commissioners, I think you ought to know that
9 there is a city north of Amarillo. And it's Dalhart.
10 There's even a smaller city north of Dalhart that a
11 young country boy went to the big city and became a
12 lawyer and that's me. I grew up in Follett,
13 Commissioner Rogers, so I'm a little further north than
14 Dalhart.

15 I'm here on behalf of Saddle Brook Park.
16 I'm with a law firm in Amarillo, Texas, known as the
17 Underwood Law Firm. And I sent in comments and I just
18 wanted to bring and summarize four points that I think
19 are important.

20 First, we're looking at a provision of
21 the act that regards license fees; and that's Section,
22 I believe, 5.01(b) of the act. And that requires the
23 Commission to set license fees that are reasonable.

24 Now, a little history. Saddle Brook Park
25 is an inactive license. It's a Class 2 license. It's

1 licensed for Amarillo, Texas. The Class 2 license fees
2 were \$10,000 until September of 2005. They were raised
3 then to \$20,000. And under the proposed rule, the fee
4 would go from \$20,000 to 55,000.

5 Now, I understand the need to raise
6 revenue; but that provision in the statute is found in
7 Section 6. That's the racing provision, not with
8 regard to licensing fees. Licensing fees are a
9 completely separate provision in the statute. And that
10 needs to be emphasized and understood.

11 I understand that you want to raise
12 revenue because you have a budget shortfall. I believe
13 it was 788,000 according to the testimony at the last
14 meeting. I believe this rule change will raise
15 \$452,000. That 452,000 will be made up -- 25 percent
16 of which will be made up of two Class 2 inactive
17 licenses.

18 How do I get there? You raise the fee to
19 55,000. It's due in April this year. Two inactive
20 licenses will pay \$110,000. Your budget shortfall of
21 \$450,000 can be made up by those two tracks which
22 generate no revenue and only pay their licensing fees
23 each year. That seems to be disproportionate to the
24 number of tracks that are in the state that have active
25 licenses. And September 1st the fee is going to go to

1 \$75,000 to inactive licenses.

2 And I need to drop a footnote here.
3 Active licenses did not have fees until this proposed
4 rule. They had racing fees. They did not have a
5 licensing fee. In fact, the rule as published in the
6 Texas Register states that you are creating an active
7 license fee. So for the first time they're going to be
8 charged.

9 The active license fee for a Class 2
10 track is going to be \$15,000. Compare that to 55,000
11 in April for an inactive Class 2 track and then \$75,000
12 in September.

13 Now, why am I saying this? Why is that
14 going to make any difference? Well, the statute
15 directs you to establish a licensing fee that is
16 reasonable; and when that's going to be reviewed, if
17 it's reviewed, it's going to be reviewed from the
18 standpoint of whether that licensing fee is reasonable
19 in relation to regulating that class of license. And
20 that's how it's going to be looked at.

21 You're looking at regulating an inactive
22 license that doesn't have days, doesn't have stewards,
23 doesn't have any other expenses other than that license
24 until it's built. You have no other fees. And that
25 does not seem to bear -- similar to the discussion that

1 just happened with the greyhound tracks, doesn't bear
2 the same relationship with what's going on with
3 expenses and costs of regulating an active license.

4 Therefore, Commissioner Rogers and the
5 other Commissioners, we respectfully request on behalf
6 of Saddle Brook that the proposed rule be withdrawn;
7 and it seems to make sense that we sit down and try to
8 come up with and get out to all the membership about
9 the costs for regulating each category of license as
10 directed by Section 5 of the act.

11 And I'd be happy to answer any
12 questions.

13 VICE-CHAIRMAN RUTHERFORD: How long have
14 you all had the license now?

15 MR. GADBERRY: I'm a lawyer, so I don't
16 know how long the license has been there. I believe
17 the license was established in the '80's and it was
18 transferred --

19 VICE-CHAIRMAN RUTHERFORD: When was it
20 transferred to Amarillo?

21 MR. GADBERRY: Four years ago.

22 VICE-CHAIRMAN RUTHERFORD: And they
23 haven't started construction yet?

24 MR. GADBERRY: No.

25 VICE-CHAIRMAN RUTHERFORD: Are they ever

1 going to start?

2 MR. GADBERRY: I would assume so,
3 whenever it becomes economically feasible to operate a
4 track in Amarillo. But I don't know if that has
5 anything to do with this decision. If it does, that's
6 something different.

7 COMMISSIONER BOYD: Well, Mr. Gadberry,
8 the tracks that are in operation now that are active,
9 they're bringing revenue into our industry. What
10 revenue is Saddle Brook bringing in?

11 MR. GADBERRY: Their license revenue.

12 COMMISSIONER BOYD: So when you say that
13 they're not paying as much as Saddle Brook is, they
14 are. They're bringing in revenue, quite a lot of
15 revenue.

16 MR. GADBERRY: You're absolutely right.
17 That's under Section 6.

18 COMMISSIONER BOYD: So does that not
19 balance? Does that not balance out your comment?

20 MR. GADBERRY: You have two provisions --
21 in your statutory discretion, you have two provisions.
22 You have the licensing fee statute under Section
23 5.01(b). That's the licensing fee provision. Under
24 6.18, that's the racing -- that's the racing
25 provision.

1 COMMISSIONER BOYD: I understand what
2 you're saying.

3 MR. GADBERRY: And those are racing
4 days. Those fees are generated. And that provision in
5 the statute specifically says in addition to the
6 licensing fees, those racing fees are charged.

7 COMMISSIONER BOYD: I guess I'm a little
8 at fault here because I was on the Racing Commission
9 when Saddle Brook transferred. Okay? What I probably
10 should have done then is I probably should have held
11 you more accountable to your intentions because we've
12 gotten this far and Saddle Brook has gone nowhere. So
13 I'm partly to blame in this situation. And I'm totally
14 unhappy that Saddle Brook has not done anything to get
15 any farther down the road, to be frank. Sorry.

16 And I raised this issue with our staff in
17 the first place about these inactive licenses because I
18 know how hard the people out there work that are
19 currently involved in keeping their tracks going right
20 now that are active. And I don't see that
21 participation on Saddle Brook at all. So I'm partly to
22 blame for us raising the issue.

23 I don't have any other comment. Thank
24 you.

25 CHAIRMAN ROGERS: Okay. Thank you.

1 Any other comments, Commissioners?

2 Okay. Thank you.

3 MR. GADBERRY: Thank you.

4 CHAIRMAN ROGERS: Mr. Bork?

5 MR. BORK: My comments will be very
6 short.

7 We clearly understand the situation that
8 the Racing Commission is in with their funding and
9 going forward. We'd -- we're more than willing to --
10 we're willing to accept the increases that are being
11 recommended today, with the understanding that
12 hopefully between now and when the next payment is due
13 next January that we can come up with a solution that's
14 a little better for the tracks. But we understand
15 where we are now. We spent time with Charla Ann and
16 Sammy and it's been explained to us. So we're willing
17 to go along with the change as recommended.

18 CHAIRMAN ROGERS: Thank you.

19 Mr. Shubeck?

20 MR. SHUBECK: I'd like to just echo the
21 sentiments of Mr. Bork. Lone Star understands the need
22 that the Racing Commission has for money to operate.
23 And while we go along with these extra measures for
24 funding, we really would like to leave the door open to
25 getting some other funding mechanism in place because

1 right now at Lone Star we feel the fees are onerous.

2 In 2006 we paid almost \$350,000 in daily
3 operating fees between live racing and simulcasting.
4 We also contributed hundreds and hundreds of thousands
5 of dollars of money from our uncashed tickets and our
6 breakage that went towards drug testing and then
7 finally to fund the Commission.

8 On top of that, we pay pari-mutuel taxes
9 on the excess of 150 million dollars that's generated
10 in simulcasting at Lone Star Park. I believe -- and
11 correct me if I'm wrong. I think all that money goes
12 into the general revenue for the State. It doesn't
13 touch the Commission.

14 But legislatively, we'd like to work on
15 that, that all these things are getting paid and really
16 we're not getting much in return for that. The
17 Commission is doing a fantastic job. I believe you're
18 underfunded. We want to contribute more money. We
19 want better drug testing in the state. And we don't
20 want budgetary problems to hold us back from better
21 regulation and better drug testing for the horses so
22 that the public has some confidence in our racing. So
23 we really do have to have a better funding mechanism in
24 place.

25 I thank you.

1 CHAIRMAN ROGERS: Thank you.

2 Ms. Briggs?

3 MS. BRIGGS: Thank you.

4 I think I'm probably going to reiterate
5 the other things that have been said by the other track
6 individuals, but at Gulf Greyhound we have had the
7 opportunity to visit with Ms. King and Mr. Jackson and
8 Mr. Fenner and we really appreciate that opportunity
9 during the last couple of weeks.

10 We also feel that we have fulfilled our
11 obligations for the past 14 years to the Commission and
12 fulfilled the things that they have asked us to do. We
13 also feel that these active license fees are high. And
14 we also simply would like to have the opportunity to
15 come back and revisit this again before the next budget
16 year.

17 CHAIRMAN ROGERS: Thank you.

18 MS. BRIGGS: Thank you.

19 CHAIRMAN ROGERS: Would anybody else like
20 to speak on this subject?

21 Any of the staff have a comment?

22 I think one of the things prior to a
23 vote -- let me just say there's been a look at other
24 ways to fund the Commission. They all require
25 legislative action in that process. And there have

1 been ongoing discussions about that. I don't know that
2 that's going to happen in the short term, but hopefully
3 there will be a different way that won't be as onerous
4 on everyone involved.

5 Presently we're three hundred -- I think
6 \$358,000 worth of cash flow short before September. So
7 I don't think we have any choice but to do what we're
8 doing on the fees. But I do recognize the need to look
9 at this again and to look at it and to make this as
10 equitable as we can.

11 And so I would recommend that we adopt
12 this but that we go back and look at this again prior
13 to September and see if it needs to be -- adjustments
14 need to be made where we can make this as equitable as
15 possible for all of the stakeholders involved. And we
16 can do that in a staff and working group arrangement or
17 we can do that with Commissioner involvement if
18 Commissioners want to be involved as long as we are not
19 violating some quorum rules. So if you would
20 facilitate that, I think that would be good.

21 MS. KING: Yes, sir.

22 CHAIRMAN ROGERS: Okay. And if there's
23 no other comment, I'd recognize -- I mean, I would
24 accept a motion to adopt the change to Rule 309.8 as
25 published in the December 29th, 2006 edition of the

1 Texas Register.

2 COMMISSIONER SOWELL: So move.

3 COMMISSIONER BOYD: Second.

4 CHAIRMAN ROGERS: Moved by Commissioner
5 Sowell, seconded by Commissioner Boyd.

6 All in favor?

7 COMMISSIONERS: Aye.

8 CHAIRMAN ROGERS: Okay. We have a
9 proposed amendment to Section 321.313, Select Three,
10 Four, or Five.

11 Mr. Fenner?

12 MR. FENNER: Commissioners, we've
13 received some complaints from patrons about the
14 application of Rule 321.313. This is regarding what's
15 called a Select Three, sometimes called the Pick
16 Three. You have to pick the winners in three different
17 races during a day.

18 The issue for some patrons is that if
19 there's a dead heat in one of those races -- let's say
20 that one of the horses in the dead heat is the odds-on
21 favorite and the other horse is somewhat of a long
22 shot -- that the patrons who own tickets on each side
23 will be paid equally. And their feeling is that that's
24 not fair, that the person who has the long shot in the
25 dead heat should be receiving a greater share of the

1 pool.

2 In response, staff has prepared this
3 amendment to the rule that would accomplish that change
4 for the Select Three. I don't believe -- it seems
5 there's some technical problems with doing it for a
6 Select Four or Five, but we can do it for a Select
7 Three. So the staff would recommend posting this for
8 public comment.

9 If you have any questions, I'm going to
10 call somebody who knows more about it than I do.

11 CHAIRMAN ROGERS: I think somebody should
12 ask a question so we can find out who that is.

13 COMMISSIONER BOYD: I applaud who put
14 this together.

15 MR. FENNER: Thank you. I'll pass that
16 along to her.

17 CHAIRMAN ROGERS: Any comments,
18 Commissioners?

19 Is there anyone that would like to
20 discuss this?

21 Okay. I would accept a motion to publish
22 the proposed rule change to 321.313 in the Texas
23 Register for public comment.

24 MR. ANGELO: So move.

25 VICE-CHAIRMAN RUTHERFORD: Second.

1 CHAIRMAN ROGERS: Moved by Commissioner
2 Angelo, seconded by Commissioner Rutherford.

3 All in favor?

4 COMMISSIONERS: Aye.

5 CHAIRMAN ROGERS: Okay. I would
6 entertain a motion to enter executive session under
7 Government Code Section 551.071 to confer with the
8 Commission's attorney regarding litigation by Trinity
9 Meadows Raceway, Inc., against the Commission in
10 Bankruptcy Case No. 97-41302, Adversary No. 06-04165.

11 COMMISSIONER CABRALES: So move.

12 CHAIRMAN ROGERS: It's moved by
13 Commissioner Cabrales and seconded --

14 VICE-CHAIRMAN RUTHERFORD: Second.

15 CHAIRMAN ROGERS: Seconded by
16 Commissioner Rutherford.

17 All in favor?

18 COMMISSIONERS: Aye.

19 CHAIRMAN ROGERS: Okay. We'll go into
20 executive session at 12:40.

21 (Recess for executive session from 12:40
22 p.m. to 1:07 p.m.)

23 CHAIRMAN ROGERS: Okay. We'll come back
24 to order out of executive session. It is 1:05, 06 --
25 1:06.

1 I guess the only order of business left
2 would be to schedule our next Commission meeting. And
3 would you --

4 MS. KING: March 20th.

5 CHAIRMAN ROGERS: Okay. March 20th. And
6 we're going to start at --

7 MS. KING: 9:00 a.m.

8 CHAIRMAN ROGERS: We're going to start at
9 9:00 a.m. on March 20th and expect a relatively long
10 day. Anybody that comes probably ought to bring their
11 lunch. We may take a break or two during the day.

12 COMMISSIONER SOWELL: You're talking
13 about literally on that lunch deal, right?

14 CHAIRMAN ROGERS: I'm saying that the
15 staff needs to bring us lunch. And anybody else that
16 wants to be around -- which, of course, we'll gladly
17 buy. Okay? But anybody else might want to consider
18 what they're going to do for their lunch plans. Okay?

19 Anything else to come before the
20 Commission?

21 COMMISSIONER ADAMS: Will we be here,
22 Mr. Chairman?

23 CHAIRMAN ROGERS: I have no idea where
24 we'll be.

25 COMMISSIONER ADAMS: We don't know where

1 we'll be.

2 MS. KING: We don't know where it will
3 be. We don't know.

4 CHAIRMAN ROGERS: We don't know.

5 MS. KING: We will work on the location.

6 CHAIRMAN ROGERS: We're just vagabonds.

7 But we'll find a suitable location.

8 We're adjourned.

9 (Proceedings concluded at 1:08 p.m.)

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1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

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4 I, SHERRI SANTMAN FISHER, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-captioned matter came on for
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8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said
10 hearing were reported by me, accurately reduced to
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12 being so reduced, were filed with the TEXAS RACING
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,
15 Texas, this 5th day of February, 2007.

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