

BEFORE THE TEXAS
RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING

BE IT REMEMBERED THAT the above-titled matter came to hearing on the 14th day of June, 2016, beginning at 10:36 a.m. and adjourning at 11:21 a.m. at 105 West 15th Street, Room 120, held in Austin, Travis County, Texas, and the following proceedings were reported by APRIL C. BALCOMBE, Certified Shorthand Reporter for the State of Texas, reported by computerized stenotype machine.

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APPEARANCES

Commissioners: ROLANDO PABLOS
RONALD F. EDERER
MARGARET MARTIN
GLORIA HICKS
GARY P. ABER
ROBERT SCHMIDT
JOHN T. STEEN, III
VICTORIA NORTH
CYNTHIA LEON

P-R-O-C-E-E-D-I-N-G-S

1
2 Chairman Pablos: Okay. Folks, we will
3 get started. Today is Tuesday, June 14. The time is
4 10:35, and at this time I would like to call this
5 meeting with the Texas Racing Commission to order.

6 Mary, could you please call the order?

7 Ms. Welch: Commissioner Gary Aber?

8 Commissioner Aber: Here.

9 Ms. Welch: Commissioner Gloria Hicks?

10 Commissioner Hicks: Present.

11 Ms. Welch: Commissioner Cynthia Leon?

12 Commissioner Leon: Here.

13 Ms. Welch: Commissioner Margaret Martin?

14 Commissioner Victoria North?

15 Commissioner North: Here.

16 Ms. Welch: Commissioner Robert Schmidt?

17 Commissioner Schmidt: Here.

18 Ms. Welch: Commissioner Ron Steen?

19 Commissioner Steen: Here.

20 Ms. Welch: Vice-Chairman Ron Ederer?

21 Vice-Chairman Ederer: Present.

22 Ms. Welch: Chairman Rolando Pablos?

23 Chairman Pablos: Here.

24 Do we have a quorum?

25 Ms. Welch: Yes, sir.

1 Chairman Pablos: Thank you.

2 We will move on to item II, Public
3 Comment. Do we have anyone signed up for public
4 comment?

5 Ms. Bijansky: No, sir.

6 Chairman Pablos: No public comment.

7 Then we will move to item number III,
8 General Business, III (A). At this time I would like to
9 ask Adrienne Courtney to please come up.

10 Ms. Courtney: Good morning,
11 Commissioners. On pages 4 through 9 of your Agenda
12 packet, you will see the agency's fiscal year 2016
13 operating budget reflecting the revenue, collection, and
14 expenditures through April 30th.

15 With 66.6 percent of the year completed,
16 the agency has collected 5.9 million or 65 percent of
17 projected revenue, which is about \$287,500 below what
18 was projected, and has spent 5.2 million or 60 percent
19 of budgeted expenditures.

20 Approximately 4.4 million of those
21 expenditures are appropriated expenditures, and
22 approximately .7 million are unappropriated
23 expenditures.

24 If you have any questions, I will be happy
25 to answer them.

1 Chairman Pablos: Commissioners, any
2 questions?

3 No questions. Thank you very much.

4 Next, we will take up "Report on Wagering
5 Statistics."

6 Curley, please.

7 Mr. Trahan: Good morning, Commissioners.
8 On pages 10 through 12 of your meeting materials is the
9 Comparison Report on Wagering Statistics for the period
10 of January 1 through May 29 for calendar years 2015 and
11 2016.

12 For the reporting period, total wagering
13 activities at the horse racetracks increased in 2016 by
14 2.16 percent and decreased at the Greyhound racetracks
15 by 31.71 percent.

16 Overall, total wagers placed in Texas
17 decreased by 1.61 percent, while total wagers placed on
18 Texas races decreased by 6.95 percent.

19 I am happy to answer any questions you may
20 have.

21 Chairman Pablos: Commissioners, any
22 questions?

23 Vice-Chairman Ederer: The decrease in
24 Greyhounds, that's because of the closing of Gulf?

25 Mr. Trahan: Yes, sir, it is directly

1 attributable to the no live racing at Gulf Greyhound,
2 which also affects their simulcast at the same time.

3 Vice-Chairman Ederer: Sure. Sure. Thank
4 you.

5 Chairman Pablos: Any other questions,
6 Commissioners?

7 Next we will take up item 3, "Inspection
8 and Enforcement Reports," Jim Blodgett.

9 Good morning.

10 Mr. Blodgett: Good morning, Mr. Chairman,
11 Commissioners.

12 Commissioners, we currently have two
13 active race meets, the Quarter Horse running at Retama,
14 Thoroughbred running at the Lone Star Park.

15 During the reporting period since our last
16 meeting, there have been numerous enforcement activities
17 documented from the Sam Houston Race Park's meeting. A
18 breakdown of this activity can be found in your packets
19 on page 14.

20 Commissioners, during the same period,
21 inspections were conducted at Lone Star Park, Gulf
22 Greyhound Park, Sam Houston Race Park, and Gulf Coast
23 Racing.

24 From all of these inspections, we have had
25 only one outstanding issue involving required licensing

1 fingerprint assistance from Sam Houston Race Park. This
2 issue is anticipated to be resolved by the start of the
3 track's next live meet.

4 I'll be happy to answer any questions for
5 you.

6 Chairman Pablos: Commissioners, any
7 questions?

8 Commissioner Hicks: I am just curious.

9 Chairman Pablos: Yes, Commissioner.

10 Commissioner Hicks: I can't remember. Is
11 this an increasing or a decreasing of the number of
12 inspections that we are finding?

13 Mr. Blodgett: Commissioner, we have
14 slightly decreased from years past. We've removed -- or
15 redefined when we conduct a no-notice inspection.

16 It became so routine that we thought it
17 was better just to handle that as a scheduled inspection
18 and then handle them as we saw problems, rather than the
19 no-notice inspection, so it had to be redone slightly.

20 Commissioner Leon: Thank you, Jim.

21 Chairman Pablos: Thank you. You know,
22 Jim, that just inspired a thought; and that is, I wanted
23 to ask, you know, what kind of trends are you seeing
24 that might be troubling to you?

25 Are you seeing any initial trends in your

1 area that you might want to share with us, where you are
2 thinking about -- what you are thinking about or
3 anything like that?

4 Mr. Blodgett: Commissioner -- or
5 Mr. Chairman, it seems like we have a repeat of the same
6 type of violations that we continue to see, which is
7 nonlicensed individuals working, the drug positives --
8 they seem to be maintaining a pretty level significant
9 amount through the meets.

10 Other than that, I feel like we've gotten
11 a little better handle on what the licensees expect from
12 us from enforcement in as far as bringing things onto
13 the track, required medications or labeled medications
14 or things like that. So I am not seeing anything that
15 is overly concerning from that question.

16 Chairman Pablos: Okay. Good to hear.
17 All right.

18 Any other questions, Commissioners?

19 Thank you.

20 And by the way, for everyone who comes up
21 and provides us your reports, I just want to thank you.
22 I know you've spent a lot of time and effort in
23 preparing these reports for presentation. Even though
24 they are very quick, I want to make sure that you
25 understand that I appreciate your work. Thank you very

1 much.

2 We will move on to item 3(B), Report by
3 the Ad Hoc Committee on Finance. I would like to
4 recognize Vice-Chair Ederer.

5 Vice-Chairman Ederer: On May the 23rd, we
6 had a meeting at the Greyhound track in Corpus Christi,
7 which was a little unique there, because it is the first
8 time I think we had a meeting there, but it was
9 interesting and it was a very good meeting, very well
10 attended.

11 All of you, Commissioners, do have a copy
12 of the minutes, and as you can read through them, you
13 will see that it was a pretty extensive meeting.

14 The bottom line to all of this is we've
15 got a shortfall and we've got to come up with some way
16 to take care of this shortfall. The shortfall is
17 created by -- from the loss of Gulf and, you know, other
18 industry cutbacks. But we do have a shortfall.

19 Now, ordinarily we will have \$600,000 of
20 carryover, which does assist and guarantees that we will
21 have sufficient funds to make it through the year.

22 This year, we are not going to have that
23 \$600,000 carryover, so we are going to have to come up
24 with something in some imaginary -- to use our
25 imagination to come up with ways to take care of that.

1 Industry had a very good suggestion. The
2 industry is looking into a possibility of lump-sum
3 payments at the beginning of their designated period.
4 That would be a big help to us. They --

5 The industry is also working with the
6 Lieutenant Governor's office in trying to come up with
7 some assistance that they can get there.

8 We do have of course the legislative
9 session coming up, and I know that our director and
10 attorney and chairman will all be working to try to come
11 up with some solutions to request some assistance from
12 the governor -- the State.

13 Primarily where they can help us there is
14 we have -- our insurance payments are tremendous, and IT
15 is tremendous. And we've got to get some assistance
16 there.

17 So everybody is working toward this goal.
18 Now, we have got a hiccup coming, I am afraid, if the
19 inactive tracks -- and it looks like we might have a
20 problem with one -- that will be discussed later.

21 If we do lose revenue from any of the
22 inactive tracks, we are going to have to revisit, and
23 that will cause us even more problems.

24 I did want to mention, though, that, you
25 know, when inactive tracks -- if inactive tracks do make

1 their contribution and make it in a lump sum, as they
2 have suggested that it's a possibility that they do,
3 even though that is not part of the criteria that would
4 be used when we are looking and reviewing their
5 application or their license as a good-faith effort, it
6 certainly can be taken into consideration.

7 And I would request, and we will certainly
8 talk about that with the Commissioners, that that is
9 something that should be taken into consideration as a
10 good-faith effort by the inactive tracks to help the
11 longevity of racing in the industry, of course.

12 Other than that, I don't have anything,
13 but I will answer any questions if I can. If not, there
14 is some people that can help answer them.

15 Chairman Pablos: Commissioner North, do
16 you have any input based on this meeting with Vice-Chair
17 Commissioner?

18 Commissioner North: Not really, sir, just
19 that our office supports seeking a legislative solution.

20 Chairman Pablos: Commissioner?

21 Commissioner Hicks: I thought it was a
22 great meeting, and I was very impressed that the
23 industry came up with some answers for us, and I
24 appreciate that.

25 Chairman Pablos: Great. Thank you-all

1 for attending. I have read the minutes. I appreciate
2 the exchange. I know there is a good amount of interest
3 in ensuring that everybody is very frugal. Everybody is
4 running on tight budgets. Everybody is heading down to
5 the bone, and so we just need to have a good plan moving
6 forward into the legislative session.

7 So I appreciate you, Commissioners,
8 attending.

9 To the industry, I thank you for -- for
10 your input, and I also commit to continuing to work very
11 closely with you to find these solutions that we so
12 desperately need.

13 Yes, Doctor.

14 Commissioner Schmidt: Just one
15 Mr. Chairman, I would like to thank Commissioner Hicks
16 and Vice-Chairman Ederer of their efforts. It looked
17 like a very detailed and rigorous meeting.

18 Just looking at perspective over the past
19 five years, I think the message needs to be that the
20 model is broken. I think Chuck and his team has run a
21 tight of a ship as they possibly can.

22 I think the tracks have been meeting their
23 payments, but we do have sort of an Obamacare-like debt
24 spiral. If people drop out, then the payments for the
25 remainder survivors goes up.

1 We saw from our initial -- our initial
2 information that, again, betting on live Texas racing is
3 down. What is only carrying Texas racing now is the
4 simulcast. People are going to the track not to bet on
5 our horses but to bet on horses in Chicago and New York.

6 So I think we -- I think it's no one's
7 fault. We just need a new model. I think that needs to
8 be our message.

9 Chairman Pablos: Well, that can certainly
10 be the infrastructure that we look at whenever we are
11 approaching the leg on that.

12 I would like to recognize Commissioner
13 Martin. She has arrived.

14 Commissioner Martin: Thank you. I
15 apologize for being a little late.

16 Chairman Pablos: Thank you for making the
17 drive up. I appreciate it.

18 Are there any other comments,
19 Commissioners, on this item?

20 Again, thank you very much for all your
21 efforts.

22 We will move on to item 3, (C), Strategic
23 Plan for Fiscal Years 2017-2021.

24 I would like to recognize Chuck Trout.

25 Mr. Trout: Good morning, Commissioners.

1 Under Chapter 2056 of the Texas Government Code, in each
2 even-numbered, the agency is required to provide the
3 Governor and the Legislative Governor's Board, a
4 five-year strategic plan.

5 This year the LGB made significant changes
6 to the instructions preparing the strategic plan and the
7 result is a much shorter and more streamlined product
8 than what has been in the past.

9 Staff circulated the copies of the plan
10 for your review and comment, and I appreciate the time
11 you have taken to review it. We still have a few days
12 before the June 24th deadline. And so we would like to
13 have you continue to send in any suggestions that you
14 may have.

15 However, today, I would ask that the
16 Commission give the Chairman the authority to approve
17 the plan we've processed -- after we have processed your
18 feedback. We would like to be able to submit the plan
19 next week.

20 We submit it electronically, so we don't
21 have to -- as in the past, we had to print copies and
22 then bind it and send it out, so it's a little bit
23 faster process.

24 But what we would like today -- to have
25 today is for you to vote for you-all to give the

1 chairman the authority to make the final signature
2 actually so we can send it out. You can send us any
3 suggestions that you have up until that time.

4 Chairman Pablos: So given that we still
5 have a little time, I think it's a good idea for us to,
6 you know, take a look at it more in depth. I have to
7 admit, I have glanced over it. I am fine with it, but I
8 would like to take a deeper look at it.

9 I think it's the 24th, you said, or --

10 Mr. Trout: The 24th, yes, sir, is the
11 deadline.

12 Chairman Pablos: So we still have some
13 time. So the idea would be for you-all to submit any of
14 your comments between now and then. But today I will be
15 looking for authority from you to allow me to send it in
16 with my signature in representation of the Commission.

17 Are there any comments? Discussions?

18 Commissioner Schmidt: So moved.

19 Chairman Pablos: So moved. We have a
20 motion by Commissioner Mr. Schmidt.

21 Vice-Chairman Ederer: Second.

22 Chairman Pablos: And then a second by
23 Vice-Chair Ederer.

24 At this time, I would like to take up a
25 full vote. All of those in favor, please signify by

1 saying "aye."

2 The Commission: Aye.

3 Chairman Pablos: Any opposed? That
4 motion carries. Thank you very much.

5 And thank you, Chuck and Mark, for your
6 time on that.

7 Okay. We will move on to item IV (A),
8 Proceedings on Racetracks, Discussion of Renewal
9 Criteria for Inactive Racetrack Licenses under
10 Commission Rule 309.52.

11 I would like Mr. Mark Fenner to lay out
12 this item, please.

13 Mr. Fenner: Yes, sir.

14 Commissioners, you may recall at the last
15 Commission meeting, we did a review and renewal of
16 several inactive licenses, and there was some discussion
17 about criteria that was used in approving the renewal of
18 a license and an interest in perhaps revisiting this
19 issue.

20 Since the review and renewal begins again
21 immediately and they have to complete their applications
22 for renewal by the end of this month, that this gives
23 you an opportunity to kind of weigh them and review them
24 again.

25 And then if you have expectations that you

1 would like to communicate to these inactive licenses to
2 include as part of their applications, this would be the
3 opportunity to do so.

4 So I just want to give you a little bit of
5 a historic perspective, and many of you have lived
6 through this, so it will be a review and a refresher for
7 you.

8 These rules about review and renewal
9 incorporated -- the process was required and
10 incorporated as part of the Sunset Bill, which was HB
11 2271 in 2011. Before that time, there was no such thing
12 as an "active" or an "inactive" designation for
13 licenses. Licenses were perpetual.

14 But during the Sunset Bill, the
15 legislature enacted a requirement that the Commission
16 make a distinction between "active licenses" and
17 "inactive licenses."

18 And it defined them as an "active license"
19 being one that is actually holding live racing events or
20 is making good-faith efforts to conduct live racing.
21 And so this language about good-faith efforts to conduct
22 live racing really became quite a discussion point for
23 the Commission and a discussion point with the industry
24 in terms of how to define that, because the act requires
25 you to adopt the rules as guidelines for what is a

1 good-faith effort.

2 The Commission held a number of meetings,
3 I think six sitting Commissioners participated in
4 meetings with the industry to discuss those rules at the
5 time.

6 And so the rule has been adopted to say
7 that, for purposes of this section, actions that
8 demonstrate good-faith efforts toward conducting live
9 racing include but are not limited to the following:

10 Securing sufficient financial commitments
11 to fund the construction of the track, securing the real
12 property through purchase or through a 20-year lease or
13 more, entering into contracts for construction, securing
14 Commission approval of the construction plan, securing
15 permits and utilities, and then finally, beginning and
16 sustaining construction.

17 Now, there were a number of things that
18 the industry requested be incorporated into the rules
19 that the Commission declined to do. These things were
20 things such as negotiating for permits and utilities and
21 contracts, making an application to change the location
22 of a racetrack, making recruiting efforts for a team of
23 capable employees, of paying the fees timely, and then
24 conducting viability studies for either the industry or
25 for a particular location.

1 I was going to say, these were all things
2 that were requested by members of the industry. Some of
3 these were requested by Senator Hinojosa himself who was
4 the author of the Sunset Bill.

5 And the Commission, you know, made some
6 changes to the rule in order to accommodate these
7 requests, provided more flexibility, and one of the
8 things that it did is it said these actions that the
9 Commission may consider include but are not limited to,
10 and just as Vice-Chairman Ederer had mentioned, issues
11 such as securing or paying the fees timely is something
12 that you have the flexibility to consider in making this
13 determination as to whether to review or not. But it's
14 not written down as a specific item.

15 Now, there are also some specific items
16 that are grounds for nonrenewal, and those are such, for
17 example, any ground for revocation of a license, such as
18 not paying your annual fees, forfeiture of a bond,
19 failure to comply with the condition or order, or
20 failure to maintain the ownership or leasehold interest
21 in the real property underneath the license.

22 These are all factors that are
23 specifically identified in the rules, grounds for
24 nonrenewal.

25 And also, finally, I will just say the

1 rule specifically says, the presence or absence of any
2 particular factor listed is not binding on the
3 Commission in terms of either approving or not approving
4 the renewal of a license.

5 So that's where we are, and I am happy to
6 answer any questions. We have issues right now with
7 things like one of the licenses not having the property
8 underneath its license. We have an issue of nonpayment
9 of fees, which we addressed last time with Manor Downs
10 and which is going to come before you in a few minutes
11 with Longhorn Downs.

12 But this issue of what are your
13 expectations towards inactive licenses in terms of what
14 good-faith efforts towards conducting live racing should
15 they be making.

16 I am happy to answer any questions, if I
17 can.

18 Chairman Pablos: Thank you, Mark.

19 Well, we certainly have been through this
20 for many years now. I think, as Commissioner Schmidt
21 mentioned, you know, we have got a broken model, a
22 broken system in some places. We talked about funding
23 earlier.

24 I think here, given that we have a
25 modern-day situation with our racing industry, I

1 would -- I would be open to having some flexibility in
2 looking at some of these requirements that we've laid
3 out, but I think that the one thing that is not
4 negotiable for me is paying fees.

5 You know, perhaps looking at the issue of
6 securing the land via, you know, may be an option or
7 rather than having a long-term lease or something like
8 that that gives flexibility.

9 But when a license holder tells us that
10 they are not going to pay a fee, well, then, you know,
11 to me, that's clear indication of -- of their
12 unwillingness to move forward with that.

13 But, you know, I am certainly willing to
14 revisit that, everything that you've laid out, Mark, you
15 know, based on what the Commission decides.

16 But, you know, providing a certain level
17 of flexibility is something I would like to see, but
18 there are some things that just aren't going to be
19 negotiable to me. There may be other Commissioners that
20 have different viewpoints, and I would like to open it
21 up for discussion.

22 Commissioner Aber: Those fees are set?
23 We can't reduce the fees? Has the legislation set the
24 fees?

25 Mr. Fenner: The fees are set by rules, so

1 you can change those.

2 Commissioner Aber: You can change the
3 fees if you have to. Yes, I think it ought to be looked
4 at, you know, be flexible there, too.

5 And actually, we -- they don't have to go
6 along -- I know we've always said we've got to have them
7 toward live racing. Would we be flexible with that? I
8 know you said --

9 Mr. Fenner: The statute says that
10 good-faith efforts have to be made towards conducting
11 live racing. That's the standard set out in the
12 statute.

13 Commissioner Aber: So the way they do
14 that, we could almost postpone it a little bit or
15 whatever -- whatever they have.

16 Vice-Chairman Ederer: We have for the
17 last --

18 Commissioner Aber: I know, but we will
19 run out of money if we don't do something here.

20 Vice-Chairman Ederer: Should we go ahead
21 and combine the next issue with that discussion at this
22 time?

23 Chairman Pablos: Let me hear from other
24 Commissioners first. I want to just get the rule-making
25 element out of the way, if that's okay with you.

1 Vice-Chairman Ederer: Of course.

2 Chairman Pablos: Are there any other
3 comments on this particular topic?

4 Because, you know, many years ago I
5 remember talking to some of these license holders, and
6 we actually asked them at a time to give us periodic
7 reports. And we heard about shovel, get-ready projects
8 and dirt being turned, but really never anything that
9 was tangible. And so, you know -- and it wasn't --

10 I don't think it was for a lack of trying.
11 I think it was just the state of the industry, where we
12 began to see that decay occur. But at the same time,
13 you know, when these license holders applied for a
14 license or the privilege of a license, they made a
15 commitment to the people of the state of Texas, that if
16 they were given a license, that they would make all the
17 efforts to begin live racing. So there is that element
18 as well.

19 Doctor?

20 Commissioner Schmidt: I would like to
21 second Dr. Aber's thoughts. We don't use Polaroid
22 cameras anymore. We take digital cameras, and I think
23 the ground has changed, and for me, I think our problem
24 in the state of Texas is not one of capacity.

25 I think the three tracks we have running

1 could expand their days, could expand their races,
2 expand their fields. And we don't need new racetracks.

3 We need support -- simulcast support, so
4 to force these folks to try to have live racing onsite,
5 I think, is just a spiral that is not going to be
6 successful and it hasn't been successful.

7 And again, thinking out of the box, that
8 their ability to conduct live racing or support live
9 racing might be supporting the tracks that do have live
10 racing somewhat.

11 Because I just think, if you look at your
12 situation right now, the Lone Star last week, they have
13 9,000 seats and they have 900 people there. We don't
14 have a capacity problem.

15 You know, when we were all Commissioners
16 ten years ago, in the old days, I think Lone Star had
17 races from Tuesday to Sunday. Now they have Thursday,
18 and I think Friday, Saturday, Sunday, and then a
19 concert.

20 So we need to somehow -- I mean, what we
21 really need is simulcast support for live racing and
22 just view it in some different way, at least that's my
23 suggestion.

24 I think to think about it more openly
25 because, if you really look at it, anyone can go see a

1 race if they want to. The problem is that not enough
2 people are going, and the tracks have just closed down,
3 reduced the number, reduced the number, reduced the
4 number as much as they can.

5 Chairman Pablos: Any other comments?

6 So, Mark, what would be some next steps on
7 this particular issue here?

8 Mr. Fenner: Well, at this point, the
9 inactive tracks are completing their applications for
10 review, and I am sure that they would be happy to hear
11 any guidance from you, particularly. I think you have
12 given very good guidance today about the annual fee and
13 what your expectations on that are.

14 There is the issue of the land, the
15 property underneath one of these tracks that's not
16 owned. Is that an issue for some of you? You can't
17 make a decision but you can talk about it. And then, if
18 there is any changing expectations you have, this is an
19 opportunity to say.

20 Otherwise, I think we just operate under
21 the rule as it is, and they submit their application at
22 the August meeting, and we will take it up again.

23 Chairman Pablos: Is this something that
24 we want to bring to the rule-making committee for
25 review?

1 Mr. Fenner: You certainly could if you
2 would like to have some specific changes made to it,
3 yes, sure.

4 Chairman Pablos: Well, I am not
5 recommending to have some specific changes, but at least
6 a thorough analysis based on the state of the industry
7 today. Perhaps that's something we can at least begin a
8 discussion about.

9 Mr. Fenner: We can certainly open it at
10 our rules committee meeting for discussion and accept
11 input and feedback from the industry in terms of what
12 kinds of edits or changes they would like to see made.

13 Chairman Pablos: Commissioners, is that
14 something you are open to having? Any opposition to
15 something like that, at least to begin the discussion?

16 Commissioner Leon: Let may make a comment
17 here.

18 Chairman Pablos: Yes.

19 Commissioner Leon: The report on finance
20 and the report on rules seems to be something that is
21 done together because, in terms of the long-range
22 planning, the model that Dr. Schmidt is talking about,
23 in terms of broken, seems to dovetail together on this,
24 and that needs to be --

25 Chairman Pablos: I know.

1 Commissioner Leon: -- a comprehensive
2 approach on how we are going to do it, especially with
3 the legislative session coming up.

4 Chairman Pablos: Right.

5 Commissioner Leon: It's not tweaking this
6 and tweaking that. It's sort of looking at the whole
7 general thing together. I mean, that's how I am seeing
8 it happen.

9 You know, with the financial report,
10 that's just been a wonderful report that you-all
11 prepared, plus this rule-making. It just seems to me --
12 where are we going in this whole thing? What are we
13 going to accomplish?

14 Vice-Chairman Ederer: They are becoming
15 so much intertwined.

16 Commissioner Leon: They are. Don't you
17 see?

18 Vice-Chairman Ederer: Very much so, and
19 events are happening on a regular basis, such as we are
20 going to take up on the very next issue. And with the
21 legislative session coming up, I think that -- I would
22 be, you know -- I believe that the rule committee should
23 look into that.

24 Commissioner Martin: Okay. So let's do
25 this, Mark. Why don't you figure out how we might be

1 able to work both the financial element and the
2 rule-making element together.

3 Mr. Fenner: Okay.

4 Chairman Pablos: And let me know, and
5 then I will speak to the Commissioners and members of
6 the Committee. Do we have a rule-making committee at
7 this time?

8 Mr. Fenner: We do, and it is presently
9 Commissioners Ederer, Aber, and Commissioner North.

10 Chairman Pablos: So there is some overlap
11 there?

12 Mr. Fenner: Right. Generally, I prefer a
13 committee to stay at three members. That way, they can
14 talk to you without violating open meetings, so keep it
15 all under a quorum.

16 Chairman Pablos: Excellent.

17 Commissioner Aber: I think the rules
18 committee, we think we can just work with it, but we
19 have got to include all of the Commissioners and really
20 make it inclusive and come to the rules meeting, you
21 know, and listen to it and make sure we are all doing
22 this.

23 I am not particularly fond of just two or
24 three people meeting. The other ones should be
25 well-informed.

1 Chairman Pablos: Well, there are a couple
2 of items there. One, we don't want to have a quorum of
3 the entire Commission.

4 Commissioner Aber: Well --

5 Chairman Pablos: Secondly, the reason we
6 have small committees is so that we can have efficiency
7 you guys have figured out and then you come report to
8 us. So for all of these rules, there's always
9 involvement.

10 Commissioner Aber: And it's just a
11 report, you know, so I understand.

12 Chairman Pablos: It is just a report.
13 Absolutely. So to allay your concerns, I assure you
14 that the entire Commission will be fully engaged in what
15 you-all come up with. I like that we have the overlap
16 in the two committees. I hate to add more work to
17 you-all.

18 But it is something that's very important,
19 especially as we try to develop a legislative fix, as
20 Commissioner North says. So this is a perfect time in
21 the interim to try to come up with some ideas so that we
22 can work with the industry as the session approaches.

23 Commissioner Leon: Because the rules are
24 based on what the legislation is, and the finances make
25 the proposals as to how things tweak, so --

1 Chairman Pablos: No, no. It is a great
2 point, and we will take that for sure.

3 Okay. Are we all square?

4 Excellent.

5 Thank you.

6 Now we will take up item IV (B), and
7 Commissioner Ederer, the reason I wanted to take it up
8 after this is because I certainly want to ensure that we
9 listen to public input and public comment.

10 So I would like to pass it on to Mark for
11 laying out the item.

12 I don't have any cards.

13 Do we have any cards on this item at all?

14 Ms. Bijansky: No, sir.

15 Chairman Pablos: No cards?

16 Is there a representative from Longhorn
17 Downs here? There is no representative from Longhorn?

18 Mr. Fenner: No, sir. In fact, I have an
19 email I can share with you -- I can read to you, and I
20 believe we have given you a copy at your desk. It came
21 in at 6:00 o'clock last night.

22 Chairman Pablos: Okay. Well, Mark,
23 please lay out the item and please brief us.

24 Mr. Fenner: Yes, sir. This is a review
25 and renewal of Longhorn Downs and, as you may remember,

1 it was tabled at the last meeting until this meeting
2 because they were not currently authorized to do
3 business in Texas.

4 Their charter with the Secretary of State
5 hadn't been maintained and their franchise tax account
6 status hadn't been maintained with the comptroller's
7 office.

8 Since that time, they have brought their
9 filings up to date. They have given me a Certificate of
10 Filing with the Secretary of State. I have checked with
11 the comptroller's office this morning. Their franchise
12 tax account -- account status shows they are now active
13 and have the right to transact business in Texas. So
14 the reason for which it has been tabled has been, I
15 think, adequately addressed.

16 However, June 1 was the due date for their
17 quarterly installment of the annual fee, which is
18 \$57,500. We did not receive that fee. I reached out to
19 them.

20 And last night at 6:00 o'clock, I got this
21 email from Mr. Jason Blackmer, Jason Blackmer is an
22 attorney for KTAGS/Cliff Thomas for the group that is
23 trying to acquire it and has been paying the annual fee
24 for the past several years.

25 He writes: "Recently a determination was

1 made to cease payment on the Longhorn Downs' racing
2 license as the participants in the license have
3 determined that the fee is too unreasonable to continue
4 paying.

5 "As such, we will not be making the
6 May 2016 payment and will not be making any future
7 payments. I believe we discussed this earlier today and
8 you mentioned that you had heard that" the -- excuse
9 me -- "you mentioned you had heard that may be an option
10 but had not yet received formal notice.

11 "We understand that this will require that
12 the license be sent to an administrative hearing."

13 Also, he begins the letter that,
14 "Unfortunately, I will be unable to attend tomorrow's
15 Commission's meeting in person and our normal
16 representative, Bryan Brown, is also unavailable."

17 And he offers to discuss it further. But
18 at this point, they have clearly expressed their intent
19 to not pay any more fees.

20 Chairman Pablos: Okay. Since we have no
21 one here from the organization, I will open it up for
22 discussion.

23 Commissioners?

24 Commissioner Leon: Well, how does this
25 affect the fairness with other organizations that are

1 paying? I guess that's my ...

2 Chairman Pablos: Or others who have paid
3 who have been referred to SOAH?

4 Commissioner Leon: Right, exactly, so how
5 do we treat -- the treatment of the entity? And it is
6 just an open question.

7 Chairman Pablos: Okay. Anyone else care
8 to chime in?

9 Vice-Chairman Ederer: No. I will make a
10 motion.

11 Chairman Pablos: Okay. Let's -- do you
12 know what? I will entertain a motion.

13 Vice-Chairman Ederer: I make a motion
14 that the Texas Racing Commission refer the Longhorn
15 Downs -- is it called Longhorn Downs; is that correct?

16 Mr. Fenner: Yes.

17 Vice-Chairman Ederer: -- the Longhorn
18 Downs' license to --

19 Mr. Fenner: The State Office of
20 Administrative Hearings.

21 Vice-Chairman Ederer: -- the State Office
22 of Administrative Hearings for potential termination.

23 Chairman Pablos: Okay. We have a motion.

24 Mr. Fenner: And may I clarify that?

25 You are referring it to SOAH for a

1 proposal for a decision as to whether or not to renew
2 the license?

3 Vice-Chairman Ederer: Yes, that's the
4 motion.

5 Thank you, Counsel.

6 Chairman Pablos: Thank you for clarifying
7 that.

8 Is there a second?

9 Commissioner Hicks: I will second.

10 Chairman Pablos: Seconded by Hicks.

11 Okay. So any further discussion on this
12 item?

13 Commissioner Schmidt: Just one question.
14 I agree with the Chairman, that every licensee has to
15 pay fees. Where I get a little heartburn about this is,
16 in reading through all of the information is: Has this
17 point established that Longhorn Downs has the license?

18 Mr. Fenner: Well, Longhorn Downs has the
19 license, absolutely.

20 Commissioner Schmidt: Is that recognized
21 by the Court?

22 Mr. Fenner: Yes. However, the issue is
23 not whether Longhorn Downs has the license. It's who
24 has the stock of Longhorn Downs.

25 Commissioner Schmidt: The ownership stock

1 is in escrow, correct?

2 Mr. Fenner: Longhorn Downs' license is in
3 escrow. The question is really: Does the stock belong
4 to the Austin Jockey Club or to KTAGS?

5 Commissioner Schmidt: Right. I guess
6 that's where I have some heartburn, is that this is not
7 just a licensee who is stating they aren't going to pay.
8 This is a licensee that does not really have title to
9 their track.

10 Mr. Fenner: That is true. The litigation
11 over the ownership of Longhorn Downs' license has been
12 ongoing ever since the Commission rejected the
13 application of Dallas City Limits several years ago, and
14 then KTAGS subsequently came -- or Austin Jockey Club
15 requested approval to transfer the license to KTAGS, and
16 that request by Austin Jockey Club was approved.

17 Litigation ensued, and I believe it's
18 currently pending before the Texas Supreme Court and has
19 been for quite some time.

20 Chairman Pablos: But in either case,
21 there is no payment forthcoming from anyone, correct,
22 whether it is this licensee or anyone else? So this
23 agency does not have a payment on a license, and that's
24 why I think Commissioner Ederer is moving to recommend
25 it to SOAH for an Administrative Hearing.

1 I will tell you that I am very
2 disappointed that we don't have anyone here from -- from
3 whomever we are talking about here, in this case,
4 Mr. Jason Blackmer or Bryan Brown. If this was
5 important to them, I think they would have been here, so
6 they are sending me a message -- I am only speaking for
7 myself -- that this isn't important to them.

8 So I would like to bring this up for a
9 vote. We have a motion. We have a second.

10 All of those in favor, please signify by
11 saying "aye."

12 The Commission: Aye.

13 Chairman Pablos: Any opposed?

14 That motion carries.

15 We will take up number V, Proceedings On
16 Occupational Licenses, V(A), The Proposal for Decision
17 in SOAH Case Number 476-16-1728; In Re: The Appeal of
18 Edward Paul Webb from the Stewards' ruling Number
19 RETA2526.

20 Ms. Bijansky: Mr. Chairman.

21 Chairman Pablos: Yes.

22 Ms. Bijansky: Mr. Chairman,
23 Commissioners, good morning. I am here to present for
24 final action a disciplinary case against Edward Webb, a
25 trainer whose horse tested positive for Firocoxib, a

1 Class 4 -- a nonsteroidal anti-inflammatory drug
2 following a race at Retama Park on September 5th of last
3 year.

4 I have given you a handout as a quick
5 refresher on the disciplinary process, but if you have
6 any questions, please stop me at any time.

7 In this case, after the race, the Texas
8 A&M lab found Firocoxib in the sample, so Mr. Webb was
9 given the opportunity to have the split sample re-tested
10 at a second lab. He declined to do so, so the Stewards
11 gave him a hearing and issued a ruling that is on page
12 32 of your materials.

13 He appealed, so we gave him a hearing
14 before the State Office of Administrative Hearings, and
15 that brought us to today.

16 Mr. Webb doesn't seem to be here, and I
17 don't think anyone is here on his behalf. But in short,
18 his position both before the Stewards and of SOAH was
19 that Firocoxib is basically just like Bute and so it
20 should be penalized just like Bute.

21 Under the Agency's medication guidelines
22 though, the recommended penalty for a Firocoxib overage
23 is a 15-day suspension, 500-dollar fine, and loss of
24 purse; and that's what the Stewards did.

25 They conducted a full hearing. They

1 determined that the recommended penalties did apply,
2 that there were no extenuating circumstances that
3 warranted a lesser or a greater penalty.

4 And so we reviewed the case and agreed.

5 Mr. Webb had an opportunity to file what
6 are called "exceptions," basically an appeal to certain
7 aspects of a proposal for the decision, but he didn't do
8 that.

9 These matters are before you today for
10 final action, and there is a draft order in your
11 materials beginning on page 55, which adopts the
12 Stewards' ruling in full.

13 The order provides for a 15-day
14 suspension, which Mr. Webb has already served, a
15 500-dollar fine, which he has paid, and disqualification
16 and redistribution of the purse.

17 And I have a clean copy of the order here
18 that I am going to -- if you approve, I am going to make
19 sure that you-all sign before you leave.

20 So I would ask that you adopt the
21 Steward's ruling in full, and I am happy to answer any
22 questions that you may have.

23 Chairman Pablos: Commissioners, is there
24 any questions?

25 Thank you very much.

1 Okay. So is there anyone here --

2 Thank you.

3 Is there anyone here -- is Mr. Webb or
4 anyone representing Mr. Webb here?

5 Okay.

6 Then I will ask for a motion to affirm the
7 Stewards' ruling. Is there a motion?

8 Motion by Steen and seconded by Martin.

9 Any further discussion on this?

10 Commissioner Schmidt: Just one comment.

11 Chairman Pablos: Yes, you may.

12 Commissioner Schmidt: I think it's an
13 unfortunate circumstance. I think the trainer probably
14 had the best intentions of the horse. Horses have
15 ulcers, I think the medicine is indicated. But I think
16 we can't as a Commission use as an excuse of bad advice
17 and we set a precedent that way.

18 I think this trainer was very
19 well-intended, and I have had horses with ulcers and I
20 have used Firocoxib as well. But that said, his horse
21 tested positive, and we can't set a precedent. And I
22 think that needs to be the message.

23 I will also just correct one thing in the
24 information we received. I guess it was inferred
25 somewhere that perhaps a vet who uses videos with

1 English horses, hunters, jumpers, and corsage, that
2 there is different criteria. The criteria is different.
3 It is zero tolerance at the Firocoxib level, not
4 20-nanograms but zero nanograms, so I fully support the
5 Stewards' decision.

6 Chairman Pablos: And I agree with you.

7 Okay. All of those in favor, please
8 signify by saying "aye."

9 The Commission: Aye.

10 Chairman Pablos: Anybody oppose?

11 That motion carries.

12 Thank you very much.

13 Ms. Bijansky: Thank you.

14 Chairman Pablos: The next item VI (A),
15 Proposal to Amend Rule 319.110, Health Certificate. I
16 would like to recognize Mr. Mark Fenner.

17 Mr. Fenner: Yes, sir, we just have one
18 rule amendment to bring to you today. This was a
19 requested change to address inconsistencies between the
20 current Racing Commission rule on health certificates
21 and the requirements to enter the Racing Association
22 grounds and the difference with the Animal Health
23 Commission.

24 Our rule currently says -- it was
25 consistent with Animal Health Commission rules when it

1 was initially adopted -- says a health certificate must
2 be issued within 45 days prior to the time they enter
3 the Association grounds.

4 However, the Animal Health Commission
5 subsequently changed it to 30 days, and this has created
6 some confusion for our rule, and their rule is
7 different.

8 We recognize that the Animal Health
9 Commission is the agency primarily responsible for
10 safeguarding the health of the livestock in this state.

11 And so what this proposal would do would
12 be, rather than track exactly the language that the
13 Animal Health Commission has and modify it each time
14 they make a change, just to incorporate their standards
15 by reference to. Instead of saying "45" or "30 days,"
16 just to say that, "It must meet any health inspection
17 requirements established by the Animal Health
18 Commission."

19 That way, they make a change, it's
20 implemented with the racetracks automatically. They go
21 through the full rule-making process just like we do.
22 So if anybody has any concerns about what the rules are
23 or should be, they can participate in the Animal Health
24 Commission's rule development process just as they do
25 here.

1 Are there any questions? I will be happy
2 to answer them. Dr. James is here as well if you have
3 any technical questions.

4 Chairman Pablos: Commissioners, are there
5 any questions? Is anybody signed up to speak on this?

6 Ms. Bijansky: No, sir.

7 Chairman Pablos: Dr. Aber, do you have
8 anything to add?

9 Commissioner Aber: Well, I just think we
10 have to do that. The Texas Animal Health Commission has
11 really got the knowledge and everything else to do this.
12 So, yes, I think we should, for sure.

13 Chairman Pablos: Any other comments?

14 At this time I would like to entertain a
15 motion to publish. Is there a motion?

16 Vice-Chairman Ederer: I would like to
17 move.

18 Chairman Pablos: Commissioner Ederer and
19 seconded by Dr. Schmidt.

20 Any discussion?

21 I will take it up for a vote.

22 All those in favor, please signify by
23 saying "aye."

24 The Commission: Aye.

25 Chairman Pablos: Any oppose?

1 That motion carries.

2 Having no further items and no executive
3 session today, I would like to adjourn this meeting of
4 the Texas Racing Commission. The time is 11:21.

5 Thank you.

6 (Meeting adjourned at 11:21 a.m.).

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