

BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING
FEBRUARY 7, 2012

BE IT REMEMBERED that the above entitled matter came on for hearing on the 7th day of February, 2012, beginning at 10:31 A.M. at 6100 Guadalupe, Building E, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

APPEARANCES

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Commissioners: ROBERT SCHMIDT
 RONALD F. EDERER
 MIKE MARTIN
 GLORIA HICKS
 VICKI WEINBERG
 JOHN T. STEEN, III
 ANN O'CONNELL
 ALLAN POLUNSKY

1 CHAIRMAN SCHMIDT: Good morning. The
2 time is 10:31 and we'd like to call the meeting of the
3 Texas Racing Commission to order.

4 Ms. Weiss, can you please call the roll?

5 MS. WEISS: Commissioner Ron Ederer?

6 VICE-CHAIRMAN EDERER: Present.

7 MS. WEISS: Commissioner Gloria Hicks?

8 COMMISSIONER HICKS: Present.

9 MS. WEISS: Commissioner Mike Martin?

10 COMMISSIONER MARTIN: Present.

11 MS. WEISS: Commissioner Ann O'Connell?

12 MS. O'CONNELL: Present.

13 MS. WEISS: Commissioner Allan Polunsky?

14 MR. POLUNSKY: Present.

15 MS. WEISS: Commissioner John Steen?

16 COMMISSIONER STEEN: Present.

17 MS. WEISS: Commissioner Vicki Weinberg?

18 COMMISSIONER WEINBERG: Present.

19 MS. WEISS: Chairman Robert Schmidt?

20 CHAIRMAN SCHMIDT: Present.

21 We do have a quorum, don't we?

22 MS. WEISS: Yes, sir.

23 CHAIRMAN SCHMIDT: Thank you.

24 To begin with, we have some
25 representatives from the Attorney General's office here

1 today. Rather than keeping them waiting through the
2 entire meeting, we're going to move into executive
3 session.

4 So at this time the Commission will now
5 enter executive session under Government Code Section
6 551.071 to seek advice of its attorney regarding
7 pending or contemplated litigation and under Section
8 551.071(2) to seek the advice of its attorney as
9 privileged communications under the disciplinary rules
10 and to discuss the Open Meetings Act and the
11 Administrative Procedures Act.

12 It's now 10:32. Thank you.

13 (Recess for executive session from 10:32
14 a.m. to 11:08 a.m.)

15 CHAIRMAN SCHMIDT: Okay. Thank you for
16 your patience. The time is now 11:08. We're out of
17 executive session. We're going to take no action at
18 this time.

19 We'll move forward to public comment.

20 We have a small delay pending public
21 comment.

22 Mr. Fenner, would it be useful to move
23 public comment later in the agenda?

24 MR. FENNER: Mr. Chairman, there is one
25 item that I think we can fit into public comment of

1 interest to the industry. This was delivered by -- I
2 don't know who by.

3 CHAIRMAN SCHMIDT: David Hooper.

4 MR. FENNER: Mr. Hooper.

5 CHAIRMAN SCHMIDT: From the Texas
6 Thoroughbred Association.

7 MR. FENNER: Who would like to make a
8 recognition.

9 Mr. Hooper, would you like to read this
10 into the record as part of the public comment?

11 MR. HOOPER: I'll be glad to.

12 Mr. Chairman, members of the Commission,
13 I'm David Hooper, executive director of the Texas
14 Thoroughbred Association.

15 Many of us in this room for a number of
16 years have heard Diane Whiteley very professionally
17 represent the Texas Greyhound Association and the
18 greyhound industry. Unfortunately, Diane's health has
19 declined significantly and she will not be with us in
20 all too soon.

21 I would like to propose, on behalf of the
22 industry as a whole, a resolution in commendation and
23 recognition of Diane Whiteley.

24 Be it resolved that on this date,
25 February 7, 2012, the Texas Racing Commission, on

1 behalf of the entire Texas racing industry, hereby
2 recognizes the many contributions of Diane Whiteley to
3 improve the climate for racing and breeding in Texas
4 during her tenure as executive director of the Texas
5 Greyhound Association, for her exemplary representation
6 of all TGA members, and for her tireless work in the
7 area of greyhound adoption to assure the well-being of
8 all greyhounds.

9 CHAIRMAN SCHMIDT: Thank you,
10 Mr. Hooper.

11 MR. FENNER: Mr. Chairman, we're not
12 posted to adopt a resolution on this, but we'd be happy
13 to draft it up in a really nice form and bring it to
14 you at the next Commission meeting.

15 CHAIRMAN SCHMIDT: That would be very
16 appreciated. She's an outstanding lady, an outstanding
17 advocate for her cause. If you could redraft the same
18 resolution which Mr. Hooper very thoughtfully created
19 and bring it up on the next meeting and go forward with
20 it.

21 MR. HOOPER: And if it would be possible
22 to get notification of this to her as soon as possible,
23 I know that she would be deeply appreciative of it.

24 CHAIRMAN SCHMIDT: I think she'll be
25 aware tomorrow that this resolution will be adopted at

1 the next meeting. Thank you, sir.

2 MR. HOOPER: Thank you.

3 CHAIRMAN SCHMIDT: General business.

4 Discussion and consideration of the following matters:

5 Reports by the executive director and staff regarding

6 administrative matters. Budget and finance.

7 Shelley, Ms. Harris?

8 MS. HARRIS-CURTSINGER: Good morning,

9 Commissioners.

10 Under Tab IV-A-1 through IV-A-4, you will

11 find an update on the agency's fiscal year 2012 budget

12 status. We are now 33.33 percent through the current

13 fiscal year. As of December 31st, the agency has

14 expended 25 percent of our operating budget.

15 And I will be happy to answer any

16 questions you may have.

17 CHAIRMAN SCHMIDT: Are there any

18 questions from any Commissioners?

19 Thank you very much.

20 Mr. Jackson, can you bring us up to date

21 with a report of racetrack inspections and report of

22 wagering statistics?

23 MR. JACKSON: Yes, sir.

24 Good morning, Commissioners.

25 Under Tab IV-B-1 of your agenda packet,

1 you will find a report on racetrack inspection
2 activities as of January 20th, 2012. The report
3 reflects that the staff conducted 16 inspections since
4 our last meeting, with no unsatisfactory items
5 remaining outstanding.

6 The majority of the inspections conducted
7 covered the opening of the Valley Race Park greyhound
8 meet and the opening of the Sam Houston Race Park meet,
9 with the balance being random inspections from meets
10 that concluded in the last quarter of 2011.

11 If you have any questions, I'll be more
12 than happy to answer them.

13 CHAIRMAN SCHMIDT: Are there any
14 questions of Mr. Jackson from any of the
15 Commissioners? Okay.

16 MR. JACKSON: Okay. Moving on to your
17 report on wagering statistics, Commissioners, on pages
18 IV-C-1 through IV-C-3 of your agenda packet, you will
19 find the report on wagering statistics for the period
20 of January 1st through January 29th of 2012 as well as
21 compared to 2011.

22 The report reflects that 2012 total
23 wagering activity is showing signs that the recent
24 declines may have reached a plateau. For the first
25 month of the year, we are seeing the live wagering data

1 points have increased as simulcast import wagering data
2 points have remained static.

3 Specifically, live wagering is up 4.35
4 percent. Simulcast same species wagering has remained
5 static. Simulcast cross-species has declined by 17.6
6 percent. And export wagering on our Texas races is up
7 27.6 percent.

8 If you have any questions, I'll be happy
9 to answer them.

10 CHAIRMAN SCHMIDT: Good news,
11 Mr. Jackson.

12 MR. JACKSON: It is.

13 CHAIRMAN SCHMIDT: Any insights as to why
14 this is occurring?

15 MR. JACKSON: The live wagering product,
16 the dates are fairly same as compared to the last year,
17 so I'm going to assume there's just more patrons out at
18 the track. We're still crunching numbers on the
19 attendance.

20 The export handle, it could have
21 something to do with enforcement regulations on the ADW
22 companies whereby if they're not allowed to wager on
23 some of our products, we're having more of the public
24 showing up to wager on our signal. At this point
25 that's kind of an assumption.

1 It could also be due to weather in the
2 northeast whereby some of those tracks who typically
3 run this time of the year are closed due to inclement
4 weather and that gives our product a better shot at
5 attracting more fans in those areas.

6 CHAIRMAN SCHMIDT: Any other questions of
7 Mr. Jackson from any of the Commissioners?

8 Thank you, Sammy, for your work as
9 usual.

10 MR. JACKSON: Thank you.

11 CHAIRMAN SCHMIDT: Then the enforcement
12 report.

13 Mr. Gougler, deputy director of racing
14 oversight?

15 MR. GOUGLER: Good morning,
16 Commissioners.

17 Under Tab IV-D, you'll find the selective
18 regulatory statistics on the enforcement report.

19 They've been updated since the November statistics
20 provided during that Commission meeting.

21 Over the course of the year, in
22 summarizing, things are down slightly and almost all
23 the stats are down in direct proportion to the number
24 of live race performance and number of live races.

25 From a positive standpoint, the number of

1 drug positives for the horses went down significantly
2 and we dipped under one percent of the samples that
3 were positive for horses. So that's a positive note.

4 And I'd be glad to answer any questions.

5 CHAIRMAN SCHMIDT: Any questions of
6 Mr. Gougler?

7 Thank you very much, Mike.

8 MR. GOUGLER: Thank you.

9 CHAIRMAN SCHMIDT: Appreciate your help.
10 We're now going to jump a little bit out
11 of order in our agenda. We had a very unexpected
12 conflict and we're going to move to Item -- proceedings
13 on racetracks, Item V-D. This will be under page six,
14 I think, a request by MAXXAM, Incorporated, to discuss
15 a potential transaction affecting its capital
16 structure, respond to questions, and obtain any
17 necessary approvals.

18 We have one speaker signed to speak up.

19 Mr. Hurwitz?

20 MR. HURWITZ: Good afternoon. Thank you
21 for taking me out of order. I appreciate that. We
22 are -- my name is Shawn Hurwitz. I'm the president of
23 MAXXAM, Inc. MAXXAM is the 50 percent owner of three
24 racetracks, Sam Houston, Harlingen, and Laredo. And
25 the other 50 percent partner is Penn National Gaming,

1 which you all are -- most of you are very aware -- all
2 of you are very aware of and were involved during that
3 transaction.

4 And so MAXXAM is going to be announcing
5 today a potential transaction whereby we may go
6 private, in which case my father and I will be the
7 owners of MAXXAM, Inc., if the proposed transaction
8 occurs. MAXXAM will remain a 50 percent owner in the
9 three racetracks. Penn will remain a 50 percent owner
10 in the three racetracks. They're publicly traded as
11 you know. And they will remain the managing member of
12 the partnership. And the management which has been in
13 place for the last three or four years will also
14 remain.

15 So there will be really no changes in the
16 operations of any of the racetracks. The only thing
17 will be in the ownership -- or potential changes would
18 be in the ownership of MAXXAM. Whereby my father and I
19 now own a vast majority of the shares, we would own all
20 the shares. Both of us are Texans and have been Texans
21 our whole lives. And so we would be seeking approval
22 of the Racing Commission for that proposed potential
23 transaction.

24 CHAIRMAN SCHMIDT: Any questions of
25 Mr. Hurwitz by any of the Commissioners?

1 Okay. Mark, do you have any insight or
2 comments?

3 MR. FENNER: Well, Commissioners, in
4 reviewing the request, the only question I had was
5 whether this still complied with the majority Texas
6 ownership requirement found in the act.

7 The act does provide an exception under
8 6.06(i) when the parent company is a publicly traded
9 company, so my question was does that still qualify as
10 a publicly traded company when they hold exactly 50
11 percent of the ownership. Under the Texas Business
12 Organizations Code, they do. That's how they define a
13 parent company is a company that owns at least 50
14 percent of the ownership of another business.

15 So Penn National Gaming will remain the
16 publicly traded parent company of the ownership of
17 these three licenses. And the fact that the 50
18 percent -- other 50 percent is owned by Texas residents
19 is just an extra benefit.

20 CHAIRMAN SCHMIDT: Any further
21 questions?

22 Thank you, Mr. Hurwitz.

23 MR. HURWITZ: Thank you.

24 CHAIRMAN SCHMIDT: Is anyone else signed
25 up to speak about this issue?

1 Any additional discussion, comments?

2 Okay. I'd certainly entertain a motion
3 at this point.

4 VICE-CHAIRMAN EDERER: I make a motion
5 that we approve the transfer of ownership.

6 CHAIRMAN SCHMIDT: There's been a motion
7 made by Commissioner Ederer to approve the request by
8 MAXXAM, Incorporated, to make changes to its capital
9 structure.

10 Is there a second?

11 COMMISSIONER MARTIN: Second.

12 CHAIRMAN SCHMIDT: Seconded by
13 Dr. Martin.

14 Any further discussion?

15 We'll now bring it to a vote. All those
16 in favor signify by saying aye.

17 COMMISSIONERS: Aye.

18 CHAIRMAN SCHMIDT: Anyone opposed?

19 It's approved unanimously.

20 Thank you.

21 We're going to jump back on our agenda
22 and now Item E, a report by the ad hoc committee on
23 rules to implement House Bill 2271 and a report by the
24 committee on rules.

25 Commissioner O'Connell?

1 MS. O'CONNELL: Thank you.

2 The committee to implement House Bill
3 2271 met in January. We met on January 10th. And we
4 discussed some rule drafts that are pretty
5 noncontroversial, but the bulk of our meeting centered
6 on discussions about what should go into a proposed
7 draft that relates to the Legislature's mandate to
8 categorize all racetrack licenses as active or inactive
9 by September 1st of 2012.

10 So the ramification of the categorization
11 is that if you are categorized as active, you have an
12 ownership and management review every five years; and
13 if you're categorized as inactive, you have an annual
14 review that's very specific; and as part of that, if
15 you are not able to show any good faith efforts, your
16 license can be referred to be potentially not renewed,
17 which would be an action that would occur at SOAH.

18 So the way the statute is laid out is
19 that all racetracks that are currently conducting live
20 racing automatically will be categorized as active, but
21 the statute also says that it's up to the Commission by
22 rule to determine what good faith efforts a track could
23 do just short of that to also be able to be a
24 designated active.

25 And so that is where the crux of the

1 discussions are at this point and we've had a lot of
2 good input from different stakeholders here in Austin
3 and I hope that that will continue as we move forward.

4 CHAIRMAN SCHMIDT: Commissioner
5 O'Connell, I want to thank you again for basically
6 carrying the load on this task. I want to stress I
7 know you were doing it with Commissioner Haywood and I
8 think at this point our plan is however to expand the
9 discussion to the entire Commission.

10 Mr. Fenner, you think you'll have a rough
11 draft of one proposal available to the Commission
12 within the next week or two?

13 MR. FENNER: Yes, sir, I think that we
14 could provide to the Commissioners a first draft of
15 what this rule could look like to the Commissioners
16 very quickly. And we would really hope that each of
17 you would have an opportunity to look at it and provide
18 some feedback to us so that, you know, if we need to
19 make adjustments that we can do so so that it will be
20 in a fairly good form to take back to the sunset rules
21 committee and show to the industry and start working
22 through the refinement of it and see if we're on the
23 right page.

24 CHAIRMAN SCHMIDT: I think what I'd like
25 to do is since most of this work has been done in

1 Austin, this is a significant issue and it will -- I
2 think we need more sunshine to it. I think we might be
3 better served by having at least one additional rules
4 committee at Lone Star, maybe a second one at Houston
5 or Retama, north and south, with other Commissioners
6 participating in it to vet this process before it comes
7 back to us.

8 So we'll have further discussions later.
9 But I think the next rules committee will either be at
10 Lone Star or Retama in March.

11 MR. FENNER: Yes, sir. The pressure on
12 this is increasing because in order to make the
13 deadline of designating racetracks as active or
14 inactive by September 1, we need to be able to publish
15 this rule in the Texas Register at the next Commission
16 meeting so that it can be adopted at the June meeting
17 so that by August you'll be able to make the
18 designation. So the timeline is compressing on this.

19 CHAIRMAN SCHMIDT: I think I had planned
20 to expand the rules committee temporarily through the
21 month of March and I'll be in touch with other
22 Commissioners requesting your input, but just so we can
23 all share in the process, get as much input as
24 possible. That way when we come back in April, we've
25 kind of vetted this to the best of our ability.

1 Thank you, Commissioner O'Connell, for
2 your work. Appreciate it.

3 The next item is a report on the
4 greyhound advisory committee. Commissioner Hicks and
5 Dr. Martin?

6 COMMISSIONER HICKS: We're going to ask
7 Dr. Quirk to make our report.

8 CHAIRMAN SCHMIDT: Thank you.

9 MR. QUIRK: Mr. Chairman, Commissioners.

10 I'll just first say I began my day by
11 backing into a tree that's been there for 50 years, so
12 bear with me on this. I wasn't necessarily prepared
13 for this. But I'll try to stumble through it.

14 We did convene this group on the 23rd of
15 January and those committee members present were
16 Mrs. Hicks of course, Dr. Martin, Ms. Briggs, and John
17 Dalton and myself. I think we decided by acclamation
18 to make Ms. Hicks chairman of this committee for her
19 long interest and support -- or long interest in this
20 issue.

21 I have to tell you that we called it an
22 advisory committee which I think presumes that --
23 presupposes anyway that we're in a position to advise.
24 A review committee may be a better word, although we
25 hope to reach the point where we can advise after

1 gathering some information.

2 I think the -- in addition to the
3 committee members present on our conference call, we
4 were assisted by Sammy. To a large degree, he provided
5 a historical perspective on the issue and then frankly
6 framed the discussion by providing context.

7 I think also Jean Cook was with us. And
8 Jean has done all the legwork in gathering the
9 information that we've been looking at, the injury
10 information and data, and has been invaluable as I
11 say.

12 I think Chuck was there. And I think
13 Chuck, for a lot of reasons, is very helpful in these
14 matters just to provide some of the wisdom that he
15 brings to the table.

16 The first comments or the first part of
17 that discussion focused on drug testing in greyhounds
18 primarily because they're -- we have some concerns that
19 we may need to improve the depth of our testing,
20 looking specifically at anabolics and the
21 nonsteroidals, primarily as they could contribute to
22 injury.

23 That's in the early stages, though, of an
24 investigation and I really can't report as to whether
25 any of that is being discovered. Obviously in a

1 discussion like this, I find this issue to be somewhat
2 inscrutable in that there's so many variables in this
3 equation that it's difficult to know sometimes where to
4 go.

5 We can point at the easy ones. One of
6 the easy ones obviously is the track surface. That's
7 the one that we hear the most about. The variance in
8 the surface that may occur by virtue of weather, by
9 virtue of some things that controls there at least
10 that's involved in the weather that they deal with.

11 Along those lines, I'd say kudos to Gulf
12 Greyhound for bringing in a consultant, a recognized
13 expert frankly on dog injury, who also has an extensive
14 background in track surface issues, a gentleman by the
15 name of Dr. Rob Gillette. I understand from Ms. Briggs
16 that she received a report from him as recently as last
17 night and hopefully we'll have that available to us at
18 our next -- at our next meeting and we'll take a look
19 at his recommendations and kind of go from there.

20 Beyond track surface, when you look at
21 the epidemiology of injury, there are, again, many
22 factors, the age of the dog, the size of the dog. And
23 an interesting note there is Dr. Chip Wilkinson, our
24 point man at Gulf, has mentioned to me that he thinks
25 the average greyhound weight has maybe increased by

1 15 -- as much as 15 pounds over the period of time that
2 we've been racing. How that may contribute to injury
3 as a genetic component or perhaps as a result of
4 anabolic use, we'll have to discover.

5 Beyond that, we discussed our performance
6 standards and what's involved in that. That's
7 something that we're having to take a look at. We're
8 not -- we don't have the history to inform us as to
9 where it came from. And it is an important measure
10 that we have to act on. And I think we need to -- we
11 need some clarity on that point.

12 And then beyond that, we need to address
13 how to best deal with the injured greyhound after the
14 injury. And that's something that we've had some
15 interest in for some time. I know Ms. Hicks has a
16 special interest in that as well. And we need to move
17 forward with that initiative.

18 I'd be happy to attempt to answer any
19 questions you may have.

20 CHAIRMAN SCHMIDT: Thank you very much.

21 Any questions from any of the
22 Commissioners?

23 I really appreciate your efforts.
24 Important work. Thank you.

25 MR. QUIRK: Thank you.

1 CHAIRMAN SCHMIDT: The next item is the
2 recognition of the Texas Horsemen's Partnership as the
3 official horsemen's organization.

4 Mr. Trout?

5 MR. TROUT: Good morning, Commissioners.

6 The rules require that the agency
7 recognize one organization to represent horse owners
8 and trainers on matters related to the conduct of live
9 racing and simulcasting at Texas racetracks. This
10 organization is also responsible under the act for
11 advocating interests of horse owners and trainers
12 before the Legislature.

13 When we grant this recognition, it is
14 good for two years. As the last recognition letter was
15 due to expire last month, we posted notice of a new
16 application period in the December 16th, 2011 edition
17 of the Texas Register. The only application we
18 received was from the Texas Horsemen's Partnership
19 which has been the horsemen's organization for many
20 years.

21 We reviewed the application and it was
22 complete and met the requirements of the rule. As
23 required by Rule 309.299, I then issued the partnership
24 a recognition letter that extends their authority until
25 January 2014.

1 If you have any questions, I'll be glad
2 to answer them.

3 CHAIRMAN SCHMIDT: Any questions?

4 Thank you very much, Mr. Trout.

5 MR. TROUT: Yes, sir.

6 CHAIRMAN SCHMIDT: Appreciate it. That's
7 taken care of.

8 Next is a discussion of a memorandum of
9 understanding with the Texas Veterinary Medical
10 Diagnostic Laboratory for fiscal year 2012.

11 Mr. Fenner?

12 MR. FENNER: Commissioners, under the
13 act, the Texas Racing Commission enters into a
14 memorandum of understanding with the Texas Veterinary
15 Medical Diagnostic Lab by which we set the -- or agree
16 to the fees that the lab will charge to the racetracks
17 for the costs of conducting the testing of the race
18 animals.

19 We've undergone this on a number of
20 occasions and we have this MOU that's before you today
21 for approval. It's very similar to MOU's that have
22 been approved in previous years.

23 The primary changes are that we're
24 reducing slightly the number of samples that are being
25 tested. We'll now reduce the samples per horse race

1 from 2.1 to 2.0, and we're going to reduce the tests
2 for samples per greyhound race from actually 1.0 to
3 0.9, so that's a 10 percent decrease in the number of
4 tests at the greyhound races.

5 We have reviewed it. We believe that
6 these changes will still maintain the integrity of
7 racing and it will allow the costs for medical testing
8 at Gulf Greyhound in particular to be reduced by about
9 \$100,000.

10 Staff recommends approval. I'm happy to
11 answer any questions you have.

12 CHAIRMAN SCHMIDT: Are we still testing
13 all winners?

14 MR. TROUT: Yes, sir.

15 CHAIRMAN SCHMIDT: Any other questions of
16 Mr. Fenner by any of the Commissioners?

17 Okay. Any further discussion by the
18 Commission?

19 I'd certainly entertain a motion to
20 approve a memorandum of understanding with TVMDL for
21 fiscal year 2012.

22 COMMISSIONER WEINBERG: I so move.

23 CHAIRMAN SCHMIDT: A motion made by
24 Commissioner Weinberg.

25 Second?

1 COMMISSIONER HICKS: Second.

2 CHAIRMAN SCHMIDT: Seconded by

3 Commissioner Hicks.

4 Any further discussion?

5 We'll bring it to a vote. All those in
6 favor signify by saying aye.

7 COMMISSIONERS: Aye.

8 CHAIRMAN SCHMIDT: All those opposed?

9 The motion carries.

10 Moving to Item V, proceedings on
11 racetracks, a request by Austin Jockey Club to approve
12 100 percent change of ownership of Longhorn Downs, and
13 we'll take concurrently a request by Longhorn Downs for
14 approval of change in location.

15 First to begin, Mr. Archer?

16 MR. ARCHER: Mr. Chairman, Commissioners,
17 my name is Joe Archer. I'm the president of Austin
18 Jockey Club.

19 Austin Jockey Club remains supportive of
20 its original request for transfer of the license and
21 the location to the KTAGS group. They're all here
22 today. Attorneys for Austin Jockey Club are here if
23 you have any questions from them. And the application
24 obviously will be -- questions on that will be answered
25 by KTAGS.

1 CHAIRMAN SCHMIDT: Thank you,
2 Mr. Archer.

3 Any questions by any of the Commissioners
4 of Mr. Archer at this point?

5 Okay. Mr. Fenner, can you bring us up to
6 date with any technical issues and a brief summary?

7 MR. FENNER: Well, Commissioners, what
8 I'd like to do is just wander -- walk you through the
9 necessary factors that are set out in the act for a
10 consideration of a change of ownership and location.

11 The act requires an applicant to fill out
12 an application and including the following types of
13 information. First of all is whether or not the fee
14 for the background check has been paid. Yes, KTAGS
15 provided -- Austin Jockey Club provided an
16 85,000-dollar check to cover the costs of processing
17 the application both at the Commission and at DPS.

18 The application must identify the
19 proposed owners and the ownership structure. That is
20 set out on page V-A-3. The proposed owners will be
21 Clifton Thomas, Phillip Adams, Ricky Knox, and then
22 through a separate organization it will be Michael
23 Gallagher and Russell Serafin. The percentages are set
24 out on that page as well.

25 The location at which the track -- the

1 racetrack meeting is to be conducted. That's described
2 on page V-A-9. They propose to locate this racetrack
3 at a 148-acre site in Creedmoor. This is about eight
4 miles south of Austin and it's adjacent to State
5 Highway 45. It's about three miles from I-35, just
6 north of Buda. It's a short drive from the highway
7 without toll fees if you use FM 1327. This location
8 has been purchased and is owned by Mr. Thomas.

9 The next item that has to be discussed is
10 whether the site complies with the zoning. This site
11 is not zoned. The parties have been in discussion with
12 the City of Creedmoor about annexation. And you may
13 recall that the mayor of Creedmoor, Mr. Robert Wilhite,
14 appeared before this Commission and addressed it at its
15 meeting on June 21, 2011. He reported that the City
16 Council was excited about the possibility of the
17 racetrack coming to Creedmoor and that he did not
18 anticipate that there would be local opposition.

19 We have to address whether the facility
20 is leased or owned. The answer is that it will be
21 owned. In fact, it's already owned.

22 Identification of any other beneficial
23 owner of shares that bear voting rights. We have
24 identified all the owners as being these five people.

25 A detailed statement of the assets and

1 liabilities of the applicant. Those have been
2 described in the Department of Public Safety
3 confidential report which has been provided to you
4 separately.

5 The kind of racing to be conducted and
6 the dates requested. The KTAGS group has requested
7 that there will be 18 days of racing each year, that
8 there will be 10 races each day, and that these 18 days
9 will be distributed three per week. There is a
10 potential for conflict with race dates that are already
11 allocated to Gillespie County Fair and to Retama Park.

12 There needs to be proof of residency.
13 That has been addressed by the Department of Public
14 Safety in their report, but all of these individuals
15 are Texas residents who have resided here for at least
16 10 years.

17 Copies of any tote, management, and
18 concession contracts. The tote company will be
19 AmTote. AmTote is a licensed company by Texas. It
20 does operations for Retama Park already. Retama
21 Park -- Retama Park's operator will be Retama
22 Entertainment Group and the concessionaire will be
23 Breckenridge Entertainment Group. Both of these are
24 associated with Retama Park and all of them are
25 licensed by the Commission and have good relationships

1 with the Commission.

2 The next section that has to be addressed
3 is Section 6.031 of the act, the background check
4 section. DPS has completed its background check. It
5 was submitted to the Commission on May 27, 2011, and
6 provided to you. It has been on file with the
7 Commission for at least 14 days. The report found
8 nothing that would preclude the Commission from
9 licensing KTAGS.

10 And then when it comes to conditions that
11 the Commission must find before it issues a racetrack
12 license, first it has to discuss -- or determine that
13 the conduct of race meetings at the proposed track and
14 location will be in the public interest. This is a
15 decision for the Commission to decide. But the
16 community's mayor did appear and expressed support for
17 the track.

18 You must find that the track and location
19 complies with zoning laws. As we described earlier,
20 there's no zoning for this site, but they're talking
21 about getting it zoned; and if so, it would be zoned
22 appropriately for a racetrack.

23 And that the Commission will find by
24 clear and convincing evidence that the applicant will
25 comply with all criminal laws. Once again, the DPS

1 found nothing that would indicate otherwise.

2 Then there are 11 factors that the
3 Commission may optionally consider as public interest
4 factors, such as the applicant's financial stability.
5 The DPS found out that the applicants do have the
6 financial wherewithal to go forward with this.

7 Their resources for supplementing the
8 purses. Again, the applicant has sufficient financial
9 resources.

10 The location of the track. We know it's
11 in Creedmoor.

12 Effect of the proposed track on traffic
13 flow. We sent over the application to the Department
14 of Transportation. They suggested that extending the
15 eastbound left-turn lane into the westernmost entry of
16 the site would be appropriate, and KTAGS has committed
17 to us that they are willing to do that.

18 We've described the facilities for the
19 patrons, the race animals, the support services, the
20 experience of the employees. These are all experienced
21 employees that are operating Retama Park right now and
22 they are licensed and in good standing with the
23 Commission.

24 There is a potential for conflict with
25 the race meets at Gillespie and Retama Park; but since

1 it will be managed by Retama Park, I'm sure that
2 they'll resolve that.

3 We've described the anticipated effect of
4 the race meeting on the breeding industry. And they've
5 described the effect on the economy from tourism,
6 increased employment, and other resources.

7 Frankly, the biggest issue that the staff
8 identified in reviewing the materials was the level of
9 commitment by KTAGS to actually going forward and
10 building the racetrack. This was an issue that we
11 asked them about specifically in December, I believe.

12 They wrote back to us. They have
13 conditioned somewhat their commitment on the fact of
14 continuing litigation that exists between the Austin
15 Jockey Club and Dallas City Limits and the release of
16 the stock and whether or not they are able to go
17 forward or whether they're going to be precluded from
18 going forward because of that ongoing litigation.

19 Other than that, we really found no
20 issues with the site or the people operating it or any
21 of the elements that are addressed by the Commission.
22 As to whether or not you are satisfied with their level
23 of commitment, I think you should ask Mr. Thomas and
24 KTAGS to come up and address that.

25 Do you have any questions for me about

1 the report or my description of it? Is there anything
2 I can fill in for you?

3 CHAIRMAN SCHMIDT: Any questions of
4 Mr. Fenner from any of the Commissioners?

5 Thank you, Mark, for updating us.

6 I had one question. Have you kept
7 Mr. Thomas and his KTAGS group up to date with respect
8 to the proceedings of the rules committee so they have
9 a full understanding going forward, were their
10 application to be approved, of what determines an
11 active or inactive license?

12 MR. FENNER: Yes, sir. Executive
13 Director Trout and I called the attorney for KTAGS,
14 Bill Russell, last Friday; and we had a pretty frank
15 discussion with him about the implications of the
16 active and inactive designation and the fact that they
17 could be licensed -- buying a license that could be
18 designated as inactive and not renewed at the end of
19 the following year. It's a possibility.

20 CHAIRMAN SCHMIDT: Okay. Thank you,
21 sir.

22 Mr. Reynolds from DPS? Thank you very
23 much for assisting us.

24 Mr. Reynolds is from DPS. Do any of the
25 Commissioners have any questions regarding the DPS

1 report of Mr. Reynolds?

2 Any comments?

3 MR. REYNOLDS: Just to reiterate what
4 Mark said, DPS completed a complete and thorough
5 background investigation and we did not find anything
6 that would preclude KTAGS from going forward with the
7 actual process.

8 CHAIRMAN SCHMIDT: Thank you very much,
9 sir. Appreciate it.

10 Okay. Speaking next will be Mr. Thomas
11 representing KTAGS.

12 Mr. Thomas?

13 MR. THOMAS: Commissioners, very brief, I
14 just wanted to make myself available to you if you have
15 any questions. Obviously we're excited. It's been a
16 long time coming. And we think we're to a position
17 where we can move forward with our business venture.

18 Any questions?

19 CHAIRMAN SCHMIDT: We appreciate you
20 being here, sir.

21 Any questions from any of the
22 Commissioners?

23 MS. O'CONNELL: I have a question.

24 CHAIRMAN SCHMIDT: Commissioner
25 O'Connell?

1 MS. O'CONNELL: I understand that there
2 were a couple of different things in the application
3 about who would actually fund the project and I think
4 that ultimately you have taken responsibility for
5 funding the entire project. Is that correct?

6 MR. THOMAS: That's correct.

7 MS. O'CONNELL: Okay.

8 MR. THOMAS: Yes, ma'am.

9 CHAIRMAN SCHMIDT: Thank you, sir.

10 MR. THOMAS: Thank you.

11 CHAIRMAN SCHMIDT: Mike Gallagher?

12 Mr. Gallagher?

13 MR. GALLAGHER: Good morning. Mike
14 Gallagher. I'm one of the limited partners in KTAGS
15 and I'm here to answer any questions you have with
16 regard to the litigation that's pending in Harris
17 County. The litigation that's on appeal from Dallas
18 County will be addressed by Mr. Butch Boyd who's the
19 lawyer for the -- for Longhorn Downs.

20 There was a hearing held in Houston
21 yesterday in which the judge determined that Dallas
22 City Limits had no ownership interest, beneficial or
23 otherwise, in the underlying stock that's held by
24 Longhorn Downs and he released the stock to Austin
25 Jockey Club. And pending your decision -- the decision

1 that you make today, that will be released to KTAGS
2 upon your approval.

3 CHAIRMAN SCHMIDT: Thank you, sir.

4 Do we have any questions of Mr. Gallagher
5 from any of the Commissioners?

6 Thank you for updating us, sir.

7 MR. GALLAGHER: Thank you.

8 CHAIRMAN SCHMIDT: I'd like to request
9 Mr. Boyd.

10 Since you were referenced, sir, would you
11 mind bringing us up to date on the current litigation
12 in Dallas County?

13 MR. BOYD: Yes. The litigation in Dallas
14 County is on appeal. It's been on appeal, I guess,
15 over a year now. And we're just awaiting a ruling.
16 Our view of the world is that Harris County was
17 determinative of ownership of the stock and the judge
18 released that stock to my client, Austin Jockey,
19 yesterday. As for Dallas, it's on appeal. It's been
20 fully briefed. And we're just waiting for the
21 Appellate Court to render a decision.

22 CHAIRMAN SCHMIDT: If it's possible in
23 two minutes or less, could you summarize the for and
24 against arguments of the pending appeal?

25 MR. BOYD: For and against on the Dallas

1 appeal?

2 CHAIRMAN SCHMIDT: Yes.

3 MR. BOYD: Dallas City Limits requested
4 that Judge Jordan, the trial court judge, grant
5 specific performance requiring my client to bring them
6 back before the Commission. And that judge denied that
7 relief, entered a take-nothing judgment.

8 So Dallas City Limits is saying that the
9 Court erred in not granting specific performance. We
10 are saying two things: That, number one, that was not
11 error as it relates to the specific performance and the
12 take-nothing judgment. There's also some procedural
13 issues that we're taking up on things he did that are
14 periphery to that with some of the other relief that
15 was granted.

16 But the specific difference is Dallas
17 City Limits wanted specific performance. We said that
18 was inappropriate. And the judge entered a
19 take-nothing judgment. They took the appeal. And
20 that's what we're waiting on now.

21 CHAIRMAN SCHMIDT: Any further questions
22 from any of the Commissioners?

23 Thank you, sir.

24 Bryan Brown is signed up to speak.

25 Mr. Brown?

1 MR. BROWN: Good morning, Commissioners.
2 I'm Bryan Brown.

3 I would be happy to answer any specific
4 questions about the track design itself, the plain
5 operations, anything that you would like to know about
6 what the track would look like. I would be happy to
7 answer any questions that you have.

8 CHAIRMAN SCHMIDT: I think they were
9 nicely summarized in the report.

10 MR. BROWN: It was a great job of
11 summarizing in the report.

12 CHAIRMAN SCHMIDT: Any questions from any
13 of the Commissioners?

14 Thank you.

15 VICE-CHAIRMAN EDERER: I have one
16 question.

17 CHAIRMAN SCHMIDT: Commissioner Ederer?

18 VICE-CHAIRMAN EDERER: Mr. Brown, I see
19 on here that as far as the timeline for a potential
20 opening of the facility is about 28 weeks. Now, that's
21 28 weeks after the litigation is straightened out once
22 and for all?

23 MR. BROWN: Right. That's 28 weeks from
24 when we would start construction of the facility
25 itself, yes.

1 VICE-CHAIRMAN EDERER: Is there -- I
2 should have asked the attorney on the Appellate Court.
3 Is there any anticipated timeline there? Do we have
4 any idea when the judge is going to rule -- when the
5 Court is going to rule? The Appellate Court.

6 MR. BOYD: No. You know, there's just no
7 way to tell except it's been there. It's ripe.

8 VICE-CHAIRMAN EDERER: It's been there
9 for a year.

10 MR. BOYD: Right. It's ripe. It's been
11 fully briefed for some time.

12 VICE-CHAIRMAN EDERER: So it could happen
13 at any time.

14 MR. BOYD: It could.

15 VICE-CHAIRMAN EDERER: And then once that
16 does happen, then you're ready to go forward,
17 Mr. Brown?

18 MR. BROWN: That is correct. We would
19 start the development process. I didn't mean we'd be
20 able to stick a shovel in the ground the next day.

21 VICE-CHAIRMAN EDERER: I understand
22 that.

23 MR. BROWN: But we'd start making sure
24 utility lines are permitted or on their way. We have
25 to work out our agreement with the City on annexation,

1 which we'll start ahead of time. But assuming that
2 annexation has occurred, the City has permitted the
3 property following annexation, which will probably
4 happen simultaneously, we would then start moving
5 forward with the utility line development and ultimate
6 development of the property.

7 VICE-CHAIRMAN EDERER: And from your
8 knowledge, the City's position remains the same, full
9 support.

10 MR. BROWN: Yes. And I can't tell if the
11 mayor is here. I know he was going to try to get
12 here. But he was willing to come and testify to that
13 today.

14 VICE-CHAIRMAN EDERER: Thank you.

15 MR. BROWN: Thank you.

16 CHAIRMAN SCHMIDT: Thank you, Bryan.

17 MR. BROWN: Thank you.

18 CHAIRMAN SCHMIDT: Thank you very much.

19 There's no further questions, are there?

20 Next Mr. Hooper, the Texas Thoroughbred
21 Association.

22 MR. HOOPER: Mr. Chairman, Commissioners,
23 I'm David Hooper, executive director of the Texas
24 Thoroughbred Association.

25 The Texas Thoroughbred Association

1 strongly supports the 100 percent ownership change from
2 Austin Jockey Club to KTAGS and also the change in the
3 location to Creedmoor. And we look forward to working
4 with Mr. Thomas and the others in the new ownership
5 group.

6 CHAIRMAN SCHMIDT: Any questions of
7 Mr. Hooper?

8 Thank you, David.

9 Mr. Wilson has driven down from Forney,
10 the Texas Arabian Breeders Association.

11 MR. WILSON: Ed Wilson, president of the
12 Texas Arabian Breeders Association.

13 And we, too, totally support this
14 change. It's something we need is more opportunities
15 to race and for all breeds. And it would certainly
16 help us. Thank you very much.

17 CHAIRMAN SCHMIDT: Thank you for your
18 input, sir.

19 Rob Werstler, the Quarter Horse
20 association.

21 MR. WERSTLER: Good morning,
22 Mr. Chairman, Commissioners. I'm Rob Werstler
23 representing the Texas Quarter Horse Association.

24 We're also -- we support the requested
25 changes as well and we look forward to working with

1 them as they move forward.

2 CHAIRMAN SCHMIDT: Thank you.

3 Any questions?

4 Thank you, Rob.

5 Ms. Rountree?

6 MS. ROUNTREE: Mr. Chairman,
7 Commissioners, last but not least, I'm Marsha Rountree
8 with the Texas Horsemen's Partnership.

9 And I'd like to state for the record that
10 the Texas Horsemen's Partnership is in favor of the
11 requested changes. Our members are really enthusiastic
12 and excited about the possibility of live racing coming
13 to Creedmoor and adding more racing opportunities back
14 into Central Texas. Thank you.

15 CHAIRMAN SCHMIDT: Thank you.

16 Any questions?

17 Great.

18 Next speaking against will be Mr. Carr.

19 MR. CARR: Mr. Chairman, members, my name
20 is Snapper Carr. I'm an attorney here in Austin, also
21 a consultant, and I represent Dallas City Limits, LLC.

22 We are here in opposition to both of
23 these agenda items today. And I think that all of you
24 should have received a letter that was hand-delivered
25 to your offices and to the executive director and staff

1 regarding some of the things that we see as still very
2 appropriate in consideration of this matter.

3 And I think the fact that we had
4 representatives up here talking about two different
5 sets of litigation, one that's currently in the Dallas
6 Court of Appeals where briefs have been filed and we're
7 awaiting a date for oral arguments, is clear enough
8 indication that this matter of ownership is not
9 settled.

10 And to approve a license today when the
11 Dallas Court of Appeals could rule at any time that the
12 jury verdict that was found in that matter, which I
13 will -- I noted that wasn't discussed by the previous
14 speakers -- is valid, would really put this Commission
15 and the license, I think, in a very peculiar spot.

16 A little history. The Dallas District
17 Court, the jury verdict that came out, a couple of key
18 points. It noted that there was a valid stock purchase
19 agreement by Dallas City Limits that Dallas City Limits
20 had not breached in any way.

21 Another very important finding by the
22 jury that they have appealed in the appellate matter is
23 that Austin Jockey Club did, in fact, breach and that
24 was an express finding.

25 Another very important fact that I would

1 hope that you all would consider as you look to -- I
2 heard Mr. Fenner say one of the items is determining
3 who the actual owners are on an application. I think
4 that's very difficult to do when the issue of ownership
5 is still not settled.

6 The principals of Dallas City Limits to
7 date have paid 1.5 million dollars in cash -- that's an
8 undisputed fact -- that Austin Jockey Club principals
9 have received. It hasn't been refunded and it's still
10 in their bank accounts today.

11 As we sit here today, the stock for the
12 very company that we're considering this transfer for
13 is sitting in a court registry. The hearing that
14 occurred yesterday was a motion for reconsideration by
15 the KTAGS group to allow that stock to be released.
16 That motion was denied. The judge said until we have a
17 final order in this matter, the stock is staying in the
18 court registry.

19 So I know we had a previous speaker
20 discuss that. It certainly is not contingent on any
21 action that is being taken here. In fact, with all due
22 respect to the Commission, I don't think you all want
23 to be in the position of litigating contractual
24 disputes between private interests.

25 I know it has typically, even with this

1 very license, been the history of this Commission to
2 avoid interfering with pending litigation, as is with
3 most agencies. To do otherwise involves the State in a
4 private business matter, where it puts them in that
5 litigation as well. And I know that has not been the
6 stance that this Commission or staff has taken up to
7 this point. We would urge you to avoid further
8 complicating this very contentious litigation that is
9 occurring.

10 But I would also ask you, again, look
11 down the road. And we have the Court of Appeals which
12 is likely to be the first Court to pass an appellate
13 opinion on this. What do we do at that time if you do
14 approve the transfer of this license and then it's
15 determined that those people weren't the rightful owner
16 and didn't have a contractual right to do it? Do we
17 unwind that? Is that license valid? Are the revenues
18 that may have been derived in the meantime subject
19 to -- who gets to keep that benefit?

20 In essence, with the pun intended, we are
21 putting the cart before the horse here if you approve
22 this. And we would ask you to avoid doing so. And in
23 fact, I think the staff's memo that was provided to you
24 all has some very telling points within it that I hope
25 many of you I know have probably seen.

1 The first one that I would just like to
2 quickly point out was on V-A-3 as it identifies the
3 owners. Again, I wanted to state that my client to
4 date has paid a million and a half dollars that has
5 still not been refunded. Nothing has been done with
6 it. I would ask you, typically when you pay a million
7 and a half dollars for something, you believe you're
8 getting something in exchange. I would assume I
9 would. I would assume most of you would deem that to
10 be logical as well.

11 It's important to note, and I find very
12 interesting, that the initial contributions listed
13 within the staff report are that zero dollars have been
14 contributed to this point by the proposed owners in
15 this license transfer.

16 Additionally, within the document itself,
17 if you turn to page V-A-8, it notes in the second
18 paragraph that the very contract between KTAGS and
19 Austin City Limits is contingent upon or subject to the
20 rights of Dallas City Limits. And it says here in the
21 staff memo, "According to this subsection, the rights
22 granted in this agreement are subject to any rights, if
23 any, which may remain with Dallas City Limits or its
24 successors pursuant to the Dallas City Limits
25 agreement."

1 So in what way can we say this has been
2 settled if the very person that is proposing to be the
3 group proposing to receive this license is subject to a
4 superior contractual right that currently is before the
5 Dallas Court of Appeals -- and again, I have to just
6 repeat it because I think it's worth noting -- that has
7 a jury verdict in their favor that says they have a
8 valid contract; they were ready, willing, and able to
9 perform; and that the other side breached.

10 I know that it has been characterized
11 before this Commission in past meetings that I've
12 attended that somehow that litigation was actually a
13 win for the other side because of a take-nothing
14 judgment that was entered, entered to specific
15 performance.

16 My client didn't ask for damages at that
17 point. They asked for them to be placed before this
18 Commission and to have a shot at an amended application
19 come before you. And that's what the contract allowed
20 for that they paid a million and a half dollars for.
21 And so that is what they would ask of you all as you
22 deliberate this.

23 The last sentence as it relates in the
24 staff that I think is also, again, telling, V-A-9 in
25 your packet, says "As of the date of this report, the

1 staff is not aware that there has been any resolution
2 to any of these issues."

3 I think that's as simple as it gets to
4 just state it. This matter is not resolved. My client
5 is fully aware of the potential negative impact, that
6 licensure could be deemed inactive, new rule makings
7 that could impact this; but they also feel that it is
8 more important to get it right than just to make a
9 transfer of a license, frankly, to someone at this
10 point that we do not believe is entitled to it.

11 And with that, I would certainly open up
12 for any questions. Our letter, I think, outlines the
13 procedural aspects of the litigation. The Court in
14 Houston, as we have discussed, has not entered a final
15 judgment yet. They won't probably be able to do so for
16 at least 30 days.

17 At that time -- again, this is a District
18 Court matter. I suspect that there will be another
19 appeal to the appropriate Appellate Court, potentially
20 by both sides depending on what the final judgment
21 looks like; but certainly if an ownership interest is
22 transferred, I anticipate that my client would appeal
23 as Austin Jockey Club did and KTAGS did in the Dallas
24 matter.

25 So with that, I would certainly open it

1 up to any questions that you may have.

2 CHAIRMAN SCHMIDT: Do any of the
3 Commissioners have any questions for Mr. Carr?

4 Thank you very much, sir.

5 MR. CARR: Thanks.

6 CHAIRMAN SCHMIDT: Appreciate it.

7 MR. BOYD: Mr. Chairman, may I address
8 the Commission? I want to respond to several things
9 that I think are just erroneous.

10 The judge entered an order yesterday
11 releasing the stock to my client. We will be picking
12 that stock up today. I have provided a copy of the
13 order to Mr. Fenner. Ordered, adjudged, and decreed
14 that the stock of Longhorn Downs, Inc., which is being
15 held in the registry of this Court shall be released to
16 Austin Jockey Club. The November 1st, 2011 order is
17 now final and appealable.

18 They weren't at the hearing yesterday. I
19 was. In Houston he told their lawyer "You do not have
20 any title to the stock." So what he has just
21 represented is not accurate. We have a final order.
22 We'll have the stock today. The judge ordered it
23 yesterday. So I think that needs to be corrected.

24 CHAIRMAN SCHMIDT: Thank you, sir.

25 You'll have a chance to rebut it and then

1 we'll --

2 MR. CARR: Sure. A very well settled
3 matter clearly. Hence we're talking about what a judge
4 yesterday ruled. Again, I just want to point that
5 out. This is so settled that we're talking about a
6 court appearance that occurred. And he is correct. I
7 was not personally in attendance. We have lawyers from
8 Brown McCarroll that were that represented Dallas City
9 Limits in that.

10 The judge indicated that until a final
11 order, which is going to take -- I would put it this
12 way. It's going to take 30 days for a final order to
13 be completely issued and that stock to be released.
14 That's the earliest. And that is if my client doesn't
15 appeal a decision from a District Court in Houston.
16 And that is the matter.

17 They are not in possession of the stock
18 today. And if they were allowed to be, I assume they
19 would be expressing that fact to you, that they gladly
20 were holding title to something, but they aren't. And
21 they know that this matter is not final. There are
22 issues that haven't been resolved in Houston. There is
23 a pending Court of Appeals matter that we haven't even
24 had oral arguments on despite being briefed.

25 So if that sounds settled to you all,

1 then you all have a different perspective of what
2 settled ownership is than what I do from my legal
3 perspective. And I stand by exactly what I testified
4 to to you today, that they are not in possession, there
5 hasn't been a final order.

6 CHAIRMAN SCHMIDT: Thank you, sir.

7 Okay. Thank you.

8 Ms. Cook, we have all cards completed?

9 MS. COOK: Yes, sir.

10 CHAIRMAN SCHMIDT: Great. I'd like to
11 invite discussion by the Commissioners. And Mister --
12 okay. Mr. Jones?

13 MR. JONES: Thank you, Mr. Chairman,
14 Commissioners.

15 Just as a brief matter, I represent the
16 KTAGS group and Mr. Thomas specifically. I was at the
17 hearing in Houston yesterday as well and I have a
18 transcript of that hearing which we provided to
19 Mr. Fenner this morning.

20 But essentially what the judge said in
21 response to a question about beneficial ownership of
22 this stock, and said it to Dallas City Limits'
23 counsel -- he said "But on the issue -- but the issue
24 is, as a matter of law, you're not the rightful owner
25 of any title to the stock."

1 Then he ordered and yesterday signed an
2 order transferring -- releasing the stock from the
3 registry of the Court. And it will be picked up today
4 and will be available for transfer.

5 Now, finally let me say, this Commission
6 is the ultimate authority for who gets that stock and
7 to whom it will be transferred. And I would suggest
8 that regardless of what the Court of Appeals says, with
9 respect to the appeals that are now pending in Dallas,
10 the bottom line of the situation is this Commission is
11 the authority and is the only one that can order the
12 transfer of that stock.

13 I'll be happy to answer any questions.

14 CHAIRMAN SCHMIDT: Commissioner Ederer?

15 VICE-CHAIRMAN EDERER: You do have a
16 court order that you have provided to Mr. Fenner?

17 MR. JONES: Indeed.

18 VICE-CHAIRMAN EDERER: Thank you.

19 MR. JONES: You're welcome.

20 CHAIRMAN SCHMIDT: Any more questions?

21 Thank you.

22 Any additional public discussion?

23 Mr. Trout, is there a staff
24 recommendation?

25 MR. TROUT: Sir, if I have to make a

1 recommendation, I recommend you approve the transfer.

2 CHAIRMAN SCHMIDT: I'd like to invite any
3 discussion by any of the Commissioners regarding these
4 issues. Any discussion at all?

5 Mr. Ederer?

6 VICE-CHAIRMAN EDERER: It appears to me
7 that the Court in Houston has made it clear who the
8 owner of the stock is as far as that -- it may be
9 appealed. That's true. But at the present time that
10 is the status of the stock and I think it is ripe for
11 action by the Commission.

12 CHAIRMAN SCHMIDT: Okay. Thank you.

13 Any other questions, comments?

14 Okay. I'd certainly entertain a motion
15 at this point.

16 VICE-CHAIRMAN EDERER: I would make a
17 motion the request for Austin Jockey Club to approve a
18 100 percent change of ownership of Longhorn Downs be
19 approved. That will be the first. There will be a
20 second.

21 CHAIRMAN SCHMIDT: There's a motion on
22 the floor to approve the Austin Jockey Club's request
23 for a change of ownership by Commissioner Ederer.

24 Is there a second?

25 COMMISSIONER HICKS: I'll second it.

1 CHAIRMAN SCHMIDT: Seconded by
2 Commissioner Hicks.

3 Any additional discussion?

4 I think we'll do a roll call vote.

5 Ms. Weiss?

6 MS. WEISS: Commissioner Ron Ederer?

7 VICE-CHAIRMAN EDERER: Approve.

8 MS. WEISS: Commissioner Gloria Hicks?

9 COMMISSIONER HICKS: Approved.

10 MS. WEISS: Commissioner Mike Martin?

11 COMMISSIONER MARTIN: Approved.

12 MS. WEISS: Commissioner Ann O'Connell?

13 MS. O'CONNELL: Approve.

14 MS. WEISS: Commissioner Allan Polunsky?

15 MR. POLUNSKY: Approved.

16 MS. WEISS: Commissioner John Steen?

17 COMMISSIONER STEEN: Approved.

18 MS. WEISS: Commissioner Vicki Weinberg?

19 COMMISSIONER WEINBERG: Approve.

20 MS. WEISS: Chairman Robert Schmidt?

21 CHAIRMAN SCHMIDT: Approve.

22 That motion is carried.

23 There's a second motion.

24 VICE-CHAIRMAN EDERER: The second motion
25 is to approve a request by Longhorn Downs for a change

1 of location.

2 CHAIRMAN SCHMIDT: Commissioner Ederer
3 has made a motion to approve KTAGS' request to change
4 the location of Longhorn Downs to Creedmoor, Texas.

5 Is there a second to that motion?

6 COMMISSIONER STEEN: Second.

7 CHAIRMAN SCHMIDT: Seconded by
8 Commissioner Steen.

9 Any further discussion?

10 Okay. Can I have a vote, please?

11 MS. WEISS: Commissioner Ron Ederer?

12 VICE-CHAIRMAN EDERER: Approved.

13 MS. WEISS: Commissioner Gloria Hicks?

14 COMMISSIONER HICKS: Approved.

15 MS. WEISS: Commissioner Mike Martin?

16 COMMISSIONER MARTIN: Approved.

17 MS. WEISS: Commissioner Ann O'Connell?

18 MS. O'CONNELL: Approved.

19 MS. WEISS: Commissioner Allan Polunsky?

20 MR. POLUNSKY: Approved.

21 MS. WEISS: Commissioner John Steen?

22 COMMISSIONER STEEN: Approved.

23 MS. WEISS: Commissioner Vicki Weinberg?

24 COMMISSIONER WEINBERG: Approve.

25 MS. WEISS: Chairman Robert Schmidt?

1 CHAIRMAN SCHMIDT: Approved.

2 Both motions carry.

3 We'll move on now to a request by Retama
4 Park for approval of three changes of ownership of less
5 than one percent.

6 Mr. Gougler, will you lay out the request
7 for us, please?

8 MR. GOUGLER: Yes, sir, I will.

9 The Commission has received a request
10 from Retama Park to approve several changes of
11 ownership of less than one percent. The first two are
12 included on V-C-2 and involve 10 units being
13 transferred from the estate of Paula Rainey to the Anna
14 Peavy Trust, the Stephanie Cage Trust, and Paula
15 Johnson Trust, and also 10 units from the William
16 R. Rainey Bypass Trust to the same individuals.

17 The second request is on page V-C-4 and
18 it involves Felix Stehling transferring 10 units to 210
19 Muy Buena Suerte, Limited, and 10 interests to the
20 Straus 2003 Irrevocable Trust.

21 Background information on the applicants
22 was forwarded to DPS. DPS found no disqualifying
23 information. And we would recommend that the transfer
24 of ownerships be approved.

25 CHAIRMAN SCHMIDT: Thank you very much,

1 Mike.

2 MR. GOUGLER: Thank you.

3 CHAIRMAN SCHMIDT: Ms. Cook, has anyone
4 signed to speak on this, public comment?

5 MS. COOK: No, sir.

6 CHAIRMAN SCHMIDT: No public comment at
7 this time.

8 Any questions or discussion by any of the
9 Commissioners?

10 I'll certainly entertain a motion to
11 approve the request by Retama Park for three changes of
12 ownership of less than one percent. Is there a
13 motion?

14 COMMISSIONER WEINBERG: I'll make the
15 motion to approve.

16 CHAIRMAN SCHMIDT: A motion made by
17 Commissioner Weinberg.

18 Is there a second?

19 COMMISSIONER MARTIN: Second.

20 CHAIRMAN SCHMIDT: Seconded by
21 Commissioner Martin.

22 Any further discussion?

23 I'll call a vote. All those in favor
24 signify by saying aye.

25 COMMISSIONERS: Aye.

1 CHAIRMAN SCHMIDT: Anyone opposed?

2 The vote carries.

3 We have dealt with the MAXXAM issue, so
4 now we'll speak to the -- move to the issue of a
5 request by Retama Park to amend its allocation of purse
6 revenue generated from the simulcasting for 2012 under
7 Commission Rule 321.505 and its allocation of escrowed
8 purse account revenue for calendar year 2012 under
9 Commission Rule 321.509.

10 Mr. Brown, can you bring us up to date?

11 MR. BROWN: Good afternoon,
12 Commissioners. Bryan Brown with Retama Park.

13 When we were originally granted the race
14 dates for 2012, there were two issues that were very
15 clear that needed to be resolved. One was that we were
16 racing earlier with our Quarter Horse meet than we had
17 in 2011, which meant we would have had a month less of
18 purse accrual to the benefit of the Quarter Horsemen
19 and Quarter Horse purses. The second was that we were
20 asking for 20 Quarter Horse days, which was a bit of a
21 stretch given what we had projected for our available
22 purse funding.

23 So in getting with the Thoroughbred
24 horsemen, the Thoroughbred breed association, as well
25 as the Quarter Horsemen and the Quarter Horse breed

1 association, we came up with a model which allows us to
2 accrue at a greater rate for Quarter Horse purses
3 through August 11th, which is the last date for the
4 Quarter Horse meet, and then at a greater rate for
5 Thoroughbred purses thereafter through the end of the
6 year, with a net effect being equal to both breeds.

7 So the request that you have before you
8 would allow us to race at the purse level we would like
9 to race for Quarter Horses, to race all 20 days that we
10 had asked for, but also have no impact by the end of
11 the year on Thoroughbred purses.

12 The only issue it does create, which we
13 can worry about in 2013, it does leave the Quarter
14 Horse purse account a little bit light by the end of
15 the year. But certainly we can address that as we have
16 done here.

17 I'd be more than happy to answer any
18 questions that you have.

19 CHAIRMAN SCHMIDT: So you've all worked
20 this out. There's no dispute here?

21 MR. BROWN: Yes, sir. Yes, sir.

22 CHAIRMAN SCHMIDT: Any further questions
23 of Mr. Brown? Okay.

24 MR. BROWN: Thank you.

25 CHAIRMAN SCHMIDT: Thank you, Bryan.

1 Also signed up to speak, Mr. Werstler,
2 the Quarter Horse association.

3 MR. WERSTLER: Actually I amended my card
4 to in support, do not wish to testify. But if there's
5 any questions, I'll be happy to answer them.

6 CHAIRMAN SCHMIDT: Okay. So you're in
7 favor, as is Mr. Hooper, right?

8 MR. WERSTLER: Yes.

9 CHAIRMAN SCHMIDT: Thank you.

10 Any further discussion, questions by any
11 of the Commissioners? They seem to have worked this
12 out pretty clearly.

13 Is there a motion to approve the request
14 by Retama Park to amend its allocation of purse revenue
15 generated for simulcast and escrowed purse account
16 revenue for calendar year 2012? A motion in favor?

17 COMMISSIONER MARTIN: I make the motion.

18 CHAIRMAN SCHMIDT: Commissioner Martin
19 has made the motion.

20 Is there a second?

21 COMMISSIONER HICKS: Second.

22 CHAIRMAN SCHMIDT: Seconded by
23 Commissioner Hicks.

24 Any further discussion?

25 All those in favor signify by saying

1 aye.

2 COMMISSIONERS: Aye.

3 CHAIRMAN SCHMIDT: Anyone opposed?

4 The motion carries.

5 Moving forward, the rule proposals.

6 Mark, can you bring us up to date on the
7 rule proposals published?

8 MR. FENNER: Yes, sir. Mr. Chairman,
9 these rule proposals have been through the rules
10 committee process. In the case of the 311.3, it's also
11 been through a sunset rules committee process.

12 The proposal to amend 307.67 and 307.69
13 have to do with the statutory change that allows the
14 executive director to review and modify disciplinary
15 decisions of the Board of Stewards and Judges. It
16 provides specific criteria by which he shall consider
17 when to modify a penalty. It also sets in timelines by
18 when he must act. And it also extends the person's
19 appeal rights in case he does modify the penalty.

20 Do you have any questions about that?

21 CHAIRMAN SCHMIDT: We'll work through
22 them all together.

23 MR. FENNER: Go through them all? Okay.

24 The change to 311.3, the staff, in
25 working with the Department of Public Safety, learned

1 that there was an opportunity to eliminate the
2 fingerprinting fee in certain cases when a person is
3 applying to have their license renewed.

4 Right now they're having to pay
5 approximately \$10 to have the fingerprints physically
6 taken and submitted. However, DPS has a new system
7 available where they retain fingerprints on their file
8 and the Commission can just ask them to resubmit those
9 existing fingerprints when a person comes in to renew
10 their license every three years. And this would save
11 the licensees approximately \$10.

12 So this would enable the Commission to
13 follow that process. When DPS, in fact, does have
14 fingerprints on file, they're eligible for submission.

15 CHAIRMAN SCHMIDT: Thank you.

16 MR. FENNER: The change to 311.103 is to
17 correct a technical error that was made about 10 years
18 ago. We believed that the kennel owners rule had a
19 provision in it saying that a person who is a kennel
20 owner cannot be residentially domiciled with a person
21 who's a kennel owner of another kennel at that same
22 track due to conflicts of interest if that were going
23 on. But due to this technical error some 10 years ago,
24 that thing got removed. So all this would do is
25 reinstate the rule to the condition, frankly, we

1 thought it was in.

2 And then the Rule 313.103, Eligibility
3 Requirements, perhaps should be laid out with
4 Mr. Sherwood. But basically what it says is that a --
5 right now if a horse is dual registered -- and this
6 happens when a horse is registered as both a Paint and
7 as a Quarter Horse -- that if he enters a meet, he has
8 to declare which one he's going to race as. He can
9 either race as a Paint in that meet or he can race as a
10 Quarter Horse in that meet, but he can't race as one
11 and then turn to the other.

12 This request by Mr. Sherwood would
13 eliminate that prohibition in the hopes that it would
14 open up more racing opportunities for the Paints.

15 CHAIRMAN SCHMIDT: Okay. Is anyone
16 signed to speak up on any of these rules?

17 MS. COOK: Yes. Mr. Sherwood.

18 CHAIRMAN SCHMIDT: Mr. Larry Sherwood,
19 speaking on behalf.

20 MR. SHERWOOD: Good morning,
21 Commissioners. My name is Larry Sherwood. I'm a
22 longtime racehorse breeder, owner, stallion owner.
23 I've been in all aspects of the business.

24 About four years ago I got in the Paint
25 part of it. I've been fairly successful for just

1 getting started with the Paints. But I noticed that
2 especially in Texas -- and I race horses all over the
3 country. But in Texas, with the short fields that they
4 have at most racetracks -- and I'm pertaining to the
5 Quarter Horse and the Paint because that's the only
6 dual registered breed that you have nationwide is
7 Paints and Quarter Horses can be papered in both breed
8 industries -- registries.

9 So to give you an example, they're
10 running about two Paint races a meet at each race
11 meet. That's a pretty small percentage. If a Paint
12 horse comes to a race meet and he's a dual registered
13 horse, he could have run prior to the Paint races; but
14 if he declares, he has to sit here and wait for the
15 whole meet and then run at the end of the meet just in
16 the Paint race.

17 So this is an obstacle to a lot of the
18 Paint people. They don't want to do that. So they
19 take the horse and run him out of state somewhere where
20 they can run him on a weekly basis.

21 So then you'll see Quarter Horse races
22 that aren't really filling all the time. They'll get
23 four or five and they need six to run the race. Well,
24 the dual registered horse, if he was allowed to do it,
25 he's a Quarter Horse, he could enter that Quarter Horse

1 race and make that race go.

2 So it's more advantageous at this time to
3 drop this rule due to the fact that we have one -- like
4 I did a survey the other day. I'm with the American
5 Paint Horse Association. I'm on the board of
6 directors. And I'm the racing rep for Texas for Paint
7 horses.

8 I couldn't find 10 Paint horses to race
9 at one meet like in an allowance or a maiden race. The
10 only race they could run in are the stakes. And that's
11 because some outside-of-the-state Paint horses come in
12 and make those go.

13 So I feel that we should drop this rule
14 temporarily until this minor breed Paint business
15 increases where we have more horses to run. Then if
16 there's a reason to have this rule, which I don't
17 really see the reason for it, but one reason was -- and
18 that's been corrected. You'd have a Quarter Horse
19 papers with one name and a Paint horse paper had
20 another name. But in the last three years, all these
21 dual registered horses have to have the same name. His
22 Paint papers have to be the same as his Quarter Horse
23 papers. That was confusing to Equibase when they tried
24 to write the program and these horses had different
25 names, but that's been eliminated now.

1 So that's the basis of the proposal. So
2 I'm open to any questions if you -- if I haven't
3 covered something, maybe there's something you need to
4 know.

5 CHAIRMAN SCHMIDT: Thank you,
6 Mr. Sherwood.

7 I think -- any questions from any of the
8 Commissioners of Mr. Sherwood?

9 I think there are few things more
10 frustrating than having a horse ready to run and not
11 find a race for him.

12 MR. SHERWOOD: It is. Thank you, sir.

13 CHAIRMAN SCHMIDT: Thank you.

14 VICE-CHAIRMAN EDERER: Mr. Fenner, this
15 rule change would comply with the request?

16 MR. FENNER: Yes, sir, Vice-chairman.
17 Yes, it would satisfy his request by eliminating that
18 requirement.

19 VICE-CHAIRMAN EDERER: Thank you.

20 CHAIRMAN SCHMIDT: Do you have any other
21 industry input, particularly in opposition?

22 MR. FENNER: No. There was no opposition
23 expressed at the rules committee. And the racetracks
24 seemed supportive. The Texas Quarter Horse Association
25 was supportive. I can assure you that it will -- the

1 discussion will continue at the next rules committee;
2 and if there are issues to be worked out, we'll
3 continue to work on them.

4 CHAIRMAN SCHMIDT: Commissioner
5 O'Connell, do you have any comments or insights?

6 MS. O'CONNELL: We had a good discussion
7 about it and folks seemed to be aware of the history
8 behind the rule and were able to brief us on
9 technological advances that have occurred since then
10 that at least everyone is consistent.

11 CHAIRMAN SCHMIDT: Thank you.
12 Any other discussion by the Commission?
13 Any comments, concerns, or questions?

14 Okay. I'd certainly entertain a motion
15 to publish the rules listed in Agenda Items VI-A
16 through VI-E in the Texas Register for public comment.

17 Is there a motion?

18 COMMISSIONER MARTIN: Motion.

19 CHAIRMAN SCHMIDT: A motion by
20 Dr. Martin.

21 Seconded by Mrs. Hicks?

22 COMMISSIONER HICKS: Uh-huh.

23 CHAIRMAN SCHMIDT: Any further
24 discussion?

25 All those in favor signify by saying

1 aye.

2 COMMISSIONERS: Aye.

3 CHAIRMAN SCHMIDT: All those opposed?

4 Those motions carry.

5 Mark, can you lay out rule adoptions for
6 us?

7 MR. FENNER: Yes, sir. Each of these
8 rules have been published in the December 16th edition
9 of the Texas Register and also reviewed by the
10 committee on rules.

11 The first one is a change to Rule 311.5.
12 This was required by the sunset bill. It says that --
13 it allows certain employees of racetracks to not have
14 to be licensed by the Commission. It requires that the
15 Commission identify those occupations where they can
16 either affect racing with pari-mutuel wagering or they
17 can have access to the secured areas of the backside
18 and requires that those occupations be licensed. And
19 that's what this rule change accomplishes.

20 The change to 311.104 makes it the
21 trainer's responsibility to report the correct sex of
22 every horse in his or her care to the Commission
23 veterinarian and to the Commission -- and to the horse
24 identifier, regardless of when that alteration
25 occurred.

1 Now, the change to 313.50, Horse
2 Identifier, makes the horse identifier responsible for
3 correcting any inaccuracies in the registration paper
4 and ensuring that the program accurately reflects each
5 horse's gender.

6 This material on 313.50 in your materials
7 is slightly different than what was published in the
8 Texas Register. We had feedback from Eric Johnston of
9 Sam Houston Race Park, very constructive and good
10 comment, on the ways to clarify that the horse
11 identifier would not be subject to a rule violation
12 just because for the first time the horse shows up and
13 it's reported incorrectly in the program and the first
14 time he sees it is just before it goes out on the
15 track. He can't be responsible for knowing what the
16 sex of a horse is three days in advance of the horse
17 actually showing up. This makes that adjustment and I
18 believe it could be adopted with that adjustment.

19 And then finally the change to 313.308,
20 currently the rules say that a claimed horse must stay
21 on the premises or he can't compete elsewhere. He's
22 got to compete only in that meet. This would create an
23 exception for a horse to go compete in a stakes race at
24 a different meet upon verification by the stewards that
25 he was actually going to go compete in one of these

1 stakes races.

2 CHAIRMAN SCHMIDT: This is our third pass
3 at these rules now out of the rules committee.

4 Any public comment or input you've got?

5 MR. FENNER: Primarily the comments by
6 Eric Johnston in response to 313.50. And we made an
7 adjustment in response to his comment.

8 CHAIRMAN SCHMIDT: Okay. Mr. Hooper just
9 wants to signify that the Texas Thoroughbred
10 Association endorses these adoptions.

11 Thank you, Mr. Hooper.

12 Okay. Commissioner O'Connell, do you
13 have any additional input or questions or comments?

14 MS. O'CONNELL: These have had several
15 go-arounds. Everyone has had many chances to say their
16 peace and I think we've thoroughly discussed them and
17 everybody is on board.

18 CHAIRMAN SCHMIDT: Yes. Yes. I think I
19 know them by heart now.

20 Any other comments?

21 I'd certainly entertain a motion to adopt
22 the rules listed in Agenda Items V-F through V-I as
23 published in the Texas Register.

24 Is there a motion?

25 VICE-CHAIRMAN EDERER: So move.

1 CHAIRMAN SCHMIDT: Moved by Commissioner
2 Ederer.

3 Second?

4 COMMISSIONER STEEN: Second.

5 CHAIRMAN SCHMIDT: Mr. Steen?

6 Okay. Any additional conversation,
7 questions?

8 Okay. We'll bring it to a vote. All
9 those in favor signify by saying aye.

10 COMMISSIONERS: Aye.

11 CHAIRMAN SCHMIDT: All those opposed?

12 Okay. These are now approved.

13 Our next meeting will be scheduled on the
14 10th of April. I'd again like to ask Mr. Trout if he
15 could make certain that a resolution is sent, perhaps
16 with a nice bouquet of flowers, to Diane Whiteley.

17 Thank you very much.

18 We're now adjourned. Thank you.

19 (Proceedings concluded at 12:27 p.m.)

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1 STATE OF TEXAS)
2 COUNTY OF TRAVIS)

3
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
7 hearing before the TEXAS RACING COMMISSION as
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said
10 hearing were reported by me, accurately reduced to
11 typewriting under my supervision and control and, after
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 13th day of February, 2012.

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