

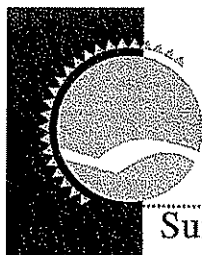
BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING

MARCH 20, 2007

Reported by: SHERRI SANTMAN FISHER

Job #9-61909



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1 BE IT REMEMBERED that the above entitled matter
2 came on for hearing on the 20th day of March, 2007,
3 beginning at 9:02 A.M. at 6100 Guadalupe, Building E,
4 First Floor Auditorium, Austin, Travis County, Texas,
5 and the following proceedings were reported by SHERRI
6 SANTMAN FISHER, Certified Shorthand Reporter for the
7 State of Texas.

8

9

10

APPEARANCES

11

12

Commissioners:

R. DYKE ROGERS

13

MICHAEL G. RUTHERFORD

14

JESSE R. ADAMS

15

TREVA J. BOYD

16

G. KENT CARTER

17

CHARLES L. "SONNY" SOWELL

18

DAVID G. CABRALES

19

ERNEST ANGELO, JR.

20

JIMMY ARCHER

21

22

23

24

25

1 CHAIRMAN ROGERS: If we can call this to
2 order, please.

3 Ms. Giberson, would you call the roll?

4 MS. GIBERSON: Jesse Adams?

5 COMMISSIONER ADAMS: Here.

6 MS. GIBERSON: Treva Boyd?

7 COMMISSIONER BOYD: Here.

8 MS. GIBERSON: Dr. Kent Carter?

9 COMMISSIONER CARTER: Here.

10 MS. GIBERSON: Ernest Angelo?

11 MR. ANGELO: Here.

12 MS. GIBERSON: Mike Rutherford? Sonny
13 Sowell?

14 COMMISSIONER SOWELL: Here.

15 MS. GIBERSON: Jimmy Archer?

16 MR. ARCHER: Here.

17 MS. GIBERSON: David Cabrales?

18 COMMISSIONER CABRALES: Here.

19 MS. GIBERSON: Dyke Rogers?

20 CHAIRMAN ROGERS: Here.

21 Okay. There's a quorum present, so we
22 will begin.

23 Is this echoing out there as bad as it's
24 echoing up here?

25 MR. FENNER: We're going to keep an eye

1 on it here. I don't hear any echo out here.

2 CHAIRMAN ROGERS: It's coming back here
3 really strong.

4 COMMISSIONER SOWELL: It did a minute
5 ago. I think it quit.

6 CHAIRMAN ROGERS: Okay. Let the record
7 show that Commissioner Rutherford has arrived.

8 This is going to be a rather long meeting
9 today, or at least we anticipate one. We will be
10 breaking for lunch and we will take a couple of other
11 breaks as Commissioners request. So if you have a
12 reason to take a break, well, say so and we will --
13 we'll do that at any time.

14 We'll begin today with public comment.

15 Is there anyone turned in a card for
16 public comment, Mr. Fenner?

17 MR. FENNER: Chairman Rogers, no one has
18 turned in a card for public comment that is not tied
19 directly to an agenda item; so it's your option whether
20 to delay that or to take it now.

21 CHAIRMAN ROGERS: Okay. No, we will --
22 unless we have any legislators or other folks that need
23 to be leaving that want to make a public comment now,
24 we'll hold it until we get to the agenda item.

25 Okay. So we don't have?

1 Okay. We will begin with discussion,
2 consideration, and possible action on the following
3 matters: Budget and finance update.

4 Ms. Curtsinger?

5 MS. HARRIS-CURTSINGER: Good morning,
6 Commissioners. We are, as of January 31st, 41.67
7 percent through the fiscal year. Budgetary-wise, we
8 are on track with our budget, right where we expect to
9 be. And I would be happy to take any questions or
10 answer any questions if you have any.

11 CHAIRMAN ROGERS: The only question I had
12 really was about this cash flow statement that we
13 have.

14 MS. HARRIS-CURTSINGER: Yes, sir.

15 CHAIRMAN ROGERS: And we are showing
16 still in '07 the 358,000 short.

17 MS. HARRIS-CURTSINGER: That is correct.

18 CHAIRMAN ROGERS: Will that be
19 accommodated in this next fee round or --

20 MS. HARRIS-CURTSINGER: With this fee
21 structure, it should be taken care of, yes.

22 CHAIRMAN ROGERS: Okay. So this is not
23 where we expect it to be after the fee structure. This
24 is before.

25 MS. HARRIS-CURTSINGER: This is before,

1 yes. That is correct.

2 CHAIRMAN ROGERS: Any other questions,
3 Commissioners?

4 Thank you.

5 MS. HARRIS-CURTSINGER: Thank you.

6 CHAIRMAN ROGERS: Okay. A report on
7 racetrack inspections.

8 Ms. Goscha?

9 MS. GOSCHA: Good morning,
10 Commissioners. I'm here on behalf of Mr. Neely who's
11 out of town this week.

12 In your packet you have the report on the
13 racetrack inspection activities.

14 CHAIRMAN ROGERS: Yes. It's under Tab 1,
15 the very back page of Tab 1.

16 MS. GOSCHA: 1-6 is what I show.

17 CHAIRMAN ROGERS: 1-6. It's hidden.

18 Go ahead, Ms. Goscha.

19 MS. GOSCHA: Thank you.

20 There are some unsatisfactory items
21 reported regarding pari-mutuel. Those are issues
22 related to ongoing ticket cancellations which will be
23 resolved with the new rule adoptions.

24 Regarding unsatisfactory veterinary
25 practices, at Valley, it's related to maintenance in

1 the kennels. Gulf Greyhound Park was resolved on
2 3-14.

3 Regarding the judges, it's related to
4 starting gate maintenance. And relating to
5 enforcement, that's from Manor Downs related to
6 security furnishing fingerprint persons.

7 All other issues have been resolved.

8 CHAIRMAN ROGERS: Any questions,
9 Commissioners?

10 Thank you, Ms. Goscha.

11 MS. GOSCHA: Thank you.

12 CHAIRMAN ROGERS: Okay. We will now move
13 to proceedings on racetracks, discussion,
14 consideration, and possible action on the following
15 matters: Approval of a change in ownership for Valley
16 Race Park.

17 Is there anybody here to testify on
18 that?

19 MR. VANMIDDLESWORTH: Yes, Your Honor.

20 CHAIRMAN ROGERS: I like that word.

21 MR. VANMIDDLESWORTH: It's habit. And I
22 hope you come to get used to it.

23 CHAIRMAN ROGERS: That's as good as it
24 gets.

25 MR. VANMIDDLESWORTH: All of you all are

1 Your Honors. I hope you'll excuse me for that
2 formality. I'll try to be less formal throughout the
3 rest of this.

4 I advised Mr. Fenner that we had not
5 completed a signed agreement. We have worked since the
6 meeting seven weeks ago to try to reach agreement. We
7 had further discussions with Mr. Fenner, with the
8 principals, in an attempt to reach an agreement on
9 revised sale terms that would address all of your
10 concerns and we had hoped to present that.

11 Unfortunately, we're not able to present
12 that today. We do not have a final agreement. And
13 accordingly, we're not asking you to take any action
14 today. I set forth that statement in a letter that I
15 was able to prepare last night and I'll distribute at
16 this point.

17 When I told Mr. Fenner, he appropriately
18 asked what does that mean for the other items on the
19 agenda; and I told him our view on that; and I've set
20 that out in this letter, which also includes a letter
21 from the Attorney General that was issued last night on
22 the interpretation of Article 6.06(h) of the Racing Act
23 that sets out the Attorney General's interpretation of
24 that act. It includes also -- which we incorporate and
25 adopt.

1 And let me make sure I have that
2 attachment with that, the letter from the Attorney
3 General. I'm sorry. I meant that to be attached,
4 along with a letter from Senator Ellis that was the
5 letter that precipitated the Attorney General letter
6 that came out last night.

7 I anticipate -- I understand that Senator
8 Ellis is forwarding that to the Commission's attention
9 himself for the Commission's consideration. But we did
10 not get it until last night. I got it late last
11 night. And I wanted to provide that to you and submit
12 it not only as the Attorney General's position on that
13 but as our position on that issue. And I think we'll
14 be talking about that at some length on the next agenda
15 item.

16 CHAIRMAN ROGERS: We probably will
17 because I think we're going to have to reach a decision
18 on whether this will actually affect your application
19 on this -- on the next part, whether you'll be eligible
20 for consideration or not.

21 I'm not real sure what's the proper way
22 for us to take a moment to read this because without --
23 without having a little time to digest this, I'm not
24 sure exactly where we go here.

25 Mr. Fenner, do you have a suggestion?

1 MR. VANMIDDLESWORTH: I wish it had been
2 here earlier, but I just got it last night.

3 MR. FENNER: Chairman Rogers, I suggest
4 we just take a few minutes to read it.

5 CHAIRMAN ROGERS: Okay. We'll just --
6 ladies and gentlemen, just take a minute and figure it
7 out.

8 There's not enough copies of the -- oh,
9 Senator Ellis.

10 (Discussion off the record)

11 CHAIRMAN ROGERS: Commissioners, shall
12 we -- are we close? Okay.

13 Mr. Fenner?

14 MR. FENNER: Chairman Rogers, the issue
15 that is contained within the letters, both from
16 Mr. VanMiddlesworth and from First Assistant Attorney
17 General Kent Sullivan, are central to the Webb County
18 applications; so I think it's worthy of discussion by
19 the Commission. However, it's not really something
20 that we would be taking up under the sale of Valley
21 Race Park agenda item. It's really incorporated into
22 the Webb County. And so we can discuss it at that
23 time --

24 CHAIRMAN ROGERS: Okay.

25 MR. FENNER: -- if you're ready to move

1 forward.

2 CHAIRMAN ROGERS: Will that be okay with
3 you all, Commissioners? Okay.

4 Okay. We will begin with applications on
5 Laredo Park -- or Laredo Race Park and LRP Group for
6 Class 2 horse racetrack licenses in Webb County.

7 Let me kind of lay out what we anticipate
8 the agenda to be here. I think we would like Ms. King
9 and Mr. Fenner to kind of lay out the situation. Then
10 we will have some time from the administrative law
11 judges in this case to present their findings. We will
12 have a period of public comment for anyone that would
13 like to address this; and those comments on the public
14 comment, depending on how many they are, may have a
15 limited time on them. And then we will give each party
16 40 minutes to make their case.

17 In that 40 minutes, I'm going to ask
18 Ms. Giberson to keep the time and to let you know where
19 you are in that time. The last 10 minutes she will
20 tell you, and then she will tell you again in five on
21 the -- on those 40-minute intervals. I would ask you
22 to kind of focus on the positive qualities of your
23 application as much as possible and to have as few
24 interruptions as possible. You'll have a rebuttal time
25 when you're done.

1 We will get a background discussion from
2 the DPS that should take a few minutes. And then we
3 will have a 15-minute rebuttal time from both Laredo
4 Race Park and from the LRP Group. And then we will
5 have a few minutes from the staff, kind of wrapping
6 up. And then we'll see where we go from there.

7 I would tell you at least it's my
8 intention, if we can, unless the Commission decides
9 differently, when we finish this discussion, it is my
10 intention that we don't take a vote on the Laredo -- on
11 the Laredo Race Park or LRP Webb County applications at
12 that moment but that we move to the Hidalgo
13 application; we hear the information on that; after
14 we've got all the information in front of us, then we
15 make the decision on whether we grant none, one, three
16 licenses so we have all the information in front of us
17 before we do that.

18 So that would be the way that I would
19 propose that we proceed. Is there any objection to
20 that?

21 Okay. We'll begin with Ms. King.

22 MS. KING: Thank you, Mr. Chairman and
23 members.

24 You will find the staff report under Tab
25 3. The executive secretary's report was prepared in

1 accordance with Section 303.8 of our rules which
2 require the executive secretary to review all racetrack
3 applications and make a report to the Commission.

4 For your benefit and the benefit of the
5 public, the report details the statutory thresholds to
6 receive a license and information relating to the
7 applicants. On page two of the report you will find a
8 time line of significant events, showing the
9 application period opened December 2003 and the
10 proposal for decision issued by SOAH in September
11 2006.

12 The report provides background
13 information on the contested case process and the State
14 Office of Administrative Hearings. We reference the
15 proposal for decision and your most recent
16 consideration of the Valley Race Park sales contract.

17 In regard to the applications themselves,
18 the report provides information on ownership,
19 background investigation, management, location, tick
20 zone, facilities, operations, financing, economic
21 impact, and areas of concern. In the appendix you will
22 find, starting on A-1, information on ownership
23 documents, location map, and site plans.

24 Mr. Chairman, I would like to publicly
25 thank staff for their hard work, long hours, and

1 dedication in working through this process. We did our
2 best to move the process along without delay while
3 trying to minimize the diversion of resources from
4 other regulatory efforts while completing this assigned
5 task.

6 Mr. Chairman, at this point I believe the
7 general counsel is ready to provide you with procedural
8 counsel and instructions for your consideration of the
9 racetrack applications in Webb County.

10 CHAIRMAN ROGERS: Mr. Fenner?

11 MR. FENNER: Commissioners, this hearing
12 is -- or this portion of the hearing, the Webb
13 applications, is for persuasive argument about the
14 facts and the law. It's not an evidentiary hearing.
15 So no one can come up and start providing you evidence
16 about the applications or about the proposed
17 facilities. They can certainly come up here and argue
18 about whether it's good public policy or whether it is
19 about the law, whether -- for example, this issue that
20 Mr. VanMiddlesworth has brought up, he can certainly do
21 that.

22 There are some things about the proposed
23 order that the Commission cannot change. Pure findings
24 of fact are not subject to change by the Commission.
25 For example, the ALJ's may have determined that one

1 applicant's racing surface would be 28 inches deep,
2 that there would be 12 inches of fill, six inches of
3 limestone screening, and 10 inches of sand, silt, and
4 clay. These are the types of things that are not
5 really subject to be re-examined by the Commission nor
6 do I think you would want to.

7 But there are things the Commission can
8 change, matters of public policy and law. You get to
9 interpret the Racing Act. Also the application of
10 public policy and law to the facts. Those mixed
11 findings of fact and conclusions of law, you have a
12 considerable amount of discretion.

13 However, when we deviate from the
14 proposed order, we have to have a discussion about
15 that. You need to be able to provide a rational basis
16 for making that deviation from the proposed order. So
17 I would encourage you in that respect to have a full
18 and frank discussion of the application. That will
19 only help us in preparing the proposed order and it
20 will help us in case we ever have to defend that
21 decision in court.

22 I also would like to discuss a little bit
23 about the confidential portions of the proposal for
24 decision and the replies and the briefs. There are
25 some things in there that are confidential, for

1 example, the totalisator contracts, the security plan,
2 the management contract, as well as some of the
3 financial information about the applicants. That
4 portion is in your binders, but it has not been in the
5 public portion that was given out to the people in the
6 audience or posted on the web.

7 So I would ask your discretion in raising
8 those issues. I don't think it will be a problem.
9 None of those have been any of the controversial topics
10 in this case.

11 Those are my guidelines.

12 CHAIRMAN ROGERS: Okay. Commissioners,
13 any questions?

14 Mr. Fenner, I would ask you that if we
15 get into something that is new evidence in the program
16 and I don't happen to recognize it that you raise some
17 objection, if you would, please.

18 MR. FENNER: Yes, sir.

19 CHAIRMAN ROGERS: Okay. Public comment.
20 Or, no, let's hear from the administrative law judges
21 first.

22 Ms. Sullivan, Mr. Marshall --
23 Ms. Marshall, Mr. Sullivan. I'll get this down here in
24 a minute. I'm sorry that I got the names wrong.

25 MS. MARSHALL: It's Ms. Marshall and

1 Mr. Sullivan. Thank you. Thank you very much for
2 inviting us to be here today.

3 As administrative law judges, of course,
4 our job is not to offer any persuasive conversation to
5 the Commission but merely to summarize the proposal for
6 decision that was based upon the extensive evidence
7 offered in this case.

8 As you know, the hearing was to consider
9 two applicants for a Class 2 horse racetrack license in
10 Webb County, Texas. The applicants were Laredo Race
11 Park and LRP Group. That's how I'll refer to them.

12 Both applicants proposed to conduct live
13 racing and simulcast racing at their proposed
14 facilities, with a significant portion of income coming
15 from the simulcast operations. Each of them have
16 proposed Quarter Horse meets and Thoroughbred meets. I
17 won't go into specific details because we've laid that
18 out, I think, pretty extensively in our proposal for
19 decision.

20 Basically it was suggested to us, and the
21 issue before you will be, what the possible outcomes
22 are, meaning whether Laredo Race Park should get a
23 license, whether LRP Group should get a license,
24 whether both should get a license, or whether neither
25 should get a license. So there were four possible

1 outcomes that were proposed. Ultimately, we believe
2 the choice of outcome is a policy decision for this
3 Commission.

4 We did make a recommendation for one of
5 the applicants, noting that both applicants were
6 qualified, because we did not have sufficient evidence
7 that would indicate that the Webb County area had the
8 economic support for two racetracks; and it was because
9 we didn't have sufficient evidence on economics for two
10 racetracks that we recommended one racetrack.

11 I won't go into the procedural history.
12 The executive secretary very thoroughly laid that out
13 in her report to you. But I would like to note one
14 thing in case it appears that this process took a long
15 time. And it did. But there was one complication that
16 started us off in that there was some question about
17 whether the actual election in Webb County had been
18 properly certified to the Secretary of State. And when
19 that issue came up, it was necessary to seek an
20 Attorney General opinion on that topic before
21 proceeding through the very extensive discovery that
22 both applicants engaged in.

23 After the hearing on the merits, Judge
24 Sullivan and I decided that a site visit to actually
25 see both locations would be beneficial to put into

1 context the evidence that we had heard. We contacted
2 the parties and we all went down and conducted a site
3 visit by agreement with all of us.

4 I'm going to just summarize the factors
5 that I addressed in the proposal for decision and then
6 Judge Sullivan will summarize the factors he addressed
7 and then we will both be available to you for any
8 questions that you have of us.

9 First of all -- and this is in no order
10 of importance. But location, I'll begin with that
11 topic. We looked at location with regard to four
12 different factors, one being the location with relation
13 to the City of Laredo's population and entertainment
14 venues.

15 The Laredo Race Park facility is proposed
16 to be located on Mines Road, which is about 11 and a
17 half miles from the center of Laredo. The LRP proposed
18 facility is on Highway 59, which is about five miles
19 from IH-35 and is in the entertainment venue. So when
20 you looked at that factor alone, we felt that the LRP
21 Group application location was a better location to be
22 located around the entertainment facilities.

23 The second factor, the ease or difficulty
24 in traveling to the site, we were looking at the roads
25 and how easy it was to travel on the roadways and get

1 in and out of the facilities. And in that regard,
2 Laredo Race Park's facility is located off of a
3 four-lane highway; and although it's in a -- a portion
4 of the road travels through a very heavily congested
5 commercial area, at that particular location there's
6 not extensive amounts of traffic and the four-lane
7 highway seemed to be adequate to support the ingress
8 and egress from a racetrack.

9 The LRP Group has -- Highway 59 is a
10 two-lane highway at the point of location for their
11 facility and that highway does become congested during
12 periods of heavy use and so there would be
13 modifications potentially that would be required at
14 that location.

15 In terms of access to utilities, both, we
16 felt, could get utilities and had access to utilities.
17 A little bit easier for the LRP Group, but Laredo Race
18 Park did have the possibility of making utilities --
19 bringing in utilities to their site.

20 Another factor in regards to the location
21 was the issue that was raised to us about the proximity
22 of the facility, particularly Laredo Race Park's, to
23 the fever tick quarantine zone. And there was
24 extensive testimony on the fever tick issue. And we
25 concluded that there was sufficient evidence to

1 conclude that preventive measures, such as removing
2 vegetation, double fencing, things of that sort, could
3 be taken that would adequately address the concerns
4 regarding the fever ticks. Additionally, there's a
5 nearby horse training facility, indicating that that
6 sort of activity is ongoing, has been ongoing in that
7 location for a number of years without significant
8 problem.

9 Let me backtrack just for a moment. With
10 Laredo Race Park, in addition to their horse racing,
11 they also intend to have horse training facilities on
12 site. With the LRP Group, in addition to the horse
13 racing and simulcasting, they do intend to have other
14 entertainment ventures, such as concerts and things, at
15 their location. So those are some other sources of
16 economic activity at those facilities.

17 With regard to experience, both of the
18 applicants have proposed experienced racetrack
19 managers. Laredo Race Park would use the management
20 team from Sam Houston Race Park, a great deal -- number
21 of years of experience. We felt that they had a
22 broader base of experience because of the work with a
23 number of different racetracks in the country.

24 The LRP Group, though, likewise, has very
25 qualified and competent management experience coming

1 from the Retama Race Park facility. In addition, they
2 have brought in into their management structure
3 personnel and people who have a lot of horse racing
4 knowledge and experience as well.

5 In terms of financial stability, we found
6 that both of the applicants had and demonstrated
7 financial stability. Laredo Race Park is part of a
8 corporate structure; and in the past, the corporation
9 Maxxam, Inc., has contributed money as needed to the
10 Sam Houston Race Park and Valley Race Park; and it
11 was -- it seemed equally likely that they would
12 continue to fund the Laredo Race Park as needed.

13 The LRP Group has a partnership
14 structure, so the management structure is a little bit
15 different. Maybe, we felt, a little less stable than a
16 corporate structure in that not all the partners are
17 required to contribute to cash calls when there's a
18 need for money and they can exit partnership at any
19 time. However, at this -- at the time of the hearing
20 and based upon the evidence, there did appear to be
21 sufficient financial resources from both groups.

22 That concludes the topic that I -- topics
23 that I wanted to cover. I'd ask Judge Sullivan to
24 touch upon the others. And then we'll be happy to
25 answer any of your questions. Thank you.

1 CHAIRMAN ROGERS: Thank you.

2 MR. SULLIVAN: Good morning,
3 Commissioners. I'm Kerry Sullivan with the State
4 Office of Administrative Hearings. I was co-assigned
5 to this proceeding along with Judge Marshall.

6 In my part of the presentation, I'll
7 touch briefly on a comparison of the physical
8 facilities between the two applicants with respect to
9 the facilities for patrons, facilities for licensees,
10 and facilities for racehorses.

11 I'll also briefly address the limitation
12 on the multitrack ownership that we have some
13 late-breaking news on here this morning and also the
14 policy question of whether the Racing Commission should
15 issue licenses to both qualified applicants or to the
16 applicant it determines to be the most qualified with
17 the overall superior application.

18 We believe that both applicants do meet
19 the requirements pertaining to physical facilities for
20 patrons, for licensees, and for racehorses. The
21 proposed simulcasting facilities are both clearly
22 adequate and are comparable in our views.

23 With respect to live racing, the Laredo
24 Race Park facilities are considerably larger and also
25 considerably more expensive. They would include an

1 air-conditioned grandstands area and also
2 air-conditioned areas for folks to stand that would
3 seat at least 1500 people.

4 There would also be, with respect to --
5 in contrast with that, the LRP Group application does
6 not provide any air-conditioned grandstands for viewing
7 live racing. Their only live -- their only
8 air-conditioned facilities are the simulcasting
9 facilities and the only view the simulcasting
10 facilities would have of live racing would be over the
11 television monitors.

12 Additionally, for horsemen, the Laredo
13 Race Park facilities would include sleeping
14 accommodations and access to a low-cost track kitchen
15 for groomsmen and other horsemen who could stay at the
16 facility during the live race meet. Up to 300 of those
17 could be accommodated in the Laredo Race Park
18 application. And we believe that that would be an
19 important convenience to those folks, many of whom are
20 low-pay salaried individuals who have to get up at 4:00
21 in the morning to attend to their duties.

22 Again, in contrast, LRP Group does not
23 contain -- their application does not have similar
24 facilities to accommodate those people.

25 The big question, though, is whether the

1 proposed extra facilities that Laredo Race Park has in
2 its application would render that track economically
3 infeasible for the relatively small size of the Laredo
4 market. And there is no clear answer to that
5 question.

6 It's not clear to us that either facility
7 would be profitable in the current racing climate.
8 Certainly Laredo Race Park would be more expensive than
9 LRP Group to construct and a bit more so to operate and
10 so it would need to draw more fans and more wagering
11 dollars than the LRP Group in order to be financially
12 profitable.

13 In terms of the success of live racing,
14 however, we believe that the air-conditioned facilities
15 and the accommodations for the horsemen would be a
16 clear and tangible benefit and so we do give the edge
17 to the Laredo Racetrack application with respect to
18 those items.

19 With respect to the two-track ownership
20 issue, I've been reviewing the documentation that we
21 have. And we've been -- the State Office of
22 Administrative Hearings has been completely out of the
23 loop with respect to actions that have been occurring
24 with respect to the potential sale of one of those
25 facilities by -- that Maxxam owns since the close of

1 our record and the issuance of our PFD back in
2 September.

3 But we do understand that there is an
4 Attorney General's opinion, informal letter opinion,
5 that was issued yesterday or the day before yesterday;
6 and having reviewed that, those are certainly entitled
7 to considerable deference by the Commission and you
8 may -- could certainly interpret that provision that
9 indicates that no more than two racetracks can be owned
10 by an applicant to mean that there is not a limitation
11 on the number of paper licenses that an applicant -- or
12 that a race -- that an individual person could hold.

13 I do believe, however, that the
14 Commission has a great deal of discretion with respect
15 to implementing your policies. And the testimony at
16 the hearing from the -- and the arguments from the
17 Commission staff were that paper licenses allowing
18 racetrack owners to essentially dabble or broker in
19 paper licenses would be contrary to the public interest
20 and contrary to the orderly conduct of business by the
21 Commission in keeping and ensuring that facilities are,
22 in fact, built where they're licensed.

23 So I do believe that you would have the
24 discretion to continue along the lines of requiring
25 that Maxxam divest itself of ownership of these

1 facilities prior to issuance of an unconditional
2 license. So I would continue respectfully to recommend
3 that you condition the issuance of the license, in the
4 event that you do grant the license to Laredo Race
5 Park, on the final closure of the sale of the Valley
6 Race Park facility by Maxxam in order to comply with
7 the Commission's interpretation of its statute and also
8 if you choose to view it as in accordance with your
9 policy in order to make sure that you're not issuing
10 paper licenses that could not be acted upon.

11 So I believe you have discretion with
12 respect to that. Obviously we've only just reviewed
13 these documents and that is simply my initial reaction,
14 along with Judge Marshall.

15 Finally, I'd like to briefly touch on the
16 question of whether the Commission should issue
17 licenses to both qualified applicants as opposed to
18 simply one. We do want to emphasize we concur, I
19 think, with Mr. Fenner that this is a -- this is a
20 policy matter that you all are free to chart your own
21 course on. We do believe there are some facts that
22 were developed at the evidentiary hearing that can help
23 to provide an informed assessment of this issue.

24 At the risk of being repetitive, it's not
25 clear to us that either facility standing alone would

1 be profitable in the current environment. That's
2 because of the limited size of the Laredo market and a
3 comparison of attendance and wagering at -- the history
4 of attendance and wagering at other licensed facilities
5 in Texas make it a risky proposition.

6 What does appear to be clear is that two
7 racetracks in this small market would plainly not be
8 economically viable. While the live racing could
9 presumably be staggered over different periods where
10 there wouldn't be direct head-to-head competition, both
11 applicants would rely very heavily on year-round
12 simulcasting revenues. I believe approximately 75
13 percent of their revenue would come from simulcasting
14 as they projected. If they were required to split that
15 significant revenue stream between the two of them,
16 neither racetrack could succeed.

17 Still the Commission could determine that
18 both tracks should be licensed and allowed to compete
19 with the idea that the fittest would survive or perhaps
20 with the idea that, well, probably only one would be
21 constructed in any event. Our take is that it is more
22 in the public interest to license only the one superior
23 facility under the economic realities that we've
24 addressed.

25 If both were built, again, we believe

1 that clearly at least one would fail. On the other
2 hand, there is no guarantee that either facility would
3 actually be built under the rules as they've been set
4 out before us. Accordingly, an argument can be made
5 that by licensing both qualified applicants, perhaps it
6 would be more likely that at least one of the
7 facilities would actually be constructed as proposed.
8 That may be.

9 It appears to us at least as likely,
10 however, that if the Commission were to issue two
11 licenses for this small market that the existence of
12 another licensed facility could serve as a deterrent to
13 either facility proceeding, again, under the climate
14 that we have. Again, we believe that's your all's
15 policy determination. Those are our assessment based
16 on the facts that we had developed in the record.

17 Our proposal is long, as you all are
18 painfully aware, and I won't address the many
19 additional subissues and other matters that we have set
20 out in the proposal for decision. Judge Marshall and I
21 will be glad to answer any questions related to those
22 other matters that we haven't covered in our oral
23 presentation or matters that we have covered in the
24 presentation to the best of our abilities.

25 In summary, though, we believe that

1 Laredo Race Park has submitted the overall superior
2 application based on the factors set out in the Texas
3 Racing Act, particularly in terms of the potential
4 success of live racing. Because the Laredo market is
5 not capable of supporting more than one racetrack at
6 most, we believe that only one license should be
7 granted.

8 And we recommend that you issue that
9 license to Laredo Race Park, again, subject to Maxxam
10 divesting itself of the -- of its holdings in the
11 Valley Race Park proceeding, although that certainly is
12 a matter -- the need to do that has certainly been
13 raised in a new light here today. And again, 45 days
14 would be, as a starting point, an appropriate period we
15 would suggest in response to a request for a
16 recommendation on that for you all to send that out.
17 But obviously that would be a matter that's entirely
18 within your all's discretion.

19 We recommend that all exceptions, other
20 than the clarifications that we issued in our
21 supplemental letter to the PFD, be overruled. And
22 again, we'll be happy to try and answer any questions.
23 Thank you all.

24 CHAIRMAN ROGERS: Any questions?

25 I have one for you.

1 MR. SULLIVAN: Yes, sir.

2 CHAIRMAN ROGERS: Your recommendation was
3 that a conditional license be issued to Laredo Race
4 Park based on your findings. Is that correct?

5 MR. SULLIVAN: Yes, sir.

6 CHAIRMAN ROGERS: Okay. Our licenses, if
7 I understand them, are perpetual; so in your opinion,
8 how do you issue a conditional license that's a
9 perpetual license? Those two seem to be
10 contradictory.

11 MR. SULLIVAN: Well, and what -- what we
12 are --

13 CHAIRMAN ROGERS: We issue a license or
14 we don't issue a license, it seems to me.

15 MR. SULLIVAN: I think that's a valid
16 point. And the conditional aspect of this that we
17 would suggest for your consideration would simply be an
18 interim decision that you would make prior to the
19 issuance of the final decision to issue or not issue
20 this license.

21 It's essentially your decision after
22 convening and discussing and voting on it that that
23 license should be issued as long as Laredo Race Park
24 follows through and does what it's said it's going to
25 do with respect to the other facility owned by Maxxam.

1 And then within 45 days, during which period you would
2 have continued this item on your agenda, you would
3 still have jurisdiction over the matter. At that point
4 you would issue the final unconditional order. This
5 would simply be today -- in our view, would simply be
6 your declaration of the intent of what you're planning
7 on doing to allow then Laredo Race Park the opportunity
8 to finalize that sale.

9 And again, I don't mean to present that
10 as in stronger terms than perhaps I should, especially
11 in light of the Attorney General's opinion that has
12 come out that has indicated that from their perspective
13 in viewing it, there is no restriction with respect to
14 that and you can take final action here today.

15 CHAIRMAN ROGERS: Any other questions?

16 Okay. Thank you, Your Honor.

17 MR. SULLIVAN: Thank you.

18 CHAIRMAN ROGERS: Thank you both. This
19 was a long process. We appreciate your effort.

20 MR. SULLIVAN: Yes, sir. Thank you.

21 CHAIRMAN ROGERS: Okay. We will take a
22 period of public comment.

23 Do you have anyone that's signed up for
24 public comment? I guess that would be for Webb only.

25 MR. FENNER: Yes, sir. And there are

1 also a number there who are for both Webb and the
2 Hidalgo applications.

3 CHAIRMAN ROGERS: Okay. Now, these are
4 not the people who are going to be making the
5 presentation, just the public comment cards?

6 MR. FENNER: These are just public
7 comment.

8 CHAIRMAN ROGERS: Okay. I would ask
9 these folks to restrict your comments to something less
10 than five minutes, if you would, and three would be
11 even better.

12 Mr. Bork, do you have a comment?

13 MR. VANMIDDLESWORTH: Your Honor?

14 CHAIRMAN ROGERS: Yes.

15 MR. VANMIDDLESWORTH: If I may. We had
16 anticipated his comment would be in -- within our
17 40-minute commentary.

18 CHAIRMAN ROGERS: Okay. Is there anyone
19 here, the folks who have signed up on this, who are not
20 in your 40-minute period? Roger Drummond, Ben --

21 MR. VANMIDDLESWORTH: Puig.

22 CHAIRMAN ROGERS: -- Puig, Gary Wilson,
23 Don Walden. Is there anybody else in that -- I see one
24 of the participants here. Is there anybody else that's
25 not in your 40 minutes?

1 MR. VANMIDDLESWORTH: No. And most of
2 those people have signed those notes in an abundance of
3 caution in case you had any specific questions on any
4 specific issues.

5 CHAIRMAN ROGERS: Why don't we begin your
6 40 minutes.

7 And, Ms. Giberson, if you would keep the
8 roll and give him appropriate time frames, we'd
9 appreciate it.

10 MR. VANMIDDLESWORTH: Thank you,
11 Commissioners, Your Honor. I really do appreciate the
12 opportunity after quite a long time to be able to speak
13 with the Commissioners and have the folks with Laredo
14 Race Park speak with the Commissioners about what our
15 vision is for bringing a new racetrack to the Laredo
16 area.

17 We believe in bringing a first-class live
18 racing venue focusing on live racing, building the
19 audience for live racing in South Texas, and we believe
20 that that will greatly benefit the horse racing
21 industry, the jockeys, the grooms, the owners, fans who
22 enjoy the sport and pageantry of live racing and it
23 will also benefit the Laredo economy. We want to build
24 live racing. It's fine to have a simulcast parlor for
25 people to come to watch races elsewhere. That's a part

1 of what we would have. But we really want to build the
2 live racing industry and that's what you'll see our
3 proposal is focused on.

4 I must really at the outset thank the
5 ALJ's who you saw today. We were very fortunate. SOAH
6 appointed two of its most experienced, senior,
7 qualified administrative law judges to handle this case
8 and they did an excellent job handling a very, very
9 difficult hearing. They ran it in exemplary fashion.

10 They went above and beyond the call of
11 duty in the road trip to Laredo that they mentioned
12 where they not only heard the evidence and heard the
13 testimony and saw the exhibits. They, by God, got in a
14 van with all of us and drove to Laredo and drove around
15 all of these sites and drove the roads and walked the
16 sites and got a firsthand look. It really leads to a
17 better understanding.

18 So I have -- and you saw the quality of
19 the report, how they developed the issues. All the
20 facts were there. They really deserve a lot of credit
21 for what they've done.

22 I would also be remiss if I did not
23 acknowledge the professionalism of counsel and
24 representatives of the LRP Group that you'll be hearing
25 from later on in this proceeding. This was a

1 hard-fought proceeding between two competing
2 applicants. Mr. Moltz, the LaMantias, Greg and Steve
3 LaMantia, were professional, courteous throughout, and
4 worked with us to develop and present to you what we
5 believe is a full and complete record.

6 Ms. Fritsche was thrown into this case on
7 about two weeks' notice. And she joined the
8 Commission. She stepped in. And somebody said,
9 "Congratulations. You're going to trial." She
10 wrapped her arms around this case and did an excellent
11 job in presenting the staff's witness -- the staff --
12 it's important to understand, the staff is a party to
13 this case. Staff takes positions. They're just like
14 any other party in a lot of ways. They have the same
15 ex parte prohibitions. You can't talk with them. You
16 can't talk with us. They're a party. And their job is
17 to develop the record and present it to you in as good
18 a form as possible.

19 Ms. Fritsche asked good questions at the
20 hearing, got her witnesses on, helped frame the
21 issues. And really a lot of credit for the quality of
22 this goes to her participation.

23 So as a result of all of that, we have a
24 thorough and well-written proposal for decision. It
25 sets forth all the facts. It weighs the evidence.

1 They weighed the credibility of the witnesses. They
2 heard them live. They made findings. And they applied
3 the law.

4 This is an important case and it's a
5 credit to the Commission and the ALJ's that you have
6 the record to make a decision in a case of this
7 importance. This is the first major new racetrack or
8 racetracks to be built in Texas in 15 years. You have
9 been presented in the proposal for decision with very,
10 very clear choices about what each track does and the
11 vision for each track.

12 The presentation will be somewhat less
13 formal than perhaps normal, notwithstanding my
14 inability to quit saying "Your Honor". And I have
15 Mr. Bork here, who is president of Laredo Race Park,
16 Mr. Vitek, Ms. McGovern, who are vice-presidents, our
17 architect, Mr. Wilson, and various other folks who I
18 may call on from time to time to answer specific
19 questions.

20 At this time I'd like to start with
21 Mr. Bork. We're really here today because of
22 Mr. Bork's desire to build one more racetrack in Texas,
23 a first-class live racing venue, an idea which he
24 developed and persuaded his company to support it. He
25 came to the Commission, asked the Commission to open

1 this period, and he developed the whole proposal that
2 you see here today. So I'd like Mr. Bork to make a few
3 comments.

4 MR. BORK: Good morning, Commissioners.
5 Once again, I stand here. I can't tell you how
6 intimidating this is every time I have to come up
7 here.

8 COMMISSIONER SOWELL: You ought to be
9 used to it by now, Bob.

10 MR. BORK: You know, you'd think you
11 would; but you never do.

12 My name is Bob Bork. I'm the president
13 and general manager of Sam Houston Race Park and Valley
14 Race Park.

15 In 1995 I took over the management of Sam
16 Houston Race Park with the help of a management team of
17 Mike Vitek and Ann McGovern and some wonderful
18 department heads. I've enjoyed watching Sam Houston
19 Race Park grow and it was once a financially troubled
20 facility that's now turning into a success.

21 In 2000 our team saw an opportunity to
22 acquire Valley Race Park. It was a greyhound facility
23 that had been closed since 1995. We looked at this
24 opportunity very carefully. And since then, we've
25 invested millions of dollars in that track and we've

1 enjoyed the opportunity to market our racing product in
2 the Valley and learn a little bit about the Valley.

3 I've also enjoyed the opportunity of
4 developing new friends in the greyhound industry. This
5 was my first encounter into the greyhound industry.
6 But it's really the same. Maybe the animals are
7 different that are participating, but the basic
8 principles of the business are the same of hiring and
9 keeping courteous employees and keeping our customers
10 happy. And that's the reason that the Valley is
11 beginning to show some growth, too. It's a seasonal
12 greyhound track and it's shown pretty consistent
13 development over the past couple of years.

14 Sam Houston Race Park is committed to
15 maintaining our national reputation in the racing
16 industry and we're committed to our high standards in
17 Laredo. That's the reason why we developed the plan
18 that we submitted; that if we're going to do it, we
19 want to do it exactly right.

20 For example, Sam Houston Race Park, on
21 many occasions, we've received some national
22 attention. We've had the MBNA Challenge Championships
23 at the racetrack. We've participated in and started
24 the Great State Challenge. We hope to be the sponsor
25 of that again in the future. And that event attracts

1 horses from all the different states around the country
2 in a point type basis to see who had the best -- which
3 state had the best horses in the country.

4 Unfortunately, Florida won; but that's okay.

5 I'm also proud to inform you that we have
6 been -- Sam Houston Race Park has been asked to apply
7 for a future Breeders' Cup. That application is in the
8 process of being prepared and will be submitted shortly
9 to the Breeders' Cup in Kentucky.

10 The Laredo racetrack, to be successful,
11 it's very important that the management team be
12 involved in the racing industry. As you know, I have
13 recently been elected to a two-year term as president
14 of the Thoroughbred Racing Association. This
15 organization represents all the major racing
16 jurisdictions from New York to California, including
17 Canada. All of this is really just a preface to my
18 real mission today.

19 In 2003 I turned my attention to the
20 prospect of building one more first-class racing
21 facility in Texas. Some of the people say it's my
22 dream -- I guess to a certain extent that's true -- to
23 have one more. Myself, along with Ann McGovern and
24 Mike Vitek, approached our parent company, Maxxam.
25 They gave us their support in building a racetrack in

1 Laredo.

2 We are lucky to have the support of
3 Maxxam. It's a publicly held corporation with a sound
4 financial backing. And Maxxam openly agreed to support
5 us and to go forward with that project. And here we
6 are today.

7 We then approached the Racing Commission
8 to open up an application period for Webb County, which
9 we believe is one of the fastest growing areas not only
10 in Texas but in the United States. After 35 years in
11 the racing business, this was just a wonderful
12 opportunity for me and we went at it full steam ahead.

13 Laredo presented the opportunity to build
14 a first-class racing facility that people in Texas can
15 be proud of and that I can be proud of. We carefully
16 chose our 200-acre site that will provide room for
17 additional expansion. We also decided it was important
18 to locate the track on a four-lane divided highway that
19 provides convenient access for patrons coming and going
20 off the track premises.

21 Most importantly, we wanted to build
22 top-notch facilities that demonstrate our commitment to
23 the live horse racing product. We looked at the
24 existing model of Valley Racetrack to build our
25 grandstand. That facility's grandstand works very,

1 very well and we used it as a model.

2 Our grandstand is similar to our existing
3 track at Harlingen and will contain two levels. In
4 addition to racing events, the second level, which is
5 of great concern, is available for group events,
6 community events the Chamber of Commerce could have or
7 other business groups that we can bring in to conduct
8 small trade shows and other types of entertainment
9 events.

10 It's undeniable that Laredo gets hot. So
11 our facility is totally enclosed and air-conditioned
12 for our patrons' benefit.

13 Our backside facilities were also very
14 important to us. The stable area and our auxiliary
15 buildings are laid out in accordance with the
16 Commission requirements, including having the required
17 number of stalls. We think it's a must to have
18 sufficient stables for the horses that will be
19 traveling from across the state to come to the racing
20 there. We are committed to the safety of the jockeys
21 and the horses participating in our races.

22 As you know, this was a contested case.
23 It went to the State Office of Administrative Hearings,
24 where the judges examined lots and lots of evidence
25 over a two-week period. The judges ultimately decided

1 that our application was superior. And we are proud of
2 our application and our planned facility. Our
3 application is financially sound. And most
4 importantly, our application presents an opportunity
5 for the Commission to bring a first-class facility to
6 Laredo.

7 Thank you for your time.

8 CHAIRMAN ROGERS: Thank you, Mr. Bork.

9 MR. VANMIDDLESWORTH: One of the
10 pleasures in working on this project has been to get to
11 know Mr. Bork and to share his enthusiasm for this
12 project and for building live racing in Texas. That
13 shows through in everything he does, including the
14 proposal that he's developed for this case.

15 We have a proposal for decision from the
16 administrative law judges in this case. So what we
17 have is an initial decision of the Commission of
18 whether to accept or reject that proposal for
19 decision. We submit that that proposal for decision is
20 appropriate, that it makes the right recommendation,
21 and it is supported.

22 Factual findings -- as Mr. Fenner noted,
23 factual -- making factual findings are committed to the
24 discretion of the SOAH judges. Making policy decisions
25 is committed to your discretion. An example that we've

1 always said is a policy decision is how many racetracks
2 to have in Laredo, whether to have zero, one, or two.

3 I want to go over -- I'm mindful of
4 Mr. Rogers' admonition to focus on the positive of
5 ours, but I have drawn some comparisons. I'll try to
6 focus in this part on the positive. But I structured
7 this in a way -- the only way I can really show the
8 positive is to show how we compare with other
9 racetracks in Texas and with what's been proposed.

10 So let me first put up a board that
11 summarizes what the administrative law judges presented
12 to you. This is based on three through five of their
13 pages -- I'm sorry, pages five through eight of their
14 recommendation, where they go through the various
15 factors that they weighed and which proposal they found
16 was superior on each of those. And I'm going to -- I'm
17 going to go through that in some detail.

18 We have an asterisk on facilities for
19 racehorses because, as you know, LRP Group proposed
20 only 240 stables or stalls for horses. Grossly
21 inadequate. The Commission so found. The
22 administrative law judge so found. At the hearing they
23 offered to put in more if need be. And that asterisk
24 is if they change their application and are permitted
25 to change their application and put in enough, the 600

1 stalls, then theirs would be comparable and adequate,
2 although they say that the Laredo Race Park proposal
3 was more detailed and straightforward.

4 Let me go over these one by one. And we
5 have -- my assistant has extra copies of this for
6 anybody who can't read the boards. We have several
7 sets if anybody would like one or if the Commissioners
8 would like one afterwards.

9 The next board deals with the first
10 point, the experience of the employees. Diane, if you
11 could just have these -- if you could just have these
12 ready one after another.

13 This sets forth first, in bold, what the
14 ALJ's said about the experience of the employees. "The
15 ALJ's believe that Laredo Race Park has shown an
16 advantage over the LRP Group with respect to the
17 experience of its management team and ownership."

18 The basis for that was, with respect to
19 Laredo Race Park, as you know, Mr. Bork has been
20 involved with the actual construction of new
21 racetracks. He's the only one who is on either
22 management team who actually knows how to deal with
23 architects, deal with engineers, and build a
24 racetrack. He was involved in the construction of
25 Philadelphia Park, also with the reopening of Valley

1 Race Park. We're the only ones who have that
2 experience.

3 Ms. McGovern is a veteran racetrack
4 manager. She is one of the few women in upper
5 management in the industry and she is well respected.
6 There was considerable testimony about her nationwide
7 reputation as an experienced manager.

8 Mr. Vitek, who is vice-president, has
9 experience opening and operating a track in South
10 Texas. He manages the Valley Race Park track. He's
11 shown that he can do business there, that he can make
12 it work. And as you know through testimony in this
13 case, that turnaround has been quite remarkable.

14 The ALJ's noted that Laredo Race Park's
15 manager has twice the number of years of experience
16 running a racetrack as LRP Group's. And of course, we
17 have experience running a racetrack in the border
18 region.

19 The LRP Group is headed by a president
20 who has no experience in horse racing, only ever been
21 to one racetrack. There's no one on the management
22 team with experience in building a new racetrack. And
23 the management has considerably less experience.

24 The next area I'd like to discuss is
25 facilities for patrons, which the judges discussed with

1 you and which is one of our key points. The judges
2 found that "Laredo Race Park's proposed facilities for
3 live race patrons and licensees are superior to those
4 proposed by LRP Group." And it's a "Clear choice
5 before the Commission in terms of the future of racing
6 in Texas."

7 We have with us Gary Wilson, who's the
8 architect for this, and I think it might be useful for
9 him to explain -- and he could probably do a better job
10 than I can -- about why we went this way, why we
11 developed this kind of facility, and what it does.

12 Do you also have a picture of the
13 grandstand?

14 Yes, sir, Mr. Wilson.

15 MR. WILSON: Thank you. Thank you,
16 Commissioners, for the opportunity to talk to you for a
17 moment.

18 This whole concept for the design of the
19 proposed Laredo Race Park was a melding of two proven
20 ideas that have worked here in the State of Texas. The
21 grandstand building, as it was mentioned to you
22 earlier, was based on the size and the general
23 configuration of the track and the grandstand
24 facilities in Harlingen, while the backside facilities,
25 scaled appropriately for a Class 2 track and the number

1 of entrants and racing days in Webb County, emulates
2 almost exactly what we have done at Sam Houston Race
3 Park.

4 I'm going to focus, if I might, for a few
5 minutes on the main floor of the grandstand building.
6 It is about 75,000 square feet in area, the total
7 building being about 120. The second level is a little
8 over 40,000 square feet. And there are a couple of
9 intermediate levels that house a kitchen and a lounge
10 and some auxiliary functions that comprise the
11 remainder of the area.

12 MR. VANMIDDLESWORTH: Your Honor, this is
13 a little hard to read. I have better copies.

14 MR. WILSON: I'm glad to know it's hard
15 for you to read, too, because I couldn't see it.

16 What we have done is designed a facility
17 that's about 420 feet in length and it is about 178
18 feet in depth, 180 by 420 roughly. The front portion
19 of it facing the track, which is this section here,
20 this 60-foot-wide swath is where the fixed seating, the
21 table seating, and the counter seating is handled.

22 The back portion of it, back toward the
23 parking lot and the entry, is the part where we have
24 the concessions, we house the -- some of the mutuel
25 lines, bars, TV lounges, toilet facilities, then also

1 the office area, including the Commission office and
2 DPS office. Those are all located in a suite back over
3 at this one side immediately off the main entry.

4 The second level is accessed as you enter
5 into this either via stair, a pair of escalators, or
6 elevators that are located directly in front of you so
7 that confusion as to where you're headed when you come
8 into the facility is minimized. It's blatantly obvious
9 to you.

10 You enter the facility at a point -- for
11 a reference point, we'll call the racing surface
12 elevation zero and we'll talk about everything being
13 relative to that. You enter at a point 13 and a half
14 feet above the racing surface so that you have an
15 elevated grandstand type view down to it. As the
16 seating tiers down in the various configurations, it
17 goes down an additional nine feet so that you have
18 vision over the head of the people in front of you
19 unobstructed to the track.

20 The sight lines on the site plan have
21 been designed so that the entire track from the chute
22 on one side to the chute on the other side is
23 unobstructed and the elevations work for the sight
24 lines that we have here.

25 We have also made sure that we

1 accommodated the handicapped. We have access to all
2 the various seating levels as well as to the apron of
3 the track via ramps and stairs.

4 When you enter the apron of the track,
5 you're still four and a half feet above the surface; so
6 as people queue up outside to watch the live racing in
7 the evenings and during nice weather, they still have
8 this elevated, over the head of the person in front of
9 you view of the racing surface and the activity that's
10 going on there.

11 At the north end of the facility, back in
12 this area, is the paddock area. The paddock area is
13 tiered in an amphitheater sort of way so that the
14 patrons can come step down in front of each other with
15 a view of the saddling that's going on. The bottom
16 level of the paddock area is about six feet above the
17 racing surface. The paddock itself is about four feet
18 above the racing surface. And the horses would be led
19 down a path with a very gradual ramp onto the racing
20 surface itself.

21 This also will double as a venue -- a
22 possible venue for concerts. You can set the stage up
23 on the paddock level itself, have elevated tiered
24 seating going back up to it.

25 The exterior wall facing the racing

1 surface, which in this case would be the east wall, is
2 a 17-foot-high mullionless glass wall. There are no
3 frames in it. It's very similar to the wall that you
4 see at Sam Houston Race Park and other first-class
5 facilities.

6 The top level, what we're calling the
7 clubhouse level has, again, a 400-foot-long glass wall
8 so that patrons in there can see what's going on. It's
9 also mullionless and it's nine feet high. So you get
10 the full height of this room in glass facing the
11 track.

12 We think that it's a first-class facility
13 in every respect. We think that it addresses the
14 comfort, the safety, convenience, and we think the
15 entertainment of the patrons that are going to visit
16 it. And we're equally confident that the backside
17 facilities will handle the needs of the horsemen and
18 the horse owners and their staff as well.

19 So I thank you for the opportunity to
20 visit with you.

21 VICE-CHAIRMAN RUTHERFORD: Mr. Wilson?

22 MR. WILSON: Yes.

23 VICE-CHAIRMAN RUTHERFORD: Where is the
24 simulcast parlor here?

25 MR. WILSON: The simulcast takes place,

1 Commissioner -- there are TV's at all the tables, TV's
2 on the counters, TV's suspended --

3 VICE-CHAIRMAN RUTHERFORD: So in the same
4 building.

5 MR. WILSON: It's in the same building in
6 all of this open area, including the VIP area.

7 VICE-CHAIRMAN RUTHERFORD: One other
8 question. If we got alternative gambling like VLT's,
9 where would you put it on the racetrack?

10 MR. WILSON: Probably it would happen on
11 that second level, the clubhouse level. There's 40,000
12 feet up there, Commissioner.

13 VICE-CHAIRMAN RUTHERFORD: I like the
14 glass where you can see the horses saddle.

15 MR. WILSON: I do, too.

16 COMMISSIONER CABRALES: Mr. Wilson, one
17 quick question.

18 MR. WILSON: Yes, sir.

19 COMMISSIONER CABRALES: Whose job was it
20 on the team to determine whether Laredo could generate
21 enough traffic to actually take advantage of this
22 beautiful facility that you've planned out?

23 MR. WILSON: It was not mine, I can tell
24 you.

25 COMMISSIONER CABRALES: Do you know who

1 it was?

2 MR. VANMIDDLESWORTH: We'll speak to
3 that.

4 COMMISSIONER CABRALES: Okay. Fine.
5 Thank you.

6 MR. WILSON: Any other questions?
7 Thank you again.

8 MR. VANMIDDLESWORTH: I will speak to
9 that. I would note that this is -- it's been suggested
10 in some of the briefs that this is a posh, overbuilt
11 facility. You know, Retama cost 80 million 15 years
12 ago. Sam Houston cost a hundred million. Lone Star
13 cost -- this costs 30 million today. This is -- that's
14 the same facility you have at Valley Race Park. This
15 is not an overbuilt facility. This is a nice
16 facility. People will want to come here. But it's not
17 overbuilt.

18 It does have a 120,000-foot
19 air-conditioned grandstand area where you can watch
20 races through those big glass panes, compared to no
21 area that's air-conditioned where you can watch races
22 on the other proposal. We've got 1500 indoor seats.
23 As you can see, there's a place where you can have
24 dining and watch the race. You can sit at a bench.
25 You can work on your form there. And we've got it set

1 up like a first-class racetrack should have it.

2 You've got to have people -- especially
3 if you're going to have races in July in Laredo or
4 January anywhere, you've got to have people have the
5 ability to watch a race from a place that's either
6 air-conditioned or heated. We think it is absolutely
7 untenable to expect folks to do anything else if you
8 really care about live racing. That's why we made that
9 investment. We think that that investment is probably
10 the best money we will spend on this facility because
11 that's what will get people out. If we didn't make
12 that investment, we don't think we'd get many people
13 out. We think the investment in the private lounges
14 and rooms and parties and so on also will pay off.

15 So this is an area that is, as the
16 examiners or administrative law judges noted, a huge
17 distinction between the two proposals and a clear
18 choice about the dedication to a real live racing venue
19 where fans will use it as a destination. This is the
20 only racetrack in Texas south of Retama. So there's a
21 big area for people to come to. And that includes
22 Nuevo Laredo and Mexico. We want people to see this as
23 a destination, a spot to come to, a spot to spend a day
24 at or an evening at. And the only way you can do that
25 is give them first-class facilities. Mr. Bork knows

1 that because he's done this before. And that's why we
2 have the type of proposal that we do.

3 CHAIRMAN ROGERS: Just let me understand
4 one thing. So all the time you're open, live racing or
5 otherwise, for just simulcasting, you are air
6 conditioning 120,000 square feet. So you do not have a
7 smaller simulcast area that runs more efficiently. You
8 have the whole thing open every day all day?

9 MR. VANMIDDLESWORTH: I'm going to ask
10 Mr. Bork about that. And I know that they have this
11 issue about --

12 CHAIRMAN ROGERS: That just seems to be
13 hugely inefficient to me.

14 MR. BORK: It's zoned. It probably would
15 be at least four zones. The top level would be
16 probably two zones, that you only air condition the
17 portion that you might be using on that day. It's the
18 same thing we do at Valley now, the same thing we do at
19 Sam Houston. If we're not using a particular area of
20 the building, we don't have the air conditioning on; or
21 if we have it on, it's very low. And even on the first
22 floor, most of the simulcasting would be on the -- as
23 you're looking at it, the left-hand side of it; and the
24 other side would not -- would only be opened up if
25 there's other events going on.

1 CHAIRMAN ROGERS: Just wondering.

2 MR. BORK: So it cuts it way back,
3 probably to at least four zones.

4 MR. VANMIDDLESWORTH: It has not been an
5 issue at Valley Race Park or, as far as I know, Retama
6 or any of the other places that have adequate
7 grandstands and then have areas that are zoned.

8 COMMISSIONER CABRALES: Let me ask you a
9 quick question.

10 MR. VANMIDDLESWORTH: Yes.

11 COMMISSIONER CABRALES: You've made the
12 comparison of this facility to what you have at Valley
13 Race Park in Harlingen. How big is the area that
14 you're basing your numbers on in population for this
15 facility versus the area in Harlingen that I guess you
16 cover with that track?

17 MR. VANMIDDLESWORTH: I may have to get
18 back to you on that after a break. I'm not sure if the
19 population numbers are in the record for the two
20 areas. But I want to confirm that and not tell you
21 something that's not in the record.

22 COMMISSIONER CABRALES: And there's a
23 follow-up to that and maybe you can get back to me on
24 this as well. The reason why I ask that question is
25 I'm looking at the impact study that Innovation Group

1 prepared for Valley Race Park with respect to Hidalgo
2 County. And one of the things they said with regard to
3 Valley Race Park was that the facility is larger than
4 necessary for the current level of business, making it
5 operationally inefficient. And that's one of the
6 issues that gets brought up. And I don't want to talk
7 about Hidalgo obviously. That will come up later.

8 But my concern here is: How do we know
9 population-wise that you're not walking into that same
10 situation where you're building more facility than the
11 area is going to be able to actually absorb and use and
12 make profitable in Laredo? And it sounds like that's
13 the situation you've got in Valley and you're taking
14 Valley and superimposing it in Laredo.

15 MS. GIBERSON: We have a 10-minute
16 warning. 10 minutes remain.

17 MR. VANMIDDLESWORTH: I'm going to be a
18 little pressed for time, Your Honor.

19 The Valley Race Park facility, we
20 believe, is appropriate; and Mike Vitek, who's the
21 director of Valley Race Park, can answer that
22 question. If you'd like, I can direct you to him now
23 or I can wait for a question-and-answer session.

24 COMMISSIONER CABRALES: I'm looking at
25 their own consultant's report talking about operational

1 inefficiency and I'm just wondering if you're walking
2 into that same situation here.

3 MR. VITEK: Commissioner, Mike Vitek.
4 I'm the general manager of Valley Race Park.

5 That report and that comment -- and it's
6 a very good point -- is related to the simulcasting
7 operation and where the facility is oversized. And
8 again, the way we run the Valley right now is we shrink
9 the size of the simulcasting area down to what's needed
10 on the day. So on a Monday there's a very small area
11 open. On a Saturday much more of the facility is
12 open. And I believe that was directed to that
13 comment.

14 CHAIRMAN ROGERS: I think we better let
15 them have an opportunity to finish their deal and then
16 we'll ask the questions on our time, if that's okay.

17 MR. VANMIDDLESWORTH: However you want to
18 do it. I know we're a little ahead of schedule and I'm
19 hopeful that will allow as much discussion as you
20 want.

21 CHAIRMAN ROGERS: Yeah, but on this
22 40-minute program, I'd sort of like to get the
23 presentation all in this 40 minutes, if we could. Then
24 we'll get right to the questions.

25 COMMISSIONER CABRALES: And we've

1 probably used up five minutes. Maybe we'll let them
2 have five more minutes.

3 CHAIRMAN ROGERS: I think so.

4 MR. VANMIDDLESWORTH: My son is a high
5 school debater and he does something called spreading,
6 which involves talking about 600 words a minute. For
7 the court reporter's sake, I won't do that. I hope
8 you'll bear with me a little bit.

9 Facilities for racehorses are also an
10 area where the ALJ's noted there's a huge difference.
11 We propose -- as the ALJ's said, we propose more
12 extensive facilities for racehorses. I'm sorry.
13 Facilities for licensees is the next one, isn't it?

14 Facilities for licensees. The ALJ's say
15 "With respect to facilities for licensees, the ALJ's
16 find significant Laredo Race Park's commitment to
17 construct sleeping quarters and access to a track
18 kitchen for up to 300 grooms and other licensees."

19 This is real important if you're going to
20 have a successful live racing operation. There are
21 hundreds -- literally hundreds of people during a live
22 race meet that get up at 4:00 in the morning, that
23 groom the horses, that prepare them. And those folks
24 don't make a lot of money. They don't have a big per
25 diem. They can't stay at the downtown Hilton. That's

1 why tracks in Texas provide these facilities for them
2 at no charge.

3 They're not luxurious, but they allow
4 them to be right there near the horses. The alarm goes
5 off at 4:00. They walk out and start taking care of
6 their horses. That is very important for trainers,
7 very important for grooms, very important for owners of
8 horses to have that ability there. And the ALJ's so
9 found.

10 We provide showers, locked storage areas,
11 snack bar for jockeys. We met all the requirements,
12 plus we provide saunas and bunks for the jockeys.
13 Jockeys typically may not stay there, but they do need
14 to rest. Saunas and bunks may seem like a luxury, but
15 they're not for jockeys. We found it important and
16 that's why we proposed it in our proposal and they did
17 not propose it in their proposal.

18 Let me turn to facilities for
19 racehorses. "Laredo Race Park proposes more extensive
20 facilities for racehorses and provides more detail to
21 assess them than does LRP Group."

22 LRP Group's bare bones and not-to-scale
23 architectural plans proposed and the multiple
24 alternatives it has proposed renders the adequacy of
25 its facilities more difficult to assess than our more

1 straightforward and plainly adequate plan.

2 One key thing about what we're doing is
3 providing a year-round training center there. There
4 are several training centers in Texas but probably not
5 enough. It would be licensed by this Commission. It
6 would provide a place where horses can receive official
7 works, can get times so that they can enter in races,
8 provide training for jockeys and the horses, and be a
9 considerable advantage not just for this track but for
10 the Texas racing industry as a whole to have another
11 year-round training facility. That's one of the things
12 that Mr. Bork insisted be a part of this and it will
13 help tracks not only there but everywhere.

14 Our stall -- or the stalls are 10 percent
15 larger than they have to be, and we think that's an
16 additional comfort and safety issue for the horses.
17 Theirs are the bare minimum.

18 You've been to a track. You know there
19 are hot walkers between the barns generally to allow
20 the horses to walk around. Our proposal had those in
21 them, had room for them. Their proposal had none. And
22 if you put in the number of stalls that they now say
23 they are talking about and you look at the plans, I
24 don't think you can find a place where they could put
25 hot walkers. Those are important for the safety of the

1 horses.

2 MS. GIBERSON: Five minutes.

3 MR. VANMIDDLESWORTH: Our plans showed an
4 isolation barn, a post-mortem area. Theirs did not.

5 We have 200 acres, which allows us to
6 have plenty of room for hot walkers. Plenty of room.
7 When Mr. Bork sent somebody to start looking at areas,
8 he said, "Get me 175 acres or more."

9 They have 125 acres. They bought closer
10 in to town. Land was more expensive. So they had to
11 get less acreage. That affects the horses. That
12 affects the facilities for the licensees. That's why
13 they only went with 240 stalls. Or one of the
14 reasons.

15 Financial stability and resources.
16 Again, the administrative law judge -- law judges
17 concluded that "The evidence supported Laredo Race Park
18 on the issue of financial stability. The failure of a
19 number of the LRP partners to respond to cash calls is
20 troubling and somewhat undermines the assertions of
21 Steve LaMantia that the partners are committed to the
22 project and to the racing industry in Texas."

23 We have a long history of supporting the
24 racing industry in Texas. We've spent a lot on it. We
25 have a capital commitment from Maxxam. Sammy Jackson

1 noted that our efforts have been beneficial to racing
2 in Texas. And the staff found our revenue and expense
3 forecasts to be reasonable. And maybe on your time
4 I'll answer a little more about that if you have
5 questions about that.

6 In contrast, on the LRP Group, the
7 partners have no obligation to make any contribution at
8 all. You could get into this at the outset for \$2,000
9 and be a partner. No obligation to do anything after
10 that.

11 Increasingly, partners are not responding
12 to cash calls. We don't know how many since the close
13 of the hearing. We know that 17 didn't respond to the
14 September 2005 cash call. Some have responded to the
15 cash call by getting a check for \$1,349 from the LRP
16 Group in violation of the LRP Group agreement,
17 partnership agreement, as the ALJ's noted, and then
18 turning around and sending it right back to LRP Group.
19 So even those who have remained in, there's some
20 question about their commitment.

21 The ALJ's are clearly correct in their
22 statement at the bottom there that the partnership
23 arrangement of LRP Group is less stable.

24 I'm going to ask Mr. Mendiola to cover
25 the remainder of the items on the checklist.

1 MR. MENDIOLA: Thank you.

2 Mr. Chairman, Commissioners, good
3 morning. Lino Mendiola on behalf of Laredo Race Park.

4 I'm going to address the remainder of the
5 factors that were considered by the ALJ's with respect
6 to this examination. In fact, I'm asked to address
7 really the single factor that the ALJ's determined that
8 the LRP Group has in its favor. And that is location
9 with respect to the proximity to the center of Laredo.

10 We don't dispute that their site is
11 closer to downtown. But we do categorically dispute
12 that it is an advantage for a racetrack focused on live
13 racing to be close to downtown. The ALJ's said that
14 "The LRP Group site offers a more direct location for
15 the patron envisioned as a simulcast customer.
16 Although there are more streetlights and there can be
17 heavy traffic on U.S. Highway 59, the travel time to
18 and from the site is less than that of Laredo Race
19 Park."

20 The Laredo -- the LRP Group site is
21 closer to downtown, but that doesn't make it a better
22 location and it doesn't improve or promote the horse
23 racing industry in this state. Laredo Race Park has
24 200 acres. LRP Group has 125 acres.

25 Why are these types of factors

1 important? Laredo Race Park acted deliberately and
2 carefully to find a location that was a short distance
3 from the center of town. Mr. Bork testified that the
4 location was chosen so that people would come to the
5 track as a destination as opposed to building the track
6 where people and other traffic already are located.

7 It may be a result of inexperience in
8 building and operating a racetrack on the part of LRP
9 Group, but racetracks that emphasize live racing are
10 not typically located in the middle of cities.
11 Mr. Bork explained that racetracks are not generally
12 built in the middle of cities due to the cost of the
13 land, the lack of adequate and suitable space, and
14 potential problems with traffic congestion.

15 You may be aware of several highly
16 successful tracks that are far from city centers.
17 Consider Turf Paradise, for example, that's located
18 around 25 miles outside of Phoenix. When it was built,
19 that location was but barren desert. You can look at
20 the website and there's a whole description of the
21 location of Turf Paradise when it was built far outside
22 of town. They make it part of their story.

23 Also consider Philadelphia Park, a
24 racetrack that Mr. Bork had a hand in building.
25 Mr. Bork will tell you that when that racetrack was

1 built, it was little more than several cornfields and a
2 four-lane highway. Now it's a highly successful horse
3 track with live racing 12 months out of the year.

4 Think about this, too. None of the other
5 racetracks in Texas are located near a city center.
6 Retama, Sam Houston, Lone Star, even Manor Downs,
7 they're all located outside a city center and the
8 reason is obvious. Existing traffic.

9 Needless to say, if you want to build a
10 successful racetrack, it requires sufficient acreage
11 for barns, stalls, grandstands, simulcast facilities,
12 maintenance and service buildings, parking, and of
13 course the racetrack itself. And 125 acres, the size
14 of the LRP Group site, is simply too small to
15 accommodate the basic needs of live racing, namely an
16 adequate number of stalls.

17 During the course of this case every
18 party questioned the size of the proposed LRP Group
19 site. Commission staff expressed concern about the
20 size of Laredo Downs, the name of their park. Even LRP
21 Group's own architect stated the site is cramped. As
22 an example, the barns appear too cramped to
23 accommodate, as Mr. VanMiddlesworth mentioned, hot
24 walkers. They require at least 40 to 50 feet to
25 accommodate the diameter.

1 If you -- if all you really want to do is
2 build an off-track betting facility, then, sure, you
3 can build one of those in the middle of town. You
4 don't need the space for living quarters for horsemen.
5 You don't need all the stalls required by Commission's
6 rules. You don't even need a sufficiently sized
7 apron. All of those things take space. And if you
8 want space, you're going to have to locate a few miles
9 outside of town.

10 So that's why Laredo Race Park chose a
11 facility, a site, that is about 11 and a half miles
12 outside of the city center; two miles from a nationally
13 known horse training facility, El Primero; and five
14 miles from the Camino Columbia Toll Road that offers an
15 alternate way for horsemen to bring their livestock
16 down 35 and access the race site without ever having to
17 drive through downtown traffic.

18 The site is located in an area that's
19 ripe for development and Laredo Race Park's dedication
20 to building a first-class facility will help spur that
21 development.

22 Now let's talk a little bit about
23 traffic. As the ALJ's mentioned -- yes, sir.

24 CHAIRMAN ROGERS: We have actually
25 exceeded your time a little, but we're giving you a few

1 more minutes because of Commissioner Cabrales'
2 suggestion. But you'll need to come to a close pretty
3 quick.

4 MR. MENDIOLA: I'll come to a close
5 quick, Your Honor.

6 In a nutshell, on traffic, the ALJ's
7 identified that the four-lane highway leading to Laredo
8 Race Park is preferred over the two-lane U.S. 59
9 because it provides better ingress or egress.

10 Now, importantly, what the ALJ's noted is
11 that 59 may, in the future at some point, change number
12 of lanes but right now it's only two lanes and it
13 offers -- and look at this quote -- "a restricted and
14 possibly dangerous option for entering and exiting the
15 track".

16 Restricted, possibly dangerous. That's
17 based not only on the expert testimony but likely on
18 the observations that the ALJ's made themselves when
19 visiting the various sites.

20 That is an interesting observation,
21 restricted and possibly dangerous, in light of the fact
22 that the Commission is charged with a duty to protect
23 the health, safety, and welfare of race animals and
24 participants in racing and to safeguard the interests
25 of the general public as noted in the Texas Racing Act

1 at Section 3.021.

2 So a four-lane highway, the important
3 aspect there is that if you're hauling a horse trailer,
4 you have easier ways to access the facility; three
5 driveways at Laredo Race Park, including one driveway
6 that's specifically dedicated for the use of horsemen
7 and other licensees so they don't have to share the
8 same driveway with patrons.

9 At LRP Group, two driveways. It was
10 noted at the hearing that one of the driveways fails --
11 a technical term, but it fails to provide a, quote,
12 "adequate level of service". There's measurements
13 there that show the amount of delay and things like
14 that. So it just simply is inadequate.

15 I just want to touch quickly on two other
16 topics, which will take just a minute or so. And that
17 is the effect --

18 MS. GIBERSON: Time has expired.

19 CHAIRMAN ROGERS: We're going to let you
20 use the rest of your time in your 15 minutes.

21 MR. MENDIOLA: All right. I appreciate
22 it, Your Honor.

23 CHAIRMAN ROGERS: We gave you five more
24 there.

25 MR. VANMIDDLESWORTH: Thank you.

1 CHAIRMAN ROGERS: Okay. We're going to
2 take about a three-minute break before we move to
3 anything else, if that's okay. We stand in recess.

4 (Recess from 10:34 a.m. to 10:45 a.m.)

5 CHAIRMAN ROGERS: If we can get started
6 again, please.

7 Just to kind of start the expectation for
8 the next little bit, I would anticipate that the LRP
9 Group will take 40 minutes. And then we will have a
10 staff presentation of 25 minutes roughly, not to exceed
11 that. And then DPS will give us their background
12 information. That should take five to 10 minutes. And
13 then we're going to stop for lunch. And that will give
14 both sides an opportunity to kind of prepare whatever
15 rebuttal time they might need or any additional
16 comments that they may want to make.

17 We will also have another public comment
18 period because I didn't go through all of the cards
19 while ago. I only picked up one side of those. So we
20 will have another opportunity for those people who sign
21 up for public comment that are not on one side's group
22 or -- or one side or the other directly involved
23 probably just before the rebuttal time. So that's kind
24 of the expectation that we would have here presently.

25 Okay. Let's --

1 VICE-CHAIRMAN RUTHERFORD: Mr. Chairman?

2 CHAIRMAN ROGERS: Yes.

3 VICE-CHAIRMAN RUTHERFORD: When can the
4 Commissioners ask questions?

5 CHAIRMAN ROGERS: I think what we might
6 want to do is -- and I'll leave this open to you all.
7 I would think that maybe we get the 15-minute
8 rebuttal. We get it all out. And then it's kind of
9 our time, if that suits you all.

10 Okay. Let's call the LRP Group to make
11 their presentation.

12 UNIDENTIFIED SPEAKER: We need a minute
13 to set up. I'm sorry. We didn't know that would be
14 the order. We apologize.

15 CHAIRMAN ROGERS: No, no. Take whatever
16 time you need and we'll start when you're ready.

17 For the court reporter, I will tell you
18 Jean furnished us some snacks so we can really foul up
19 your transcript while we're messing with the boxes and
20 foul up the microphones.

21 Are we ready?

22 MR. MOLTZ: Maybe I misunderstood. This
23 is our presentation as opposed to our rebuttal,
24 correct?

25 CHAIRMAN ROGERS: This is your

1 presentation. This is your presentation time; and then
2 after we've heard all the presentations, then we will
3 get to the rebuttal.

4 MR. MOLTZ: Thank you.

5 Thank you, Mr. Chairman, Commissioners.
6 My name is Bill Moltz. And I'm here on behalf of the
7 LRP Group. And pursuant to our procedure here, I
8 will -- I will limit my discussion, to the greatest
9 extent possible, to our particular track without a lot
10 of comparisons to Laredo Race Park which we've been
11 asked to save for our rebuttal and I intend to try to
12 honor that request.

13 First, I would like to point out, for the
14 benefit of the Commissioners, just who LRP Group is in
15 case some of you all don't know that. The PFD was not
16 real clear on that.

17 LRP Group is a partnership among what is
18 primarily people in the horse business. I'd just like
19 to go down the list. When we hear talk about the LRP
20 Group doesn't have experience, they're not -- they
21 don't know what they're doing in this area, let me just
22 go down some of the people that are members of this
23 partnership.

24 First you've got the Straus Trust, which
25 is Joe Straus. He's the founder of Retama Park,

1 chairman of Retama Entertainment Group. And despite
2 what was said earlier about not having built a track,
3 Mr. Straus was right in the middle of building Retama.

4 You've got Paul Bryant, who's a principal
5 in Gulf Greyhound, Bluffs Run Greyhound, Coeur d'Alene
6 Race Park, which, by the way, he was involved in
7 building all three of those parks. You've got Sam
8 Phelps, also a principal in Gulf Greyhound, Bluffs Run
9 Greyhound, Coeur d'Alene Race Park.

10 You've got Christopher Hall, a principal
11 stockholder in Call Now, Inc., that, as you probably
12 know, is the principal debt holder for Retama Park and
13 involved heavily in Retama Park. You've got Tom
14 Johnson. He's the president of Call Now, also a horse
15 owner. You've got William Allen, the former CEO and
16 another principal shareholder in Call Now, also a horse
17 breeder, horse owner.

18 You've got Dr. Charles Graham, who I
19 suspect you all have heard from before and know very
20 well, president of the Texas Thoroughbred Association,
21 Texas Quarter -- or former president -- former
22 president of the Texas Quarter Horse Association, a
23 renowned veterinarian, and has appeared before this
24 Commission on a number of issues.

25 You've got James Helzer, the president of

1 Texas HBPA, also a horse owner and breeder; Ted Abrams,
2 vice-president of Texas HBPA, horse owner and breeder;
3 George Wolff, a Thoroughbred owner and breeder; Larry
4 Christopher, former chairman of this Commission,
5 current president of the Texas Thoroughbred HBPA, also
6 a horse owner, Silver Creek Racing; and then Lisa
7 Medrano from Retama, the CFO of Retama; Bob Pollock,
8 general manager of Retama; Steve Ross, director of
9 simulcasting at Retama; Doug Vair, director of
10 publicity at Retama; Larry Craft, director of racing at
11 Retama; Bryan Brown, CEO of Retama Entertainment Group,
12 who, by the way, I will ask to come up here and tell
13 you about our track more specifically, the LRP Laredo
14 Downs; and then Gordon and Robert Johnson, who have
15 been heavily involved in horse racing, at least from a
16 legislative end of it, very familiar with the business,
17 very involved.

18 And I bring that up just to let you know
19 who LRP Group is, to put some faces to that applicant.
20 This is not some, you know, thrown-together deal. This
21 is horsemen that are putting this together, well-known
22 horsemen.

23 And also a primary owner in this is a
24 partnership called -- or it's Muy Buena Suerte. It's
25 basically the LaMantia family from South Texas. Steve

1 LaMantia, who is the president of LRP Group, lives in
2 Laredo, is a businessman in Laredo, a very successful
3 businessman in Laredo, deals daily with the
4 entertainment venues in Laredo as a -- they are
5 involved in the beer distributorship down there. They
6 know entertainment. They know the market. And when
7 you combine people who know the market, know
8 entertainment in South Texas, along with horsemen,
9 that's LRP. Quite qualified, both from knowing the
10 local market and from horsemen.

11 Now let me just briefly show you where
12 these tracks are in the Laredo area just to kind of get
13 some slight orientation. And again, these maps here
14 are all out of the record in the proceeding. I don't
15 think they have exhibit numbers on them, but they're
16 there somewhere.

17 This is the Laredo city limits around
18 here, if you can see this orange area. There's
19 Interstate 35 coming down here. This map has marked on
20 it the various amenities, the police, fire, hospital,
21 lodging, things like that. You can see, as is typical,
22 that you've got all of these things in this area which
23 is Laredo proper.

24 LRP Group's site is right here on Highway
25 59, close proximity to Texas A&M University over here,

1 Laredo Entertainment Center. There's the airport.
2 There's parks in here. There's lakes. I forget what
3 it's called. There's a lake right there. A lot of
4 activity, residential areas, basically -- not
5 physically in the middle of these things but right on
6 the edge of them where it offers easy access.

7 Laredo Race Park, on the other hand, you
8 find it out here on Mines Road. You can see there's
9 really nothing out there. This right here, however, is
10 a heavily congested commercial area. Basically what
11 happens is trucks come in from Mexico and currently
12 they're not allowed to just drive all the way up
13 through the United States because of transportation
14 regulations.

15 So what they do is they come to these
16 international bridges and they come over here to this
17 warehouse area and they off-load hundreds and hundreds
18 of trucks a day. They come here. They off-load. And
19 then U.S. carriers come down here and pick it up from
20 these warehouses and take it up north up 35. And you
21 see those, truck after truck after truck, coming up
22 Interstate 35. Just go down in Austin anywhere. You
23 see them coming up there one after another. Here's
24 where they're coming from. Here's 35. They're picking
25 up stuff right there, right where you have to go

1 through to get over to Laredo Race Park.

2 The reason I bring this up is to show
3 what the examiners or ALJ's were speaking of when they
4 talked about the superior location.

5 Now, you've heard that successful
6 racetracks are all located out in the country
7 somewhere, as they are; and I'll tell you that -- well,
8 I don't need to tell you. You know that's not
9 correct. You look at racetrack after racetrack.
10 Churchill Downs, even Sam Houston, Retama, they're
11 all -- they may not be right in the middle of downtown,
12 but they're not out in the country either. The one
13 exception to that that was brought up, Turf Paradise
14 was built out in the country, basically financially
15 didn't make it, had big problems.

16 It is very important. And that is what
17 the LaMantias -- Steve LaMantia knew when they were
18 finding this site as opposed to building -- or
19 proposing to build a facility out here -- and which I
20 might also mention, but I don't want to get into any
21 detail unless there's questions. Right across this
22 road, this is all a permanent tick quarantine zone
23 along here; but they're right across the road from it.

24 We feel that that site is appropriate.
25 And that's just sort of an overview of where we are,

1 what the site is, and who the applicant is.

2 Now, I'm not going to get into any great
3 detail about our application and even less, if any,
4 about Laredo Race Park's application. That's not what
5 I'm supposed to be doing here right now. I'll say that
6 the purpose of this proceeding was to determine whether
7 or not these applicants were qualified and whether or
8 not they were building a facility or proposing to build
9 a facility that complied with the Texas Racing Act and
10 the rules of this Commission.

11 And what the ALJ's have determined -- and
12 while we don't agree with every one of their
13 subconclusions in there, what they determined
14 ultimately is that both applicants are qualified. Both
15 applicants are qualified -- well, let me back up on
16 that. With one major exception, Laredo Race Park is
17 qualified.

18 Now, I don't think that we can get up
19 here and argue with a straight face -- and I would
20 suspect that -- I was a bit surprised what I heard this
21 morning, argument that Retama Entertainment Group, who
22 is operating Retama and will be operating this
23 facility, is not qualified to run this racetrack.

24 I think both Mr. Bork and his team and
25 Mr. Brown and his team know how to run racetracks. And

1 I'm not going to tell you they don't. They can each do
2 that. The tracks both comply with the requirements of
3 the act. And our bottom line on this is that we're
4 both qualified to operate a track.

5 Now, Laredo Race Park has one major
6 problem. That is this five percent rule. And I'm not
7 sure this is appropriate to address right now; but I
8 will address that the ALJ's have made a determination
9 on that, that basically it applies to licenses as
10 opposed to just physical facilities.

11 Now, this morning we received an informal
12 letter opinion -- I wouldn't even say it's an opinion.
13 It's not called an opinion. It's not an Attorney
14 General's opinion. It's a letter from somebody in the
15 Attorney General's office written in response to a
16 letter that went in five days ago obviously prepared by
17 Mr. VanMiddlesworth. It went in five days ago and then
18 you get a quick off-the-cuff response.

19 This is not binding on this Commission.
20 This means really nothing. This is an opinion of
21 another lawyer. If you want to wait five minutes, I
22 can go get you five more lawyers to come tell you
23 something different.

24 The way an Attorney General's opinion
25 works is you publish the fact that there's an opinion

1 been requested. People submit briefs on that. The
2 Commission has an opportunity to weigh in on what it
3 should be. And it's a six-month process of coming out
4 with considering the law, considering the impacts,
5 giving deference to this agency, a number of legal
6 things. And then the Attorney General issues an
7 opinion, which does have an impact on this agency.
8 This does not. This is five days worth of "This is
9 kind of what I think based on your one-sided letter
10 here." I think you ought to give it the consideration
11 it deserves, which is just about nothing.

12 But beyond that, our position is that
13 you've got two applicants who are proposing facilities
14 that meet your requirements. And the ALJ's stated in
15 their presentations, and in their PFD to a lesser
16 degree, that there is insufficient evidence with
17 respect to this particular marketplace.

18 And that's true. There was basically
19 no -- I won't say no, but I'll say very little evidence
20 and most of it in response to questions from the ALJ's
21 themselves as to two tracks in this market. It was not
22 addressed by either party. It just -- it wasn't an
23 issue that the parties addressed, at least not to any
24 significant degree. And there was a reason for that.
25 But that's not what this was about.

1 And our position here is that LRP Group
2 is qualified. LRP Group is proposing an acceptable
3 facility. LRP Group is proposing a facility that has
4 been reviewed and is participated in by the horsemen of
5 Texas. It's in a good location. And that LRP Group's
6 license ought to be issued.

7 Now, to the extent you can say the same
8 thing about Laredo Race Park, then perhaps you ought to
9 issue their license, too. That's up as a policy
10 decision for this Commission. But our position is we
11 deserve to have a license. There's no reason in the
12 world why we shouldn't have a license. And we request
13 that the Commission act on that and grant the license
14 today.

15 There's nothing holding LRP Group's
16 application up. We don't have these five percent rule
17 issues hanging out there, which, by the way, I'll
18 mention that has been around for like three years now
19 and we keep hearing -- the first thing we filed in this
20 case was a motion to dismiss the application because of
21 the five percent rule and we heard, "Well, we're going
22 to sell it before the Commission meeting. We're going
23 to sell it before the Commission meeting."

24 We've heard that dozens of times through
25 this three years. You can imagine how often this came

1 up. Now here we are at the Commission meeting and no
2 sale.

3 And I would also mention that a sale in
4 and of itself is not sufficient. It's the substance of
5 the sale and the five percent rule. A sale, you can --
6 it has to do with the qualifications of the buyer, not
7 the result on the seller, which is what we're talking
8 about here.

9 Now, let me quickly go into the history
10 of this Commission with respect to considering
11 opposition because there's more than one facility in an
12 area.

13 Laredo Race Park would have you believe
14 that that's never been done before. You always
15 consider that. Well, that's just not the case. The
16 Retama permit was -- if you recall, those of you that
17 were here then, was opposed by both Bandera and Manor
18 based on market. Rejected. The Gillespie permit was
19 opposed by Bandera and Brady based on the same issues,
20 not enough horses, not enough market. The Commission
21 didn't accept that argument.

22 Austin Jockey Club was opposed by Manor.
23 The Commission didn't accept that argument. And back
24 in '94, when Lone Star was trying to put the -- was
25 competing for the Class 1 license across the street

1 from another applicant, Trinity Meadows opposed that
2 based on the same thing. The Commission rejected
3 that.

4 The one case that they cite for not
5 issuing two licenses is the Squaw Creek case. Now, for
6 those of you that were here and remember, I represented
7 Lone Star in that particular case. That's not what
8 that case was about. In fact, there was a finding of
9 fact -- we had a lot of discussion at that hearing
10 about what the Dallas market would stand and wouldn't
11 stand. Our position on behalf of Lone Star was you
12 can't have two tracks in this market. And the evidence
13 supported that.

14 And we came in front of this Commission
15 and the ALJ's proposed, in a proposal for decision like
16 you have here today, a finding of fact that replaced
17 the six of them that I had proposed with one summary
18 that said, quote, "The Dallas-Fort Worth market is not
19 capable of supporting two racetracks the size of Squaw
20 Creek and Lone Star."

21 If you recall, the Commission took that
22 finding of fact out of the order. That's the only
23 change that was made to that order, saying we're not
24 going to decide who in this market is going to get the
25 monopoly. That's something that would -- the staff

1 opposed it, saying that the sweeping nature of the
2 finding would be cited as precedent in succeeding
3 applications and could be used to attempt to tie this
4 body's hands in future applications.

5 Now, that was very prophetic. Here,
6 Laredo Race Park is attempting to use that case to tie
7 your hands when it didn't even get accepted. You know,
8 their argument is just plain wrong. It would have been
9 had this -- had the Commission acted to accept this
10 finding of fact, but it did not. It explicitly took
11 that finding of fact out of there.

12 So our position here is that the long
13 history of this Commission is to look at applicants and
14 see if they are qualified, see if they can run a
15 racetrack, see if the racetrack complies with the
16 rules, and issue the license if they can.

17 And to the extent there are competing
18 applications, let the market take care of that. Let
19 the horsemen take care of that. We don't mind having
20 two licenses down there. And it doesn't bother my
21 client at all. They know their facility is going to
22 work. They know their facility is appropriate. They
23 know the facility is going to have people coming to
24 it.

25 And honestly, we doubt if Laredo Race

1 Park, in the current climate, is ever going to build
2 their facility. And we've stated that again and again
3 in our proceedings -- I mean, excuse me, in our
4 pleadings in this case due to the cost of their
5 facility, where it's located, you know. And perhaps
6 they're waiting for some future act of the Legislature
7 that would change it, in which case, if that happens --
8 and I think we all know what we're talking about --
9 then two tracks is just fine in this area.

10 You know, we don't have a problem with
11 two licenses. We're going to build the track. We will
12 commit to build the track. I've had discussions with
13 Mr. Fenner about the amount of bond under your rules
14 and the schedule for opening the track. And we're very
15 close on that. I'd say extremely close. I thought we
16 were there, but apparently some small issue came up.
17 Nothing of significance. We just haven't had a chance
18 to talk about it.

19 The one other thing that I will mention
20 before turning it over to Mr. Brown to describe our
21 track for you here is the exemption from stall
22 requirements that has been requested for this
23 particular track. 240 stalls was requested. That was
24 based on Mr. Brown and the LaMantias' view of the
25 marketplace, what was necessary, how to operate it, how

1 not to overbuild the facility. It is true that the
2 staff as well as the ALJ's disagreed with that
3 particular requested exemption.

4 The rule would require 800 stalls. The
5 ALJ's proposed 600. Even Laredo Race Park's proposal
6 has 650 or something like that, in the neighborhood of
7 600. And as we said in the hearing, in our
8 application, and through the last three years, that we
9 presented 240 stalls because we thought that was
10 appropriate. Although we still believe that, if the
11 Commission doesn't agree with that, we'll put in the
12 600. There's evidence in the record of how you would
13 do that. We'll put in the 800 if you want us to go
14 that far. So basically that's a decision for the
15 Commission.

16 But we were -- we felt it was prudent and
17 appropriate to request the exemption up front and put
18 to the Commission what we thought was appropriate
19 rather than put in what the rule said and then come
20 back later for an exemption. It seemed a little bit
21 disingenuous to say, "Well, we're going to put in 800
22 or 600," and come back to you all two months later and
23 say, "Hey, how about 240?"

24 So we just put it up there up front. If
25 you don't agree with it, that's fine. The record also

1 contains plenty of information about how the other
2 alternatives, both 600 and 800, would work. And we're
3 fine with that.

4 And with that, unless there's some
5 questions for me particularly, I would ask Mr. Bryan
6 Brown to address you all briefly. And I've asked
7 Mr. Brown to basically tell you -- describe our track
8 to you.

9 MR. BROWN: Thank you, Bill. Actually
10 you asked me to say more, but you said half of what I
11 was going to say. So you cut down the need for me to
12 be up here too long.

13 I wanted to -- by the way, good morning
14 still. I wanted to kind of give you our inspiration
15 for our facility, the location, why we designed what we
16 designed. And basically -- I hate to say it; but
17 we're, in part, copying two different racetracks that
18 exist in this state.

19 Number one, as Mr. Shubeck will see when
20 he looks at our site layout, is a simulcast area, a
21 clubhouse area, that's very similar to that of Lone
22 Star Park. And for those of you who have been to Lone
23 Star Park -- I know many of you have -- to me and a lot
24 of us in the industry, the clubhouse, the simulcast
25 pavilion at Lone Star Park, is second to none. It is

1 outstanding. It does what I think every racetrack
2 operator would want it to in terms of providing a great
3 place for the simulcast patrons to enjoy races. And we
4 built and designed a -- or we designed a
5 25,000-square-foot simulcast pavilion which will seat
6 at least 350 people and made that the center focal part
7 of our site plan.

8 The second racetrack that we copied was
9 Fredericksburg, Gillespie County Fairgrounds. Many of
10 you also have been out there in July and August. There
11 is nothing more fun to me in racing -- I hate to say it
12 because I love Retama Park and I love the other
13 racetracks -- than a day, an afternoon, yes, in the hot
14 sun in an un-air-conditioned grandstand at the
15 Gillespie County Fairgrounds. It is an outstanding
16 place and it's an outstanding experience.

17 So we took those two tracks, took those
18 two concepts, and tried to marry them into one design,
19 which also, by the way, we feel is about as an economic
20 design as you can get, a common-sense design.

21 One of the things that one of our
22 partners, Joe Straus, said very early on is, "Don't
23 make the same mistakes that we did at Retama Park.
24 Let's learn from what we learned at Retama Park," Joe
25 having been involved from the ground up, "And let's do

1 something better." And I know he is very, very excited
2 about what we've designed.

3 On top of the -- on top of the clubhouse
4 and simulcast pavilion, we've designed, again, an
5 open-air grandstand that seats 1,035 people. We have
6 some benches along the track apron. We designed a
7 seven-eighths-mile track which Joe King was kind enough
8 to design for us.

9 Mr. King, I would say and I think many in
10 the industry say, is the preeminent track designer in
11 the country. I've heard estimates that he's designed
12 up to half the tracks that have been built in the last
13 several years in the country, not only in the United
14 States but in Europe, and he just got finished a rework
15 of Ascot, a very impressive turf track in Europe.

16 We also included in our initial design
17 250 stalls or barns with 250 stalls which is 48 stalls
18 per barn for five barns. The retention ponds, the
19 parking that you would see.

20 The other thing I want to point out --
21 and hopefully you can hear me when I do this. We felt
22 it was real important, particularly in Laredo -- and I
23 guess a third inspiration of ours was the Laredo Bucks
24 hockey team, believe it or not. We had an employee --
25 one of the very few employees we ever lost from our

1 marketing department went to work for the Laredo Bucks
2 before the application period opened up. And she would
3 call and correspond with us quite frequently about how
4 well they did. They averaged, the year we did the
5 application, 6100 fans. The San Antonio Rampage, which
6 is a higher level of hockey in San Antonio, that same
7 year averaged a little over 4,000 fans.

8 So it struck us that there was something
9 there about Laredo. And digging into it and speaking
10 with the LaMantias, it's really that there's not that
11 many entertainment options available in Laredo compared
12 to some of the other places that racetracks in Texas
13 exist.

14 So we're located pretty close, which
15 we'll go into a little bit more into our location, to
16 the Laredo Entertainment Center where the Bucks play.
17 But that kind of led us to say, okay, the Laredo Bucks
18 are doing what they're doing, attracting a lot of fans,
19 a profitable enterprise, and let's create not only a
20 horse racetrack, not only a great place to come and
21 enjoy simulcasting, but an entertainment area as well.

22 We drew on our initial site plan an
23 auditorium, a bowling alley, a skate park; but really
24 the concept is entertainment, whether it's restaurants,
25 bars, places to go dancing, what have you, make this

1 whole area an entertainment complex that the people of
2 Laredo would like.

3 By the way, if you want, we have
4 drawings, color drawings, of the -- I think everybody
5 has seen this at one point; but if it's helpful, we can
6 pass out one of these.

7 Mr. Moltz did a real good job talking
8 about the location. I wanted to amplify a little bit
9 on the partnership's goals with regard to location and
10 why we ended up where we did.

11 Mr. Steve LaMantia conducted the site
12 search, and his aim was to locate somewhere along I-35
13 or east of I-35. I don't believe he looked at much of
14 anything -- you can see I-35 right here. Our site
15 ended up being here east of I-35. I don't think he
16 looked at anything west of I-35.

17 He became particularly interested in this
18 general area because of where population, where retail
19 development, health clubs, the hospital, Laredo Medical
20 Center is located close by. Everything that is new in
21 terms of retail and housing developments -- I shouldn't
22 say everything. Almost everything that's new in terms
23 of retail and housing developments is located in this
24 general area and near the lake.

25 We found a piece which is pretty close to

1 the Laredo Entertainment Center right here, near the
2 hospital, again, near the airport and the lake owned by
3 Hurd Investments. It's part of about a 50,000-acre
4 ranch. And I made the mistake of asking Mr. Hurd if he
5 had enough land for us to build a racetrack on before I
6 knew he had 50,000 acres. That wasn't very smart.

7 So we're very excited about where we are
8 because it marries up the concept we talked about
9 earlier of building an entertainment-oriented facility,
10 supplying more entertainment options to the market,
11 which obviously we think are needed.

12 I want to talk very briefly about our
13 race dates. We've included in the package in the
14 application both a Quarter Horse meet, which we
15 scheduled from mid January to late February. We picked
16 that time period because there's no Quarter Horse
17 racing at that time. We felt it's important to give
18 the Quarter Horsemen some opportunities prior to Manor
19 Downs opening up. We scheduled a Thoroughbred meet in
20 the early January to late January time period, again, a
21 time period roughly where there's very few or no
22 Thoroughbred opportunities.

23 We included in our application 19 days of
24 Quarter Horse racing, eight days of Thoroughbred
25 racing. We should generate about two million dollars

1 of purse money. Depending on how the breed split would
2 work, that would give us about \$74,000 a day for purse
3 money which I think will be quite nice given the market
4 down there.

5 MS. GIBERSON: 10 minutes remain. 10
6 minutes.

7 MR. BROWN: We also included Texas-bred
8 and Texas-bred preferred racing as our main priority,
9 our main focus, in our racing card. Again, we want to
10 help out the horsemen of Texas, particularly the
11 Texas-bred, as much as we can.

12 With that, I think I'm done. I can
13 answer any questions or wait for later.

14 CHAIRMAN ROGERS: Are you through?

15 MR. MOLTZ: I believe that's -- there's
16 one thing that I wanted to clarify. I may have
17 misspoke. When I was stating that the Commission
18 doesn't consider competing racetracks, the exception to
19 that, which you all are probably all aware of, is where
20 the Legislature has limited the number of them. There
21 have been -- where you've had to decide between
22 racetracks, that's been in the Class 1 tracks and in
23 the dog tracks. But my discussion, you have not done
24 that previously with the Class 2's or 3's or 4 tracks.
25 I wanted to make that clarification. I did misspeak.

1 Other than that, we're available for
2 questions but have nothing further.

3 CHAIRMAN ROGERS: Thank you. This is --
4 by the way, I just want to congratulate you. This is
5 the first time we've ever had an attorney in front of
6 us that didn't take his full time.

7 Okay. I think let's hear from the
8 staff.

9 MR. FENNER: Commissioners, first of all,
10 I want to go back to something that came up very early
11 today, the discussion of the informal opinion offered
12 by the Attorney General. I was somewhat surprised by
13 that and we had no prior notice that that was going to
14 be coming in this morning.

15 And one of the reasons that I was
16 surprised about that was that the Harris County
17 attorney had already requested a formal opinion on this
18 very subject matter from the Attorney General. We
19 found that -- we learned of that. We notified the
20 Attorney General that this was a pending matter before
21 this Commission. The Attorney Generals formally
22 notified the Harris County attorney that they would not
23 offer an opinion on a pending matter. So I was
24 somewhat surprised to see an informal opinion today.

25 I've brought copies of the request for an

1 Attorney General opinion, my correspondence to the
2 Attorney General advising them it was a pending matter,
3 and then the Attorney General's letter telling me they
4 would not be offering an opinion.

5 Now, Commissioners, we're going into the
6 substance of the merits of the applications; and at
7 this point I want to defer to Ms. Fritsche, who
8 represented the Commission so ably before the State
9 Office of Administrative Hearings. She is certainly
10 well versed in the merits and in the law in this area.

11 And it is possible also, though I think
12 it unlikely, that you may want to go into executive
13 session strictly on a procedural issue, in which case
14 it would be better for me not to be participating in
15 the merits discussion.

16 So at this point I'll turn it over to
17 Ms. Fritsche.

18 CHAIRMAN ROGERS: You may actually have
19 to explain that to me in just a bit because I'm not
20 sure I quite understood that.

21 MR. FENNER: Yes, sir.

22 MS. FRITSCHER: Good morning,
23 Commissioners. My name is Rhonda Fritsche. And I'm
24 legal counsel for the Texas Racing Commission.

25 First off, I'd like to thank the ALJ's

1 for their hard work on this case. They tackled an
2 incredibly difficult area of the law and we appreciate
3 their efforts.

4 COMMISSIONER CARTER: Excuse me. Could
5 you move the mike a little closer to you, please?

6 MS. FRITSCHER: Is this better for you?

7 COMMISSIONER CARTER: Yes, that's
8 better.

9 MS. FRITSCHER: Okay. We want to thank
10 the ALJ's. We also want to thank the staff for their
11 hard work. It's been over three years of work in this
12 process and they've spent many hours working on this
13 and they've done a fantastic job. We also want to
14 thank the parties for their efforts and their
15 professionalism.

16 While other people have touched on the
17 highlights of the applications, I will be addressing
18 some of the areas that we consider to be problematic.

19 And first I would like to point out that
20 while Laredo Race Park was given an edge by the ALJ's
21 in the proposal for decision, both applicants were
22 deemed qualified to receive a license. So that I think
23 we need to keep in mind.

24 Also, we were presented today with the
25 informal advisory opinion that General Counsel Mark

1 Fenner just addressed. And again, that's an informal
2 opinion of an individual Assistant Attorney General.
3 It is not considered a formal binding opinion and it is
4 not the law. And as you saw, the Assistant County
5 Attorney -- County Attorney Mike Stafford had requested
6 a formal opinion and was denied by the Attorney
7 General's office. So at this juncture they do not want
8 to take up that issue.

9 As far as the two problematic areas for
10 Laredo Race Park, their first issue is ownership and
11 the violation of 6.06(h) of the Texas Racing Act.

12 The Texas Racing Act states that a person
13 may not own more than a five percent interest in more
14 than two racetracks licensed under this act. Staff has
15 always maintained throughout this process that even
16 though Maxxam and Laredo Race Park currently own Valley
17 Race Park and Sam Houston Race Park, we never precluded
18 them from applying for the third license as long as
19 they agreed to divest themselves of one of those two
20 interests prior to the awarding of the license.

21 We've tried to do that because we tried
22 to keep as many options open and available for the
23 Commissioners as possible so that they can award one,
24 two, or no licenses in this matter.

25 And it's been staff's position that a

1 license and a location have always been tied together.
2 We don't think that it's in the best interest of racing
3 to have paper licenses floating around and no live
4 racing connected with it. It's of no benefit to the
5 horsemen, the trainers, jockeys, or the industry if
6 people are just storehousing paper licenses.

7 And if you look at the definition in the
8 Texas Racing Act of a racetrack, it's a facility that's
9 licensed under the act for the conduct of pari-mutuel
10 wagering on greyhound racing or horse racing. So we
11 feel it's important that there's a physical site,
12 physical facility tied to the license, and that actual
13 live racing occurs.

14 But it's also within the purview of the
15 Commission to make a policy decision in this case and
16 to issue three licenses if it so -- if it deems that
17 it's appropriate.

18 Another issue of concern were ticks.
19 There's a history of fever tick infestation along the
20 border region. It's gone on since the cattle drives of
21 the 1800's. But we feel like this is a secondary
22 concern. Based on the expert testimony that was
23 supplied during the hearing process, if sufficient
24 preventative measures and maintenance occur, if they
25 game-proof double fence, if they provide crushed

1 granite, if they eradicate weeds, if they control
2 access to the sites, if the facilities are diligent in
3 this process, then we feel like the ticks will not be
4 as big a factor as they could be. We feel like this
5 should not be a reason to deny a license.

6 For the LRP Group, they simultaneously
7 requested an exemption from the stalls with the
8 submission of their application. They had initially
9 submitted a request for 240 stalls. However, LRP Group
10 has agreed to build whatever number of stalls the
11 Commission deems is appropriate.

12 The ALJ's had determined that a 600-stall
13 exemption was appropriate and the staff concurred in
14 that conclusion. But the exact number is also a policy
15 decision to be left up to you. Even though the rules
16 require -- 309.243 requires sufficient stalls to house
17 twice the number of anticipated starters for a week of
18 racing, we feel like a limited exemption might be
19 appropriate based in large part on the number of
20 ship-ins that are anticipated for the LRP meet.

21 A second issue for LRP Group is the Texas
22 Alcoholic Beverage Code conflict. As has been
23 reported, the LaMantia family currently owns a beer
24 distributorship; and for them to participate in any of
25 the other tiers, with the three tiers being

1 manufacturing, distribution, and retail, would be a
2 violation of the Texas Alcoholic Beverage Code.

3 But as was noted by the ALJ's in the PFD,
4 this should not be a bar to them being licensed. TABC
5 has a long history of negotiating agreements with
6 individuals regarding tier violations. In fact, they
7 gave several examples in the proposal for decision that
8 listed various arrangements that had been worked out
9 for tier violations. So we also feel like this should
10 not be a bar to awarding a license to the LRP Group.

11 For both applicants, their security plans
12 were reviewed and deemed -- and sufficiently clarified
13 and deemed satisfactory for both. Staff felt like the
14 applicants sufficiently clarified their security plans
15 and we didn't see any problem with those. Tote,
16 concession, and management contracts were reviewed and
17 determined to be satisfactory by the staff.

18 And at this time, if you have any
19 questions, I'd be glad to answer those. If not, what
20 we would like to do is introduce DPS and have them give
21 the report for you.

22 CHAIRMAN ROGERS: That would be fine.

23 MR. POERNER: Good morning. I believe
24 it's still morning. I'm Lieutenant Poerner with DPS
25 Criminal Intelligence Service down in San Antonio. My

1 group did the background on the Laredo Racing
2 Partners. We also have a DPS Criminal Intelligence
3 representative from the Houston area who did the
4 background on the Laredo Racing Park.

5 MR. FENNER: I'm sorry, sir. Would you
6 state your name?

7 MR. POERNER: It's Pat Poerner.

8 CHAIRMAN ROGERS: As a question, have you
9 filled out one of these?

10 MR. POERNER: No, sir.

11 CHAIRMAN ROGERS: Would you when you
12 finish, please?

13 MR. POERNER: Sure. Yes, sir.

14 We have no statement prepared based upon
15 the backgrounds, but we do stand ready to answer any
16 possible questions that you all might have based upon
17 the background investigations that we've conducted.

18 CHAIRMAN ROGERS: I guess the primary
19 question would be: Did you see anything in either of
20 the investigations that would disqualify someone from
21 having a license or holding a license?

22 MR. POERNER: No, sir, we did not.

23 CHAIRMAN ROGERS: I don't know as there
24 is any other question then. Thank you.

25 MR. POERNER: Thank you.

1 CHAIRMAN ROGERS: The only other thing
2 that we would have before lunch -- and we're running
3 really quite a bit earlier -- would be public
4 comments. And I may have missed someone here who has
5 something to say on this issue on Webb County that is
6 not a direct participant.

7 Is there any public comment?

8 MR. MOLTZ: Mr. Chairman, I don't have
9 public comment obviously; but I have been told that
10 there are some legislators that are taking a break from
11 the capitol to come over here and were -- and honestly,
12 I'm not sure which proceeding they want to be talking
13 about. But they were going to come over here at about
14 11:30. And I don't know if any of them are here yet.
15 Well, one is here. And I thought maybe we could, if
16 not wait a couple of minutes, let the ones that are
17 here speak. Then they're going to go back to the
18 session.

19 CHAIRMAN ROGERS: This would be the time
20 for them in public comment. So if someone would like
21 to come forward, you're welcome to.

22 MR. MARTINEZ: Hello. Thank you. Good
23 morning. My name is State Representative Armando
24 Martinez from District 39 down in the Rio Grande
25 Valley. And I'm mainly here to support the application

1 of -- by Valle de los Tesoros down in Hidalgo County.
2 I think it's much needed and I support this project and
3 I urge your consideration for that application to be
4 passed through.

5 So if there's any questions, I'll be able
6 to entertain those questions.

7 CHAIRMAN ROGERS: So you are supporting
8 the Hidalgo application --

9 MR. MARTINEZ: That is correct.

10 CHAIRMAN ROGERS: -- that we'll be
11 considering shortly.

12 MR. MARTINEZ: Yes, sir.

13 CHAIRMAN ROGERS: What is the general
14 public feeling in that area?

15 MR. MARTINEZ: I believe everybody
16 really, really does support this type of project. From
17 what I've gotten from my constituents in District 39 is
18 a lot of support for it. I've contacted several of my
19 constituents as well by phone who are in support of
20 this application and this project down there. And what
21 my constituents want is what I support. Therefore,
22 that's why I'm here to support this application and
23 urge your consideration.

24 COMMISSIONER BOYD: So you're here just
25 in support of your constituents. Is that it?

1 MR. MARTINEZ: And of the application as
2 well, yes, ma'am.

3 COMMISSIONER BOYD: Why would you want to
4 support the application, may I ask?

5 MR. MARTINEZ: Because I believe it's
6 positive for our district. I believe it's something
7 positive for the county. It brings -- it should bring
8 in a lot of revenue. And any way that we can bring in
9 revenue to the county and to the state, I think it's
10 positive for all of us. And if our constituents really
11 do like something like this, I think we should be able
12 to support what our constituents request.

13 CHAIRMAN ROGERS: Commissioner Adams?

14 COMMISSIONER ADAMS: Yes, sir. How many
15 other State Representatives are -- have constituents in
16 the Hidalgo area?

17 MR. MARTINEZ: There's three other State
18 Representatives, Commissioner.

19 COMMISSIONER ADAMS: So there's four of
20 you total that have --

21 MR. MARTINEZ: Yes, sir, that's correct,
22 a total of four.

23 COMMISSIONER CABRALES: Representative
24 Martinez, thanks for coming out and thanks for taking
25 time on your break. One quick question for you. Do

1 you think that the Commission ought to consider the
2 impact of that application on the greyhound facility
3 that is currently in place in your neighboring county
4 of Cameron?

5 MR. MARTINEZ: Well, the way I look at
6 it, Commissioner, is the fact that it's two different
7 venues. One is a greyhound park. One is a horse
8 track. They're two completely different venues. I
9 believe the constituency down in my district realize
10 that. And I have several constituents that go to the
11 greyhound park; and they have also voiced to me the
12 fact that if there was a horse track, they would go to
13 a horse track as well.

14 So I believe it's two different venues.
15 And if it was the same type of venue, I could consider
16 that as -- that would be a reason why to really look
17 into that application. It's two totally different
18 venues and that is why we support it.

19 Yes, ma'am.

20 COMMISSIONER BOYD: Representative
21 Martinez, would the potential fact that loss of jobs
22 with the greyhound track -- would that -- would that
23 enter into any of your constituency?

24 MR. MARTINEZ: Actually I believe that's
25 something else we need to look into. I mean, we can't

1 say right off that there is going to be a loss of jobs
2 or a potential loss of jobs because we haven't gotten
3 to that point yet. I think that it's --

4 COMMISSIONER BOYD: Do those people --
5 I'm sorry. I didn't mean to interrupt you. But do
6 those people fall within your constituency?

7 MR. MARTINEZ: Well, I'm sure if they do,
8 if some of those people do fall into that constituency,
9 I'm sure there's going to be jobs available at the
10 horse track as well. So I look at it as a way to
11 create more jobs instead of a way to cut jobs.

12 COMMISSIONER BOYD: So you don't know if
13 those people are within your constituency?

14 MR. MARTINEZ: I couldn't say that I do.
15 I couldn't say, yes, ma'am.

16 COMMISSIONER BOYD: Thank you.

17 CHAIRMAN ROGERS: Thank you.

18 MR. MARTINEZ: Yes, sir.

19 VICE-CHAIRMAN RUTHERFORD: 90 percent of
20 the revenue is going to come from simulcast parlors.
21 So you're really not going to gain any revenue. You're
22 going to have two crippled simulcast parlors. Have you
23 thought about that?

24 MR. MARTINEZ: No, I haven't. But what I
25 have looked at is the fact of the difference in venues

1 and the voice of the constituents. And that is mainly
2 what drives our decision to come up into speed is the
3 voice of the constituency.

4 VICE-CHAIRMAN RUTHERFORD: I wish there
5 was a way to have horse racing and dog racing at the
6 same track and only one simulcast parlor.

7 MR. MARTINEZ: Right. And I wish it
8 would be in Hidalgo County because that's the county I
9 represent.

10 CHAIRMAN ROGERS: Any other questions?
11 Thank you very much for coming today.

12 MR. MARTINEZ: Thank you for your
13 consideration.

14 CHAIRMAN ROGERS: Do we have any other
15 public comment? Come ahead, please.

16 MR. VILLARREAL: I have submitted my card
17 to the Commissioners. My name is Francisco
18 Villarreal. I'm known by many people as Pancho. I've
19 been Pancho all my life. I'm an attorney in South
20 Texas. I have recently moved to South Austin.

21 I've been involved in horse racing since
22 '87. One of the first pari-mutuel tracks was Manor
23 Downs. I was a student at the University of Texas at
24 the time. I wanted to be involved. I became a
25 pari-mutuel clerk so I could be part of it. And I have

1 followed pari-mutuel racing ever since and specifically
2 the effect of VLT's on racing.

3 And I read an article many years ago
4 about a gentleman that bought Delta Downs out of
5 bankruptcy, made lots of money when the slots were
6 introduced, and I had the idea of opening a track in
7 South Texas. Fortunately, I kept with my practice of
8 law. I know the LaMantia family. I have a familiarity
9 with Mr. Bork.

10 I'm here because I'm hearing one thing
11 from most of the people and they're all saying that you
12 have the opportunity from a policy-making standpoint to
13 grant all three licenses. And as a horseman -- and I
14 remember in a meeting one time with Jerry Windham,
15 Jerry Windham said, "Hey, I don't care who has a
16 track. The more tracks, the more times we're going to
17 have to race."

18 The Commission has to take into
19 consideration whether or not it's going to be
20 economically feasible for all of these tracks to be
21 built. We're not here fighting because we're going to
22 run or build tracks that are not going to make money.
23 We need unity in our industry and we need as many
24 people working together.

25 If this Racing Commission was to grant

1 all three licenses, then you would have more people
2 going to people like our legislators and asking and
3 making sure that we get the VLT's done. Right now I
4 have trainers leaving Texas, going to Louisiana,
5 wanting me to get Louisiana-bred horses. I have horses
6 in Oklahoma now. I'm having to pay extra money to have
7 them housed up there so I could have them
8 Oklahoma-bred. I still have horses in Texas, making
9 them Texas-bred.

10 I see a big future in that this is going
11 to be the first two or three years that we have the
12 VLT's and I'm confident that sooner or later we have to
13 have it done. And I'm familiar with a lot of the
14 Representatives that are going to come talk to you.

15 The one thing that I need to tell this
16 Commission is my understanding of the way the VLT bills
17 that are being submitted, it's going to limit the
18 tracks that can have VLT's to the existing tracks and
19 people with pending applications. And right now that's
20 who we have before you. I don't know of any other
21 tracks that have applications before the Commission.

22 But what we need from the Commission is
23 we need a decision to be made so we know who are the
24 people that are going to be holding licenses. And once
25 we have those people holding licenses, the legislators

1 can go and make their arguments about the fiscal note.
2 And 13 licenses are better than 10 licenses and that's
3 what we need and that's why we need a decision here
4 today. And that's why I'm asking the Commission to
5 please grant all three applications.

6 I don't think anybody has said that Sam
7 Houston Race Park doesn't deserve a license. I don't
8 think that anybody said that the LaMantias and all of
9 the horsemen that they have don't deserve a license.
10 They're qualified. It's all about fighting for your
11 market share. And there's nothing, from what I
12 understand, that's going to present -- prevent from,
13 say, Sam Houston Race Park getting the Laredo license,
14 either selling their Gulf Greyhound license and moving
15 that to another venue.

16 My concern is sometime in the future,
17 when we do have VLT's and we do have a great demand for
18 racing opportunities, no tracks are going to be built
19 because they can't share in the VLT money or that
20 creates other obstacles of whether or not the existing
21 tracks have to share some of their VLT money with the
22 new track.

23 Today is the opportunity to provide the
24 horsemen with the greatest opportunity in the future
25 for more tracks versus less tracks.

1 And as far as South Texas goes and
2 whether or not we want racing in South Texas, I don't
3 know if any of you all are familiar with Track
4 Magazine. I'm holding up the February 2007 issue of
5 Track Magazine. And I challenge you to go out there
6 and find any grandstand at any of the existing tracks
7 that are packed like this. And this is the Royal Shake
8 Em Futurity that's run down there at an unofficial
9 track at Las Palmas Downs.

10 The people have been asking and they're
11 always talking about the opportunity to have a track in
12 South Texas. If we can have a track in Laredo and a
13 track in McAllen, that's just going to create and grow
14 the business even more and I think it's a tremendous
15 opportunity. And I ask the Commission to use their
16 public policy and their policy-making decisions to
17 grant all three applications and for it to be done
18 today so we can now turn to the Legislature and make
19 sure we get VLT's and we get it done and we get it done
20 right.

21 CHAIRMAN ROGERS: Thanks for that.

22 VICE-CHAIRMAN RUTHERFORD: Mr. Pancho, I
23 want to say you're really enthusiastic and you must be
24 a great lawyer to feed all those horses.

25 MR. VILLARREAL: Thank you very much.

1 Any more questions?

2 CHAIRMAN ROGERS: Thank you.

3 MR. FENNER: Chair Rogers, we have three
4 more State Representatives who have shown up.

5 CHAIRMAN ROGERS: Okay. Representative
6 Pena?

7 MR. PENA: Good day to you all. My name
8 is Aaron Pena. I'm a Representative covering Edinburg,
9 Texas, parts of McAllen, and other parts of Hidalgo
10 County. I'm here, first of all, to speak on behalf of
11 the Hidalgo County application. I want to thank you
12 all for giving me this opportunity and for taking us
13 out of turn. We raced over here as quickly as we
14 could.

15 The LaMantia family, they are fixtures in
16 our community. They contribute to social causes. My
17 wife works for a nonprofit and they regularly
18 contribute to helping the underprivileged in our
19 community. These people are upstanding people and I'm
20 here to vouch for them.

21 This application means a lot to those of
22 us who live in South Texas. It is an economic
23 development tool for us. Our people enjoy this sort of
24 activity. And so I know you're probably going to hear
25 from a number of people, but I'm here on behalf of

1 District 40 in South Texas to tell you that we're in
2 full support of their effort. We would hope that this
3 committee would look favorably upon their application.
4 It means a lot to us. And I don't think you'll go
5 wrong with it.

6 With that, if you all have any questions,
7 I'll be glad to answer them. But we have a number of
8 other Representatives who are here present.

9 Thank you all very much.

10 CHAIRMAN ROGERS: Thank you very much for
11 coming.

12 MR. PENA: Yes, sir.

13 COMMISSIONER CABRALES: I just have one
14 question, Representative Pena. Thank you for coming
15 out. And I realize it's a bit of a trek to get up here
16 from the capitol.

17 In undertaking our responsibility with
18 regard to this application, would you expect us to
19 consider the impact of this application on your
20 neighbors to the east and the track in Harlingen, in
21 Cameron County?

22 MR. PENA: You know, sitting as a
23 Representative, we always have two -- we have a dual
24 role. One is to represent our districts and the other
25 is to represent the entire state. I take it that you

1 all probably have a similar role and that you have to
2 understand how it affects the rest of the state, our
3 neighbors as well.

4 But I will say that these people, this
5 fine family, they are upstanding citizens. Everything
6 they do in our community is top-notch. And I'm sure
7 that it will be a benefit to the entire community.

8 COMMISSIONER CABRALES: Thank you.

9 MR. PENA: To answer your question, yes.

10 COMMISSIONER CABRALES: Thank you.

11 MR. PENA: Any other questions?

12 CHAIRMAN ROGERS: Thank you for coming
13 down today.

14 MR. PENA: Thank you very much.

15 CHAIRMAN ROGERS: We appreciate your
16 input.

17 Representative Gonzales?

18 MS. GONZALES: Good morning.

19 CHAIRMAN ROGERS: Good morning.

20 MS. GONZALES: Thank you for taking us
21 out of turn. We appreciate it. And we did rush over
22 here as quickly as we could.

23 My name is Veronica Gonzales and I'm the
24 State Representative for District 41 which encompasses
25 most of McAllen and parts of Edinburg and Mission in

1 the Rio Grande Valley. And I'm here today to express
2 my support of the license application for Hidalgo
3 County.

4 As I'm sure you've already heard today,
5 the Rio Grande Valley is one of the fastest growing
6 areas, not only in the State of Texas but in the
7 nation. Being on the border, we get many Mexican
8 visitors from Reynosa, Monterrey, and other cities that
9 are nearby who come to our area on a daily or a weekly
10 basis and spend much of their money in our cities.

11 Just this last year 40 percent of
12 McAllen's gross national product came from Mexico. Our
13 mall, La Plaza Mall, is one of the busiest malls in the
14 entire nation next to the Mall of America. And while I
15 enjoy shopping along with so many, it's not our only
16 source of entertainment in the Rio Grande Valley and we
17 need more entertainment.

18 A racetrack that would be near the Dodge
19 Arena would, in my opinion, serve as a great
20 entertainment attraction not only for residents in the
21 Rio Grande Valley but Mexican visitors, the many
22 retired winter Texans that come to our area on a yearly
23 basis, and for the hundreds of thousands of
24 out-of-state folks that we expect to be visiting our
25 new convention center in McAllen, Texas. It would also

1 provide hundreds of jobs for people in the Valley and
2 no doubt would have a positive impact on our economic
3 development.

4 I don't personally know all of the
5 investors in this project, but I do know the LaMantia
6 family well. And I can tell you that I know of their
7 expert capabilities when it comes to running a
8 successful business. But it's more than that. The
9 LaMantia name carries with it not only a reputation for
10 business success but also for giving back to the
11 community in a very big way.

12 I don't know if you've heard this
13 already; but back in 2002 the LaMantia family started a
14 program called STARS, which is the South Texas Academic
15 Regional Scholars. And what they do is they provide
16 scholarships to millions of -- or not millions, but
17 millions of dollars to students who want to attend
18 college and make their college a reality for them.

19 They have brought names such as Clint
20 Black, Los Lonely Boys, Brooks and Dunn, Gretchen
21 Wilson to the Rio Grande Valley. And I know that they
22 would do the same with a racetrack in terms of making
23 it a great success.

24 Now, I realize that you have to consider
25 that, whether or not if you have a racetrack in Hidalgo

1 County, if it would be successful. And I can tell you
2 based on the reputation of the LaMantia family and
3 based on the way that they run a business, I have no
4 doubt that it would be a successful enterprise in the
5 Rio Grande Valley and I ask you to please look with
6 favorable consideration to this application.

7 And I'll be happy to answer any questions
8 you have.

9 COMMISSIONER BOYD: You're from that
10 area?

11 MS. GONZALES: Yes, ma'am. I live in
12 McAllen.

13 COMMISSIONER BOYD: I don't spend a whole
14 lot, but I do have friends that live in McAllen. What
15 is your opinion about these open grandstands that time
16 of year of racing?

17 MS. GONZALES: Excuse me?

18 COMMISSIONER BOYD: Without air
19 conditioning in the grandstands.

20 MS. GONZALES: Well, we're used to the
21 hot weather in the Valley; and I don't doubt that if
22 it's good entertainment, the people will come out. A
23 little heat has never hurt us.

24 COMMISSIONER BOYD: So that's never
25 stopped anyone.

1 MS. GONZALES: No, it never has.

2 COMMISSIONER BOYD: Thank you.

3 MS. GONZALES: Thank you all very much.

4 CHAIRMAN ROGERS: Thank you very much for
5 taking your time.

6 Representative Guillen?

7 MR. GUILLEN: Thank you. My name is Ryan
8 Guillen. I represent part of the Rio Grande Valley,
9 part of Laredo, and other rural parts of South Texas.
10 And today I appear here in favor of racetracks down in
11 South Texas.

12 And I am not from Hidalgo County and I
13 know that's where the proposed venue will be, but I'm
14 from the neighboring county. And over the past several
15 years I'll tell you that one of the top issues in my
16 district is whether or not we're getting more
17 racetracks and it's one of the most talked about issues
18 that I've come to and so I'm here in support of it.

19 I know that you all are contemplating
20 doing one thing or another with these racetracks, and
21 in South Texas this is a -- this is looked upon as
22 something that is -- people would do on a weekend,
23 every weekend probably. They love going out to the
24 racetrack. They'll come up to other parts of the
25 state. They'll go out of state. We've got many folks

1 who raise horses, who raise dogs, and I'm here to
2 recommend to you all that I think it will be a great
3 success both in Hidalgo County and in Laredo.

4 Those parts of South Texas are the
5 fastest growing parts of Texas and in the nation. And
6 I think that there's over 700,000 people in Hidalgo
7 County now, a huge increase over the last five or six
8 years. In Laredo, Laredo is the fastest growing city
9 after Las Vegas and so many people coming down there
10 and there's such an opportunity for such a center, such
11 an event, and so I ask that you all favorably consider
12 these tracks.

13 CHAIRMAN ROGERS: What county do you
14 actually represent?

15 MR. GUILLEN: I represent Starr County,
16 Zapata County, Webb County, and Duval County.

17 CHAIRMAN ROGERS: Okay. Any other
18 questions?

19 Thank you very much for coming down.

20 MR. GUILLEN: Thank you.

21 CHAIRMAN ROGERS: Representative Flores?

22 MR. FLORES: Thank you, Mr. Chairman.

23 CHAIRMAN ROGERS: Welcome.

24 MR. FLORES: Thank you, Mr. Chairman and
25 members. I'm here -- let me tell you a little bit

1 about myself. I chair the licensing and administrative
2 procedure committee on the House side and which is part
3 of the Texas Racing Commission. But today I'm here on
4 behalf of the residents of District 36 in South Texas
5 which encompasses the location of where the track is
6 being proposed and the application process is ongoing.

7 But I'm sure you've heard about economic
8 impact and you've heard about jobs and you've heard
9 about the impact that it's going to have to South
10 Texas. But I'm going to give you a different
11 perspective and talk to you a little bit about from the
12 horses industry.

13 We're not too concerned about what's
14 going on in the Thoroughbred industry because we have a
15 13-second passion in South Texas. We like to run -- we
16 like to run Quarter Horses. And even today we have --
17 we have no place to go even to train. And as you know,
18 the rules say you will have certain outs and you will
19 have and you will have. We don't have any place to
20 go.

21 And if you look at the number of horses
22 that are registered in South Texas at Retama, at
23 Houston, at Manor Downs, over 60 percent of those
24 horses are coming from South Texas. And we have to
25 trailer to Laredo or trailer to Manor in order to get

1 our outs and get our training in, which I think puts us
2 in a very unfair position. I mean, this weekend over
3 at Manor Downs, the winner, Mission, Texas, right in my
4 hometown, about two blocks down from my house are where
5 they train those horses.

6 So I want to add and I want to make sure
7 that you all fully understand that for years we have
8 been discriminated against because we have nothing in
9 the area. You compare the track to what is it going to
10 do because it's open stands. It's not any different
11 than what you have at Manor Downs. I like to call it
12 something else, but -- I think everybody is giggling in
13 the back because they know what I'm talking about. It
14 ain't no different, if you go to that facility, that --
15 I mean, stables that I own and that other people own
16 are better than what's out there. The facility, the
17 simulcast area.

18 I mean, I think that the time has come
19 that you give us an opportunity, that we keep our
20 horses, that we train our horses, and that we have the
21 race days that are available. And do not be surprised
22 if we come before you and we say we want more race days
23 because we have the area that is -- that we're just on
24 the northern end and we just happen to have a river
25 between us and Mexico, that we're going to get that

1 whole population, if you look at the book and the
2 number of horses that were purchased in Ruidoso from
3 individuals who have ties into Mexico and some of those
4 that is going on.

5 So I not only want to remind you of the
6 economic impact and the jobs and everything else that
7 you've heard, but I want to talk to you about the
8 horsemen and how we have been left out and why we want
9 to be there and the impact that it's going to have on
10 gambling as it takes place because there's another --
11 there is another track down the road that races dogs.

12 Well, I don't know very many people in
13 South Texas -- at least I have not met them -- that
14 were racing dogs. And you will see that if this track
15 comes, there will be plenty of jobs, plenty of
16 simulcasts going on. There will be plenty of tie-in.
17 The jobs are going to be plenty. And the money that is
18 going to be spent is going to be much, much greater
19 than what we have today. And I anticipate that it's
20 going to be one of the better tracks in all of Texas.

21 So with all of that said, I will stop
22 there and entertain any questions.

23 COMMISSIONER CARTER: I have one
24 question, sir.

25 MR. FLORES: Yes, sir.

1 COMMISSIONER CARTER: You're talking
2 specifically about the McAllen track.

3 MR. FLORES: That's correct.

4 COMMISSIONER CARTER: Is that correct?

5 MR. FLORES: That's correct.

6 COMMISSIONER CARTER: We had another
7 horseman in here just a moment ago who said South Texas
8 could handle three licenses and it would be a positive
9 move. What's your opinion of that?

10 MR. FLORES: Well, you know, I think that
11 today I'm here on -- I mean, we could handle as many
12 as -- I think that there's enough going around right
13 now. You all know what's going on with Palma Downs and
14 the activity and the money that is taking place there,
15 the number of races that are running on the weekends.

16 And I think that if we were to have a
17 track of this magnitude in McAllen, Texas, or, you
18 know, south of McAllen by a big venue that we have
19 there, the Dodge Arena, I think that it would really
20 strengthen our position in the Quarter Horse industry
21 and bring it down to Texas where it belongs.

22 Whether it's one or three, I think that
23 one will be stronger; but I know we can handle it. And
24 you're referencing to the Laredo one. I think that the
25 McAllen is a much better place. It's got a much better

1 locale. It's got better access. And in the flow of
2 the people that are participating with the people in
3 southern Mexico, we'll have a better, better advantage
4 of anything that we have today.

5 COMMISSIONER CARTER: Thank you.

6 COMMISSIONER CABRALES: Representative
7 Flores, thanks for coming down. As we look at this
8 application -- and I want to focus on McAllen -- would
9 you expect this Commission to be considering the impact
10 that that racetrack might have on your neighbors to the
11 east in Harlingen and the track that's there already?

12 MR. FLORES: Well, you know, I think
13 they've been in operation for a while. And not taking
14 anything away from them, but I think that people in
15 South Texas are not following dogs. I think people --
16 you look at it -- we have a joke in South Texas. We
17 call it the Valley's largest parking lot.

18 And what we're looking for is a venue
19 that -- we are racing horses. You know, we are at
20 Manor. We are at Retama. We are at -- you know, we
21 are in Lone Star. We're at Sunland. I mean, we're
22 traveling.

23 And if you look at the numbers -- I wish
24 I would have brought them. I mean, to have over 50
25 percent of the horses running at every track in the

1 State of Texas coming from an area, I mean, I think
2 it's -- I mean, I think it's just flat out
3 discriminatory that you don't allow -- that this
4 Commission doesn't give us the opportunity for us to
5 run some of those -- forget running the horses. To
6 have a training facility where we can -- you know,
7 where we can work with our horses and prepare them to
8 take them to different tracks.

9 And then if we were to be able to do that
10 there, I mean, what it does to the one in -- that could
11 be handled through a rule change. That could be
12 handled through an agreement, a third-party agreement
13 over there, through a lease purchase, through a sale,
14 through a -- whatever, so it fits in within the law of
15 the 70 miles.

16 But, you know, I think the time has come
17 that that particular area in Hidalgo County, in
18 particular this application of Valle de los Tesoros,
19 that we have our shot at it; and I think that the type
20 of area that we are and the type of people that we are,
21 we're going to make this one of the most productive
22 tracks in the State of Texas.

23 COMMISSIONER BOYD: Representative
24 Flores, thanks for coming today. You've been very
25 articulate about what you think is going on down

1 there. But I do have one question.

2 You've mentioned discrimination twice.
3 So is it your opinion that if we do accept the McAllen
4 track and the Webb County tracks that it will not be
5 discriminating against the horsemen down there?

6 MR. FLORES: Well, I don't think it's a
7 number of one or two. And don't --

8 COMMISSIONER BOYD: Or excuse me. Let me
9 preface it by one other thing. I'm sorry to
10 interrupt. Or is it past discrimination in not having
11 tracks?

12 MR. FLORES: I'm using the word
13 "discrimination" not in the way that you and I know
14 the word. But there is absolutely no reason of why we
15 couldn't have a track that is going to be worth 30, 40,
16 50, a hundred million dollars, in comparison to what we
17 have in Manor Downs and the problems we've had at Manor
18 Downs but yet we cannot have a track in McAllen,
19 Texas.

20 And the reason I use that as an example
21 is because I've traveled to all the tracks. I go to
22 all the tracks. I've been at all the tracks, not once,
23 not twice. But I look at what we don't have and I use
24 the word "discriminatory" in the sense of what we don't
25 have and what we should have had years ago but because

1 of the rule and the way the law was written or
2 whatever --

3 COMMISSIONER BOYD: So it's more about
4 opportunities.

5 MR. FLORES: Right. We have this
6 opportunity, and that's how I'm using -- I guess I'm
7 not using --

8 COMMISSIONER BOYD: Racing
9 opportunities.

10 MR. FLORES: Yeah. You know, that we
11 have -- we should have had this opportunity a long time
12 ago. And when I was driving up here, the gentleman
13 that was with me said, "You know, they just built a
14 toll road here in 11 months; and yet we travel to South
15 Texas and it's been seven years and they still haven't
16 been able to finish the construction there."

17 And I guess that's where I got the word,
18 that I used the word. Well, I guess, you know, we just
19 keep getting, you know, the raw end of the stick here,
20 that we just -- for some reason we haven't been able to
21 catch up. And this is an opportunity that I think will
22 put us on the map and will get us -- and I'm also
23 working on some bills for the Commission and for gaming
24 in Texas as well that will help us with purses and that
25 will help us with other issues that hopefully will

1 create the biggest purses in the State of Texas by a
2 long shot.

3 COMMISSIONER BOYD: Thanks, sir. I
4 really appreciate your information very much.

5 MR. FLORES: Thank you.

6 CHAIRMAN ROGERS: Any other questions?
7 Thank you.

8 MR. FLORES: Thank you.

9 CHAIRMAN ROGERS: We appreciate you
10 coming.

11 Do we have anything else?

12 MR. VANMIDDLESWORTH: Your Honor, I
13 know -- I'm advised that there are some folks coming up
14 from Harlingen to talk, but this was supposed to --
15 this part of it. And understandably, we've got to make
16 accommodations for any legislator that will take the
17 time to come down here. We have some people coming up
18 and anticipating being where the agenda would be on
19 that, so I do think there will be some folks after
20 lunch.

21 CHAIRMAN ROGERS: That's fine.

22 I think what we're going to do here is
23 we're going to break for lunch and then we will have
24 that other opportunity if we need to. Okay? We're in
25 recess.

1 (Recess from 12:04 p.m. to 12:54 p.m.)

2 CHAIRMAN ROGERS: Okay. Let's start
3 back, please.

4 Okay. We probably just need a point of
5 clarity. You know, we had a number of folks who came
6 up and testified a bit out of order, all in favor of
7 the Hidalgo reservation -- I mean, application. And I
8 really clarified some things here. Thank you.

9 Anyway, and we have not concluded the
10 Webb applications, just so that everybody understands
11 that. We will come back to the Webb, along with the
12 rebuttals. But we do have four people that fall in
13 this public comment period, all of which want to talk
14 about Hidalgo. And so we will hear them now and then
15 we will move to the 15-minute rebuttal from each of the
16 parties.

17 The first one would be county judge of
18 Hidalgo County, J.D. Salinas.

19 Judge Salinas?

20 MR. SALINAS: Hi. Good afternoon,
21 Chairman and members. Thank you for the opportunity to
22 be here to speak to you about this important investment
23 and opportunity for South Texas.

24 As county judge of Hidalgo County, we are
25 second only to Flagler County, Florida, in growth rate

1 in the next 10 years. We will be at 780,000 population
2 just in our county alone. And north of the border we
3 have about a million in population and south of the
4 border we have another million. And we think that we
5 have an opportunity in helping this racing industry to
6 make sure it's controlled in a family atmosphere.

7 We have a lot of interest in South
8 Texas. I have a County Commissioner today who is
9 traveling to Louisiana Downs with his horse for the
10 half-million-dollar purse. I have a County
11 Commissioner that was in Louisiana Downs last week.

12 We have signed a resolution, for the
13 record, in Hidalgo County to help this investment in
14 infrastructure. Our sheriff has said he's committed to
15 provide deputies in a uniformed manner for a family
16 atmosphere. Our county is prepared to help in the
17 South Texas region.

18 I also have a letter from the county
19 judge who couldn't make it today from Cameron County
20 who I'll read into the record, if you don't mind, from
21 Judge Carlos Cascos to Ms. Charla Ann King. "Dear
22 Ms. King: I am writing to express my support of Valle
23 de los Tesoro's application for a Class II horse track
24 to be located in Hidalgo County. As you may recall,
25 over two years ago I represented the Department of

1 Public Safety Commission as a member of the Texas
2 Racing Commission. I participated and supported
3 opening an application period for Hidalgo County and at
4 that time I voiced my support and voted in favor of
5 opening the application period. Today, as County Judge
6 of Cameron County I wish to express my same support for
7 the Hidalgo application. Sincerely, Carlos Cascos."
8 This letter is dated March 19th, 2007.

9 He and I both feel, as a region, that the
10 industry can prosper with this application and this
11 opportunity. Not only that, but the voters of Hidalgo
12 County overwhelmingly in 1987 elected to go ahead and
13 provide this type of opportunity. So we've been
14 waiting patiently.

15 Thank you again for the opportunity to
16 speak before you. If there's any questions, I'll go
17 ahead and answer them now.

18 Yes, sir.

19 CHAIRMAN ROGERS: Just for clarity,
20 Cameron County has what town in it?

21 MR. SALINAS: Cameron County has South
22 Padre Island, Brownsville, Harlingen. Brownsville is
23 the county seat.

24 CHAIRMAN ROGERS: So Harlingen, where we
25 presently have a greyhound track, this is the county

1 judge of that --

2 MS. SALINAS: Yes.

3 CHAIRMAN ROGERS: -- county recommending
4 that we do something.

5 MR. SALINAS: And I'm one county over
6 next door. Our county seat is in Edinburg. Our main
7 population, half -- of 750,000, half of them is from
8 the City of McAllen, Edinburg, Weslaco area.

9 CHAIRMAN ROGERS: Any other questions,
10 Commissioners?

11 MR. SALINAS: But, yes, the county judge
12 of Cameron County is supporting this and he is from the
13 City of Harlingen, who served as a member and also
14 served as County Commissioner in Cameron County for two
15 terms.

16 Any other questions?

17 CHAIRMAN ROGERS: Thank you very much for
18 coming.

19 MR. SALINAS: Thank you. Thank you
20 again.

21 CHAIRMAN ROGERS: Okay. And Mr. Cortez,
22 mayor of McAllen.

23 MR. CORTEZ: Good afternoon. And I want
24 to thank you on behalf of all us Texans for your
25 service to our great state.

1 I happen to be the mayor of the City of
2 McAllen. If you're not familiar with McAllen, we are
3 in Hidalgo County. We are very blessed that we have a
4 very prosperous city. So some of the information that
5 I'm going to share with you today may sound a little
6 vain, but I think it helps with some empirical evidence
7 as to why we think McAllen is such a great venue for
8 capital investment.

9 Every year we invest over a million and a
10 half in our McAllen Economic Development Corporation.
11 We also invest an equal amount of a million and a half
12 within our Chamber of Commerce. We happen to own an
13 international bridge. And we have a presidential
14 permit to do our second international bridge that we're
15 out there for bids and proposals right now.

16 We started as an agrarian-based
17 community. Our city started about 1904 and it was
18 farming and ranching. We're now a service industry,
19 where the majority of gross national product comes from
20 providing services. McAllen really is the Manhattan of
21 Hidalgo County. We are the center for financial
22 services. We are the center for health care services.
23 And we are the center for consumer products such as
24 retail. In fact, we're the number ninth city that
25 receives the largest portion of sales tax in the State

1 of Texas.

2 Where does this consumption come from?
3 If you look at the statistics, our average income per
4 household is much less than in other areas. Yet our
5 consumption is 200 percent of what has been published
6 as the average earning of individuals in our city.

7 Well, it happens to be that we attract a
8 large number of consumers from the south. 40 percent
9 of our gross national product comes from consumers in
10 Mexico. McAllen has enjoyed itself as the favorite
11 destination for these consumers because of what we
12 provide for them, the quality of life that we have for
13 them.

14 So we pay particular attention to
15 economics because we know that politics can choose a
16 venue that's over here because you have the power to do
17 that. But politics by themselves cannot sustain that
18 decision. Economic factors are going to sustain that
19 decision.

20 We've had monopolies in the Rio Grande
21 Valley of having venues that have gambling and these
22 type of gaming situations in a monopolistic setting
23 that have failed. So obviously the combination of
24 menu, management, and capital investment, along with
25 the market study of what really does the consumer want,

1 is going to help you mitigate the dangers of going into
2 business. We want people that invest in McAllen to
3 succeed.

4 And let me tell you. I don't know how
5 you judge people. Okay? And how you judge somebody
6 that's had an opportunity to do things. But if you go
7 back to McAllen, please judge us by our statistics. I
8 happen to enjoy 250 million dollars of fund balances in
9 my city and we have no general obligation debt. That
10 is something that very few municipalities and
11 governments can say.

12 Why? Because we've approached the
13 government of our city as a business. We like to do
14 things with empirical evidence. If I want to know how
15 much water I have in that bottle over there, I'm not
16 going to guess at it because science will help me
17 scientifically know for sure how many ounces of water I
18 have in that bottle. So we take the empirical data
19 that science has given us and measure it and now we
20 have success.

21 In McAllen, we want this track in our
22 city. We want this capital investment in our city. It
23 will complement the other venues that we're trying to
24 bring to our city to make really McAllen that complete
25 city, to have the entertainment of the art and cultural

1 that not only visitors coming from other areas to
2 McAllen can enjoy but ourselves can enjoy as well. So
3 we think this is a very good fit for what we're trying
4 to do in our area.

5 And with all due respect to my good
6 friend J.D. Salinas, judge from Hidalgo County, we are
7 expected to be a million two north of the river and a
8 million four south of the river. So we're going to be
9 home to 2.6 million people. 2.6 million people. And
10 our city and our area is older than this country of
11 ours. It's older than the State of Texas, that area.
12 So we are family. We are interdependent with one
13 another. This venue complements our heritage.

14 Thank you very much.

15 CHAIRMAN ROGERS: Thank you. I'd say the
16 City of McAllen is probably pretty lucky to have you as
17 mayor when you're this passionate about this. Thank
18 you very much.

19 MR. CORTEZ: Thank you very much. I'm
20 open to any questions.

21 CHAIRMAN ROGERS: Thank you. Appreciate
22 you coming.

23 Okay. We'll get somebody to follow
24 that. I'm waiting for that. Mr. Allen?

25 MR. ALLEN: Thank you, Mr. Commissioner,

1 members. My name is Mike Allen. I'm from McAllen.
2 I've been head of the economic development corporation
3 there for 18 years. We worked throughout the whole
4 border but mostly in Mexico and Reynosa, Tamaulipas.
5 We have developed a lot of manufacturing operations
6 there. We have gone all over the country recruiting
7 companies to locate there. We have a lot of supply
8 companies.

9 I also, from a personal note, want to
10 mention just the LaMantia family for a minute. And it
11 may be a little bit -- but I've known them, I guess,
12 over 40 years. I knew them when they were kids, two of
13 them that are here. And I think that, first of all,
14 they come from a very fine family. But the economic
15 impact of this thing is, first of all, that so much of
16 the investment is going to stay in the Valley, which we
17 really need.

18 The other issue that I wanted to mention
19 is because we're always competing for companies, we're
20 trying to bring industry in there. But really we don't
21 compete in the Valley. We're competing with the State
22 of Utah and others when we're looking at call centers
23 and things like that. But this opportunity will be a
24 tremendous draw from Mexico. I probably spend more
25 time in Mexico than I do on the U.S. side.

1 But if you look at the geographical
2 position of where McAllen is, it's on the very -- it's
3 150 miles away from Monterrey. Within 150 miles of our
4 community there are 10 million people. There's
5 approximately six million in Monterrey. There's
6 approximately 1.3 million that live in Reynosa,
7 Tamaulipas, right now, which is right across the
8 bridge. And so there's a tremendous interest from
9 Mexico for people that are coming over I think that
10 could take advantage of this thing. So I think it's a
11 great opportunity for us. I hope that you will approve
12 the permit.

13 And I want to say just one word about --
14 you know, sometimes there's concern from other
15 communities that this might hurt their business. Well,
16 just recently in Mercedes, Texas, Simon Properties
17 opened a huge outlet mall. And everybody -- several
18 people in McAllen said, well, this is going to hurt our
19 community. We supported it. And we supported it
20 because this year our retail sales tax went up nine
21 percent despite having a mall there.

22 So I think the point that I want to make
23 is that everyone's boat is going to rise with this
24 venue. It's going to help Harlingen. It's going to
25 help McAllen. It's going to help Roma and Rio Grande

1 City. And it's going to be good for Mexico also
2 because I think that there's a legitimate thing for
3 this opportunity to happen.

4 So I thank you for the time here. I know
5 that you sit here for a long time and listen to a lot
6 of people, but we appreciate your listening to us
7 today.

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

10 CHAIRMAN ROGERS: Any questions for
11 Mr. Allen?

12 Thank you very much.

13 MR. ALLEN: Thank you.

14 CHAIRMAN ROGERS: Mr. Summers?

15 MR. SUMMERS: Mr. Chairman,
16 Commissioners, thank you for giving me this opportunity
17 to be here. I'm Bill Summers, president and CEO of the
18 Rio Grande Valley Partnership. They might be from
19 McAllen and Hidalgo; but our organization, business
20 organization, represents the whole Rio Grande Valley,
21 all the four counties. We have businessmen from all
22 over the Valley on our board. We also have an office
23 in Mexico, in Ciudad Victoria, 200 miles south of the
24 border.

25 We have horse races in the Rio Grande

1 Valley already. You can drive down 1015, Texas 1015.
2 There's three or four racetracks every Sunday. And
3 there are horses coming from Mexico coming over here to
4 wager. The State of Texas doesn't get any of that
5 money. If we put this racetrack in Hidalgo, the State
6 of Texas will get the money and so will the benefits of
7 the Rio Grande Valley.

8 But I want to tell you a little bit about
9 the family. Mike mentioned some of this. And you
10 probably know the LaMantia family. They're known for
11 generous support of charitable causes across the state,
12 particularly in the 22 counties of South Texas. On top
13 of all their good works, in 2002 they started the South
14 Texas Academic Rising Scholar scholarship foundation,
15 STARS. And it was to help local students obtain a
16 higher education at the college or university of their
17 choice, including area medical schools. They've
18 probably outdone themselves because for the 2006-2007
19 academic years, STARS distributed nearly three million
20 dollars for over a thousand scholarships. That's the
21 type of people that want to run this racetrack.

22 They give. They're local people. They
23 don't come from other states. They don't come from
24 other parts of Texas. They come from the Rio Grande
25 Valley. STARS cares deeply about enabling successful

1 futures for our youth, a clear reflection and just
2 another illustration of how deeply the LaMantia family
3 cares about contributing toward the success of future
4 for South Texas communities.

5 And let me tell you. We have a -- every
6 two years we bring the Legislature to the Valley. This
7 past year we brought 27 Senators and State Reps. They
8 spent four days in the Rio Grande Valley. The first
9 people that called up to offer help was the LaMantia
10 family. They not only help in the school districts and
11 the colleges but in the community.

12 And I'm proud to stand here on behalf of
13 the Rio Grande Valley Partnership and recommend that
14 you give them their license for that beautiful
15 racetrack in Hidalgo County, Texas.

16 Thank you much.

17 CHAIRMAN ROGERS: Just one question. You
18 say you represent the four counties of the Rio Grande
19 Valley. And that includes Cameron County?

20 MR. SUMMERS: Cameron, Hidalgo, Willacy,
21 and Starr County. And also on my board, the
22 chairman-elect, who's also been chairman one other
23 time -- the chairman-elect is from Harlingen. And I've
24 talked to him several times within the last couple of
25 days and he said we should stand behind this project

1 100 percent.

2 CHAIRMAN ROGERS: Any other questions?

3 Thank you.

4 MR. SUMMERS: Thank you.

5 CHAIRMAN ROGERS: Okay. Senator

6 Hinojosa?

7 MR. HINOJOSA: Good afternoon. I am here
8 to support the application for the County of Hidalgo
9 for a racetrack, horse racetrack.

10 You know, the Valley, South Texas, is one
11 of the fastest growing areas in the State of Texas and
12 we can create more jobs and we have a lot of people
13 that support horse racing. I will tell you that if you
14 look at the other side of the border in Mexico, where
15 they also love and enjoy horse racing, we'll have a lot
16 of people come and visit the Valley and enjoy a
17 racetrack.

18 The people that are applying for this
19 license I've known for many, many years since I've been
20 involved in public office, the LaMantia family, who are
21 very much active in the community, not only in terms of
22 scholarships for students but also in other
23 community-based organizations that help people, help
24 the public.

25 I cannot emphasize how important it is

1 for us in South Texas that we continue to grow. And if
2 we look at the growth in population down there and the
3 number of jobs that have been created, the number of
4 businesses that have relocated to South Texas, right
5 now that's where the action is.

6 This application has now been pending, I
7 think, for about three years. I think it's time to
8 make a decision. I certainly support this very
9 strongly.

10 I would also tell you that my colleague,
11 Senator Eddie Lucio from Cameron County, a neighboring
12 county, who has two bills this afternoon and couldn't
13 be here, but he also told me to convey to you the very
14 strong support for this application for Hidalgo.

15 And I'll be glad to answer any
16 questions. But again, consider the location. Consider
17 the growth. Consider the progress taking place. And
18 in terms of growth, that's also taking place across the
19 border in Reynosa, Matamoros, Rio Bravo. And the love
20 for horses in South Texas. I know that other parts of
21 the state also love horses. It's Texas. But I've got
22 to tell you that we have an advantage of being so close
23 to the border and we'll attract people from Monterrey
24 and Mexico City and a lot of the other areas on the
25 border.

1 But I'll be glad to answer your
2 questions.

3 CHAIRMAN ROGERS: Any questions?
4 Senator, thank you very much for coming.
5 Appreciate your comments.

6 MR. HINOJOSA: Thank you all for your
7 hard work. I know you have to listen to a lot of
8 testimony just like we do in the Senate. But I know
9 you'll do the right thing. Thank you.

10 CHAIRMAN ROGERS: Thank you.
11 Okay. Any other comments presently?
12 Okay. We will -- we will move back to
13 the hearing on Webb County.

14 MR. FENNER: Chairman?

15 CHAIRMAN ROGERS: Yes.

16 MR. FENNER: Could I ask your indulgence
17 for a moment?

18 CHAIRMAN ROGERS: Sure. Why not?

19 MR. FENNER: Commissioners, we've
20 received a letter from former State Representative Ron
21 Wilson. It's regarding the informal Attorney General
22 opinion and the request for that opinion that came in
23 this morning that was presented by
24 Mr. VanMiddlesworth. So I think that it would be
25 appropriate for me to pass this out and let everybody

1 have an opportunity to read this and so that the
2 parties will also have an opportunity to address this
3 during their 15-minute rebuttal period.

4 CHAIRMAN ROGERS: Okay. Why don't you go
5 ahead and pass them out then.

6 (Discussion off the record)

7 CHAIRMAN ROGERS: Has everybody had an
8 opportunity to read it?

9 Okay. We will move forward at this point
10 with the 15-minute rebuttals. And we will begin with
11 Laredo Race Park.

12 MR. VANMIDDLESWORTH: And we're going to
13 start with Mr. Mendiola. And he has four minutes,
14 which is entirely enforceable by me.

15 MR. MENDIOLA: I've been allocated four
16 minutes, so I think that means I'll take 12.

17 CHAIRMAN ROGERS: You only get 15, so
18 spend it however you like.

19 MR. MENDIOLA: Mr. Chairman,
20 Commissioners, Lino Mendiola on behalf of Laredo Race
21 Park. I'm going to address two issues on rebuttal and
22 then Mr. VanMiddlesworth will address the balance.

23 The first issue I wanted to address
24 relates to questions about the level of Laredo Race
25 Park's investment and, in fact, whether that level of

1 investment may be too high for Webb County.

2 You've heard much in the way of public
3 comment today about the importance of attracting
4 investment for counties in South Texas. That's exactly
5 what we're talking about here. And frankly, one of the
6 statutory factors to consider is the impact on the
7 state and local economy.

8 It's clear from the evidence that was
9 developed that Laredo Race Park will invest
10 approximately twice as much in terms of construction
11 than the LRP Group. That's the price of creating a
12 first-class grandstand and that's air-conditioned and
13 everything else. That will have an impact of 480 jobs
14 during the construction period compared to 199 jobs
15 during the construction period for LRP Group. That's
16 what we're talking about in terms of economic
17 investment. That's what everybody here says that they
18 want. Here's an opportunity to actually get it.

19 Now, of course, the question is, all
20 right, but does it really make sense to spend that much
21 money. That was an issue that was addressed at length
22 at the hearing. And there was expert testimony on it.
23 There were factual questions that were addressed
24 regarding it. And this is what the ALJ's said about
25 it: "In the ALJ's view, the additional costs

1 associated with the Laredo Race Park proposal, in
2 particular air-conditioned facilities to view live
3 racing and living quarters for groomsmen, are worth it
4 and will significantly increase the track's appeal to
5 patrons and horsemen as a destination for live
6 racing." That's the outcome of the hearing.

7 The second issue that I wanted to address
8 was the issue of location. You've heard, I think,
9 earlier comment by the LRP Group that kind of referred,
10 I think, to the site that the Laredo Race Park has
11 chosen as the site being out in the boondocks in some
12 farmland that's far away from everything. It's 11 and
13 a half miles from the center of town. That's
14 established. We know that. We don't contest it.

15 We do contest, however, that that site is
16 somehow inferior because of its remoteness or its lack
17 of development or something else. And here's why.
18 This is Mines Road, 1472. We've talked about it. This
19 is our site right here, about 11 and a half miles from
20 downtown.

21 This whole area that is further from
22 downtown that's a little bit farther west and a little
23 bit farther north, much of it has been purchased by the
24 LaMantia family, 11,000 acres of it. Why was it
25 purchased? Let me tell you. These are comments that

1 were made by Mr. Steve LaMantia. He says, "We think
2 that it will be a developable piece of property in the
3 not too distant future." This is the 11,000 acres
4 that's purchased even farther away from downtown than
5 Laredo Race Park. "We think that it will be a
6 developable piece of property in the not too distant
7 future. The reason that we bought this piece of
8 property is because it has city water, city sewage,
9 water rights, mineral rights, a foreign trade zone, and
10 highway frontage."

11 The future of development in Laredo is
12 out in that direction. It's not along 59.

13 Thank you.

14 MR. VANMIDDLESWORTH: I want to address a
15 couple of issues.

16 First, you heard a rather impressive list
17 of names of individuals who signed up to be partners
18 for the LRP Group proposal and that's on the front page
19 of their application. What you weren't told is that
20 the price of doing that was about \$2,000 and that 17 of
21 those individuals, maybe many more by now, long since
22 responded -- quit responding to cash calls. They're
23 not contributing.

24 What you also didn't hear is that those
25 folks aren't the folks who are involved in the

1 management of the facility. I wish they were. The
2 president and the person who calls the shots is someone
3 who has no experience in the industry. And as all of
4 these folks have dropped out or cut their contribution
5 or quit responding, what we've seen is the influence of
6 the inexperienced group, the LaMantia group, has
7 increased by 50 percent just by the time of the
8 hearing.

9 And as you sit here and think about
10 awarding this license today, you have no indication, no
11 evidence in the record, no knowledge whatsoever of what
12 the current percentage is because when they submitted
13 this, they didn't lock everybody in so that the
14 Commission -- you know how you treat changes of
15 ownership -- so the Commission would know who it was
16 giving the license to and how much. They didn't do
17 that. They have an influx every time they send out a
18 cash call and you don't know who owns how much of the
19 LRP Group proposal as you sit here today.

20 I want to talk a little bit more about
21 the difference between the two proposals. And I think
22 it's been apparent in the ALJ's report and in our --
23 and everything you've heard is that the difference is
24 the focus on live racing versus a focus on simulcasts.
25 And this was discussed by the principal witness for the

1 LRP Group on this, a fellow named Jim Toscano. And
2 this is really hard to read. I apologize. But we have
3 provided books that allows this. I'm going to go over
4 here so I can -- actually I have it.

5 He testified that he believed the
6 facility would be better off with no live racing at
7 all. This is their principal expert. He talks about
8 what tracks are trying to do. He says they're trying
9 to reduce their race days. "Every day they race, they
10 lose money. Simulcast, simulcast, simulcast."

11 I asked him, "So it would be better to
12 just have a simulcast facility without even having the
13 expense of live racing?"

14 "Well, your net revenue would be better
15 with no live racing."

16 "No live racing at all."

17 "Yes, sir."

18 "And so that's why you want to keep the
19 investment in the live racing portion as minimal as
20 possible."

21 "You need to be prudent about it, yes,
22 sir."

23 "Simulcast, simulcast, simulcast doesn't
24 provide a single job for the local jockey by the
25 facility there."

1 "I agree. And that's why the Texas
2 Racing Commission probably will never permit that."

3 But what they've proposed is as close as
4 you can possibly get, the absolute minimum investment,
5 below the minimum investment in the facilities to
6 support live racing.

7 Now, their location is fine for a
8 simulcast parlor. There are simulcast parlors on Fifth
9 Avenue in New York, a lot of them. And what this --
10 what they've done is done -- and I don't know whether
11 their simulcast operation, where it's located, will be
12 profitable or not profitable. But what I do know is
13 that they do little or nothing to enhance live racing.

14 There's no year-round training facility.
15 There's no facilities for licensees on the grounds.
16 There's no adequate facilities for jockeys. There's no
17 hot walkers. There's just the absolute bare minimum to
18 allow a building one-fifth the size of the dog track in
19 Harlingen's grandstand, one-fifth that size, just for
20 watching TV and betting on races in New York and
21 California.

22 We, however, intend to support live
23 racing. And this case goes to the heart of the reasons
24 why the Racing Commission was created. The statute
25 provides you're to promote racing within the State of

1 Texas and to support those who breed, raise, race, and
2 care for race animals.

3 Our application demonstrates that we're
4 committed to that and we want to support that. We've
5 decided to make the investment in that. And I'd
6 suggest that if there's anybody in this room that can
7 make an evaluation of whether that evaluation will pay
8 off, it's Mr. Bork. He believes it can. He believes
9 with his commitment he can make this work.

10 In contrast, the other application
11 doesn't promote racing in Texas, has a small building
12 where bettors can come in today, watch TV, and bet on
13 races from horses in other states, with jockeys from
14 other states largely and trainers from other states.

15 This is about what the Texas Racing
16 Commission will do and what it will support. Laredo
17 Race Park is headed by individuals who have devoted
18 their working lives to live racing, demonstrated the
19 commitment to grow actual live racing in the State of
20 Texas consistent with your statutory mandate.

21 We want to build a new racing and
22 training venue that will allow racing patrons to watch
23 live races in comfort, to come from all over, will
24 provide facilities for horses that exceed the
25 Commission's requirements, and that will provide

1 accommodations on the grounds that are so necessary for
2 those who care for the horses.

3 If this is about horse racing in the
4 State of Texas, there's only one choice. If this is
5 about simulcast and off-track betting, there's another
6 choice. The overall assessment of the administrative
7 law judges reflects this. I've provided this in your
8 book. I've set out the key findings which state that
9 in case after case, as we've gone over them, the Laredo
10 Race Park proposal is superior.

11 Now I want to talk about what you all
12 have been waiting to talk about, and that's Article
13 6.06(h). And I think we have to start, as we generally
14 should, with the words in the statute.

15 The statute is not unclear on this issue,
16 notwithstanding all the confusion that has been
17 created. It is human nature for folks to look at a law
18 and try to make it mean what they think it ought to
19 mean rather than what the law says. But the law is
20 made down the road and it's not for others to take its
21 words, its literal construction, and say, "Well, they
22 must not have meant that."

23 Agencies and Courts are supposed to apply
24 the law, not make the law, not ignore the statute. And
25 my support for its strict constructionism and applying

1 the law as written is not some rigid Old Testament
2 whether it makes sense or not approach. The
3 Legislature generally gets it right. And in this case,
4 I believe they did get it right. And I want to visit
5 with you and talk with you about that.

6 MS. GIBERSON: Five minutes remain.

7 MR. VANMIDDLESWORTH: Let me first go
8 through the Racing Act provisions that we're talking
9 about. And this is -- while there's been a lot of
10 sound and fury about this, this is not a very
11 complicated provision. It's reasonably
12 straightforward. A person may not own more than a five
13 percent interest in more than two racetracks licensed
14 under this act.

15 All right. That's fairly
16 straightforward. You can't own more than a five
17 percent interest in more than two racetracks licensed
18 under the act.

19 Well, what's a racetrack? Fortunately,
20 the statute tells you what a racetrack is. A racetrack
21 is a facility that is licensed under the act for the
22 conduct of pari-mutuel wagering.

23 It is a facility. And racetrack facility
24 is further defined as a facility operated by an
25 association within its enclosure for the purpose of

1 presenting races for pari-mutuel wagering.

2 It would have been a very simple matter
3 had the Legislature intended -- had they adopted the
4 LRP Group's approach, for instance, to put in a
5 provision, with a list of 17 things that you had to
6 meet in order to get a license, to say you cannot have
7 more than two licenses currently or you cannot have
8 more than two racetracks currently. That could have
9 been done. It would be the standard way of doing it if
10 that's what was intended and was meant. That was not
11 what was intended and I'm going to talk about the
12 reasons in just a second.

13 The administrative law judges in this
14 case went through this and said, "Well, we agree that
15 Laredo Race Park's approach may be more consistent with
16 a literal reading of the statute; but we will accept
17 the Commission staff's recommendation."

18 There's another section of the act that,
19 frankly, I'm a little bit embarrassed about because I
20 didn't catch it but it is referenced in the Attorney
21 General's letter that is another provision that makes
22 clear the distinction between ownership of a racetrack
23 and ownership of a license for a racetrack that you
24 will own sometime in the future. And that is cited in
25 the Attorney General letter that I've provided you.

1 Why does this interpretation make sense?
2 Why didn't the Legislature just say, "If you've got two
3 racetracks, don't come to the Commission," or, "Sell it
4 before the day you come to the Commission and ask them
5 to grant you, hopefully, your next one"?

6 Well, the reason that doesn't make sense
7 is that it requires a leap of faith by the applicant.
8 In this case, the applicant would have to go to
9 someone, if that were the interpretation of the
10 application, and sell its racetrack prior to knowing
11 whether they're going to get a second racetrack or a
12 third racetrack, if you will, having sold the second.

13 That doesn't make sense. There aren't
14 other places where the Legislature, in licensing
15 procedures or anything else, requires you to take the
16 leap of faith and go sell off a facility before you
17 get -- before you get the next one. It doesn't make
18 sense. That's why this is written this way.

19 The other alternative is a Rube Goldberg
20 contraption of a corporate deal which you all have seen
21 some of, where you try to construct a deal with
22 somebody and you say to them, "Look, I'm applying for a
23 license. I hope I get the license. If I get this
24 license, I want you to commit to buy this. And we'll
25 set up things in escrow over here in order that if I

1 get the license, you will automatically have bought
2 this and it will be triggered nanoseconds before the
3 actual license occurs."

4 That doesn't make sense. It complicates
5 trying to do any kind of -- finalize any kind of
6 transaction with a purchaser and it creates all sorts
7 of difficulties in trying to structure the
8 transaction. That doesn't make sense.

9 Now, the Attorney General's letter
10 confirms this and points out the key provision that we
11 missed but it also points out how this works and how it
12 should work. And there isn't a parade of horrors
13 about somebody accumulating paper licenses. That's not
14 going to happen and I'll talk to you about that in a
15 second.

16 MS. GIBERSON: One minute.

17 MR. VANMIDDLESWORTH: The Attorney
18 General and we have said that what happens is you get
19 your license. We've made a showing that we are trying
20 to sell Valley Race Park. We intend to sell Valley
21 Race Park. And then you have to divest yourself of
22 that before the Commission does the next thing, which
23 is to award you a construction permit.

24 You can't turn a spade of dirt until you
25 come to the Commission and say, "Okay. Now I'm ready

1 to build this." And then the Commission says, "Have
2 you complied with everything?" And as the AG notes,
3 you better be in compliance with Section 6.06(h) when
4 you do that.

5 This letter from the Attorney General,
6 which has been just dismissed as just another lawyer --
7 he's not just another lawyer. I know you can get
8 legislators or former legislators to say, "Well, I
9 meant this. I meant that." And the Courts are pretty
10 consistent that you don't try to interpret it by going
11 back with a battle of the legislators. And I'm sure
12 Rodney Ellis and Ron Wilson could talk all day about
13 that. But what is important is the opinion of the
14 Attorney General, in this case First Assistant Attorney
15 General Kent --

16 MS. GIBERSON: Time has expired.

17 CHAIRMAN ROGERS: Go ahead and finish
18 your thought.

19 MR. VANMIDDLESWORTH: First Assistant
20 Attorney General Kent Sullivan. The Attorney General
21 is ultimately responsible for defending the actions of
22 this Commission in court; and the Attorney General,
23 therefore, does not lightly take a position on
24 interpretation of a statute because the Attorney
25 General is later going to be in court defending that.

1 This is not some haphazard writing that
2 was dashed off. The Attorney General did research and
3 found stuff that none of the other parties had even
4 found on this. And it is absolutely clear it's not
5 even a close call because the Attorney General goes
6 through the statute and says, "This is what it means."

7 The Attorney General's letter could not
8 be more clear. We adopt it. And I'd be happy to
9 answer any questions, including if you want to talk
10 about the prospect of a paper license problem.

11 CHAIRMAN ROGERS: Okay. I think what
12 we'll do is listen to the other 15 minutes and then
13 we'll get you both up for questions. Okay?

14 MR. VANMIDDLESWORTH: Thank you.

15 CHAIRMAN ROGERS: Thank you.

16 If we could hear from the LRP Group,
17 please.

18 UNIDENTIFIED SPEAKER: Can we have two
19 minutes just to set up?

20 CHAIRMAN ROGERS: Take about two.

21 (Discussion off the record)

22 CHAIRMAN ROGERS: Okay. Why don't you
23 begin.

24 MR. MOLTZ: Thank you, Mr. Chairman.
25 Sorry about that little delay there trying to get

1 organized. And I don't believe I will take my whole 15
2 minutes here actually.

3 I would just like to reiterate that LRP
4 Group, despite assertions to the otherwise, is very
5 qualified, has much background before this Commission
6 and in the racing industry and in the horse industry.
7 And I don't think that's subject to reasonable
8 question. The facility they have designed and proposed
9 was designed and proposed based on the local market and
10 their expertise in horses.

11 I think that first part of that is
12 something that Laredo Race Park lacks with regard to
13 Laredo, that they came into this market, purchased a
14 piece of property that they really didn't know the
15 impact or where it was and what they were getting into
16 going out there. They don't know what the people in
17 Laredo want. LRP Group does. That's why it's located
18 where it is.

19 And I also will note that Mr. Mendiola is
20 correct that the LaMantia family owns about 11,000
21 acres right out in here, land that was under contract
22 about the same time that these sites were --
23 applications were being put together and filed. And
24 it's peculiar that Mr. LaMantia, Steve LaMantia, who,
25 by the way, is here and would be more than willing to

1 answer any questions you may have, would have 11,000
2 acres right next to the Laredo Race Park site and yet
3 choose to come buy some land down here if that site was
4 better. It just doesn't make sense. He knows the
5 market and that's why they are where they are.

6 Now, with regard to this supporting live
7 racing, LRP Group is in full support of live racing.
8 They've got the facilities to do it. And the way you
9 support live racing is through purses. You pay the
10 horses to come race. You draw them in there. You give
11 them a facility.

12 And this facility is designed to be
13 financially viable to have the money to pay the purses
14 to get the horses in there. It's not -- it's not
15 designed as a Taj Mahal out in the middle of nowhere
16 that's going to have financial difficulties. It's
17 going to be a successful racetrack, successful for the
18 horsemen that want to come there, that want to race for
19 those purses.

20 Now, having said all that, let me go just
21 a second to the -- this five percent rule we've been
22 talking about because ultimately that's your decision
23 on this. And as I stated previously, our position here
24 is that LRP Group is qualified. LRP Group has a
25 facility that fits the market, is ready to go, and

1 would urge issuance of their license.

2 Now, with respect to the five percent
3 rule, that, to a great degree, is between the
4 Commission and Laredo Race Park. Now, I will say that
5 we do have a problem -- or I would personally have a
6 problem with a conditional permit. I think that's
7 pretty shaky ground. And I believe your staff will
8 agree with that.

9 And this five percent rule -- and I
10 mentioned earlier today that give me 10 minutes and
11 I'll get you a letter from somebody else. Well,
12 unfortunately, I can't take credit for this. I was
13 sitting right here. But it's been about an hour and
14 here we've got a letter from somebody else.

15 But, you know, I think it's pretty
16 accurate. It shows what the intent of the Legislature
17 was in that provision. And it goes right to what the
18 Commission has been trying to do for a number of
19 years. And that is, you don't want a market out there
20 of people having paper licenses that they move here,
21 there, and yonder, don't build racetracks. You've got
22 a problem with that now -- I don't need to point that
23 out to you -- with Saddle Brook and others, where
24 you've got licenses out there with no facilities
25 associated with them.

1 The Commission has uniformly taken that
2 position and it's nothing new. You know, and I don't
3 think this Commission needs from me, or
4 Mr. VanMiddlesworth for that matter, a lesson in
5 statutory construction. This is nothing new to this
6 Commission. What this rule is talking about is
7 licenses and facilities together. You can't have more
8 than five percent.

9 Now, how that is solved, it can't be
10 solved before today obviously. It hasn't been. We've
11 been hearing for three years that it's going to get
12 solved and it hasn't been. And what the Commission
13 wants to do about that as far as perhaps severing LRP
14 from Laredo and let them have more time or whatever,
15 you know, that's -- I suppose with our concept that we
16 want our license and that's between you and the
17 Commission, you know, that's fine so long as LRP Group
18 does not have to wait another period of time to get
19 started with their project.

20 And I will mention to you that the delay
21 here has been -- go ahead and put that up -- because of
22 this five percent rule, trying to work it out and
23 giving Laredo Race Park more time and more time and
24 more time. And applying the Government Code, a
25 decision in a proceeding like this is supposed to be

1 rendered within 60 days after the hearing.

2 In this case, as long as you want to
3 stretch it, the last thing the ALJ's possibly did --
4 our hearing was over; we filed paperwork and all that
5 sort of thing -- was October 27th. Now, I won't
6 overstate that. This is not something from the
7 Legislature that says something you do on Day 61 is
8 void. But it is a direction to the agency of how long
9 you're supposed to let these things languish.

10 We're coming up on 180 days already.
11 Staff tried to get this on the December agenda to meet
12 this. It didn't work out. We moved it to January. We
13 said fine, as long as we get there. It came to January
14 and you'll recall we still had some issues. We bumped
15 it to March.

16 And at this point, if you would like to
17 do something with Laredo Race Park about their
18 ownership issue, we think that you all ought to have a
19 problem with that; but our position is please grant us
20 our license, let us get to the business of putting a
21 racetrack in Webb County. As I said, we've talked with
22 the staff about the bond to ensure that that happens.
23 And we would like the opportunity to get started.

24 Thank you.

25 CHAIRMAN ROGERS: Thank you. Okay.

1 Before -- okay.

2 MR. VANMIDDLESWORTH: Your Honor, may I
3 raise just one point? I discussed this with Mr. Fenner
4 earlier. Normally -- we're the party that is defending
5 the proposal for decision and urging that you award it;
6 so I would normally, at least in my experience, open
7 and close on that. Mr. Fenner said he didn't want to
8 do that but would give me an opportunity if need be. I
9 have about two minutes at some point that I'd like to
10 respond to a couple of Mr. Moltz's points at your
11 convenience.

12 CHAIRMAN ROGERS: Why don't you go ahead
13 and do that right now. We'll give you the -- we'll
14 give you the two minutes.

15 Is that okay with you, Mr. Moltz?

16 MR. MOLTZ: As long as I get two
17 minutes.

18 CHAIRMAN ROGERS: I can say this is going
19 to be the last two for each of you. You still have 12
20 left.

21 MR. VANMIDDLESWORTH: With respect to the
22 argument that they'll have more money for purses
23 because they'll have a better simulcast facility, the
24 ALJ's considered that issue, considered which facility
25 would be best at supplementing purses. And it found --

1 they found, after considerable testimony, that our
2 facility would be best for supplementing purses and
3 that our recommendation -- our application was better
4 in that regard.

5 He also raised the issue of a conditional
6 permit and how you would go about that. For the
7 reasons I stated earlier, if you accept the
8 interpretation of 6.06(h) that we laid before you,
9 there is no need for a conditional permit. You can
10 issue a final order. And the procedures are set out in
11 the AG's letter on how to proceed with that. I don't
12 want to get into why I don't think that's a problem
13 because I think that's a little bit beyond that. But I
14 do hope we'll have an opportunity to discuss 6.06(h) a
15 little better.

16 The conditional permit issue that he
17 raised I think we need to be clear on. There are lots
18 of cases, including this Commission's own Lone Star or
19 Gulf Greyhound case and the TNMP case and others, that
20 say an agency can issue an order and say "It's
21 conditioned on something else that we have to find."
22 And the order doesn't become a final order until that
23 time. It can't be appealed. It can't -- but there's
24 nothing wrong with that. Agencies do it all the time.
25 And I think Mr. Fenner will confirm this.

1 You can have an interim order that says
2 "It is our intention to award a license to X assuming
3 that Y happens before Z date." And then assuming that
4 that happens -- and the ALJ's laid this out as well --
5 then you post it at a subsequent meeting and you make
6 that order final.

7 We don't think that's necessary because
8 we think the plain language of 6.06(h) allows you to
9 issue an order today. If you disagree with that, then
10 the ALJ's have set out the proposal, in their proposal
11 and a fairly common proposal, that would at least
12 provide for, once the interim order is issued, there be
13 an opportunity before a final order.

14 And Mr. Moltz is right. I agree with --
15 I haven't agreed with a lot of things today, but I do
16 agree with him that agencies routinely sever out cases
17 if they need to do that so they can order whatever they
18 want to order finally and, if there's something that
19 needs to be resolved, that's severed.

20 So I would submit that that's not
21 required in this case under a proper application of
22 6.06(h), but that is the option that the ALJ's have
23 made.

24 CHAIRMAN ROGERS: Okay. Thank you.

25 Rhonda?

1 MS. FRITSCHER: I hope you had a good
2 lunch. It feels a little bit warmer in here than it
3 was before.

4 I'm Rhonda Fritsche for the Racing
5 Commission staff. And I just wanted to reiterate that
6 the staff has tried to be as objective and neutral as
7 possible in this proceeding and that we've tried to
8 leave all options open for you to make your decision.
9 And we've maintained throughout the process that you
10 could award one, two, or no licenses; and we continue
11 to hold that position.

12 VICE-CHAIRMAN RUTHERFORD: Talk into the
13 microphone, please. I can't hear you.

14 MS. FRITSCHER: Can you hear me now?
15 Okay.

16 All right. And as we said before, both
17 applicants have met the threshold to receive a license;
18 so it's up to you whether you want to give one, two, or
19 no licenses in this case.

20 Now, certain things have been brought up
21 about the fluctuation in ownership changes; and as far
22 as we're concerned, that is not applicable to an
23 applicant. Once they do become licensed, if you award
24 them a license, then it will become an issue where they
25 will have to get preapproval for any ownership

1 changes. So I just wanted to make that point.

2 And as far as a leap of faith, I don't
3 know how many different times we're going to have to
4 show up here for the sale of Valley Race Park; so I
5 would hope that would come to a resolution at some
6 point. So I don't know how much more we can leap on
7 that.

8 And as far as the AG's letter, again, I
9 just want to bring up the point that that's an
10 Assistant Attorney General. That's not an official
11 AG's opinion. I've already expressed that the AG
12 refused to take up this issue at this point.

13 And you saw the letter from the
14 legislator, Ron Wilson, who put it pretty succinctly
15 when he said that the reason that they have a two-track
16 limit is to facilitate healthy competition among
17 racetracks and to prevent a situation where a person
18 would warehouse racetrack licenses. So that's what we
19 don't want to happen. We want to try to foster
20 opportunities for live racing in this state.

21 And I also want to bring up a few other
22 housekeeping details which happen to be if -- depending
23 on what your decision is here today, if you decide to
24 grant more than one license -- or if you decide to
25 grant one to LRP Group, we will have to make certain

1 changes to the proposal for decision. So I just want
2 you to be aware of that. We can address those at a
3 later point.

4 But in particular, another finding of
5 fact, which was No. 333, related to the economy in
6 Laredo not supporting two racetracks. And it was
7 brought up about Squaw Creek in the past where the
8 Commission has refused to go down that path, where we
9 didn't want to tie our hands by making those kind of
10 statements about the economic condition of a particular
11 area. So we may have to address that. But it's going
12 to be up to you to decide whether you want to keep that
13 finding of fact in or if you want to delete it.

14 Again, 6.06(h) was brought up. Staff
15 believes that you cannot separate the idea of having a
16 track and having a separate paper license. We feel
17 that those two things go together. And if they choose
18 to build a facility out there and not have it licensed
19 and not hold pari-mutuel racing, then that's fine.

20 But if they want to -- if they want to
21 race and they want to have a license with us, then we
22 feel like 6.06(h) would prevent them from doing that
23 right at this point because it's very clear on what it
24 says. A person may not own more than a five percent
25 interest in more than two racetracks licensed under

1 this act. And the plain reading of that says they
2 already own Valley Race Park and they own Sam Houston
3 Race Park. How can we give them a third?

4 And it seems a little odd, when an
5 applicant claims that it wants to provide and promote
6 live racing, that it comes to the Commission to make a
7 request that we make a distinction between holding a
8 paper license and having a physical facility. It just
9 seems a little disingenuous.

10 But anyway, we've tried to preserve the
11 options for you to have one, two, or no licenses. So
12 it is now in your hands.

13 Thank you.

14 CHAIRMAN ROGERS: Thank you.

15 Any questions for her before we -- okay.

16 Why don't we -- well, let me just ask
17 what your pleasure is. My thought would be that we
18 would maybe bring one person to the podium, ask
19 whatever questions we have to ask, bring the other to
20 the podium, ask whatever questions we have to ask
21 there. We're still not going to take a vote on this
22 until we hear the Hidalgo program. But would that be
23 satisfactory with you all?

24 Okay. Since we've been with you first
25 all day, let's come with you first.

1 MR. VANMIDDLESWORTH: Thank you.

2 CHAIRMAN ROGERS: I have a couple of
3 questions to begin with and then we'll let whoever.
4 One is you have a focus on live racing. How many race
5 days were you suggesting in your application you were
6 applying for?

7 MR. VANMIDDLESWORTH: I'm going to -- I
8 may have to get somebody to kick me from behind and
9 tell me how many live racing days. We proposed that
10 that would be subject to the discretion -- as you know,
11 we applied back in 2004; so it's going to be subject to
12 the discretion of the Commission. I think we noted
13 generally when we proposed to have it. I think we
14 noted that we proposed to have three a week. The
15 record shows from Ms. McGovern what the proposal is
16 and -- but it also stated that we intended to do that
17 in these months. And I --

18 CHAIRMAN ROGERS: Do you have a number of
19 dates there that you put in your --

20 MR. VANMIDDLESWORTH: I'm sorry. 20 to
21 30 days of live racing.

22 CHAIRMAN ROGERS: 20 to 30. Okay.

23 MR. VANMIDDLESWORTH: At times scheduled
24 by the Commission. Live racing where there's wagering
25 on that racing.

1 CHAIRMAN ROGERS: Right.

2 MR. VANMIDDLESWORTH: We would have 365
3 days when there's training going on at the facility.

4 CHAIRMAN ROGERS: So 20 to 30 days. Do
5 you happen to know how many live days the other
6 application contained or do I need to ask them that?

7 MR. VANMIDDLESWORTH: I think you better
8 ask them because I might get it wrong.

9 CHAIRMAN ROGERS: Could you go ahead and
10 answer that question? Would you mind? I just want to
11 see where this focus on live racing was going.

12 MR. MOLTZ: Mr. Chairman, I believe --
13 and correct me if I'm wrong, Bryan. But I believe that
14 our number was 27 days.

15 MS. KING: That's correct.

16 MR. MOLTZ: And I also recall that the
17 Laredo Race Park license did not specify days. We may
18 have said 20 to 30, but there were no live race days
19 specified.

20 CHAIRMAN ROGERS: But basically in the
21 applications at least, you're both looking at about the
22 same number of live days.

23 MR. VANMIDDLESWORTH: The same number of
24 days, but that's only the beginning of it. And that's
25 a very small part of the dedication to live racing.

1 CHAIRMAN ROGERS: Okay. And then I just
2 would ask, do you -- I mean, do you believe -- and
3 maybe I heard you say while ago that it had no
4 standing -- but what legislative intent is whenever
5 they write the legislative laws?

6 MR. VANMIDDLESWORTH: The Courts will
7 tell you and Mr. Fenner can probably tell you this
8 that -- and this is why we didn't send something over
9 when Senator Ellis sent his letter in because the
10 Courts have said that we do not defer to what a
11 legislator says about the statute. And so we do not --
12 if we were in court, we would not admit -- and this
13 happens sometimes when you get a legislator coming in
14 who's going to testify about it, testify about
15 generally what it was about but not about the intent.

16 That's why this didn't really become
17 something that we wanted to present until last night
18 when we got a letter from the Attorney General, who
19 represents you, who does set out there his
20 understanding of this and has gone on record as the
21 position that they take, which is a literal in genere
22 but, as you know, is a strict constructionist of the
23 laws and a lot of us support that and it's entirely
24 consistent with his approach.

25 CHAIRMAN ROGERS: Well, our opinion has

1 up until now -- and maybe there's been some change in
2 that thought today. I don't know. We haven't taken a
3 poll here. But our opinion up until today has been
4 that you could not own more than five percent of two
5 racetracks and that that was both the intent and the
6 law and that's the way that we have looked at that.

7 MR. VANMIDDLESWORTH: We agree.

8 CHAIRMAN ROGERS: And we have looked at
9 that that way, that they could not own more than five
10 percent of two. We've considered license and
11 racetracks the same thing. But I guess I was somewhat
12 impressed by the person who writes the law giving the
13 rationale and reasoning for why and how it came about.
14 And so I guess I'm kind of thinking that the person who
15 wrote it probably has a better opportunity to interpret
16 it than I do in that sense. So do you have a comment
17 there?

18 MR. VANMIDDLESWORTH: Yes. Yes. First
19 of all, the ultimate interpreter -- and several folks
20 have said that -- is not the Attorney General. It's a
21 District Court in Travis County or the Third Court of
22 Appeals or whoever.

23 CHAIRMAN ROGERS: But it begins here.

24 MR. VANMIDDLESWORTH: But it begins
25 here. And in terms of what you would look to, I think

1 we've had two legislators who were there when this was
2 considered that have diametrically -- actually I'm not
3 sure that Ron Wilson, who is a good friend of mine, is
4 diametrically opposed. We agree that we don't want
5 warehousing of licenses. We agree that we want people
6 to build racetracks, not hoard licenses. We agree that
7 we want more racetracks rather than less racetracks.
8 We agree with all of that.

9 What we believe is that the procedure
10 where you can -- where you can get the award of the
11 license and then you complete the sale and then you
12 come to the Commission and say, "It's done," fosters
13 that. We didn't spend all this time and money to not
14 go forward with Laredo Race Park. We didn't spend all
15 the investment in Valley Race Park to have that die.

16 We want there to be facilities at Valley
17 Race Park, at Laredo Race Park, at Sam Houston Race
18 Park. And it isn't the folks who have built
19 racetracks, who have working racetracks, that are your
20 problem when it comes to paper licenses or people who
21 get them. It's the people who don't have experience
22 that are the problem with paper licenses.

23 CHAIRMAN ROGERS: See, I'm not even as
24 interested in that as I am in who controls the racing
25 totally and having it in -- having the control of the

1 horsemen's lives in too few hands. And so that was the
2 way I read the drift of this letter was that the intent
3 was to have not the control of the industry in one or
4 two or three hands but spread out among a number of
5 folks. So that's the way that I've read this letter.

6 MR. VANMIDDLESWORTH: I think that is
7 appropriate. Control is defined as an ownership
8 interest.

9 CHAIRMAN ROGERS: Right.

10 MR. VANMIDDLESWORTH: And we believe that
11 the statute, as the AG has read it, is consistent with
12 the -- I think with the thrust of Mr. Wilson's letter,
13 although I haven't studied it in detail, that we do not
14 want warehousing of licenses.

15 And let me tell you. I mean, the
16 prospect of warehousing of licenses can be addressed in
17 a number of ways -- and you're doing it now -- with a
18 provision hopefully that will apply penalties for
19 people who try it.

20 Let me tell you. If some party
21 warehouses a license and came to you and got a third
22 license and then they said, "Well, I want to get four
23 or five more," let me tell you, at the first hearing
24 after they did that, they would be shut down and I
25 think there would be procedures about their existing

1 licenses. So I don't think -- I think that is a red
2 herring.

3 CHAIRMAN ROGERS: That really isn't my
4 particular concern on this particular issue.

5 The other question I guess I would have
6 is: Prior to this hearing has it been your
7 understanding that it was this Commission's position
8 that you would have to have a sale of Valley Race Park
9 in order to be considered for this license and that
10 that sale would not have to be completed prior -- I
11 mean, would not have to be completed prior but the
12 terms of that sale would have to be done prior to this
13 particular meeting today? Was that your understanding
14 when you left here on the last meeting six or seven
15 weeks ago?

16 MR. VANMIDDLESWORTH: My understanding --
17 and I don't mean to be evasive. But the Commission's
18 position is stated by the Commission when they rule. I
19 knew what the staff's position was on this. I went
20 away from the last meeting, parts of which were not
21 very pleasant for me if you recall --

22 CHAIRMAN ROGERS: I understand that.

23 MR. VANMIDDLESWORTH: -- with the clear
24 direction that some or all members felt that it was
25 important to get that deal done and get back here. And

1 we went back and tried to do that in the time frame
2 that we had. It is complicated by several things,
3 including the staff's interpretation. And I don't
4 think the Racing Commission has ever gone on record on
5 the interpretation of 6.06(h). This will be the first
6 time the Racing Commission goes on record on that.

7 But part of it is complicated by going
8 back to a seller -- two things. Going back to a
9 purchaser and saying, "Listen, you know, it's unclear
10 whether we're going to get this license. We think we
11 are. But we want you to send your lawyer over here and
12 spend a few weeks hammering out all these things so we
13 can get it so we hope that it will pass there." That's
14 one of the reasons that this doesn't make sense.

15 CHAIRMAN ROGERS: I know that would be
16 very, very difficult and it does create some problems.
17 That burden, we feel like, is on you, though, not on
18 us. But I do understand that it is a difficult
19 proposition. I just -- I knew where I stood on this
20 last time. I thought you knew where I stood. And I
21 thought a number of other Commissioners were making the
22 same comment.

23 So at least the sense of the Commission,
24 to me, was that unless you had a proposition to divest
25 yourself of this license in some agreeable form or that

1 it was done contingent on this at the same time that
2 you would really be limiting our options on what we're
3 going to do as far as issuing a license. Now, that was
4 the way that I thought this was left last time. And
5 I'd let other Commissioners speak to that. But I just
6 wanted to get your view on what you thought when you
7 left here last time.

8 MR. VANMIDDLESWORTH: I appreciate that.
9 And I left here last time and urged that we do
10 everything we can to do that, notwithstanding that that
11 was -- that was not our view of the law. It was not
12 the ALJ's view of what had to be done. But I got that
13 message, frankly, from Mr. Fenner and also from some of
14 you all.

15 And we tried. And we made significant
16 progress. But what is required is a complete deal with
17 the bells and whistles about escrows and it will happen
18 when this happens. And the other difficult element,
19 frankly, is to -- because of the -- part of the problem
20 is there's a question because legislation may have an
21 impact on the value of this track and any racetrack as
22 you all know.

23 CHAIRMAN ROGERS: No question.

24 MR. VANMIDDLESWORTH: And so you've got a
25 seller that says, "I want to capture value for that and

1 I think there's a decent chance it will occur." You've
2 got a buyer that says, "Well, yeah, there's some
3 chance; but I don't want to -- I'm not going to pay
4 forward of that." They've got to agree on some
5 percentage or they have to try to agree on some
6 mechanism for allowing the seller to take value out of
7 it in the future.

8 That has been what we understood was the
9 Commission had some difficulties with. We have tried
10 to come up with a mechanism -- we hope to present to
11 you soon a mechanism that accomplishes that. And I'm
12 sorry we were not able to get it by today's meeting.
13 It was not for a lack of effort.

14 CHAIRMAN ROGERS: Other Commissioners,
15 questions?

16 VICE-CHAIRMAN RUTHERFORD: How much time
17 do you think you would need to finish, get your sales
18 contract completed? 45 days?

19 MR. VANMIDDLESWORTH: After my experience
20 last meeting, Your Honor, I'm hesitant to make a
21 commitment. I think -- I think we could -- and I'm not
22 involved directly in the negotiations. I know progress
23 has been made. I know if we had some assurance that if
24 the deal is done that it would actually take place
25 because we would get the Laredo Race Park -- if we

1 don't get the Laredo Race Park license, the deal is
2 off. So the seller is somewhat unwilling, in the
3 uncertainty that we have, to commit a great deal of
4 resources to that.

5 But I believe there's a decent chance we
6 could get it by the next Commission meeting and perhaps
7 sooner and present something.

8 VICE-CHAIRMAN RUTHERFORD: Even if it was
9 contingent on if you -- if you got a license in Laredo
10 and if we gave you 45 days, you couldn't do it in 45
11 days?

12 MR. VANMIDDLESWORTH: Well, I think, as I
13 understand it, the Commission would have to see -- the
14 reason 45 days doesn't work is I think the Commission
15 would want to actually see the deal. And so I think it
16 would have to be at the next Commission meeting so we
17 could present you with something.

18 VICE-CHAIRMAN RUTHERFORD: Then you'd be
19 either in or out.

20 MR. VANMIDDLESWORTH: That's the ALJ's
21 recommendation. Under their reading of 6.06(h), that's
22 their approach.

23 COMMISSIONER CABRALES: Let's follow up
24 on that. Let's say we go the ALJ's route on this deal
25 and leaving aside the issue of the statutory

1 construction. How soon after -- let's say it all gets
2 done and a contract for sale of Valley racetrack is
3 approved. How soon after that are you guys turning up
4 dirt and starting construction in Laredo?

5 MR. VANMIDDLESWORTH: I'm going to have
6 to, I guess, defer to someone else who can talk about
7 what the plans are for construction and when that will
8 happen. We have intended to get going on that as soon
9 as possible.

10 Is there anyone who wants to --
11 Mr. Bork?

12 MR. BORK: Nice and easy. As soon as we
13 can. I mean, we have to get our -- finish up our
14 architectural plans and -- a very short period of
15 time.

16 COMMISSIONER CABRALES: Well, how long is
17 that? Is that 90 days, six months, a year? What are
18 we talking about? After -- and I'm saying we're
19 working all the way down to the point where a final
20 license has been approved and the sale of the Harlingen
21 track has occurred and all of that. Start from that
22 point.

23 MR. BORK: A few months.

24 COMMISSIONER CABRALES: Less than six?

25 MR. BORK: Oh, yes.

1 COMMISSIONER CARTER: Can I expand upon
2 that, please?

3 CHAIRMAN ROGERS: Sure.

4 COMMISSIONER CARTER: So you're committed
5 to build this facility if you get this license.

6 MR. BORK: Yes, sir.

7 COMMISSIONER CARTER: Irregardless of any
8 legislative actions that's going on right now, you're
9 going to build this.

10 MR. BORK: Yes, sir.

11 COMMISSIONER CARTER: Okay.

12 MR. VANMIDDLESWORTH: That's why it
13 sometimes helps to have the client come up and speak
14 plain rather than a hem-hawing lawyer. I apologize.

15 CHAIRMAN ROGERS: Any other questions?
16 Okay.

17 MR. ANGELO: Mr. Chairman?

18 CHAIRMAN ROGERS: Yes.

19 MR. ANGELO: I had a question.

20 CHAIRMAN ROGERS: Please.

21 MR. ANGELO: In the record there was a
22 party mentioned that -- or suggested that they had some
23 concern about Maxxam's financial capabilities and I was
24 curious about what other businesses they're in and how
25 you would respond to that. I never did see a response

1 to it.

2 MR. VANMIDDLESWORTH: Yes. Thank you.
3 That was actually something that was delved into at
4 length.

5 MR. ANGELO: I presumed it had been, but
6 it didn't say.

7 MR. VANMIDDLESWORTH: First of all,
8 Maxxam, as you know, is a fairly large company. It has
9 real estate holdings. It has hotel holdings. It has
10 timber holdings and other holdings. It has about, I
11 think, 30 to 40 subsidiaries. Maxxam, as the parent
12 company, is insulated from any liability from those
13 subsidiaries, as most parent companies are.

14 Maxxam has 150 million dollars in
15 unrestricted cash, unrestricted cash available to fund
16 this or other activities. Emily Madison testified they
17 have bankers calling them up all the time. They want
18 to loan them money. And Maxxam says, "We don't need to
19 borrow money. We need to find places to put our
20 money."

21 So the record was very clear -- and there
22 was, I think, a day of testimony on this -- that Maxxam
23 is absolutely healthy. They have a lot of unrestricted
24 cash. And they have essentially no liabilities.

25 CHAIRMAN ROGERS: Any other questions?

1 We'll have another shot to talk with him again if we
2 need to.

3 COMMISSIONER BOYD: I do. One question.
4 If both are approved -- let's say both of them are
5 approved. Are you going to turn dirt in six months
6 still?

7 MR. VANMIDDLESWORTH: I'm not going to
8 even try to answer that for Mr. Bork. My gut reaction
9 is yes from having spent time with him.

10 MR. BORK: Same answer.

11 MR. VANMIDDLESWORTH: Absolutely.
12 Because our facility is a very different facility,
13 relying on very different things.

14 COMMISSIONER CABRALES: Let me ask a
15 related question. I mean, is it your opinion or your
16 side's opinion that this area could support,
17 economically, two tracks?

18 MR. VANMIDDLESWORTH: There was some
19 testimony about that at the hearing. And the problem
20 is, as you know, it splits the simulcast revenues. And
21 there is -- the ALJ's properly said it's not clear that
22 this area can support two facilities at this time.

23 We would like to build our facility
24 because there's something to be said for competition.
25 And if two can survive, then they will. If two build

1 and the better one survives, then that's competition.
2 In America, that's not a bad thing.

3 So we obviously prefer the proposal for
4 decision which awards a single license to the superior
5 applicant, but we intend to build it in any case.

6 CHAIRMAN ROGERS: Thank you.

7 Mr. Moltz?

8 MR. MOLTZ: Mr. Chairman, do you want me
9 to respond to the existing questions or did you want to
10 ask more questions?

11 CHAIRMAN ROGERS: No, we'd like to ask
12 some questions independently.

13 MR. MOLTZ: Okay.

14 CHAIRMAN ROGERS: And, Mr. Brown, do you
15 want to join him just so you can also be right here for
16 those racing questions?

17 We have not yet talked about Hidalgo.
18 Okay? And we will before a decision is made. But is
19 it your contention that the groups are basically the
20 same group? Is that accurate or is it not?

21 MR. MOLTZ: LRP Group?

22 CHAIRMAN ROGERS: Yes. Is there enough
23 change in ownership that it's two --

24 MR. BROWN: Do you want a quick answer or
25 do you want to wait for him? The groups are

1 different.

2 MR. MOLTZ: The groups are different, but
3 there's a lot of overlap.

4 CHAIRMAN ROGERS: Does that amount of
5 overlap -- does that amount of overlap mean that if
6 these licenses were awarded that you could build one or
7 the other or both?

8 MR. MOLTZ: We could build both.

9 CHAIRMAN ROGERS: And you have the
10 capability to build both and that was --

11 MR. MOLTZ: Yes.

12 CHAIRMAN ROGERS: Okay. On your
13 financial structure, there's one area in everything in
14 this I read that I agreed with the ALJ on for sure and
15 that was that the way that this limited partnership is
16 set up where capital calls are not required and people
17 can come in and out, it appears to me that you have at
18 least one party maybe that's capable of doing all the
19 money and the other folks kind of have an option in or
20 out depending on how that is and since the five
21 percent -- since those people are already more than
22 five percent, they would always be more than five
23 percent so it wouldn't require any particular change
24 from our rules.

25 Is that the way that you see that this

1 partnership is set up?

2 MR. MOLTZ: Yes, Mr. Chairman. If I'm
3 understanding you, that's correct, that the partnership
4 agreement allows capital calls or contemplates capital
5 calls and then -- and it also contemplates that all the
6 partners will make the capital calls. But in the event
7 that they do not, then one of two things can happen.
8 One is that you go forward without that capital call,
9 you have another one and everybody else makes it up, or
10 the partners can choose to make it for them and your
11 partnership percentages are adjusted accordingly.

12 Now, it is also set up, and we've seen to
13 it, such that, as you said, nobody is going to be under
14 that five percent that hops over it because of this
15 Commission. And in the future, as an association, any
16 such change would require approval of this Commission.

17 But let me get back to another one of
18 your points --

19 CHAIRMAN ROGERS: But as a practical
20 matter, you've got some folks who are a little stronger
21 who are more apt to put money in and which their
22 percentage would just go up.

23 MR. MOLTZ: Yes. That's what I was about
24 to get to, that the LaMantia family has categorically
25 stated on the record in this proceeding that to the

1 extent that anybody else doesn't want in, they're going
2 to make that up. That would never happen; but I
3 suppose, theoretically, the worst possible case is
4 everybody goes away and they've got a hundred percent
5 and they're okay with that, too.

6 So money is not the issue. And the
7 LaMantias, I believe, have been shown to be well
8 capable of taking care of these financials. And to the
9 extent you'd like to hear that live, both Greg and
10 Steve LaMantia are here today and can make that
11 commitment to your face.

12 COMMISSIONER BOYD: Mr. Brown, let me ask
13 you a question. I guess I'm looking kind of for a
14 commitment from you. I know how you feel about racing
15 live and a training facility because of Retama. But is
16 this track going to be about live racing? Because I'd
17 hate to for all those Representatives and Senators that
18 showed up and -- you know, they're talking about
19 opportunities. I'm looking for a commitment from you
20 that this is going to be about live racing.

21 MR. BROWN: I think it's about both live
22 and simulcast racing and you have to have -- you have
23 to have each to support the other.

24 COMMISSIONER BOYD: I understand that.

25 MR. BROWN: One for legal reasons more

1 than anything else. But you need -- and to go back at
2 how we view live racing at Retama, we've built, we
3 think, a large part of our simulcast business by
4 marketing live racing. That's how you get people out.
5 It's hard to market somebody into a facility just to
6 bet on a TV. That's not what people think of when it
7 comes to racing.

8 So we've spent a lot of money over the
9 last 10 years and before that, before I got there,
10 marketing live racing. And as you mentioned, we run a
11 training center. We have horses on our track every day
12 of the year. Maybe we don't allow them on Christmas
13 Day, but we have horses on our track every day of the
14 year. We're, I believe, up until now, with Lone Star
15 running a training center, the only tracks that could
16 say that in this state.

17 COMMISSIONER BOYD: And is this track
18 facility going to be committed to taking care of
19 horsemen?

20 MR. BROWN: Absolutely.

21 COMMISSIONER BOYD: On the backside as
22 well?

23 MR. BROWN: Absolutely. And I will tell
24 you, you can't avoid that because they're tough and
25 it's tough facing those guys every day and women every

1 day when you don't take care of them. And I think
2 we've done an excellent job at that.

3 And again, the training center arose by
4 the horsemen coming to us and saying, "Can you give us
5 a place to run in the off-season and stay in the
6 off-season? We have nowhere to go."

7 We didn't look at it as a profit-making
8 enterprise at the time we did it. It's ended up that
9 way. But we did it as a response to the horsemen. I
10 think our history has shown that we are very, very
11 responsive to the horsemen.

12 COMMISSIONER BOYD: Well, one of the
13 reasons I'm asking that question is early on as a
14 Commissioner I went to the backside of a track and
15 looked at the facilities where some of the backside
16 folks have to live. And it was not pretty. And I
17 really didn't like that look for this industry. So I
18 guess, you know, that's always stuck with me and I want
19 to make sure that those people are going to be taken
20 care of as well.

21 MR. BROWN: Sure.

22 COMMISSIONER BOYD: Thanks.

23 COMMISSIONER CABRALES: Gentlemen, if we
24 approve this license, how soon are you prepared to
25 begin construction and how soon after that will you be

1 ready to open your doors?

2 MR. MOLTZ: The discussion I had with
3 Mr. Fenner -- and I'll let Bryan chime in because I was
4 kind of a conduit here -- was the proposal would be
5 that we would begin simulcasting by the first quarter
6 of '08 and live racing by the first quarter of '09.
7 And that delay is not a construction delay. It's my
8 understanding that you have to build up a purse from
9 simulcasting before you start live racing. So that was
10 the tentative schedule we had discussed.

11 COMMISSIONER CABRALES: And when do you
12 contemplate beginning construction?

13 MR. BROWN: That schedule would
14 contemplate it fairly quickly. We have, I want to say,
15 roughly 90 days or so to permit and then six to nine
16 months of construction. I think that's what backing --
17 going backwards from what Mr. Moltz said, that's what
18 we'll require. So fairly quickly.

19 CHAIRMAN ROGERS: Any other questions?

20 VICE-CHAIRMAN RUTHERFORD: Yes, sir.

21 Mr. Brown, I think you know me pretty
22 well.

23 MR. BROWN: Yes, sir. You're very direct
24 in general.

25 VICE-CHAIRMAN RUTHERFORD: The gambling

1 is just a way to have good horse racing to me and so
2 I'm interested in live horse racing. And I'm
3 interested in breeding an industry in Texas of the
4 horse industry. There's like a million people in San
5 Antonio. Is that correct?

6 MR. BROWN: About a million five now.

7 VICE-CHAIRMAN RUTHERFORD: A million
8 five. Okay. How many people are in Laredo?

9 MR. BROWN: In Laredo there's probably
10 about 240,000 as we speak.

11 VICE-CHAIRMAN RUTHERFORD: You all do
12 not -- in 2007 you all are not going to have live
13 Thoroughbred racing with a million and a half people,
14 are you?

15 MR. BROWN: That's correct.

16 VICE-CHAIRMAN RUTHERFORD: Why? How do
17 you make money in Laredo if you can't make it in San
18 Antonio?

19 MR. BROWN: We're not racing
20 Thoroughbreds in 2007 in order to take new dates in
21 2008, or with the hope to take new dates in 2008.

22 VICE-CHAIRMAN RUTHERFORD: I don't know
23 about you. I have a place down there in Laredo and
24 last year in July it was 116 degrees one day. I can't
25 imagine you having any kind of entertainment without

1 having air conditioning and heating. Now, you're going
2 to have that in the simulcast parlors for the gamblers;
3 but you're not going to have that for the horse
4 lovers.

5 MR. BROWN: Correct.

6 VICE-CHAIRMAN RUTHERFORD: That doesn't
7 make sense to me.

8 MR. BROWN: Well, we do it at Retama.
9 And whether it's 116 or --

10 VICE-CHAIRMAN RUTHERFORD: You have air
11 conditioning at Retama.

12 MR. BROWN: We have a lot of people that
13 stay outside.

14 VICE-CHAIRMAN RUTHERFORD: I've been over
15 there a lot and I've never seen many people outside.
16 I'm not jumping on you, but I'm just telling you that.

17 Another thing, you all would be willing
18 to build 600 stalls.

19 MR. BROWN: That's correct.

20 VICE-CHAIRMAN RUTHERFORD: Or plus
21 whatever the Commission tells you.

22 MR. BROWN: Correct.

23 VICE-CHAIRMAN RUTHERFORD: Because I
24 worry that you do have a tick fever down there. And if
25 your track gets quarantined, where are we going to put

1 the horses? Are we going to haul them back to San
2 Antonio?

3 MR. BROWN: Once they're quarantined,
4 they can't haul for a certain period of time.

5 VICE-CHAIRMAN RUTHERFORD: I understand.
6 So that's why you need enough stalls. That's another
7 reason that you need enough stalls down there.

8 And as you know, most trainers take their
9 help with them. They take their grooms and such. So
10 we need some facilities out at your track, at your
11 facility, to take care of those people. They can't
12 afford to stay at a motel or hotel. I think you need
13 to look into that if you do get a license.

14 My main purpose is I want live racing
15 because that's the reason we had to pass the Racing
16 Act. That's why we have this Commission up here, for
17 people to go see racing, not to run a simulcast
18 parlor.

19 Thank you.

20 MR. BROWN: Thank you.

21 CHAIRMAN ROGERS: Commissioner Angelo?

22 MR. ANGELO: Obviously a liquor license
23 is important to a facility like a racetrack to make it
24 profitable. And with the TABC regulations that appear
25 to me, as a nonattorney, to be pretty black and white,

1 I'm wondering how you all plan to address that problem
2 with respect to the LaMantia family owning the
3 distributorship.

4 MR. MOLTZ: Commissioner, there are a
5 number of ways to do that. It was discussed in the
6 hearing. I will defer to Mr. LaMantia who is
7 intimately familiar with that about what the real
8 bottom line is talking to the TABC.

9 Go ahead.

10 MR. LaMANTIA: Good afternoon. And thank
11 you.

12 Basically I think that having dealt with
13 TABC in the past on a lot of issues, they usually like
14 to look at them on a case-by-case basis, whether it
15 is -- when you look at -- and I'm not an attorney.
16 This is simply on a practical matter. But things like
17 you're not supposed to give anything of value to a
18 retailer over a dollar, things like that. If you look
19 at that interpretation literally, then you couldn't go
20 to a Seven-Eleven, a Circle K, or an HEB and buy gas,
21 bread, things like that.

22 And so although the rules are written in
23 such a fashion that would say you can't do it, they
24 look at it and say, "All right. That's not what we
25 were trying to accomplish." And then as long as you

1 adhere to the main purpose of, in this case, a
2 three-tier system, then there's no problem.

3 In fact, I think in some of the testimony
4 it was brought up that some of the people that have
5 ownership interests in Maxxam where they are currently
6 selling beer would be in violation of the law.

7 So I think they look at it on a basis of
8 what are you trying to do, why are you trying to do it;
9 and then they make a ruling accordingly. And based on
10 our conversations with TABC, it won't be an issue.
11 We'll be able to do it and it won't be any problem,
12 especially for the 108 days -- or 108 degrees or
13 whatever.

14 VICE-CHAIRMAN RUTHERFORD: It gets it.
15 You know it.

16 MR. LaMANTIA: It will get warm and, boy,
17 they love that cold Budweiser.

18 VICE-CHAIRMAN RUTHERFORD: I'm telling
19 you. I love cold Budweiser, too.

20 MR. LaMANTIA: Thank you. Thank you for
21 your business.

22 CHAIRMAN ROGERS: You should have come up
23 earlier.

24 VICE-CHAIRMAN RUTHERFORD: I lived next
25 door to Bill Georges for 20 years. You remember Bill?

1 MR. LaMANTIA: Oh, yeah. Very well. But
2 I hope I answered your --

3 MR. ANGELO: That's what I wanted to
4 hear.

5 MR. LaMANTIA: Okay. Thank you.

6 CHAIRMAN ROGERS: Could I ask you, have
7 you currently had discussions with TABC on how this
8 might be structured to work? I'm not asking for how it
9 works. I'm just asking if you've had discussions on
10 whether --

11 MR. LaMANTIA: There have been
12 preliminary discussions at a lower level on the
13 different ways that this could be accomplished. And I
14 think there was a lot of testimony in the ALJ case that
15 cited specific examples of things like this. Maybe
16 not -- it wasn't a horse track with a second-tier
17 wholesaler ownership in a horse track, but things that
18 hit on the same ingredients.

19 VICE-CHAIRMAN RUTHERFORD: Like owning a
20 skybox.

21 MR. LaMANTIA: A skybox, for instance.
22 Or I think there was a country club issue where it came
23 up and they did it. In fact, another one that doesn't
24 fit exactly, but the Sea World issue. When
25 Anheuser-Busch came in and saved Sea World from

1 shutting down and leaving San Antonio, they own it and
2 they're the first tier and they're the manufacturer and
3 yet they're selling beer there. Well, they came up
4 with different ways. They passed some rules and looked
5 at it. And still today it's going on where that is
6 happening.

7 So I guess my point is they look at each
8 one specifically, trying to adhere to the purpose of
9 the three-tier system; and as long as they do that,
10 then they're fine.

11 CHAIRMAN ROGERS: Okay. Let's assume for
12 a moment that it doesn't work, you can't get past the
13 TABC. Just make that assumption for a moment. Where
14 does that leave you?

15 MR. LaMANTIA: Well, I guess Steve will
16 buy me out.

17 CHAIRMAN ROGERS: Steve is not the
18 Budweiser distributor then.

19 MR. LaMANTIA: He's a brother.

20 CHAIRMAN ROGERS: But he's not in the
21 distributorship.

22 UNIDENTIFIED SPEAKER: I'd buy his
23 distributorship.

24 MR. LaMANTIA: And I'd buy a racetrack.

25 CHAIRMAN ROGERS: Sounds great. I can

1 tell you which one I'd rather own right now.

2 VICE-CHAIRMAN RUTHERFORD: I'm going with
3 the brother.

4 MR. LaMANTIA: I hope I have a loving
5 brother.

6 I hope that answered it.

7 CHAIRMAN ROGERS: It does. Thank you.

8 MR. VANMIDDLESWORTH: I'm not an expert
9 on alcohol, Your Honor; but we do have one in the
10 audience, someone who formerly represented the
11 Alcoholic Beverage Commission. I think he submitted a
12 card and we brought him here in case there were TABC
13 questions relating to this and he has spoken with the
14 general counsel at TABC about this very issue.

15 CHAIRMAN ROGERS: We may listen to him in
16 a moment.

17 COMMISSIONER SOWELL: One more question
18 for clarification, Mr. Chairman.

19 I'm still a little confused,
20 Mr. LaMantia. I thought I understood you to say first
21 that the real purpose of the liquor law is to protect
22 the three-tier system, but then later on it sounded
23 like that even an alteration of the three-tier system
24 has been negotiated at Sea World or some other place as
25 well. And so somebody is negotiating with the

1 Government to avoid laws that are clearly written? Is
2 that what's going on?

3 MR. LaMANTIA: No, not laws. They're
4 rules and interpretations of rules.

5 COMMISSIONER SOWELL: But they have the
6 same effect as law, do they not?

7 MR. LaMANTIA: I'm not an attorney. I
8 don't know that a rule is the same thing as a law.
9 You'll have to ask one of these guys. But they're
10 trying to adhere to the spirit of it. And what they
11 don't want to see happen is the example where
12 Anheuser-Busch would own Sea World and then that the
13 only product served at Sea World was Budweiser and
14 nobody else had an opportunity to sell their product,
15 things like that, the three-tier system, which was the
16 cause of prohibition and then the repeal of prohibition
17 and they came up with the three-tier system. So that's
18 what they're looking at to make sure.

19 An example is when we go to Dodge
20 Garage -- or excuse me. Dodge Arena. That's a
21 nickname -- Dodge Arena in South Texas, where they have
22 a new venue, where they have hockey, ice skating,
23 concerts, all these things, we were able to negotiate
24 an exclusive advertising in that area for
25 Anheuser-Busch.

1 Okay. Well, here's a retailer. The
2 retailer is getting something of value, so to speak.
3 How do you do that? Well, as long as -- are they
4 serving other products? Is other beer there? Is that
5 not confined to a specific area? Things like this.

6 So although I'm not an attorney and I
7 can't get to the specifics of it, what I'm trying to
8 say is they look at the spirit of the law, the spirit
9 of the rules, and the three-tier system; and then they
10 can make adjustments as long as that spirit is there.

11 But they're not trying to break the law.
12 I'm not trying to break the law. I'm not trying to
13 change the three-tier system. It's very dear to beer
14 guys. In fact, we're going through sunset right now
15 and we just came out of the Senate at five of and we
16 went to the House at 1:30 and came out of that.

17 So it is not in my best interest to break
18 the law, jeopardize our distributorship, any of the
19 above, and we won't do that. And we don't think it's
20 an issue based on everything we've seen and based on
21 the testimony that happened in front of the ALJ's. And
22 I think the ALJ's agreed with that.

23 CHAIRMAN ROGERS: Mr. Fenner?

24 MR. FENNER: Commissioners, we're getting
25 into an area where we're starting to delve into the

1 introduction of new evidence. The information about,
2 for example, Dodge Arena I don't believe was in the
3 Webb record. Certainly new testimony from the TABC I
4 think would be inappropriate.

5 The TABC information has been set out in
6 the PFD. I think that we really need to restrict
7 ourselves to the information that's already been
8 presented.

9 MR. LaMANTIA: I'm sorry if I went too
10 far.

11 CHAIRMAN ROGERS: No. You were asked the
12 question. Thank you.

13 COMMISSIONER CARTER: Could I get back to
14 the racetrack?

15 CHAIRMAN ROGERS: Yes. Please.

16 MR. MOLTZ: Yes, sir.

17 COMMISSIONER CARTER: You were asked a
18 little while ago if you would expand the stalls, and
19 you said yes. And we heard something earlier that 125
20 acres might not be enough to do that. And then you
21 said that this was bought off of a large ranch. Do you
22 have opportunities to expand this to make room for the
23 stalls and the walkers and all that kind of stuff?

24 MR. BROWN: Number one, we did revise our
25 site plan just to ensure that we could, under our

1 existing footprint, fit the 600 stalls; and we have it
2 here, I think, in poster form. That's the same
3 125-acre site. And you'll also notice that the
4 entertainment area is, I believe, the same size. So we
5 were able to -- or close to it. We were able to fit
6 the 600 stalls, plenty of room for the hot walkers, I
7 believe 100 feet between the barns, which should be
8 plenty of room, and get everything in without really
9 altering our site too much.

10 COMMISSIONER CARTER: Okay. Back to
11 Commissioner Rutherford's questions, what did you have
12 intended for grooms and backside labor? What did you
13 have intended for them?

14 MR. BROWN: In terms of housing, we don't
15 have housing planned. We would be just like
16 Fredericksburg, where the grooms, the horsemen, the
17 trainers would come in, race, and then go somewhere
18 else and go back home or wherever they might go. So
19 that's what happens today at Fredericksburg.

20 COMMISSIONER CARTER: Do you have
21 opportunities to expand that with that footprint?

22 MR. BROWN: There's plenty of room. I
23 mean, as you can -- you can see. We believe there will
24 be plenty of room. We might get into some of the
25 entertainment area if we were to do that.

1 VICE-CHAIRMAN RUTHERFORD: Could you buy
2 more land?

3 MR. BROWN: I'm sure we could buy more
4 land. I mean, again, we're part of a massive, massive
5 tract; and particularly as you go backwards, I'm sure
6 we could do that. I've not asked the question of
7 Mr. Hurd, but I'm sure we could.

8 CHAIRMAN ROGERS: Any other questions?
9 Okay. I think -- do you have something
10 else you want to add?

11 MR. MOLTZ: No, I don't. I was coming to
12 answer a question if you've got one.

13 CHAIRMAN ROGERS: I don't have one.

14 I think what we'll do here, if there are
15 no other questions, is I think we will just go ahead
16 and move to Hidalgo. And -- yeah. We're going to
17 take -- we're going to take five minutes and then we're
18 going to come talk about Hidalgo.

19 (Recess from 2:34 p.m. to 2:47 p.m.)

20 CHAIRMAN ROGERS: Okay. Let's come back
21 together here. Okay. I think we're going to move
22 to -- we're going to move to Hidalgo. Could we kind of
23 come to order here, please? I'm having a little
24 trouble hearing myself up here. That's a dangerous
25 thought. We're going to move to Hidalgo.

1 Ms. King, would you lay this out for us,
2 please?

3 MS. KING: Sure.

4 Mr. Chairman, members, you'll find the
5 executive secretary's report under Tab 4. The report
6 is laid out in similar fashion as was the other
7 report. Again, the report was prepared according to
8 Section 303.8 of the Rules of Racing requiring the
9 executive secretary to review all applications for
10 racetrack licenses and prepare the report.

11 The Racing Commission posted notice in
12 the January 28th, 2005 Texas Register to open the
13 application period for the Class 2 racetrack license in
14 Hidalgo County for 60 days. The application period ran
15 from April 1st, 2005, to May 31st, 2005. On May 25th,
16 2005, Valle de los Tesoros submitted an application for
17 a Class 2 racetrack in Hidalgo County.

18 The report isn't too lengthy, but it has
19 a lot of good materials in it. Before I turn it over
20 to Mark to start addressing some of the issues, let me
21 remind you that we've included in the report standards
22 for issuing a racetrack license, the 11 factors that we
23 consider from the statute, the financial stability and
24 resources for supplementing purses, and the other items
25 like track location, effect on traffic flow, patrons,

1 race animals, facilities, all those kinds of things.
2 There's a fair amount of detail in there and the staff
3 has worked very hard on this and can address your
4 questions.

5 In the appendix you'll find
6 organizational documents, in Appendix A, and then the
7 list of items, land uses within a half mile, a Texas
8 Department of Transportation letter, site plans and a
9 map, financial review, the impact study of Hidalgo
10 County Class 2 racetrack on the Valley racetrack, which
11 is an important piece that people have been referring
12 to, listing of the letters of support and opposition.
13 We didn't put all the letters in your packet. We put a
14 list of them but have them available here. And then
15 some meteorological information which has been the
16 subject of some discussion here today.

17 Mr. Chairman, at this point I'd like to
18 turn it over to Mark to address the referral to the
19 State Office of Administrative Hearing issue.

20 CHAIRMAN ROGERS: Thank you.

21 Mr. Fenner?

22 MR. FENNER: Thank you, Chairman.

23 Unlike the Webb County application that
24 we have been talking about for the last several hours,
25 the Hidalgo case is not a contested case. Behind the

1 Tab 4 you'll see the executive secretary's report which
2 Charla Ann mentioned. In this process, that executive
3 secretary's report is the evidentiary record that
4 you'll be reviewing and considering in determining what
5 action you wish to take.

6 Behind the report you will find also a
7 pleading from representatives of Valley Race Park, a
8 pleading to institute a case proceeding and motion to
9 transfer the Hidalgo County application to the State
10 Office of Administrative Hearings. Behind that is also
11 a response from Mr. Moltz on behalf of the Tesoros
12 application.

13 You have two options on this
14 application. You may either grant the license or you
15 may take no action. At this point you cannot take
16 any -- you may not have a motion to deny a license at
17 this point because it has not been to the State Office
18 of Administrative Hearings.

19 So let's talk a little bit about that.
20 The fundamental issue regarding SOAH is whether the act
21 or the rules requires the executive secretary or the
22 Commission to refer the application to SOAH whenever a
23 nonparty objects.

24 Now, there's no doubt that it is
25 certainly within your discretion to refer it to SOAH;

1 but it's clear to me that there are, first of all,
2 certain applications that the executive secretary must
3 bring to you and give you an opportunity to make a
4 decision about before going to SOAH and that there is
5 the provision for the Commission or the opportunity for
6 the Commission to grant a license without going to the
7 State Office of Administrative Hearings.

8 Now, the act specifically says when an
9 application must go to SOAH. Section 3.15, which
10 applies to hearings generally, and Section 6.06, which
11 applies to racetrack licenses particularly, require a
12 hearing before SOAH whenever you refuse, suspend, or
13 revoke a license. However, there is not a comparable
14 provision in the statute or the rules requiring you to
15 refer a case to SOAH before you grant a license.

16 The rule also sets out the standards for
17 the executive secretary. Rule 307.5(b) states that
18 "For each application, the executive secretary shall
19 determine whether to refer the application to SOAH for
20 a hearing. In making that determination, the executive
21 secretary shall consider the expressed support and
22 opposition to the application. For each application
23 the executive secretary proposes to be denied, the
24 executive secretary shall refer the application to SOAH
25 for a hearing."

1 Now, in this case, staff has reviewed the
2 application. The executive secretary has reviewed
3 staff's work. She's reviewed the application. She's
4 reviewed the expressed support and opposition to this
5 application. And she cannot in good conscience at this
6 point make a referral -- or make a recommendation to
7 deny this license. So at this point, under the rule,
8 it's incumbent upon her to bring it to you and give you
9 an opportunity to review it yourself.

10 Now, any policy that would require all
11 applications, even qualified ones with broad public
12 support, that they be referred to SOAH, I think that's
13 of questionable public value. It is a long and
14 expensive process to go to SOAH for the agency if no
15 one else. And so therefore I think that if you're
16 interested in giving licenses and good government, it
17 makes sense to take these things up and give them some
18 consideration at this point.

19 Now, that's all I had to say on this
20 topic. We will let Chairman Rogers proceed on, unless
21 you have some questions for me.

22 CHAIRMAN ROGERS: I don't. Does anybody
23 else?

24 Thank you.

25 Okay. We would call on the Valle de los

1 Tesoros folks to present their case.

2 MR. MOLTZ: Thank you, Mr. Chairman.

3 MS. GIBERSON: Is this 40 minutes timed?

4 CHAIRMAN ROGERS: Do what?

5 MS. GIBERSON: Is this timed?

6 CHAIRMAN ROGERS: We're going to give him
7 30 minutes.

8 MR. MOLTZ: That's plenty.

9 MS. GIBERSON: Okay.

10 CHAIRMAN ROGERS: We're in hopes he
11 doesn't take quite all of it.

12 MR. MOLTZ: Good chance.

13 Thank you again, Commissioners,
14 Mr. Chairman. I'm here, for the record -- I know I've
15 been here awhile -- but Bill Moltz on behalf of Valle
16 de los Tesoros.

17 I would like to just briefly introduce,
18 as I did previously in Webb County, the site and the
19 ownership. It's slightly different as we mentioned
20 previously in answer to a question. And then I will --
21 well, ultimately Mr. Brown will present the track
22 itself to you and the various technical issues.

23 And as Mr. Fenner mentioned, there's been
24 a pleading filed to refer this case to SOAH. Although
25 Mr. VanMiddlesworth hasn't actually presented that yet,

1 I guess due to the procedure here, I'm going to respond
2 before he presents it. That's a bit awkward. But in
3 the interest of everybody's time, I guess we'll just go
4 ahead and do that. I think everybody knows what it's
5 going to say.

6 So with that, with respect to the
7 ownership, I'm not going to go every one of these
8 people we've already gone over; but I'll just read
9 through and you'll probably recognize the names of the
10 folks that you've already heard.

11 Valle de los Tesoros is made up, of
12 course, of the LaMantia family through Hidalgo Muy
13 Buena Suerte. Then you've got the Straus Trust, Joe
14 Straus, Tom Johnson again, Christopher Hall again,
15 George Wolff, Dr. Graham, Nick Serafy, Silver Creek
16 Racing, Bryan Brown, Doug Vair, Larry Martin, Robert
17 Johnson, and Gordon Johnson.

18 I believe all those names you've heard me
19 go over before. And the reason I'm going over them
20 right here is there are -- I haven't counted them, but
21 there's probably five or six that were on the LRP Group
22 that aren't in here. Other than that, we've pretty
23 much got the same quality of folks, the same people.
24 It's not identical, but very similar.

25 Now, and again with respect to -- let me

1 just go over briefly where it is. This map here was
2 prepared at the request of the Racing Commission and I
3 haven't had a chance to study it. But here we are.
4 This is McAllen and Harlingen. The proposed site is
5 right here on the edge of McAllen. The Valley Race
6 Park site is over here in Harlingen.

7 As we come up a little bit closer to it
8 and see where it is, there's vacant land -- I say
9 vacant. It is developed around here. We've got
10 commercial and a lot of agricultural around here. And
11 if we back off a little bit further, we see here, here
12 is McAllen proper. We have the roadways coming down --
13 we have the roadways coming down to it, the airport
14 right there, Dodge Arena just to the south.

15 Anyway, that's the proposal for the Valle
16 de los Tesoros site there in McAllen and I'm sure
17 Mr. Brown could fill you in on details of what's around
18 that site.

19 Okay. I would like to, before I turn it
20 over to Mr. Brown, respond to the request that this
21 matter be referred to SOAH. I think that it is
22 clear -- and even within the pleadings that have been
23 filed, I haven't seen a lot of argument -- that there
24 is no right to send this matter to a hearing given to a
25 protestant.

1 The act and the rules of the Racing
2 Commission make it pretty clear that that right
3 attaches if you're going to deny, suspend, or revoke a
4 license, not issue a license, hence the procedure
5 utilized by the staff where to bring it to you and you
6 could grant it. If the proposal is to deny it, then
7 there's a right for us to have a hearing and then we go
8 back through that whole thing. But short of that,
9 granting a license, there is no right to a hearing.

10 And in support of their position that,
11 among other things, that they get a hearing -- and
12 there is a provision in your rules. The rule is --
13 let's see if I can find it here. Okay. It's in
14 contested cases, prehearing procedures, Section 307.31,
15 which basically directs someone who has a right to a
16 hearing how to implement that right. You send a letter
17 to the Racing Commission saying "Okay. I want my
18 hearing." It gets docketed and then you go from
19 there.

20 And I believe it is incorrect to
21 interpret that procedure, actually called prehearing
22 procedure and docketing, to somehow give an independent
23 right to a hearing just by sending a letter in to the
24 Commission saying "I want one."

25 I don't think that's the intent. It's

1 never been interpreted that way. It's just a
2 procedural mechanism. It's not in and of itself a
3 right to a hearing.

4 Actually the hearing, as Mr. Fenner said,
5 you have a right to one where the proposal is to deny,
6 suspend, or revoke; and short of that, as Mr. Fenner
7 said, the executive -- I'll just read the rule. "The
8 executive secretary shall determine whether to refer
9 the application to SOAH for a hearing. In making the
10 determination, the executive secretary shall consider
11 the expressed support and opposition to the
12 application. For each application the executive
13 secretary proposes should be denied, the executive
14 secretary shall refer the application to SOAH for a
15 hearing."

16 So I don't believe we would dispute that
17 if the executive secretary determines that there is a
18 basis for a hearing and decides to call one, grant,
19 deny, or suspend or whatever, the executive secretary
20 could do that. In this particular case, the executive
21 secretary has made a decision under the rules that it
22 is not appropriate to send this case to SOAH; and I
23 would submit to you that that decision doesn't -- has
24 been delegated by this board, through rulemaking, to
25 the executive secretary and you all don't really even

1 need to revisit that decision.

2 You can either grant this permit, which,
3 of course, we would propose; or if you take no action
4 on it, I guess at that point it becomes clear to the
5 executive secretary she's got to do something, so refer
6 it to a hearing. But the decision has already been
7 made. In effect, what we've got here is an appeal of
8 the executive secretary's decision.

9 Now, as I read the rule, the executive
10 secretary shall consider the expressed support and
11 opposition for the application. I will note, and as,
12 again, Mister -- I believe Charla Ann pointed out, that
13 there are a number of letters in support and a few in
14 opposition. There's just a listing of them in your
15 packet. There was really too big a pile to try to send
16 to everybody.

17 But I will say, just by way of summary,
18 that in support of the application there were numerous
19 horsemen, numerous business owners and operators,
20 numerous Chambers of Commerce, economic development
21 organization, numerous County Commissioners, a County
22 Judge of both Hidalgo and Cameron County, 18 State
23 Representatives, and three Senators. I'd say that's
24 pretty good support.

25 The people down in McAllen want this

1 track. They think it's important. And they want it
2 down there. And I believe that it's clear that your
3 executive secretary has made the right decision in not
4 to try to delay this thing by a couple of years by
5 sending it off to a hearing.

6 Also let me say that it's notable that
7 originally the Texas Greyhound -- I guess Greyhound
8 Association I think they call themselves -- I could be
9 wrong on that --, was in opposition and did speak when
10 we were opening up the application period. They have
11 since withdrawn the opposition. They're neutral. I
12 won't go so far as to say they're promoting or -- but
13 they are neutral in this thing, in this matter.

14 Also there was talk within the pleadings
15 that have been filed by Valley Race Park with regard
16 to, you know, the Commission has always sent these
17 things to hearing; they've always done this, always
18 done that. And there's a great misstatement of history
19 in there.

20 Now, I've just -- I've put together a
21 list here. And many of you may remember these things,
22 so I'm not going to go into great detail. But your
23 rules provide for two types of proceedings: One you
24 call a decision-making proceeding and another is called
25 in your rules a contested case proceeding.

1 The rules do contemplate exactly what
2 we're doing here today, without an evidentiary hearing,
3 going ahead and making a decision. That is called a
4 decision-making proceeding in your rules where this
5 happens. You sit in front of your Commissioners. You
6 all ask questions. And you make a decision on what's
7 in front of you.

8 That is the procedure that was used with
9 regard to the Manor application, Gillespie, Brady,
10 Bandera, Trinity Meadows, the Lubbock Saddle Brook --
11 Saddle Brook when it was in Lubbock, Austin Jockey Club
12 in Round Mountain, and the Corpus Christi dog track.
13 So to say that we've had evidentiary hearings on all
14 track licenses I think is just a bit off.

15 Now, there were hearings with respect to
16 Retama, Gulf Greyhound, and Lone Star. Those, again,
17 were proceedings, as I mentioned earlier, where the
18 Legislature has said you can only have three Class 1's
19 and then you can only have dog tracks in these counties
20 and so many of them. So when you have that situation,
21 with competing applications, you do have to make a
22 choice and that perhaps is appropriate. It is not
23 appropriate within a Class 2, what we're applying for
24 here.

25 I'd say the most recent was the

1 application in Webb County for El Primero. You all may
2 remember that. It was gone through this same
3 proceeding. It came in front of the Commissioners,
4 just like this one is here today. And the
5 Commissioners took no action, in which case the
6 executive secretary said, "Well, if you're not going to
7 grant it, I guess I'm going to have to deny it; and if
8 I'm going to deny it, they get a hearing; so let's send
9 it to SOAH." And then the applicant withdrew that
10 application before it actually got anywhere at SOAH.
11 So that was the procedure that was used there also.

12 And then also they bring up Squaw Creek,
13 how they had a hearing in that matter. Now, let me
14 tell you what happened in Squaw Creek was the executive
15 secretary was informally, I'll say, going to deny that
16 application. So Squaw Creek had the opportunity to
17 have a hearing. And they either had the opportunity to
18 go into a hearing with the executive secretary saying,
19 "Deny your application," or they could go into a
20 hearing and let Lone Star intervene and then the staff
21 would be neutral in that hearing, with Lone Star
22 opposing it.

23 That's what happened. The hearing that
24 the executive secretary called on that was quite
25 different than what we're talking about here. It

1 wasn't just because there was an opposing track. It
2 was either go to a hearing or be denied, and we avoided
3 this step that we're seeing right here today in that
4 particular case.

5 So I think the history is very clear that
6 what the staff is recommending and the procedure the
7 staff is recommending is the appropriate way to go in
8 this particular case.

9 And you will hear a lot of discussion
10 about, you know, what this market will or will not
11 support. And I will note, if I can find it here, that
12 in support of the discussion of why this market won't
13 support two tracks -- and I'm using "this market"
14 generally. One is in McAllen and one is in Harlingen.
15 But within their pleading they filed a report saying,
16 "Oh, this is going to put Valley Race Park out of
17 business."

18 And I'll just cut down to the chase on
19 this and read the second to the last sentence and the
20 conclusion. "Due to the high cost of operating a live
21 greyhound track, a certain level of revenue is
22 necessary to produce positive operating cash flow.
23 Currently Valley Race Park is not generating revenues
24 sufficient to cover operating costs. Positive
25 operating cash flow is necessary to sustain an

1 operation for any length of time. VRP would be
2 ill-advised to stay open in this operating
3 environment."

4 Basically what you've got there -- and
5 the record in Webb County will support this, although I
6 know we're not on Webb County anymore. But Valley Race
7 Park is not making money. You know, try as they might,
8 they are losing money. And now they want -- they're a
9 losing monopoly down there, as the mayor of McAllen
10 came in here and said, wanting a viable horse racetrack
11 in Harlingen to be awarded, at best put off three years
12 by going to SOAH, at worst denied for no particular
13 reason, so they can continue to lose money.

14 And I will also mention that, you know,
15 it's a bit peculiar that we're sitting here talking
16 about arguing with Valley Race Park as to whether or
17 not Hidalgo County can have a horse racetrack when, I
18 guess it's been six weeks ago now or whatever, Mr. Bork
19 filed a request for this Commission to open up an
20 application period for a Class 2 horse track in Cameron
21 County, you know, right there with Valley Race Park.

22 And either Valley Race Park is not going
23 to be injured by a Class 2 track or they're going to
24 injure themselves or -- I don't really know what the
25 game is here. But that's totally inconsistent with

1 their position that there shouldn't be a Class 2 track
2 in Harlingen, way down -- I mean, excuse me, McAllen,
3 way down the road, when they want to put one right next
4 to themselves.

5 And I don't really have an explanation
6 for that other than perhaps there's something going
7 on. And I'll let Mr. Bork speak to that because I
8 don't know what it is. But it certainly doesn't
9 support denial of this application.

10 And I will, of course, answer any
11 questions; but I know I'm running -- using up time here
12 and Mr. Brown needs to describe the facility itself,
13 which I think is of primary importance to you all. So
14 I will sit down and let him tell you about the track.

15 MR. BROWN: Good afternoon,
16 Commissioners.

17 I want to first touch on the location of
18 the site. And if we could start with -- let me jump
19 over here. To start, I think most everybody knows
20 where McAllen is; but let's not assume that. We've got
21 San Antonio, the home of beautiful Retama Park, just a
22 little -- which hopefully we'll be racing in 2008 with
23 Thoroughbreds. I had to throw that in. Wait. That's
24 another agenda item. You caught me.

25 If you went straight down 281, which

1 comes into San Antonio, which is not the way you would
2 take it but if you did, you go straight into McAllen.
3 Valley Race Park in Harlingen is just to the east.
4 Across the border from McAllen is Reynosa. Right
5 about -- where's Laredo? Right about here, almost
6 equidistant between Laredo and McAllen, is Monterrey.

7 And that's important to touch on because
8 what has been happening and what was described a little
9 bit earlier is tremendous traffic into the McAllen area
10 from Monterrey and cities south of McAllen, Reynosa, of
11 course, across the border.

12 McAllen's retail sales are ridiculously
13 high, as was pointed out earlier, relative to their
14 population and income base. The La Plaza Mall in here
15 is, as I'm told, the number two mall in Simon's network
16 on a per-square-foot sales basis, I think number two to
17 Mall of America.

18 So you have a big flood of tourists
19 coming up from Mexico, even from Monterrey, which I
20 believe is a trend that's occurred over the last 10
21 years or so, explosive growth in the McAllen area. And
22 that includes Edinburg and Pharr, Mission, Weslaco, a
23 whole slew of -- you almost feel like you're driving
24 in, say, Miami, where you go city after city after city
25 and former farmland is now developed area. That's what

1 it feels like down there now. Explosive growth.

2 The site itself -- the site itself is
3 located about a half a mile from the Dodge Arena, just
4 down the road, about a mile and a half, from the
5 McAllen airport, very near residential areas, very near
6 restaurant and other venues, and right down the street
7 from what we would consider to be our market or in our
8 market area.

9 If you'll put up the site plan. Thank
10 you.

11 There's some similarities to what we have
12 proposed in Webb County and some differences. The main
13 clubhouse is very, very similar, almost identical,
14 touched up a little bit in some detail as things we've
15 learned, a little more description in the facility
16 itself, to what we did in Webb County.

17 The main difference is the barn area. We
18 went ahead and included up front 600 stalls. The
19 reason we did that is we saw very quickly in the Webb
20 County process, with the reaction of the Racing
21 Commission, that in Webb County we were probably going
22 to have to head that direction anyway and we felt in
23 McAllen it was better just to go ahead up front and
24 plan for 600 stalls and place that in our application
25 and not have to face a lot of questions about why 240

1 and not some other number.

2 So the main difference is 600 stalls.
3 That creates a little bit different configuration. The
4 property is much bigger. It's about 200 acres. And so
5 what that creates is what I'll term massive areas for
6 development. This whole parcel here will be free for
7 future development. These two parcels, these parcels
8 up front, will be available for future development. So
9 there's tremendous extra land that we could do other
10 things with.

11 And the overall primary difference is
12 just the markets themselves. The Laredo market is very
13 much a combination of a family market and a commercial
14 market, commercial via the truck traffic coming to and
15 from the City of Laredo and the family market of people
16 having lived there for many years growing up and
17 benefitted by the growth in the area.

18 The McAllen area is much more of a
19 tourist destination area, not so much in Webb County,
20 so there will be some diversity. It's not one town
21 near the border versus another town having
22 similarities. They're far, far different in terms of
23 the approach to the market.

24 Other than that, I think you'll see the
25 similar seven-eighths-mile track designed by Joe King.

1 We've planned in our application for an 18-day mixed
2 meet starting in late February and ending April 1st.
3 We would run approximately seven Quarter Horse races,
4 three Thoroughbred races, and two Arabian/Paints per
5 day. The focus, as you can imagine in South Texas,
6 will be Quarter Horse over Thoroughbred. We think
7 there's much more demand in that area for that
8 product.

9 That's really about all I had. I'll be
10 happy to answer any questions.

11 CHAIRMAN ROGERS: Questions,
12 Commissioners?

13 COMMISSIONER SOWELL: Yes, I have one.
14 Bryan, why would you have -- what did you say, 18
15 days?

16 MR. BROWN: Right.

17 COMMISSIONER SOWELL: Versus 27, I
18 believe it was, at Laredo. Why the difference?

19 MR. BROWN: That's a very good question.
20 And there's a provision in the act -- one of the
21 criteria for approval is conflict with other race
22 meets. It's a very intimidating sentence in the act,
23 in, I believe, Section 6.04, I believe, or something
24 like that, where one of the criteria you need to look
25 at is how much conflict we would have with other race

1 meets.

2 In the case of Webb County, we picked
3 days that were not taken at that time by other
4 racetracks to avoid that provision. That,
5 unfortunately, dumped us into certain time periods
6 where we could be criticized for, racing in the heat in
7 July. Well, that was when Thoroughbred racing had no
8 dates. That's why we put our dates there. Nobody
9 wants to race when it's 109, but that was what's
10 available.

11 This go-around, by the time we had
12 finished our Webb County application, basically all the
13 dates had been taken. We had no choice but to drop our
14 meet on top of other meets and that's why we did a
15 little bit -- something a little bit different. And
16 that's why we tried not to go 27 days of racing, which
17 would really overlap with some other meets, including
18 Manor and Sam Houston.

19 COMMISSIONER SOWELL: Thank you.

20 CHAIRMAN ROGERS: But if you're primarily
21 Quarter Horse focused, this Commission could grant
22 Quarter Horse days while Thoroughbreds were running
23 somewhere else.

24 MR. BROWN: Absolutely. Yes.
25 Absolutely.

1 CHAIRMAN ROGERS: Questions?

2 Thank you.

3 MR. BROWN: Thank you.

4 CHAIRMAN ROGERS: Okay. We will --
5 before we do the public comment, we've got some DPS
6 guys here and I think I need to ask the question of
7 them so that they can go home after they answer this.
8 He has that look that says "I want out of here" and I
9 might be driving his way on the way home.

10 VICE-CHAIRMAN RUTHERFORD: I think his
11 brother got me one time.

12 MR. POERNER: You must know the traffic
13 in Austin.

14 CHAIRMAN ROGERS: The reason we'd like
15 you to come up here again is because you had said that
16 there was no -- nothing in the background checks of the
17 folks involved in either of the Webb County sites that
18 would preclude them from getting a license. Is that
19 correct?

20 MR. POERNER: Yes, sir.

21 CHAIRMAN ROGERS: Okay. But we have
22 testimony that these partners are somewhat different
23 and this ownership chart is somewhat different.

24 MR. POERNER: Yes, sir.

25 CHAIRMAN ROGERS: Is there anything in

1 this ownership chart in the Hidalgo group that would --
2 that you saw that would preclude them from getting a
3 license?

4 MR. POERNER: No, sir, we did not find
5 anything.

6 CHAIRMAN ROGERS: Okay. Any other
7 questions?

8 Thank you.

9 MR. POERNER: Yes, sir. Thank you.

10 CHAIRMAN ROGERS: Okay. We will take
11 public comments. And let me -- I have a few here that
12 I have cards for and then I'm going to call on you to
13 respond in the public comment phase also.

14 Gene McCullough?

15 MR. McCULLOUGH: Good afternoon,
16 Chairman, Commissioners. As stated, my name is Gene
17 McCullough. I'm chairman of the board of the Harlingen
18 Area Chamber of Commerce. I brought a resolution
19 that's been -- that I signed, that I was authorized by
20 the board of the chamber to sign, in support of Valley
21 Race Park. I'd like to submit that to the Commission.
22 May I approach?

23 CHAIRMAN ROGERS: Sure.

24 MR. McCULLOUGH: I have a number of
25 copies there. I'm not sure whether there are enough

1 for all of the Commissioners. But it is a resolution
2 that has been submitted and I think it's already been
3 submitted some time ago.

4 As I mentioned, I'm the chairman of the
5 Harlingen Area Chamber of Commerce; and there are other
6 members of the community that are supportive of Valley
7 Race Park; but right now the Commissioners and the
8 mayor are involved in some fairly involved discussions
9 of our economic development structure in the City of
10 Harlingen. They're having intensive meetings this
11 week. They did yesterday, a meeting which I attended.
12 And the mayor is in Washington this week after that, so
13 he wasn't able to attend. But they asked me to come
14 today to express support for Valley Race Park and to
15 emphasize that Valley Race Park has been an excellent
16 corporate citizen since it reopened in 2000.

17 And if you were looking at a map, Valley
18 Race Park is directly south of a very involved
19 commercial district in Harlingen on South Ed Carey.
20 And what has happened in that area, although I cannot
21 directly attribute it to Valley Race Park, but there's
22 been tremendous growth in South Ed Carey Drive of
23 actually mid- to upper-end homes. It's a beautiful
24 area with what we call resacas there. They're oxbow
25 lakes which kind of wind -- it's the old lake bed --

1 old riverbed of the Rio Grande that wind around through
2 there. And the homes are developing in the area and
3 it's a very nice area. And Valley Race Park is a good
4 facility and it's a beautiful facility that fits in
5 actually quite well with the way the area is growing.

6 Valley Race Park is a significant partner
7 in the Harlingen community. It employs two to three
8 hundred people on an annual basis and adds a very
9 significant payroll to Harlingen, somewhere above 1.6
10 million dollars a year, which is a significant payroll
11 in the City of Harlingen. And the loss of those
12 employees, if there were a loss of Valley Race Park,
13 would have a tremendous impact on Harlingen.

14 The park was closed for five years,
15 between 1995 and 2000, and it was a serious loss in the
16 City of Harlingen. And we value their partnership in
17 Harlingen.

18 And we would ask that the analysis of
19 adding a new park to the Valley be taken very seriously
20 because the population base north of the border is less
21 than a million people. It's probably about 400,000.
22 And the issue of the Mexican tourists, which was
23 brought up earlier, while it is a significant issue,
24 the tourism from Mexico is dependent upon a very
25 volatile economy which could vanish at any point

1 because of the volatility of the Mexican economy.

2 I was not in business in the late '80's,
3 but I remember the impact that the peso devaluation had
4 on South Texas, South Padre Island and my own family
5 and other families in the area. And the South Texas
6 economy is so dependent on the peso that you cannot
7 predict the future and you cannot say simply because
8 the Mexican tourist is coming and spending a lot of
9 money today that it will continue to do so.

10 So I urge the Commission to take very
11 seriously the impact that two parks would have on South
12 Texas and whether they can survive the changes in the
13 Mexican economy. And I'm aware of some changes in the
14 petroleum industry in Mexico that could have impacts on
15 that economy. I'm not an economist, so those things
16 may not come to fruition. But the future is uncertain
17 as we all know.

18 And I appreciate your time. I wanted to
19 express my support for Valley Race Park.

20 CHAIRMAN ROGERS: Okay. Any questions?

21 Thank you.

22 Milt Roth?

23 MR. ROTH: My name is Milt Roth. I have
24 been recently employed at Valley Race Park. For the
25 past 45 years I've been employed in the pari-mutuel

1 industry. I've worked at Hialeah Racetrack. I've
2 worked at Gulfstream. I've worked jai alai. I managed
3 a jai alai fronton in Daytona Beach for 12 years. I
4 managed a dog track in Wisconsin for 10 years. Don't
5 ask me how I got there from Florida, but I did. And --

6 COMMISSIONER SOWELL: How old are you
7 anyway?

8 MR. ROTH: Strangely enough,
9 Commissioner --

10 CHAIRMAN ROGERS: He started very young.

11 MR. ROTH: I started very young. I came
12 out of the Army in 1960. I started then and I've
13 stayed with it ever since.

14 And before I get into my regular
15 presentation, having been in the pari-mutuel industry
16 and attached to gambling all my life, these proposals
17 for 18 days of racing are incredible. Why would
18 anybody ship and bring horses down and do all this for
19 18 days of racing? What you're going to get are
20 glorified OTB parlors. That's what you're going to
21 get. Simulcasting with a view of a racetrack that has
22 no horses. It just doesn't make any sense to me. But
23 that's not the point of my discussion here.

24 My discussion here is I came to Valley
25 because Bob Bork said to me one day, "Come down here

1 and take a look at this racetrack. See what you think
2 of it." So I came down for a weekend. I sort of
3 shopped the place. I said, you know, this place has a
4 lot of potential. The employees are young,
5 aggressive. They smile. They want to take care of the
6 customers. The customers, it's a mix. We have the
7 winter race -- the winter Texans as you call them
8 here. We have some people from south of the border. A
9 good mix. They came and enjoyed the facility.

10 You know, people were saying before that
11 it's a big parking lot. You show me a dog track in
12 this country that on a Sunday afternoon can attract
13 4,000 people. There is none, except for Valley Race
14 Park which did that a couple of weeks ago.

15 There are people that want to use that
16 facility that come to that facility every day because
17 it's well run, not by me, by other people, but it's a
18 very good facility.

19 We have kennels. Right now we're running
20 eight kennels. And they were going to come here, but
21 Tuesday is the -- we race Wednesday through Sunday,
22 five days a week. They couldn't come because they
23 usually give their help the day off today. And these
24 people are not what you would call multimillionaires.
25 They run their own greyhound kennels. They take care

1 of the dogs. They care for the dogs. They vet the
2 dogs. They come in three or four times a day to feed
3 the dogs, let them out and let them run in the
4 kennels.

5 I have letters from all of them. They're
6 all the same. So I could pass them all out. Basically
7 they all said that competition from an additional
8 wagering revenue and around that place would reduce
9 their purses and make it almost impossible for them to
10 continue to run greyhounds down there.

11 And we think and we hope that you will
12 consider this very strongly, that putting another
13 simulcast center in there, whether it's a horse track,
14 which is different from a dog track -- but it's still
15 the same thing. We're all showing the same stuff on
16 television. We're still an OTB parlor. Why allow more
17 OTB parlors here?

18 As far as employees, we have 200, 300.
19 Most of them are students, housewives trying to make
20 extra money. If this track fails in Valley, if the
21 competition puts us out of business, they're not going
22 to drive all the way down to McAllen to work a couple
23 of hours a night. These are local people that depend
24 on us for that five months that we operate or six
25 months that we operate live and then also we sort of

1 spread them out over the simulcasting year for the rest
2 of the year and they all earn some extra money for
3 their families. And in that area, we need that kind of
4 income. They need that kind of extra income.

5 So I would hope that you would all take a
6 look at this very carefully and just don't build more
7 OTB parlors. Let's have -- you know, live greyhound
8 racing has been here for five years now. It's
9 growing. Every day our attendance is increasing. And
10 there isn't a dog track in the country that can say
11 that besides the one at Valley Race Park. And there's
12 a reason for that. Because we work at it. We work
13 very hard at it. We have a nice facility and we've
14 maintained it properly and our employees want to be
15 there and our kennels want to be there and they provide
16 the best greyhound racing they can.

17 Thank you. If you have any questions,
18 I'd be happy to answer them.

19 CHAIRMAN ROGERS: Thank you.

20 MR. ROTH: Except my age.

21 COMMISSIONER BOYD: I would like to ask
22 one question, please. I've heard nothing but great
23 things about your facility and I've been there and it's
24 a very nice facility and the people there seem to be --
25 they seem to like working there and do a good job.

1 Tell me what happened Sunday a few weeks
2 ago to get your patrons up that many.

3 MR. ROTH: We imported snow.

4 COMMISSIONER BOYD: Because I know you're
5 losing kennels.

6 MR. ROTH: We imported snow. We put a
7 big pile of snow out there for kids to come and play.
8 Sunday is our family day and, you know, we give them
9 dollar hot dogs and dollar Cokes and things like that
10 and we have -- what do you call those things -- bounce
11 houses and all kinds of entertainment for the family to
12 come out on Sunday afternoons because Sunday is a
13 family day.

14 And our marketing director decided one
15 day let's make it snow in South Texas. So we got a big
16 pile of snow and the kids were playing in the snow and
17 they had a really good time, a very good time. So we
18 think, you know, we're a family place.

19 COMMISSIONER BOYD: Are you concerned
20 about the lack of kennels there in your area?

21 MR. ROTH: Yes, we are.

22 COMMISSIONER BOYD: I'm sure you are.

23 MR. ROTH: Yeah. You know, the TGA has a
24 problem getting breeders into the state. Some of the
25 laws of the state or some of the rules of the state

1 with the 51 percent ownership thing is a little bit
2 difficult. It is difficult.

3 But our purses have been good. With our
4 simulcasting revenue that we raise in the simulcasting
5 season, it gives us good enough purses, of course, to
6 attract kennels from Texas and from other states also.
7 Some of the better kennels come here. When I was in
8 Wisconsin and I came back -- when I came here, some of
9 the kennels that I had in Wisconsin are here now. Some
10 of them are going to stay in the state.

11 COMMISSIONER BOYD: Thank you for your
12 time.

13 MR. ROTH: Thank you.

14 COMMISSIONER CARTER: Did you say earlier
15 you have eight kennels currently?

16 MR. ROTH: Yes, sir.

17 COMMISSIONER CARTER: And where are they
18 from?

19 MR. ROTH: Most -- I think -- I'll have
20 to check. I think there's six of them from Texas and
21 two are from out of state. No. Four and four, half
22 and half.

23 COMMISSIONER CARTER: Thank you.

24 COMMISSIONER CABRALES: Mr. Roth, thank
25 you for coming down. You don't know this; but this is

1 like my 80th day, I think, on the Commission; so I'm
2 still trying to figure this industry out.

3 MR. ROTH: Aren't we all?

4 COMMISSIONER CABRALES: Help me
5 understand the relationship between the revenue you
6 generate simulcasting and how much of that affects your
7 purse sizes. Can you help me figure out what a dip in
8 your simulcast revenue will do to your purse size?

9 MR. ROTH: It will cut our purses.

10 COMMISSIONER CABRALES: There he is.

11 MR. ROTH: He's an accountant.

12 COMMISSIONER CABRALES: Great. Let's
13 just hold that question then and we'll catch it at a
14 later time. Thank you.

15 MR. ROTH: Thank you.

16 CHAIRMAN ROGERS: Thank you.

17 Mr. Davis? Dale Davis?

18 MR. DAVIS: Good afternoon. I'm Dale
19 Davis. I'm with Davis Equity Realty. We're based in
20 the Valley. We were invited by the LaMantia family to
21 assist in the site selection and acquisition process of
22 the site in Hidalgo. And our background is we're a
23 four-generation real estate development company in
24 South Texas and we have brought numerous national
25 tenants and we've developed shopping centers and

1 entertainment centers in the Valley. So we have a fair
2 amount of expertise in finding the right locations and
3 so we were happy to get involved in this process.

4 My only background with horses is my dad
5 and I used to get up on Sunday mornings and we had a
6 Quarter Horse stallion that we would race at El Camino
7 Downs on Sunday morning before we went to the Baptist
8 church. So I was pretty happy to have an opportunity
9 to bring a real racetrack to the McAllen MSA area.

10 We spent a lot of effort making sure that
11 we were concentrating on a piece of land for this
12 project that would be successful, not just that would
13 bring economic development to a region of the Valley
14 but that it would be successful because of its
15 attributes and its locational attributes, including
16 some of the things Mr. Brown alluded to while ago,
17 transportation being close by, highways being close by,
18 hospitality centers close by, and enough room that it
19 would expand appropriately. We feel like that this
20 location does that.

21 And I'm really just here to speak in
22 favor of this for a couple of reasons. One is because
23 I think that it will succeed. I think in your analysis
24 of whether this makes sense or not, you obviously have
25 to look at all the ingredients that goes into a

1 successful pie. One of the successful ingredients is
2 whether this location will work. And I believe
3 personally, with my studying of this, that this is
4 going to be a very successful location.

5 I think the other thing that goes into a
6 successful venture of any type is the people that are
7 involved in that. I've known the LaMantia family for a
8 long time and I've noticed that they put both money and
9 effort and passion into whatever they do to make sure
10 that it succeeds and they're people of word. And I
11 congratulate them for getting involved in this kind of
12 project and bringing it to fruition hopefully.

13 I also want to speak just briefly that
14 this is a location that can stand on its own in Hidalgo
15 County, I think independent of whatever is going on in
16 Cameron County. I have -- I'm members of various
17 Chamber of Commerces in the Valley, including McAllen
18 and including Harlingen. I just completed developing a
19 Lowe's center with a shopping center in the City of
20 Harlingen. I've developed Wal-Mart's and different
21 types of projects. I've developed every movie theater
22 that's in the Valley, including the one in Harlingen
23 and several in the McAllen area.

24 Being able to track those entertainment
25 dollars and watch what's going on, I feel that McAllen

1 independently can support this and Cameron County can
2 probably independently support a track of its own. And
3 that is independent of whatever may be going on with
4 the greyhound track. Horse racing is different. Horse
5 racing is exciting. South Texas is a big Quarter Horse
6 area. Mexico loves horse racing.

7 So I just want to encourage you to
8 consider this positively and I'll answer any questions
9 you may have.

10 CHAIRMAN ROGERS: Any questions?

11 Thank you, Mr. Davis.

12 MR. DAVIS: Thank you.

13 CHAIRMAN ROGERS: Ms. Whiteley?

14 MS. WHITELEY: Good afternoon,
15 Mr. Chairman and Commissioners. I'm Diane Whiteley,
16 the executive director of the Texas Greyhound
17 Association.

18 And the information that you have in your
19 packet shows that the Texas Greyhound Association had
20 been opposed to a Hidalgo County racetrack in June of
21 2005 and we have since revised that position to a
22 neutral. And I thought I would give you some
23 background on that as I'm sure you're probably
24 wondering about it.

25 In June 2005 we were just coming -- or

1 going into the first of several special sessions in
2 legislation and it was very disappointing for everyone
3 in the racing industry at that time. And there was
4 this application with an opposing track in Valley. And
5 so our immediate reaction, of course, was to oppose
6 that. We were trying to salvage and save what our
7 position was in Texas racing at that time.

8 In the last two years, though, things
9 have changed. The racing industry has come together
10 very well, very strongly in Texas between all the breed
11 groups and the racetracks. And we have formed, I
12 think, a very strong coalition to go into legislative
13 issues.

14 Part of this is new language for us, for
15 the greyhound people and our board, things like spots
16 and dots and fiscal notes and market shares. And we
17 are -- we are good team players and we want to see
18 things perceived for the entire good of the entire
19 racing industry, not just the greyhound -- one track,
20 but all of our tracks, all of the racing industry.

21 We have kind of our big track in
22 La Marque, Gulf Greyhound Park, and they may face
23 competition with competing licenses in the Houston area
24 with new legislation and we had taken a neutral
25 position in that market. What we had told Gulf

1 Greyhound Park is that you all know what is best for
2 your track, what your demographics are, what is best
3 for you to operate, and we are going to stay neutral in
4 that market.

5 And then we discovered that it looked to
6 us to be a little bit hypocritical and a little bit
7 controversial for us to be fighting against another
8 horse track in another area when we were neutral in the
9 other market.

10 So our board got together and after a
11 very lengthy discussion about this and a very
12 thoughtful discussion -- I was very proud and pleased
13 with our board -- decided to be neutral in that market
14 as well so that the parties that are wanting the
15 licenses can pursue it without being overly concerned
16 of influence whether we bring to it legislatively or
17 personally and without any repercussions on our
18 kennels. So we decided to be neutral. And that is the
19 change is that we're looking to move racing forward
20 however we can move it forward personally.

21 When I look at the requirements for a new
22 license -- and it certainly brings up the anticipated
23 effect of the race meeting on the greyhound or horse
24 breeding industry in this state. And I certainly can't
25 speak to the horse breeding industry with a new license

1 in Hidalgo, but I cannot see it affecting significantly
2 right now where we are in the greyhound industry
3 because we have very low numbers. I don't see them
4 improving unless our entire industry improves. So
5 that's where we're standing on that.

6 It's a real tough decision. Valley
7 operates a class racetrack, excellent marketing, public
8 relations. They're excellent with our kennel owners
9 down there. We have been concerned and somewhat
10 embarrassed that we cannot get more kennel owners down
11 there, but it is just a five-month meet and our kennel
12 system is not set up to run for a short meet. So we
13 regret to see a lot of our money going to out-of-state
14 kennels, but that's the way it is right now.

15 As far as purses are concerned, you know,
16 we hoped that Valley could compete, because they have
17 shown a very competitive nature. We hoped that they
18 would compete under our global agreement to where
19 simulcast revenue would be picked up for our greyhound
20 purses, where we would perhaps suffer some live
21 greyhound and perhaps some on-track simulcasting. We
22 had hoped to pick it up from simulcast revenue from a
23 Hidalgo track.

24 So we are not pro Hidalgo track and I
25 don't want us to come across like that. And we're

1 certainly not anti Valley. But we do not want to be a
2 significant impact on your decision. We trust that the
3 Commission will make a good decision based on your
4 economic studies and the testimony of the two parties
5 involved.

6 So thank you. And I'm open to any
7 questions.

8 CHAIRMAN ROGERS: Okay.
9 Mr. VanMiddlesworth, do you have a comment?

10 MR. VANMIDDLESWORTH: Yes, Your Honor. I
11 think Mr. Vitek is going to make -- he's come down as
12 manager of the race park.

13 MR. VITEK: Good afternoon. I'm Mike
14 Vitek. I'm the general manager of Valley Race Park.
15 I'm not sure of the legal distinctions, but I would
16 like to be considered as someone contesting the
17 license.

18 I want to go back in time for just a
19 minute related to Valley. Back in 1998 Bob Bork and I
20 began visiting Harlingen on a regular basis. We
21 actually saw the potential in the facility and in the
22 community and spent several years trying to develop a
23 way to reopen the track. The track was originally
24 built and opened in 1990, closed in 1995, and we
25 reopened it -- purchased it and reopened it in March of

1 2000.

2 We developed a business plan that
3 involved year-round simulcasting on both horses and
4 greyhounds that wasn't available in 1995 when the
5 racetrack closed. Cross-species simulcasting was
6 legalized in 1997, I believe, and went fully
7 operational in 1998. That was certainly a significant
8 factor in our decision to reopen the race park in
9 Harlingen.

10 We studied the prior owner's, Ladbroke's,
11 financial statements, their attendance patterns, their
12 wagering for the five years that they operated the
13 track and found that there was a time period when there
14 was an acceptable level of attendance for live racing
15 and a time period when there wasn't and it corresponded
16 with the winter Texans visiting the Valley, which would
17 be November through early April.

18 Maybe we're not rocket scientists; but we
19 figured out, hey, we can put a business plan together
20 that takes advantage of this influx of people into the
21 community to get our attendance levels to a reasonable
22 level.

23 We took this business plan exactly that
24 way, with five months to six months of live racing, to
25 the City of Harlingen, to the economic development

1 council of Harlingen, to the Texas Greyhound
2 Association, and to this Commission. And ultimately we
3 took it to our board of directors and we said this is
4 what we think we can do and we can make it work. And
5 we did that and we opened it in 2000.

6 It has taken us longer than we
7 anticipated certainly to develop a racing program.
8 However, we believe that we have made significant
9 progress. In 2006 live handle increased 19 percent
10 over 2005. Off-track handle increased 36 and a half
11 percent over 2005. Our attendance continues to
12 increase in the last couple of months of '07 versus
13 '06. We had a record attendance live day since we've
14 owned the track a few weeks ago as mentioned by Milt
15 Roth. Our live and off-track handles continue to show
16 improvement.

17 But the fact is that this business plan
18 still relies highly on simulcasting. It's offered 364
19 days a year. It contributes over half of our purses.
20 And it's approximately 85 percent of our on-track
21 handle. Even though we race approximately 100 days a
22 year -- the report from the staff shows that we race
23 over that, 140; but that includes the sort of extra
24 performances, encore performances that we call them.
25 But we race over a hundred days a year. But even with

1 all that, simulcasting is the driver to making Valley
2 Race Park run. And it's this reliance on simulcasting
3 that causes us such concern over the potential of a new
4 racetrack being licensed in the Valley.

5 The proposed racetrack site is
6 approximately 40 miles west of the Valley, straight
7 down Highway 83. It's just down the expressway from
8 us. We're a mile south of the expressway. They're, I
9 guess, similar on McAllen side. It's a 40- to
10 45-minute drive time. As the crow flies, I've seen
11 estimates of 30 miles, 30 to 35 miles away.

12 It is simply obvious that the opening of
13 a facility in McAllen is going to negatively impact
14 wagering at Valley Race Park. It's just incredible for
15 anyone to say any different. We -- and I'm going to
16 give some facts to back that statement up.

17 But in 2005 we hired The Innovation
18 Group. The Innovation Group is the top consulting firm
19 in the racing and gaming business in the United
20 States. We asked them to evaluate the impact of a new
21 facility. The report has been submitted to the
22 Commission. And it is -- it is quite clear in its
23 findings.

24 They studied our mailing list. They
25 studied our surveys. They studied our customer base.

1 They did tons of their own demographic analysis. And
2 their conclusion is that the Valley would lose 38
3 percent of its current level of operating revenues, 39
4 percent of its simulcast wagering.

5 And this 38 percent loss is certainly a
6 reasonable estimate from my opinion. It's based solely
7 on population, geography, and drive time. You just
8 need to draw a line intersecting Highway 83 halfway
9 between the two sites on drive time and that's going to
10 divide the customer base. Folks are going to go wager
11 at the closest available location. And 38 percent is
12 completely reasonable. There's some very good charts
13 and graphs in their report to back that number up.

14 We've already seen what happens when new
15 racetracks open in a market. When Retama Park opened,
16 Bandera Downs closed. When Lone Star opened, Trinity
17 Meadows closed. Those were in huge markets. That was
18 Dallas-Fort Worth and San Antonio. We've already heard
19 the millions of population in those markets.

20 You know, the size of the Valley market
21 is a fraction of that; and splitting that into a 60/40
22 split on our customer base forces us to close. I mean,
23 it's quite simple. We'll do everything we can to hang
24 in there, but if they open up a simulcasting
25 facility -- I'm getting confused on which

1 presentation. But as good as Lone Star's -- was that
2 in Laredo or was that in McAllen? I guess it was a
3 similar plot. I mean, it's a brand-new simulcasting
4 facility. There's no question it's going to draw 40
5 percent, 38 percent of our market away.

6 So I mean, I -- you know, it's a choice
7 that this Commission has to make and it's ultimately
8 going to come down to a choice between race parks. You
9 know, I personally have nine years invested in trying
10 to make Valley run, along with Bob Bork. We've got
11 good news coming out of it as the percentage increases,
12 the record days.

13 But this Commission has a choice to
14 make. And we would certainly ask that you strongly
15 consider what the impact would be on Valley Race Park.
16 We ask that you study this to the degree that you can.
17 I believe one option is to refer this to the State
18 Office of Administrative Hearings to receive a more
19 thorough review than can be done in the few minutes
20 today or the hours today and flush these issues out and
21 let someone make that based on findings of fact.

22 That's all I have. But to me, it's
23 pretty clear. I can't imagine there being any other
24 issues that are more important than a loss of 38
25 percent of your business.

1 CHAIRMAN ROGERS: I have one question. I
2 know that you weren't the person who made this comment
3 while ago, but I'll tag it with you and you can work
4 that around to whoever did. Somebody earlier said,
5 "We're going to build this second racetrack in Laredo
6 if two licenses are issued and competition is good for
7 the soul and we're just going to make this work. We're
8 going to build it regardless."

9 Now, those are 11 miles apart and that's
10 the attitude of somebody in your group. I don't recall
11 who said that. This is 40 miles apart. What's the
12 difference?

13 MR. VITEK: I'm not sure who said that.

14 MR. VANMIDDLESWORTH: Well, that was
15 Mr. Bork who said that.

16 CHAIRMAN ROGERS: Let's point that finger
17 quickly. I'm just wondering what the difference in the
18 thought process is.

19 MR. VANMIDDLESWORTH: The difference is
20 here we have a facility that has been in existence and
21 that's gotten a lot of investment over five years and
22 we're urging that the Commission should weigh all the
23 factors about whether or not to open up another one
24 that would -- we believe the evidence will show that
25 would have a serious detrimental effect on the

1 greyhound industry and on that facility. We think
2 that's a decision that the Commission has to make.

3 We think we'll win in Laredo, frankly.
4 We think our facility will be the one that prevails and
5 we think we will ultimately be able to make it there.
6 We think people are going to be drawn to an
7 air-conditioned, strong facility. We've talked about
8 this. We think if we go head to head on that, we'll
9 win the competition.

10 We are concerned about, after all of this
11 investment that has been made in Valley Race Park, that
12 a brand-new license is offered that completely
13 disregards all that we've put into it and that we would
14 lose to the competition.

15 CHAIRMAN ROGERS: But the one that you're
16 talking about building in Laredo, you're going to have
17 five times the investment that you've got in Valley or
18 more and so you would risk five times more on a head to
19 head; but on this other one you would just say, "I'm
20 going to concede to lose at 40 miles away"? I mean,
21 it's the same facility. You're building the same
22 facility both places other than one is dog and one is
23 horse.

24 MR. VANMIDDLESWORTH: One is dog and one
25 is horse. And that has some very important financial

1 ramifications.

2 But we think that the decision for the
3 Commission -- well, the decision for the Commission is
4 whether or not to grant this license. We've got our
5 facility there. We want to present you evidence that
6 you should not grant this license, that it would be
7 bad.

8 Now, back to Laredo, why are we willing
9 to do this? This has been a long-term project that has
10 been going for five years. We've got a strong
11 commitment. We have a belief that in the long term our
12 surviving facility will serve this whole area in
13 Laredo, the fastest growing city in the country. You
14 know, Wayne Gretzky says, "I pass the puck to where the
15 man will be, not to where the man is." That's what we
16 need to do in Laredo. We're going to build for the
17 future there and we think that will ultimately be
18 successful and we think we'll be the survivor.

19 And, Mr. Bork, if I've misstated any of
20 that --

21 MR. BORK: That's absolutely correct.

22 CHAIRMAN ROGERS: Okay. Do we have any
23 other comments -- yes.

24 (Discussion off the record)

25 CHAIRMAN ROGERS: Okay. Manuel

1 Gonzales?

2 MR. GONZALES: Good afternoon,
3 gentlemen. My name is Manuel Gonzales, nickname Bebe.
4 I represent the horsemen from South Texas, South Texas
5 being the Rio Grande Valley.

6 And we have 60 percent of the Quarter
7 Horses that run in the State of Texas right down there
8 in the Valley, being four counties, Cameron, Willacy,
9 Hidalgo, and Starr County. The closest track we have
10 to us is San Antonio, which is 250 miles away. To work
11 our stock, because we have to work our stock every time
12 we don't run for 45 days, we have to haul them all the
13 way to San Antonio. We don't have no training facility
14 out there that's official to work our horses. And
15 since we have that many horses, we deserve a track down
16 there.

17 And something else at the -- we've got
18 two bush tracks up there and we draw more people at the
19 bush tracks than we do at Retama, Manor, or Gillespie
20 over here. So we have -- I mean, there's -- including
21 the Mexican border and northern Mexico up there, we've
22 got millions of people; and I think that that track
23 will be -- there's enough people for everybody there.
24 But we do have a lot of horses down there. It's
25 becoming an impact here in Texas, the amount of horses

1 we have, mainly because of the good weather most of the
2 time.

3 CHAIRMAN ROGERS: Any questions?

4 COMMISSIONER BOYD: Mr. Gonzales?

5 MR. GONZALES: Yes.

6 COMMISSIONER BOYD: Where do you live?

7 MR. GONZALES: I live in Alamo, Texas.

8 That's about six miles east of McAllen.

9 COMMISSIONER BOYD: Okay. For any
10 horsemen that are going to be coming from upstate down
11 to participate in any of these tracks, will there be
12 facilities for them to stay? If a lot of them
13 participate, would there be facilities for them to
14 spend the night or are they going to have to turn
15 around and haul back up if we don't build those
16 facilities?

17 MR. GONZALES: We do have the facilities,
18 ma'am.

19 COMMISSIONER BOYD: Hotel, motels?

20 MR. GONZALES: The Rio Grande Valley is a
21 very big attraction for tourists because of our island;
22 and there's been so many motels built now, we have the
23 facilities.

24 COMMISSIONER BOYD: Not too expensive?

25 MR. GONZALES: No, ma'am. Nothing in the

1 Valley is too expensive.

2 COMMISSIONER BOYD: Maybe I need to come
3 see you. Thanks.

4 MR. GONZALES: You're welcome.

5 CHAIRMAN ROGERS: Thank you.

6 MR. GONZALES: Thank you.

7 CHAIRMAN ROGERS: I mean, we've had -- so
8 far we've had cold beer and cheap facilities. I don't
9 know what we're doing up here.

10 Okay. Mr. Jordan?

11 MR. JORDAN: Good afternoon, Chairman,
12 Commissioners. My name is Tooter Jordan with the Texas
13 Horsemen's Partnership.

14 I guess it would probably be best to go
15 ahead and talk about the license for Webb County and
16 Hidalgo County at the same time as far as the Texas
17 Horsemen's Partnership are concerned.

18 I think that not only the backbone but a
19 part of the actual heart of Quarter Horse racing and
20 the racing family is south of San Antonio. It's
21 obvious every day that we go to the racetracks, whether
22 it be Gillespie County, whether it be Manor Downs,
23 whether it be Retama Park or Houston or even Lone Star,
24 that the consensus is at least 45 to 50, 55 percent of
25 the horses taking part in the racing that day are

1 horses that are hauled in to these racetracks.

2 From that 45 to 55 percent of horses
3 taking part in racing, an overwhelming amount of those
4 horses come from South Texas, Rio Grande City, towns
5 south of San Antonio, I mean, in the Laredo area alone,
6 Hebbronville, Zapata, Alice, Cotulla. All of these
7 areas are big city -- or big areas that house and we
8 have many Quarter Horse breeders and owners from these
9 areas, even Thoroughbred owners down in this area.

10 It's unfortunate that these guys are
11 having to haul four to five to eight, nine hours to be
12 able to compete with their horses when, like I said,
13 they're actually the backbone of our industry down
14 there is in -- especially in the Quarter Horse business
15 is down there.

16 I can tell you that more racing
17 opportunities in these areas for the horsemen would
18 certainly be the right step or a step in the right
19 direction to give this industry maybe a little bit of
20 the boost that we need under these trying times.

21 I know that just watching some of the
22 guys come from South Texas, I mean, they're determined
23 to run their horses. They drive up there four to five
24 hours on a Friday night, run their horses on Saturday,
25 go right back Saturday night because some of the

1 facilities doesn't have the housing for our horses.
2 They go back to Harlingen or to Alamo like where Manny
3 is from and all parts of South Texas and back the next
4 day with their horses the following day to participate
5 in the racing the next day.

6 I mean, these are people that are
7 determined. You know, they love what they're doing.
8 The most enthusiastic people in the world are people
9 from down there about their horses. I mean, they're
10 just -- you see them -- and a good example was last
11 week in Manor. We ran a two-year-old Grade 2 event
12 down there. You can't imagine the enthusiasm from the
13 people. And a large part of the field of the finals
14 was from South Texas. We see that day in and day out
15 at all the racetracks that we're racing at now.

16 I mean, I just think that it would be a
17 shame for those guys not to have a racetrack down in
18 their area to compete with their horses.

19 I think that the horsemen's partnership
20 is certainly behind any license being issued down
21 there. The more racing opportunities we have down
22 there, the better, whether it be in Hidalgo County or
23 in Webb County.

24 CHAIRMAN ROGERS: Any questions?

25 COMMISSIONER CABRALES: Mr. Jordan, as

1 between a track in Webb County and one in Hidalgo
2 County, from the standpoint of the South Texas
3 horsemen, which would be more convenient for them?

4 MR. JORDAN: It's hard to say. They're a
5 long way apart. Even though you're talking about South
6 Texas, Texas is a large state.

7 COMMISSIONER CABRALES: In terms of how
8 they're spread out down there in that part of South
9 Texas.

10 MR. JORDAN: I would probably say that --
11 that's a tough question. But probably the Rio Grande
12 Valley is probably -- there's more horses down in that
13 area than are actually right around the central area of
14 Laredo. But nonetheless, there's a lot of breeders and
15 owners within a hundred miles of Laredo that will
16 probably be further away than the Valley area, you
17 know. I mean, we have -- like I said, there's Cotulla,
18 Freer, Hebbronville, Zapata, Alice, Georgewest. All
19 these towns are within a 45-minute drive of Laredo,
20 maybe an hour, you know, and all of these towns have an
21 enormous amount of owners and breeders of horses.

22 CHAIRMAN ROGERS: Any other questions?

23 Thank you.

24 MR. JORDAN: Any other questions?

25 CHAIRMAN ROGERS: Thank you.

1 Mr. Werstler?

2 MR. WERSTLER: Good afternoon,
3 Commissioners. My name is Rob Werstler, executive
4 director of the Texas Quarter Horse Association.

5 Here today the Texas Quarter Horse
6 Association supports the Hidalgo County license. We
7 feel there's a definite need for a license in the
8 Valley, a racetrack in the Valley. As Mr. Gonzales
9 stated earlier, those horsemen down there have to
10 travel quite a distance to get an official workout.
11 Traveling from there to Retama Park to get your horse
12 gate approved, that's a hardship on those horsemen down
13 there.

14 We would like to see more than 18 days on
15 the application. It also has some conflicting dates
16 with Manor Downs, but we understand that would be an
17 issue that we would decide at another Commission
18 meeting.

19 You heard people testify before you
20 today, people that know the LaMantias a lot better than
21 I do, spoke what a strong presence they have in Hidalgo
22 County. The LaMantia family is held in high regard in
23 the community, so I think it's a perfect fit.

24 One other thing that I noticed sitting
25 back there listening to all the testimony, a few years

1 ago we sat in a Commission meeting for hours and
2 listened to people from a community where a license was
3 trying to locate and all they talked about were the
4 terrible things about a racetrack. I can tell you,
5 it's quite refreshing to hear people come from --
6 community leaders come from the Valley to urge you to
7 put a racetrack in their community.

8 And I'd entertain any questions you might
9 have.

10 CHAIRMAN ROGERS: Thank you.

11 MR. WERSTLER: Thank you.

12 COMMISSIONER CARTER: I have one.

13 MR. WERSTLER: Yes, sir.

14 COMMISSIONER CARTER: Does the Texas
15 Quarter Horse Association have any opinions about Webb
16 County?

17 MR. WERSTLER: Laredo, we were -- we're
18 going to leave that one up to you.

19 CHAIRMAN ROGERS: Thank you,
20 Mr. Werstler.

21 MR. WERSTLER: But I can tell you this.
22 If they're only going to run 18 days, we need all three
23 of them.

24 CHAIRMAN ROGERS: Thank you.
25 Mr. Blanton?

1 MR. BLANTON: Terry Blanton, Chairman,
2 Commissioners, of the Texas Horsemen's Partnership.
3 And I represent the Thoroughbred side of the Texas
4 Horsemen's Partnership.

5 And I will voice and second as what
6 Tooter Jordan and, of course, Rob just said, that we're
7 very enthused, even though it will be a Quarter Horse
8 side, more for the Quarter Horse industry, to endorse
9 both the Hidalgo and the Webb County sites. We think
10 that there's an opportunity for both, obviously, the
11 Quarter Horse and Thoroughbred industry. And it's a --
12 with all the doom and gloom that you hear of the
13 Thoroughbred industry in Texas, it's exciting to hear
14 these leaders, as Rob said, come up and actually want
15 our facilities in these two areas.

16 So we have no preference. We are tickled
17 to death that we have partnerships that have the money
18 and want to invest in racing in both Webb licensees.
19 We have no problem with the two licenses being approved
20 or awarded. And I've had the pleasure on a personal
21 basis to work in both of these areas. I started back
22 in the 1970's. It's been a wonderful area to see the
23 growth in what we used to call just a Valley town, to
24 see the industry that has come into these areas. And I
25 would dare say that after we do get these two

1 facilities built that within probably, I would say,
2 four or five years you'll see more than 18 or 30 days
3 of racing requested in those two areas.

4 And I stand for questions and thank you
5 for the opportunity.

6 CHAIRMAN ROGERS: Any questions?

7 Thank you, Mr. Blanton.

8 Okay. Any other -- yes, Mr. Fenner.

9 MR. FENNER: Chair Rogers, we received a
10 letter from Senator Lucio this afternoon in support of
11 the Hidalgo application. I'll distribute it to the
12 Commissioners.

13 CHAIRMAN ROGERS: Okay. Any other public
14 comments?

15 UNIDENTIFIED SPEAKER: Just for
16 clarification, Senator Lucio is from the Cameron County
17 area.

18 CHAIRMAN ROGERS: Senator Lucio is from
19 Cameron County?

20 MR. FENNER: Right.

21 MR. VANMIDDLESWORTH: We have some other
22 comments or signed statements from others that I'll
23 provide to Mr. Fenner. These are from -- well, I'll be
24 happy to do that.

25 MR. FENNER: I'll start passing them out

1 while you explain what they are.

2 MR. VANMIDDLESWORTH: These are
3 statements from about a dozen kennel operators, these
4 folks that have dogs and run kennels and run their
5 greyhounds in races. And they have each submitted a
6 statement saying that as a participant in greyhound
7 racing, they strongly object to the granting of any
8 license to allow another racing facility to open in the
9 Rio Grande Valley. The competition for wagering
10 revenues would severely reduce the purses at VRP. A
11 reduction in purses would have a strong bearing on my
12 decision to continue racing at Valley Race Park.

13 CHAIRMAN ROGERS: Okay. Thank you.

14 Okay. Before we go to the staff to wrap
15 up this discussion on Hidalgo, are there any other
16 public comments that need to be made presently before
17 we hear from the staff?

18 MR. VANMIDDLESWORTH: I have some
19 comments.

20 CHAIRMAN ROGERS: You're on if it's you.
21 If you've got them, you're considered a public comment
22 here because you're not a contestant.

23 MR. VANMIDDLESWORTH: All right.

24 CHAIRMAN ROGERS: And we'll give you a
25 little more time than most because you do have an

1 interest, although, like I say, not a party, I don't
2 think, to this application.

3 MR. VANMIDDLESWORTH: Thank you.

4 You've heard a lot of evidence today
5 about what's good or not good for horsemen and for
6 greyhound folks. And that's important. That's what
7 you're supposed to do. You're supposed to hear the
8 evidence and make decisions. There are very few things
9 as important as a decision to grant or deny a Class 2
10 horse racetrack license. We've spent lot of time on
11 that issue. And it requires the Commission to review
12 the statutory factors to make a decision.

13 The problem is you can't take evidence on
14 this proceeding. You can't base your findings on any
15 evidence. Why? Because you've been told that this
16 proceeding is a decision-making proceeding without an
17 evidentiary hearing under (b). This is -- the notion
18 that this is not a contested case -- with all of the
19 parties that have come here and said, "This will hurt
20 my livelihood. This will put us out of business. This
21 will cause great damage to us. This is a bad idea.
22 This is inconsistent with the statute," the notion that
23 this is not a contested case is Kaska-esque at best.
24 The statute --

25 CHAIRMAN ROGERS: Could you spell that

1 word for me?

2 COMMISSIONER CABRALES: I got it.

3 MR. VANMIDDLESWORTH: You got it? I was
4 just aiming for one at a time, Your Honor.

5 Your rules say a contested case
6 proceeding is one in which the Commission is authorized
7 or required by law to make a decision regarding the
8 rights or privileges of a person after notice and a
9 hearing. Now, your statute says -- or your rules say
10 pursuant to Government Code, after SOAH was created,
11 the executive secretary will refer all contested cases
12 to the State Office of Administrative Hearings for a
13 hearing.

14 You no longer have the hearings here like
15 you did in the late '80's, early '90's. All contested
16 administrative cases go to SOAH. That's the only place
17 you can take evidence. That's the only place that
18 people have an opportunity to ask questions of the
19 people who told you about this facility. I haven't had
20 an opportunity to ask a single question, to examine a
21 witness, to present any of my own witnesses, to do any
22 discovery on this. This is an issue that cries out for
23 and in our view is required to go to SOAH for a
24 hearing.

25 Now, there was a comment that this is

1 unlike Webb County. As you know, in Webb County, two
2 applications were filed and, as has been the standard
3 procedure, went to SOAH. Well, what is the
4 difference? There were two there, but you had the
5 right to grant two. There was opposition there. Well,
6 but there's opposition here. There were folks that
7 requested a hearing there, but there are folks that
8 requested a hearing here. This is exactly like the
9 Webb County licenses that you have that went to SOAH.

10 And it's a good thing it went to SOAH.
11 All of the things we've talked about today, the ALJ's
12 report, the evidence, the questions that you all have
13 asked are all based on the evidence and a record that
14 you have. That's what's so great about our system,
15 where applications aren't just granted and opposition
16 steamrollered without even an opportunity to present
17 anything. The evidence is fleshed out. That's how we
18 get to the truth. And that is very important.

19 I have tried to find a case where a Class
20 2 or Class 1 or any racetrack license was granted where
21 somebody came in and said, "I have evidence that I want
22 to submit in opposition to this," and this Commission
23 said, "We will not hear your evidence. We will not
24 allow you to present it. We're going to grant this
25 without allowing that."

1 I think that violates due process. I
2 think that violates the Racing Act. And I think it's
3 completely inconsistent with the practice. I think
4 it's also inconsistent with the law as set out in the
5 Ramirez case that we've cited in our brief.

6 The issues are fact-based issues. They
7 can only be determined when you're presented with
8 facts. You have no evidence. How can you make a
9 decision on all of these factors without evidence?

10 Now, several parties have pointed to the
11 statute and said, "Well, we have to send it to hearing
12 if it's -- if we're going to deny it." Well, of
13 course. That's because it's contested if you're going
14 to deny it. Somebody has asked for something and
15 you've said no. The issue is joined there. If
16 somebody asks for something and it's not contested, you
17 need not send it to SOAH. It's not a contested
18 proceeding. But once a proceeding becomes contested,
19 your rules and due process and State law require it to
20 be sent to SOAH.

21 We have -- this is not the first time
22 this has come up. There's been a number of cases.
23 Squaw Creek was sent to SOAH when someone contested
24 whether that license should be granted. I can't find
25 any example where it didn't happen.

1 When this was first filed, we met with
2 the executive secretary, Paula Flowerday at the time,
3 who made clear that it would go to SOAH in accordance
4 with prior practice. We met with -- immediately after
5 the hearing where this first came up, we met with the
6 current executive secretary, who made clear to us that
7 this would go to SOAH in accordance with prior practice
8 and sent out, as we've submitted in the letter we
9 submitted yesterday, letter after letter after letter
10 that states "Because a demonstrated record of
11 opposition exists, in accordance with Section 307.5(b),
12 the application will be referred" -- "will be referred
13 to the State Office of Administrative Hearings for a
14 formal hearing," and then goes on to say how that
15 happens.

16 That has been the consistent position.
17 I'm, frankly, shocked that we have the most important
18 thing that you might consider and that it's suggested
19 that you make that decision without a shred of
20 evidence, without the opportunity for anybody to ask a
21 witness a question about their application, without the
22 opportunity for any discovery of the kinds of things
23 that you've spent the afternoon talking about. This is
24 not an insignificant decision. This is an important
25 decision.

1 Now, there was a suggestion made that
2 there was something inconsistent about the application
3 that we submitted for opening a license period in
4 Cameron County. We don't think that's inconsistent at
5 all. If there is to be a horse racetrack in the
6 Valley, there's only one logical place for that to be.
7 And that's at Valley Race Park. Then you have a horse
8 racetrack and a greyhound track. You have no splitting
9 of the simulcast money. You have more use of the
10 facilities. And we have a facility that's already
11 there.

12 That's why that was presented. If
13 there's going to be horse racing in that area -- and
14 we're not opposed to horse racing in that area -- then
15 the only logical place is for it to be at the Valley
16 Race Park facility and that's why there was a request
17 to open an application period so that Valley Race Park
18 could submit that.

19 And that's -- we can't -- we can't or the
20 new owner can't sit on the sidelines and let things
21 pass by. So the notion that because we're involved in
22 trying to sell it, we shouldn't be able to come and try
23 to protect its interests and try to build something,
24 is, I think, entirely without merit. That facility
25 would make sense.

1 Mr. Bork, if you're interested, would be
2 available to talk with you about why that facility
3 makes sense and what we have in mind there.

4 CHAIRMAN ROGERS: That actually isn't on
5 the agenda. And I mean, you're welcome to tell us that
6 it's there; but we're not going into that possibility
7 today.

8 MR. VANMIDDLESWORTH: I understand. Only
9 if you're interested. And I just wanted to respond to
10 the assertions made.

11 You know, there's a lot of law in Texas
12 about the opportunity for a hearing and how you get
13 evidence. The Lewis case in the Supreme Court says, in
14 the eyes of the law, there's no hearing unless a fair
15 opportunity is afforded the parties to prove their case
16 before an administrative agency.

17 For a hearing to be meaningful for this
18 case -- that's 74 S.W. 2d 532 -- the parties must be
19 able to present evidence on the issues to be decided --
20 to present evidence on the issues to be decided.

21 The Supreme Court has stated that the
22 right to cross examination is a vital element in a fair
23 adjudication of disputed facts. The right to cross
24 examine adverse witnesses and examine and rebut all
25 evidence is not confined to court trials but applies

1 also to administrative hearings, Richardson v. City of
2 Pasadena, 513 S.W. 2d 1.

3 The Supreme Court of Texas in the Collora
4 v. Navarro case says what some view who are lawyers and
5 have heard oftentimes before, that beyond any doubt
6 cross examination is the greatest legal engine ever
7 invented for the discovery of truth.

8 Presenting evidence, asking questions of
9 witnesses, allowing cross examination, allowing facts
10 to be discovered and presented to you is not a waste of
11 time. It's not a bureaucratic inconvenience. It's the
12 essence of what this agency and every administrative
13 agency must do in deciding the important issues,
14 fact-based issues that are presented to you.

15 And we would urge that as a matter of law
16 and, more important, as a matter of policy, as a matter
17 of fairness, as a matter of allowing all of these
18 parties who have expressed opposition to this, some of
19 whom you've heard -- there have been other letters that
20 you haven't been provided yet. They were just listed.
21 But that specifically included opposition and I have
22 some of those blown up on the board. I'm not going to
23 belabor that. I think they're in the book that we
24 handed out previously. If not, we'll make them
25 available.

1 There is substantial opposition to this
2 case. I'm not asking you to deny it today. You can't
3 deny it. Nor, in my view, can you grant it. It
4 requires evidence. It requires the opportunity to
5 present evidence.

6 We have an offer of proof and a listing
7 of things that we would submit into evidence. And I'm
8 going to ask Ms. Griffiths of our office to -- I'm
9 available for questions either before or after, but I'd
10 ask Ms. Griffiths of our office to outline some of the
11 issues that we believe you must -- that are contested,
12 require evidence, including a very critical issue that
13 I might add about an Attorney General opinion from a
14 few years ago that said that the Attorney General could
15 not determine whether this county, Hidalgo County, had
16 properly complied with the act in terms of
17 certification of elections.

18 All we had at that time -- and, you know,
19 I don't have any evidence; so I don't know if anything
20 is any different -- is that there had been an election
21 apparently in the early '90's and a certification not
22 until 10 years later. The Attorney General was asked
23 to opine on whether that was legal or not and said, "We
24 can't determine that. That's a factual question."
25 It's a factual question for this agency.

1 CHAIRMAN ROGERS: Actually that issue has
2 been factually determined by this agency with testimony
3 here in front of us several -- a couple of years ago
4 now. I mean, it has been factually resolved as to
5 whether they had applied -- or that election was legal
6 or not legal.

7 MR. VANMIDDLESWORTH: I know we have
8 resolved that issue with respect to Webb County, Your
9 Honor. I would respectfully submit that there's been
10 no such factual determination. I could be wrong, but I
11 don't believe I was forwarded that, so --

12 CHAIRMAN ROGERS: I could be, too. So
13 we'll see.

14 MR. VANMIDDLESWORTH: It was an issue in
15 the Webb County case. There was testimony and a
16 stipulation on it and a finding of fact on it because
17 it's a factual issue. There's no -- I will submit
18 there's no such thing here and I'd submit that the
19 record does not show that. But I may be wrong.

20 CHAIRMAN ROGERS: Okay.

21 COMMISSIONER SOWELL: Mr. Chairman?

22 CHAIRMAN ROGERS: Yes.

23 COMMISSIONER SOWELL: I'd like to ask a
24 question of counsel, please.

25 CHAIRMAN ROGERS: Yes.

1 COMMISSIONER SOWELL: After listening to
2 all of the folks who have an interest in this
3 proceeding, I find myself unable to decide whether this
4 application should be granted or no action should be
5 taken. And the reason for my inability to make that
6 decision is based on what you said a minute ago about
7 the fact that I have not had the benefit of evidentiary
8 presentation, really by your side.

9 The other side, because of their position
10 as the applicant, probably had a little bit better shot
11 at offering something that was something like
12 evidence. But there certainly has been no cross
13 examination by anybody. And to my way of thinking,
14 this is an incomplete proceeding and it's inevitable
15 because of the interpretation of the law or the ruling
16 which has the effect of law which defines a contested
17 proceeding.

18 And it seems to me that one of the things
19 that was mentioned earlier, I find that -- have you all
20 been given the executive secretary's decision in
21 writing as we have in our booklets here?

22 MR. VANMIDDLESWORTH: We received a copy
23 of the board book. We filed an Open Records Act
24 request to get copies of some of the filings and some
25 of the questions, although it was redacted and we still

1 haven't been able -- in a contested proceeding you get
2 to see the redacted stuff when you sign a
3 confidentiality agreement. We still haven't even seen
4 the whole thing.

5 But we did see what came out last week.
6 We take issue with a number of those things. We think
7 they're based on obviously only hearing one side of the
8 story and not hearing the other side. And that's what
9 is fundamentally unfair and unlawful about trying to
10 make a -- resolve contested factual issues with only
11 one side allowed to present evidence.

12 COMMISSIONER SOWELL: And I'm very
13 frustrated about that. But it looks to me like you may
14 be up a creek without a paddle. If, in fact, the
15 interpretation of the language of what is a contested
16 proceeding, if that is actually as we have decided that
17 it is, then there's no remedy.

18 On the other hand, I can see the other
19 side of the coin which would have anybody who didn't
20 like any proceeding for which an application had been
21 filed would be entitled theoretically to a full-fledged
22 hearing. And I don't know that this agency or anybody
23 under these circumstances could handle the vast load of
24 pseudo litigation that would result. Everything would
25 be protested and then contested later.

1 So what I'm saying is I'm not sure that
2 there's a solution under the present situation without
3 either a court review of this language to decide what
4 it actually means or what it should mean or the
5 Legislature addressing this situation. And I don't
6 know which one of these rules it is.

7 But for example, what I'm talking about
8 that is so concerning to me is there's been mention
9 made of a case -- let's see. Recall the El Primero
10 Fair Association for a Class 3 racetrack deal?

11 MR. VANMIDDLESWORTH: Yes.

12 COMMISSIONER SOWELL: That's mentioned in
13 our executive director's explanation of the basis of
14 her decision and it provides here -- I don't know what
15 I'm supposed to tell you or what I'm not supposed to
16 tell you. If there's a lot of stuff that was redacted
17 and I'm getting ready to tell you about it, well, so
18 help me, I will have committed whatever crime that is.

19 CHAIRMAN ROGERS: If you can read it,
20 it's fine.

21 MR. VANMIDDLESWORTH: I believe if you
22 read it in the board packet, I think I'm all right.

23 COMMISSIONER SOWELL: All right. Here's
24 what it says: "The executive secretary has brought an
25 application directly to the Commission on at least one

1 prior instance," prior meaning prior to this
2 proceeding. "In 2002 the Commission considered an
3 application by El Primero Fair Association for a Class
4 3 racetrack license in Webb County. After discussion,
5 the Commission took no action, which resulted in a
6 referral of the application to SOAH. El Primero
7 withdrew its application thereafter."

8 Now, that's all that's said about this in
9 this treatise here. But my problem is if the secretary
10 is correct -- not the secretary. The executive
11 director. Pardon me. I didn't mean to demote you, not
12 at all. If Charla Ann King's and her counsel -- if
13 they're correct in their interpretation of the
14 ruling -- of the rule, then there's no remedy except to
15 deny everything and let everything have to have a SOAH
16 deal.

17 My question to you is: The language,
18 again, says that the executive secretary has brought an
19 application directly to the Commission on at least one
20 prior instance. Historically, I don't know really what
21 that means except exactly what it says. The question
22 is: How many other proceedings were treated that way
23 or a different way? Here again, we have no reference
24 to lean on; but it seems to me that it's important to
25 know what we're doing and why.

1 MR. VANMIDDLESWORTH: The El Primero case
2 worked out exactly the way it's supposed to and it's
3 consistent with what we're asking for. It was
4 presented --

5 CHAIRMAN ROGERS: Excuse me. Actually I
6 was on the Commission when that was presented. And let
7 me just address that just a moment.

8 MR. VANMIDDLESWORTH: Yes, sir.

9 CHAIRMAN ROGERS: There were -- that was
10 going to be obviously denied by this Commission. It
11 had lots of problems with the application. It was
12 going to be denied by the Commission. And it was -- by
13 taking no action, it referred it to SOAH because we
14 didn't have the right to deny it. We only had the
15 right to refer it. But it clearly was a deficient
16 application --

17 COMMISSIONER SOWELL: So it was not a
18 typical application?

19 CHAIRMAN ROGERS: It was clearly
20 deficient and this Commission was clearly going to deny
21 it. And rather than denying it, it was sent to SOAH.

22 COMMISSIONER SOWELL: Then, Chairman, if
23 I may ask you then, what was the pattern -- what
24 happened to other applications which didn't suffer the
25 lack of merit that the one that we're talking about

1 did? What happened under normal circumstances at that
2 time?

3 CHAIRMAN ROGERS: Well, I've only been on
4 the Commission for just seven years now, so I haven't
5 been around for any other applications. We've had --
6 we've had transfers -- or not transfers. We've had
7 moving of licenses. We have had change of ownership in
8 licenses. But to my knowledge, that's the only
9 application that we have had in the seven years that
10 I've been on the Commission. It came from the
11 executive secretary directly to the Commission as an
12 uncontested case.

13 COMMISSIONER SOWELL: Where did they go
14 before?

15 CHAIRMAN ROGERS: They came here. They
16 came to this Commission.

17 COMMISSIONER SOWELL: We had our own
18 hearing examiners?

19 CHAIRMAN ROGERS: No. What we had is we
20 had a report from the executive secretary, just as we
21 do here, that outlined the facts of the application and
22 they had -- those -- it was the completed as --
23 application as complete as what it was going to be. It
24 was presented by the staff to the Commission. And the
25 Commission had two options. They could say, "This is a

1 complete application and it makes sense and we want to
2 grant the license," or we could have taken no action,
3 in which case it went to SOAH. In that particular
4 case, it was going to be obvious that it was going to
5 be denied; and so because of that, it was then -- there
6 was no motion, so it automatically went to SOAH.

7 VICE-CHAIRMAN RUTHERFORD: There was a
8 tax problem, wasn't there?

9 CHAIRMAN ROGERS: There were a lot of
10 problems involved.

11 VICE-CHAIRMAN RUTHERFORD: The main
12 problem was the tax problem.

13 CHAIRMAN ROGERS: I don't recall exactly
14 the problem. But I recall there was not satisfaction
15 with the financial input and some of the parties
16 involved. This was also a Valley track.

17 COMMISSIONER CABRALES: Here's a question
18 I have for Mr. VanMiddlesworth.

19 MR. VANMIDDLESWORTH: I get questions,
20 but I don't get to answer.

21 COMMISSIONER CABRALES: It's right on
22 this point. You're going to get to answer it because
23 it's right on this point, Commissioner. There is a
24 rule right on point on this issue; and as I was
25 reading -- as I was turning to read your brief, I was

1 waiting to see what you were going to say about that
2 rule. And I looked and I looked and I looked and you
3 didn't say a word about that rule.

4 And that is Rule 307.5, which is special
5 provisions -- special provisions regarding racetrack
6 license applications. And Subsection (b) of that rule
7 says that "For each application, the executive
8 secretary shall determine whether to refer the
9 application to SOAH".

10 Now, we both know that "whether" means
11 whether to do it or whether not to do it. And
12 obviously that vests discretion with this Commission
13 and with our executive secretary with the discretion of
14 whether or not to send every application that comes up
15 here to SOAH or not.

16 And it even goes further. It's right on
17 point. It says "In making that determination, the
18 executive secretary should consider the expressed
19 support and opposition". Opposition. Your opposition
20 to this application, meaning it is still within our
21 discretion to determine whether we think we need to
22 send this to SOAH or not.

23 So it's one thing I believe -- and I want
24 you to address this rule and explain to me what you
25 think it means because it seems to me that this rule is

1 saying there's -- oftentimes it might be a great idea
2 to send things to SOAH and let SOAH sort them out for
3 us and other times we have to send things to SOAH
4 because the issue gets engaged, like you said, when
5 there's a denial.

6 But you're saying something completely
7 different. You're saying we have to send every
8 application to SOAH once there's opposition to it. And
9 what I need to understand from you is how do you -- how
10 are you able to disregard or distinguish or set aside
11 this particular rule when this rule deals with
12 racetrack license applications?

13 MR. VANMIDDLESWORTH: I'd be happy to
14 answer that. In the first place, the one thing I want
15 to say is that I agree with, I think, everybody here,
16 is the Commission has the discretion. The Commission
17 can. Whether it must or not, which is what we're
18 talking about now, the Commission can decide that this
19 case merits a hearing, just like every other contested
20 case on a license has had.

21 You were not provided any case where
22 there was a contested application for a Class 1 or 2
23 license and the Commission said, "Sorry. You don't get
24 a hearing on this." So I think everybody agrees with
25 that.

1 Now, we have taken the position in the
2 first part of our brief that not only may the
3 Commission and should the Commission do it -- everybody
4 agrees with "may". We think that "should" is the
5 answer. Clearly the Commission can do it.

6 We've also taken the position that the
7 law, the Racing Act, requires it. That is, the
8 provision you read does not -- is not in the Racing
9 Act. The provision you read is a Commission rule. And
10 that rule, I think, does say that all applications that
11 are going to be denied have to go to SOAH and then it
12 gives discretion.

13 COMMISSIONER CABRALES: It says more.

14 MR. VANMIDDLESWORTH: It gives discretion
15 or purports to give discretion. Does that mean that
16 the executive secretary -- notwithstanding the
17 requirement in the statute to make factual findings and
18 notwithstanding that another rule says that when there
19 are evidentiary matters that are contested, they must
20 go to SOAH, does this trump that and suggest that this
21 Commission may decide not to send it -- not to send it
22 to SOAH?

23 I don't think a rule can trump the
24 statute. And we've laid out our argument about why the
25 statute and the Ramirez case, which I would refer you

1 to, requires that it go to SOAH.

2 But we've also -- I think there's --

3 COMMISSIONER CABRALES: Before you move
4 on, you do agree with me, though, that on its face this
5 rule does give us the discretion with regard to
6 license -- racetrack license applications to make the
7 decision whether or not to refer an application to SOAH
8 even when there is opposition to that application.
9 You'll agree with me at least that that's what that
10 rule purports to allow us to do.

11 MR. VANMIDDLESWORTH: I'd agree that
12 that's one implication. There's another reading of
13 that --

14 COMMISSIONER CABRALES: No. It's a
15 direct statement.

16 MR. VANMIDDLESWORTH: Let me give you
17 another reading of that that I think squares it with
18 the statute, if I may.

19 COMMISSIONER CABRALES: Absolutely.

20 MR. VANMIDDLESWORTH: "In making the
21 determination, the executive secretary shall consider
22 the expressed support and opposition to the
23 application."

24 I think that provision, read consistently
25 with the provision that all contested cases go to SOAH,

1 means that the executive secretary is to consider
2 whether it's opposed. And if it is opposed and it is
3 the type of hearing -- not all hearings are like this,
4 but racetrack applications are. There are certain
5 applications that require notice and a hearing. This
6 is -- not all of them do. Not everything you do
7 requires notice and a hearing. A Class 2 racetrack
8 application does. And since it does, it falls into the
9 definition of a contested case.

10 So the way I would square that rule, if I
11 were just looking at the rule and not even looking at
12 the statute, is I would say, well, yes, if it's going
13 to be denied, it's contested. Obviously it has to go
14 to SOAH. In deciding whether something else is going
15 to go to SOAH or not, the executive secretary can look
16 at the expressed support and opposition. My view would
17 be that implies --

18 COMMISSIONER CABRALES: But that's in
19 deciding whether or not to refer it to SOAH. That
20 sentence modifies the sentence before that. I mean, if
21 we had wanted -- and I didn't write this rule, but it's
22 there. If we had wanted to say that the executive
23 secretary shall send any application that's opposed to
24 SOAH, we could have said that because the very next
25 sentence we say that with regard to denied. In fact,

1 you gave us these great construction arguments with
2 regard to the five percent issue earlier today. I
3 think that same sort of logic applies here where the
4 rule -- the Commission, in making this rule, could have
5 said what you just said.

6 MR. VANMIDDLESWORTH: I'm not arguing --
7 I'm not arguing that this rule -- this rule requires
8 it. Our argument is that the statute requires it and
9 that the Ramirez case requires it. Our rule -- my
10 argument is that the argument about a contested -- that
11 says -- you've got -- you've got just a few types of
12 proceedings in 307.3. You have to tell me which one
13 this is.

14 COMMISSIONER CABRALES: This is a
15 decision-making one until we decide discretionarily
16 with something else.

17 MR. VANMIDDLESWORTH: Then you can't have
18 evidence if it's a decision-making proceeding.

19 CHAIRMAN ROGERS: The only evidence that
20 we have is the executive secretary's report.
21 Everything else is a comment. It is a public comment.

22 COMMISSIONER CABRALES: It's a
23 policy-making decision.

24 MR. VANMIDDLESWORTH: And my view is that
25 it is that, as we've set out in our brief, since you

1 have to make factual determinations as set out that you
2 should, could, ought to, and must have an evidentiary
3 hearing. Now, you know, I know there's --

4 COMMISSIONER CABRALES: You're losing me
5 on the "must".

6 MR. VANMIDDLESWORTH: Let me work on the
7 "should".

8 COMMISSIONER SOWELL: To your knowledge,
9 has this question ever been litigated?

10 MR. VANMIDDLESWORTH: I have never
11 seen -- I've been practicing administrative law for 25
12 years. I've never come to an agency on something like
13 this and said, "We contest this license" -- be it a CCN
14 at the PUC, be it a permit at another agency, I have
15 never seen a situation where an agency said, "We know
16 this is important. We know this is our core
17 principle. We don't want to hear any evidence." No,
18 I'm not aware of any cases where this has ever been
19 even done.

20 CHAIRMAN ROGERS: Well, let me ask you
21 this. If -- let me bypass just a second, if you don't
22 mind.

23 Mr. Fenner, could I ask you something?

24 MR. FENNER: Yes, sir.

25 CHAIRMAN ROGERS: How long have we --

1 we've done with SOAH on the Webb County cases. How
2 long did that take to get through that process?

3 MR. FENNER: It took -- from the time
4 that the application period was opened, I believe it
5 was three years and four months.

6 CHAIRMAN ROGERS: Three years and four
7 months to get through SOAH.

8 MR. FENNER: To today.

9 CHAIRMAN ROGERS: Okay. This agency --
10 what did it cost this agency to do that, in your mind,
11 in hours, in hours applied, just a rough guess, hours
12 or money?

13 MR. FENNER: May I consult with my
14 associate attorney here?

15 CHAIRMAN ROGERS: Sure.

16 MR. VANMIDDLESWORTH: May I correct an
17 answer? You asked me for a case and my colleague
18 kicked me from behind and handed me this. Ramirez
19 versus State Board of Medical Examiners in which the
20 Austin Court of Appeals held that the State Board of
21 Medical Examiners erred by failing to initiate a
22 contested case for an applicant who was denied
23 reinstatement of his medical license. They had to have
24 a contested case.

25 CHAIRMAN ROGERS: Let's handle one at a

1 time. Then we'll get there.

2 Could you answer that for me? We know
3 how long it took. How much effort did it take on this
4 Commission staff program to do that?

5 MS. FRITSCHER: It took almost 2900 hours
6 of staff's time.

7 CHAIRMAN ROGERS: 2900 hours of staff
8 time.

9 MS. FRITSCHER: At a cost of over
10 \$80,000.

11 CHAIRMAN ROGERS: \$80,000 to do it.

12 MS. FRITSCHER: And that's just our
13 internal staff.

14 CHAIRMAN ROGERS: Okay. That's
15 internal.

16 MS. FRITSCHER: Then, of course, there are
17 costs to DPS, our sister agencies for what they've had
18 to do, court reporting costs, SOAH costs. And that was
19 another almost \$85,000. So, so far we're up to almost
20 \$165,000.

21 CHAIRMAN ROGERS: For the agency.

22 MS. FRITSCHER: Yes.

23 CHAIRMAN ROGERS: Okay. Since in the
24 length of time I've been on this Commission, I have
25 never ever had a decision, I think, that we've had

1 anything that we didn't have somebody who said, "I
2 contest," or, "I object," or, "I don't like the
3 decision." Almost everything we do here is subjective
4 in some way or another and somebody isn't going to like
5 the outcome.

6 So if we had to do that on everything
7 that we do, then it would just -- it would -- I mean, I
8 can't imagine a Class 3 racetrack, for instance, going
9 through -- that's our expense. How much expense does
10 it cost on each of the litigant's part? I mean, I
11 don't know that answer and I don't really want to
12 know. But --

13 COMMISSIONER CABRALES: I'll tell you
14 later.

15 CHAIRMAN ROGERS: But it just seems to me
16 that we would really be defeating the whole purpose of
17 the act if we say for a Class 3 license somebody is
18 going to object, for instance.

19 And in this case, I've never seen
20 anything that has more people in favor. We've had 10,
21 12, 13, 14, 15 elected officials up here today saying
22 that their people are in favor of it. We've got two
23 pages of support letters. We've got five people who
24 were opposed to it; and of those five people, all
25 but -- it appears all but maybe one couple, who I don't

1 know over here, and the City of Harlingen are related
2 to a track that might be affected.

3 I'm sensitive to the fact that this may
4 have a -- and probably will have a detrimental effect
5 on Valley to do something here, but I just can't
6 imagine that we would send everything to SOAH. I mean,
7 just personally I don't --

8 MR. VANMIDDLESWORTH: I haven't said
9 that.

10 CHAIRMAN ROGERS: We can argue this back
11 and forth, but I'm just concerned that --

12 COMMISSIONER SOWELL: I told you I
13 thought the alternative was just impossible. And I
14 think it is.

15 CHAIRMAN ROGERS: I think it is.

16 COMMISSIONER SOWELL: The question is:
17 What price justice?

18 MR. VANMIDDLESWORTH: Your Honor, I have
19 not suggested that everything go to SOAH. I have not
20 suggested -- because it's limited to specific types of
21 hearings. But if ever there's anything that you ought
22 to have a fully developed record on, it is the issuance
23 of a Class 2 racetrack.

24 How many have we had in 15 years? You
25 know, this is our third application, maybe our fourth.

1 They've all gone to SOAH. That's the only place you
2 get evidence. And the notion of an agency saying, "I
3 don't want evidence on the key things," I think is
4 inconsistent with what the agency should be doing.

5 Yes, SOAH has these hearings. They're
6 very good at it. They have great folks there. They
7 conduct them all for all other agencies. Yes, they
8 cost parties money. Yes, it's much more
9 administratively efficient for an agency to just say,
10 "I grant this certificate of convenience and
11 necessity."

12 But that's not how you get to the truth.
13 That's not how you make good decisions. And nor is it
14 a question of, if I go out and get a busload of people
15 to send in letters, then the agency will decide my
16 way.

17 CHAIRMAN ROGERS: I don't think that what
18 we've had is a busload of folks. I mean, I think
19 that -- I've been here seven years. We haven't had a
20 single legislator ever come up here and testify
21 before. I've seen more today than I knew there were in
22 the House or the Senate.

23 So I mean, the quality of the people
24 supporting it, including the people from Cameron County
25 supporting it, Senators, Representatives, and economic

1 development people, I can't see how the executive
2 secretary could do anything but have sent this to us
3 for decision.

4 But I think rather than -- I mean, we can
5 argue this back and forth forever. I think you've
6 clearly made your point and I think you've had an
7 opportunity to do that and I think we should decide
8 here now whether or not we believe that we should go
9 forward at this point or not.

10 I think we're kind of down to that area,
11 other than we still have to get a staff presentation on
12 this; and then I think we're going to come to a vote
13 and we'll decide whether we're going to do it or not do
14 it.

15 MR. VANMIDDLESWORTH: If I might make one
16 comment, Your Honor. We would ask for the opportunity
17 to present an offer of proof of the evidence that we
18 would submit in this case and to have it read into the
19 record.

20 Also, I'm sorry that this discussion took
21 longer than I thought it would. I think it's
22 important.

23 CHAIRMAN ROGERS: It is important.

24 MR. VANMIDDLESWORTH: But Ms. Griffiths
25 is prepared to go over all of the things that we've

1 identified already that are contested factual issues
2 about that; and I think it would be important, before
3 the Commission makes a decision, to hear what we think
4 the contested factual issues are if you're willing to
5 hear that.

6 CHAIRMAN ROGERS: Why don't we take about
7 three minutes worth of break and let me confer a little
8 bit with our attorney and we'll move forward.

9 (Recess from 4:46 p.m. to 4:56 p.m.)

10 CHAIRMAN ROGERS: Okay. Let's go back
11 and begin.

12 Mr. VanMiddlesworth, what we're going to
13 do here -- could we come to order here, please?

14 Mr. VanMiddlesworth, what we're going to
15 do, we're going to hear from your associate here.
16 We've got your brief, though, and we've read it. So
17 why don't you hit this in five minutes.

18 MS. GRIFFITHS: I will do that.

19 CHAIRMAN ROGERS: In five or less. And
20 then we're going to move on from there. We'll listen
21 to the staff. I want to hear what you have to say; but
22 keep it very brief, please, because we do have the
23 information.

24 MS. GRIFFITHS: Commissioners, many of
25 the good hard questions that you have asked today have

1 been a result of sending the contested Webb County
2 proceeding to SOAH. And so we have only -- we haven't
3 even been able to scratch the surface in this case.

4 What we want to show you is what the
5 evidence would show if we were given the opportunity to
6 thoroughly examine it, to have a protective order like
7 we did at SOAH. We can do things like look at the
8 concession agreement where we found out there were
9 legal issues related to TABC, where we could look at
10 also the management agreement of the LRP Group where we
11 found out that there were problems related to partners
12 who could simply drop out of the group if they wanted
13 to.

14 So I'm just going to quickly go through
15 some of the contested issues that we believe that there
16 are and that need to be looked at further.

17 First is the issue of the election
18 certification. There was a very real question of
19 whether or not the election in Webb -- I'm sorry, in
20 Hidalgo County was properly certified. As you recall,
21 the election was held in '87. It wasn't until 2004
22 that the election was certified to the Secretary of
23 State.

24 The Attorney General has said that the
25 Commission needs to make specific findings about that.

1 That hasn't been done yet.

2 There are also contested issues about the
3 fact that race dates proposed by the Tesoros
4 application would conflict with Manor Downs and Sam
5 Houston Race Park race dates.

6 We also believe that there are contested
7 factual issues related to the financial stability of
8 the application. If you look at their on-track handle
9 estimates, they're higher than what is really
10 realistic. The application itself estimates on-track
11 handle at 40 million. This compares to current
12 on-track handle at 22 million for Manor Downs and 19
13 million at Valley Race Park. This just doesn't seem
14 realistic and we should be able to ask them about
15 that.

16 Finally -- or in addition, the
17 partnership structure is going to have the same
18 problems that it had in Webb County. And we don't know
19 how thinly capitalized this project is. We don't know
20 whether or not there are any partners who have already
21 dropped out of the application. The Commission doesn't
22 have evidence in front of it right now to show who is
23 actually in it, who is actually in the application.

24 Also, one interesting issue was raised in
25 the open records request that we did, which was that we

1 weren't sure that there were -- even all the partners
2 had complied with the DPS background check. Now you do
3 have testimony from your DPS personnel that the people
4 who are part of the application have complied, but the
5 application itself had a person who had -- listed in it
6 as a contributor of \$29,000 in the application who
7 hadn't even submitted a DPS report. That was never
8 looked into.

9 Those issues don't come into the light of
10 day until we can thoroughly examine them and then
11 conduct discovery.

12 There are also issues related to the
13 facilities for patrons. We believe that their
14 facilities for patrons are substandard just like they
15 are in the Webb County application. It's also hot down
16 in McAllen, and so an air-conditioned --
17 un-air-conditioned grandstand is an issue there.

18 Also, the facilities for patrons and
19 horses don't appear to comply with the Commission
20 rules. There are lots of rules that the Commission
21 lays out regarding what's required for the backside
22 facilities. They simply didn't meet those
23 requirements. And amendments to their application
24 would need to be made before it would even be in
25 compliance with the Commission's rules. So you don't

1 have the evidence in front of you today to determine
2 whether or not it does comply with your rules.

3 In addition, they proposed a facility
4 that is near a tick quarantine zone. Have they put up
5 any protective measures towards that? Have they
6 addressed that issue? We don't know.

7 And then finally, there are -- another
8 issue is their proposed acreage for the site. They
9 have proposed a site of only 125 acres. However, we
10 have learned that there are underground gas and
11 irrigation canal easements that may affect the ability
12 to build. It may affect their cost projections. It
13 may affect whether or not their application is
14 financially feasible.

15 Also, the same TABC issues that existed
16 in Webb County exist here. They cited -- you heard
17 comments from Mr. LaMantia earlier that the Sea World
18 exception, you know, could apply. It doesn't apply.
19 That was a statutory change that was made explicitly
20 for Sea World. So there are certainly legal issues
21 related to TABC that need to be addressed.

22 And then finally we'd like you to look at
23 the fact that greyhound licenses are limited to the
24 coastal counties. And so in making that -- in making
25 your decision regarding the Tesoros application, you'll

1 need to look at that. And that hasn't been addressed
2 in the executive secretary's report either.

3 So when we went to SOAH, we were able to
4 conduct discovery. We were able to depose the
5 witnesses. We were able to cross examine them and give
6 you the substance of the questions that you asked us
7 earlier today. And so that is one of the reasons
8 why -- even though we believe that you're legally
9 required to send it to SOAH, why you should anyway,
10 even if you believe that it's just simply within your
11 discretion.

12 I hope that was short and sweet for you.
13 And I'd like you to rule on that motion. I just want
14 to let you know that I've also submitted an offer of
15 proof that we will be submitting to your court reporter
16 later on in the event that the -- if you decide not to
17 send this application to SOAH. And that's what that --
18 this paper is right here.

19 If you have any questions relating to any
20 of the factual issues that we would put on as evidence,
21 we would be happy to address those, too.

22 CHAIRMAN ROGERS: Thank you.

23 CHAIRMAN ROGERS: Mr. Fenner, would you
24 mind addressing this first? Just tell us what this
25 means in English.

1 MR. FENNER: When a motion is overruled,
2 in order to preserve their appeal rights, the party
3 generally has to make an offer of proof to show the
4 Commission in this case that their facts are correct.
5 So it's a preservation of their appeal rights. Is that
6 correct?

7 MS. GRIFFITHS: That's correct.

8 MR. VANMIDDLESWORTH: And a demonstration
9 of what we would show were we given the opportunity to
10 put in evidence.

11 CHAIRMAN ROGERS: Okay.

12 MR. FENNER: All right. Commissioners, I
13 wanted to, first of all, discuss just very quickly the
14 certification of election results. We have reviewed --
15 staff has reviewed the certification of the election
16 results and found that similarly to as in the Webb
17 case, they're adequate. That requirement was
18 directory, not mandatory. It's in the certification
19 portion of the act.

20 And also I think if you would compare
21 today's results from Hidalgo County to what happened
22 when Austin Jockey Club considered moving their
23 racetrack license to the Pflugerville -- you remember
24 the uproar that came up about the stale -- the
25 certification of election at that point. The contrast

1 is pretty pronounced. So I do think that that should
2 not be a hindering issue for this Commission.

3 Second of all, the 29,000-dollar partner
4 referenced, that person withdrew. That's why there was
5 no DPS. That person is not a party here in the current
6 scheme for the ownership of Hidalgo.

7 As to the contested case issue, this is
8 not as complex as we have been led to believe here.
9 307.3 of the rules defines a contested case. A
10 contested case proceeding is one in which the
11 Commission is authorized or required by law to make a
12 decision regarding the rights or privileges of a person
13 after notice and hearing. The rights and privileges of
14 a person.

15 We're not making any recommendation and
16 you might not make a decision in this case that's
17 adverse to the applicants for Hidalgo. The question is
18 whether there's any rights or privileges belonging to
19 Valley Race Park that are in jeopardy here.

20 No one is proposing to remove their
21 license, to suspend, revoke, or deny a license to
22 Valley Race Park. They do not have a right or
23 privilege to operate exclusively within the Lower Rio
24 Grande Valley. So I don't see that as being on point.

25 They also make reference to Ramirez, the

1 Ramirez case. However, the Ramirez case involved a
2 person who had their license denied. This is not
3 what's happened here. No one is denying Valley Race
4 Park a license.

5 As to Hidalgo, if you all decide not to
6 grant them a license, they will have the right to go to
7 SOAH. But that's a right that belongs to the Hidalgo
8 applicants, Valle de los Tesoros, not to Valley Race
9 Park.

10 Do you all have any questions on that
11 issue?

12 All right. Now, at this point we had
13 planned to go into a discussion of the merits.
14 However, you do have the executive secretary's report
15 in front of you and you have all read it, I believe.
16 And so in the interest of saving time, I would suggest
17 that we -- that we would submit the executive
18 secretary's report for your consideration into the
19 record and that if you have any questions about it, we
20 could fill in the blanks on that.

21 Otherwise, if you prefer, we will --
22 we'll go through the elements. But I think that that
23 would be a faster and more effective way to get through
24 this hearing.

25 CHAIRMAN ROGERS: Does anybody have any

1 objection just to having it put in the record?

2 MR. VANMIDDLESWORTH: We would object --
3 we would object for the record.

4 CHAIRMAN ROGERS: I think we would
5 just -- we'll go ahead and put it in the record.

6 MR. FENNER: If you have questions,
7 Ms. Fritsche would be probably more appropriate to
8 answer those questions. But otherwise --

9 CHAIRMAN ROGERS: We'll put it in the
10 record. We've all read it and are familiar with it.

11 Okay. I guess at this point we need to
12 figure out procedurally what we're going to do. I'll
13 make a recommendation; but if anybody has an objection
14 or would like to do it differently, speak up and say
15 so.

16 And I would say that we need to have
17 for -- both for the record and so that we all
18 understand what's -- where we all are, we need to have
19 a pretty free-flowing discussion about how we feel
20 about these things as opposed to just a vote yes or no,
21 given that choice.

22 Commissioner Cabrales had mentioned
23 earlier that this is one of the few places where you
24 sit in a judiciary role and you don't have an
25 opportunity to go back and talk about it and then come

1 back and give a decision of some kind. But the way the
2 open meetings law works presently, we get to do this up
3 here and make this sausage in front of everybody.

4 So hopefully, when sunset comes around,
5 that might be something that we will have discussed as
6 these particular type decisions maybe get a little more
7 flavor and honesty when you don't have this many people
8 kind of looking down your throat.

9 But for the moment, where we are is I'd
10 like to just open a discussion on -- first, on Hidalgo;
11 and we will take a vote on Hidalgo, on this applicant.
12 If the vote is yes, then that application will be
13 approved. If the vote is no, then it will go -- or if
14 there's not a motion and a successful vote, it would go
15 to SOAH.

16 Then I would propose maybe that we have a
17 motion to maybe separate the other two applications,
18 sever those, and consider those one at a time, in
19 whatever order you choose to do that. But we sever
20 those, we discuss those separately, and let them stand
21 on their own as opposed to doing this solely as we take
22 the ruling of SOAH and amend it. I think it would be a
23 lot easier if we try to do that one at a time as
24 opposed to try to do that jointly. But that's kind of
25 up to you all.

1 Now, does anybody have any objection to
2 that, first?

3 Okay. Rather than have a motion on
4 Hidalgo, why don't we just have some discussion first
5 about how we feel about where this is. And anybody can
6 start that would like to.

7 MR. ARCHER: Mr. Chairman?

8 CHAIRMAN ROGERS: Yes.

9 MR. ARCHER: I'd just like to state that
10 I don't believe from a legal standpoint that every
11 licensing decision that the agency makes, that the
12 Commission makes, would have to go to SOAH. I don't
13 believe that. And I don't believe -- I certainly don't
14 believe that every licensing decision that the agency
15 makes would have to go to SOAH for a track license
16 application. I don't think that's true. However, in
17 this particular case, it's obviously highly contested.

18 The comptroller's position is that all
19 the parties should have been given the opportunity to
20 be heard, present evidence, and have it ruled on,
21 essentially have their day in court. For this to
22 occur, this should have -- this should be a hearing
23 that's been referred to the State Office of
24 Administrative Hearings. So the executive secretary
25 should make the referral to SOAH. And that's the

1 comptroller's position.

2 CHAIRMAN ROGERS: Okay. Thank you.

3 Other positions? Yes, Commissioner
4 Carter.

5 COMMISSIONER CARTER: Since I've been on
6 this Commission, I haven't found anything that had more
7 support than this application and I trust that our
8 executive secretary and our counsel have looked into
9 this very well and have approached it in what they
10 thought was a correct manner and I think that we can
11 vote on it personally.

12 CHAIRMAN ROGERS: Commissioner Boyd?

13 COMMISSIONER BOYD: I, too, have spent a
14 lot of time talking with staff. And I have volunteered
15 a lot. I've been on boards before. And I feel like we
16 have one of the most qualified staffs available to a
17 Commission today. I've spent a lot of time on the
18 phone with them. I trust what they have to say.

19 I'm torn with Valley because of the
20 people there. But in our meetings we've discussed the
21 lack of kennels and racing for hounds today. I don't
22 think that the Hidalgo license should be penalized
23 because of something we don't like is happening to the
24 hound industry. So I think that I can vote on Hidalgo
25 today as well.

1 CHAIRMAN ROGERS: Commissioner Angelo?

2 MR. ANGELO: I've read the material in
3 our presentation and I agree with the executive
4 secretary's position that it should be brought to the
5 Commission for a vote.

6 VICE-CHAIRMAN RUTHERFORD: I agree, too.

7 CHAIRMAN ROGERS: Commissioner Rutherford
8 agrees.

9 Any other comments?

10 COMMISSIONER SOWELL: Yes. I'd like to
11 just point out that I've already told you what my
12 feeling about it is. And that is that -- well, I
13 haven't given you the whole story. I think the
14 applicants made an excellent presentation; and all
15 things equal, I'd say we ought to give them the
16 license, the franchise, without any discussion or
17 delay.

18 I have one big bugaboo. That is that I
19 don't believe the opponents had an opportunity to
20 present their side of the issues. Now, their side
21 might be woefully inadequate; but I haven't heard it
22 and I don't know that. And I think we're dealing with
23 a flawed set of rules, maybe statute. I don't know.

24 But in this particular situation, I don't
25 think the opponents got a fair opportunity to present

1 their case and I really regret that because, as I said,
2 I think the applicants, absent that, would have it on a
3 silver platter right now without any further
4 discussion. So I don't think I can vote on it one way
5 or the other.

6 CHAIRMAN ROGERS: Okay.

7 COMMISSIONER CABRALES: I think --
8 obviously I agree that I don't think the rules or the
9 statute require that this issue go directly to SOAH as
10 we heard earlier. But I do think there is a big
11 difference between whether it's required to go versus
12 whether we think it's the prudent thing to have done
13 here in order to get a more developed record of the
14 issues.

15 I do have concerns that -- I mean, I
16 think a very good case has been made about the need for
17 something somewhere down in that area. I have a real
18 concern, though, about the effect that it will have on
19 Valley racetrack and I don't know that that concern has
20 been fully developed.

21 I think, as Commissioners, we've got to
22 look at the entire industry and we've got to make sure
23 that we know what the effects are going to be across
24 the board. I don't know that with what we've got we've
25 been able to do that.

1 You know, the other issue or the other
2 concern I've -- I mean, you know, the thing about
3 Valley is, you know, as a dog track, they're stuck on
4 the coast, those Gulf coast counties, and I'm not sure
5 what -- you know, they're locked. They're where they
6 are. And unfortunately, we've got to take the
7 situation the way it is. And I think we need to give
8 further thought to that.

9 If we are going to consider this issue
10 today, I think there needs to be some discussion about
11 whether we, as a Commission, have any ability to
12 control the speed with which something gets up and
13 running down there so that we don't have a situation
14 where somebody is holding a license strictly as a
15 commodity, waiting to see what happens somewhere down
16 the road. I mean, if we're going to get tracks going,
17 then we need to get tracks going and not just have
18 licenses swirling around.

19 CHAIRMAN ROGERS: Any other thoughts?

20 I guess I'll weigh in on my two cents'
21 worth. I think the right decision was made on whether
22 to send it to SOAH or not. I agree completely with
23 your last statement, that we need to be able to see
24 that inactive licenses aren't just issued to be
25 inactive licenses and I think we have something later

1 in the agenda that will address that with a rather
2 punitive security bond that will either make it very
3 expensive to hold a license inactive or we'll get
4 something built. So I think there is some address to
5 that.

6 I do just accept the fact that this would
7 be very difficult on Valley. I think you would have to
8 be not very smart to think that this won't affect
9 Valley Greyhound. And it will, should it be approved.
10 I think sending it to SOAH is going to come to that
11 same conclusion. I would accept their numbers. That
12 may be a little strong, but I think it definitely would
13 affect the track.

14 On the other hand, you've got a whole
15 population in that area that wants, very much wants,
16 deserves the opportunity to race horses. They're
17 wanting to race Quarter Horses that nobody else really
18 wants to spend a whole lot of time racing. If every
19 other track that I have seen, other than Sam Houston,
20 had the opportunity to not race Quarter Horses, they
21 would probably take it if it wasn't in the law.

22 So we have a group of people who want to
23 do what other people don't want to do, believe they can
24 do it profitably, and have a proven track record in
25 other businesses and have more support than any other

1 thing that's ever come before this Commission that I'm
2 aware of, both from public officials, from the
3 community it's going to be built in, but also from a
4 community that it's going to affect negatively.

5 So I'm in favor of moving forward with it
6 and I'm in favor of supporting the application. But --
7 and I think the way to do this at this point is that we
8 take a motion to support and it either will pass or it
9 won't. And if it doesn't, it will go to SOAH. If it
10 passes, they would have a license. Is that agreeable
11 that we begin?

12 Okay. I would entertain a motion to
13 grant a racetrack license to Valle de los Tesoros.

14 COMMISSIONER CARTER: So move.

15 CHAIRMAN ROGERS: Moved by Commissioner
16 Carter.

17 MR. ANGELO: Second.

18 CHAIRMAN ROGERS: Seconded by
19 Commissioner Angelo.

20 Okay. Any other discussion?

21 All in favor?

22 COMMISSIONERS: Aye.

23 CHAIRMAN ROGERS: Why don't we call the
24 roll just to be sure on this, please.

25 MS. GIBERSON: Jesse Adams?

1 COMMISSIONER ADAMS: Yes.

2 MS. GIBERSON: Treva Boyd?

3 COMMISSIONER BOYD: Yes.

4 MS. GIBERSON: Kent Carter?

5 COMMISSIONER CARTER: Yes.

6 MS. GIBERSON: Ernest Angelo?

7 MR. ANGELO: Yes.

8 MS. GIBERSON: Mike Rutherford?

9 VICE-CHAIRMAN RUTHERFORD: Yes.

10 MS. GIBERSON: Sonny Sowell?

11 COMMISSIONER SOWELL: I abstain.

12 MS. GIBERSON: Jimmy Archer?

13 MR. ARCHER: I abstain.

14 MS. GIBERSON: David Cabrales?

15 COMMISSIONER CABRALES: I abstain.

16 MS. GIBERSON: Dyke Rogers?

17 CHAIRMAN ROGERS: Yes.

18 MS. GIBERSON: Three abstentions.

19 CHAIRMAN ROGERS: The motion passes?

20 MS. GIBERSON: Yes, three abstentions.

21 CHAIRMAN ROGERS: The motion passes, so

22 that license will be granted.

23 Okay. Now, we will now move to the Webb

24 County issues. And on Webb County, I would -- we can

25 take this up the way it is, but I would really prefer

1 that we sever it and look at them one at a time and
2 then adjust the findings accordingly.

3 But before we begin that discussion, are
4 there any findings of -- I guess of fact that you might
5 dispute? Other than the decision, are there any other
6 findings of fact that might be disputed in here as we
7 go through that? Or would you like to address that,
8 Mr. Fenner?

9 MR. FENNER: Commissioners, there are a
10 couple of things that I do think need some
11 clarification so that we'll be prepared to write the
12 final order.

13 CHAIRMAN ROGERS: Would you tell us where
14 to look here so that we're all on the same page?

15 MR. FENNER: Give us just a moment.

16 (Discussion off the record)

17 MR. FENNER: Commissioners, the first one
18 that we'd like to get your guidance on would be Finding
19 of Fact No. 333.

20 CHAIRMAN ROGERS: What page would that be
21 on?

22 MR. FENNER: 153 in our book.

23 COMMISSIONER CABRALES: 333, you said?

24 MR. FENNER: 333, yes.

25 CHAIRMAN ROGERS: Page 153 in the red

1 binder.

2 MR. FENNER: Let's make sure we're on the
3 same finding anyway. This is the one regarding the --

4 COMMISSIONER SOWELL: Is it okay if we
5 touch these without trouble?

6 MR. FENNER: Yes, sir.

7 CHAIRMAN ROGERS: They're highly
8 confidential, but you can look at them.

9 MR. FENNER: This reads "Based on the
10 size of the market, two licensed facilities could not
11 operate in an economically viable manner in Webb
12 County." I think that's something that we could use
13 some guidance on, whether that should stay in or come
14 out or --

15 CHAIRMAN ROGERS: I personally absolutely
16 believe that to be true, but this Commission has
17 traditionally taken the position that we don't get into
18 how that proximity works or how those economics work.
19 So I would recommend that we remove that from this
20 finding regardless.

21 MR. ANGELO: I would so move.

22 MR. FENNER: I see a general consensus.

23 CHAIRMAN ROGERS: Okay. We have -- can
24 we just do this by motion as we go?

25 MR. FENNER: Uh-huh.

1 CHAIRMAN ROGERS: Okay. Well, we have a
2 motion made by Commissioner Angelo and seconded by --

3 COMMISSIONER SOWELL: Second.

4 CHAIRMAN ROGERS: -- Commissioner Sowell
5 to remove Finding of Fact No. 333.

6 MR. FENNER: And the basis for that being
7 that that has been a position that the Commission has
8 not taken in the past and you do not wish to
9 necessarily bind future Commissions' hands on this
10 regard?

11 MR. ANGELO: Correct.

12 CHAIRMAN ROGERS: That would be the
13 reason that I believe we would be doing it. Is that
14 correct in your motion?

15 MR. ANGELO: That is correct.

16 CHAIRMAN ROGERS: All in favor?

17 COMMISSIONERS: Aye.

18 CHAIRMAN ROGERS: Okay. Other items
19 that --

20 COMMISSIONER SOWELL: Mr. Chairman, I
21 don't know the proper procedure to do what I would like
22 to do, but -- I don't know whether it's a finding of
23 fact or not. I would like to see us have -- first of
24 all, let me explain that the definition of contested
25 proceeding is one that was, I guess, formulated by our

1 present executive secretary and general counsel. Am I
2 correct in that?

3 MR. FENNER: Our interpretation of that?

4 COMMISSIONER SOWELL: Interpretation of
5 the meaning of a contested case under the definition
6 that you all had come up with.

7 MR. FENNER: Well, I would say that this
8 is an expression that is -- that we're continuing an
9 interpretation from the prior executive secretary.

10 COMMISSIONER SOWELL: I thought the prior
11 executive secretary or executive director had taken the
12 opposite position. Is that not correct?

13 MR. FENNER: No, sir, I believe that is
14 not correct. And the reason I say that is based on the
15 fact that she did bring El Primero to the Commission
16 without taking it to SOAH first. While she did not
17 recommend actually granting the license, she took no
18 position when she brought it to the Commission. She
19 just said, "Commission, I can't -- I'm not referring it
20 to the State Office of Administrative Hearings. I'm
21 not recommending it. I leave it to you to decide."

22 COMMISSIONER SOWELL: Charla Ann, correct
23 me if I'm wrong. When you and I had a conversation, I
24 believe you told me that Paula Flowerday or whoever it
25 was -- maybe it was somebody prior to her. I don't

1 know -- had had a different definition of contested
2 proceeding and they operated that way until you came
3 along and you and our current counsel got together and
4 changed your opinion about it. Am I wrong?

5 MR. FENNER: Here's where I believe where
6 we may have changed. Her prior position on this was
7 very absolute. Any expression of opposition would
8 result in a referral to SOAH. However, I looked at the
9 rule. I found that that was not in accordance with the
10 rule. The rule says that you're supposed to consider
11 both support and opposition. And I found that an
12 opinion or an interpretation of that policy that any
13 expression of opposition would result in the referral
14 to SOAH was not good policy for the Commission.

15 COMMISSIONER SOWELL: So it was not
16 necessarily a change of definition. You changed the
17 policy? Was that what it was?

18 MR. FENNER: We changed our
19 interpretation of the rule.

20 COMMISSIONER SOWELL: Which was what I
21 said a minute ago when you said no, that wasn't the way
22 it happened.

23 MR. FENNER: But it's not relating to a
24 contested case, which I believe you're --

25 MS. KING: It was not related to a

1 contested case.

2 CHAIRMAN ROGERS: This case is a
3 contested case clearly. I mean, in the Hidalgo case,
4 we have granted a license. This case is clearly a
5 contested case. I'm not sure where we're headed, but
6 this is clearly a contested case.

7 COMMISSIONER SOWELL: You're talking
8 about today's application?

9 CHAIRMAN ROGERS: Today's application.

10 MR. FENNER: The Laredo applications.

11 COMMISSIONER SOWELL: Laredo, yes. I was
12 talking about the other one. Okay. We've got so many
13 here, it's kind of hard to keep them all straight.

14 CHAIRMAN ROGERS: Yeah, I understand.
15 No. Presently we are on Laredo and the Hidalgo case is
16 done. And we need to look at how we do this, a rule or
17 whatever, if we can put that on a future agenda.

18 COMMISSIONER SOWELL: It's going to
19 happen some more. Depending upon what the Legislature
20 does, it might happen a bunch more. And what I'm
21 concerned about is I would like to have -- I'd like to
22 have a review of the language that we've been dealing
23 with in the application that we approved a moment ago
24 because that's going to come up again and I think we
25 need to bolster our position.

1 If it is what it is, we need to have the
2 Attorney General or somebody else like that proclaim
3 and opine that it is what it is and we'll take a big
4 step to avoid this kind of thing happening again, it
5 seems to me.

6 Now, how to do that, I don't know. What
7 do you have to remove in order to change that, if
8 anything?

9 CHAIRMAN ROGERS: Well, it won't be on
10 this. I mean, if we would have to -- we would have to
11 make a rule that said that we were going to send
12 everything to SOAH or anything to SOAH that was an
13 application or whatever. I think we'd also have to
14 have a rule, though, that says that the party who
15 contested it is going to have to pay for it. I mean,
16 we're probably going to have to have a full discussion
17 of how that would work.

18 COMMISSIONER SOWELL: I wouldn't argue
19 that at all. The cost would be prohibitive for us to
20 have to do it. And that's why I said earlier the
21 alternative to the present construction is
22 unthinkable. But the current situation leads to the
23 unfairness that I saw today in the opponents not being
24 able to present any evidence in a normal situation.

25 In other words, we made a decision to

1 take action without having any evidentiary proceeding.
2 And the only way you can have an evidentiary proceeding
3 under these rules is to make a decision before you know
4 what the hell is going on. And to me, flying dark and
5 in the -- blind and in the dark doesn't make much
6 sense. So I think we need to have some provision that
7 protects us from having to do that again.

8 CHAIRMAN ROGERS: I guess I would say
9 this for the record. I don't think we're flying in the
10 dark. We had the evidence that was presented by the
11 executive secretary's report.

12 COMMISSIONER SOWELL: I disagree.

13 CHAIRMAN ROGERS: That's the only
14 evidence we consider. That may not be enough to
15 satisfy in this instance. But that particular deal, I
16 mean, we have already kind of voted and done and we're
17 going to have to figure out what to do with Hidalgo.

18 I understand your concern. I just don't
19 know that we can handle that without putting it on the
20 agenda to handle that rule for future use.

21 COMMISSIONER SOWELL: Well, maybe not.
22 But I just want to point out that if you think what we
23 had today was an evidentiary proceeding, you need to go
24 sit in the courthouse a few times and watch what really
25 happens. There was no cross examination of witnesses.

1 All the things that go with that sort of thing we did
2 not have. And that's why I was concerned about it.

3 CHAIRMAN ROGERS: And I don't think that
4 we have to have. And I think that was the decision
5 that was made and was supported is that we may not have
6 to have that in every case.

7 COMMISSIONER SOWELL: I'm not saying we
8 do. What I'm saying is we need a better approach, I
9 think.

10 CHAIRMAN ROGERS: I think we can handle
11 that in a future agenda item and see where it comes.
12 The staff can look at that and we can approach that for
13 the future.

14 MR. FENNER: I can tell you that in our
15 experience through the Webb applications, we have come
16 across some rules that we also think need revision in
17 contested cases. There has been some complexity
18 regarding when you can revise applications and what the
19 timing of that is. And so I think the whole area is
20 ripe for review by the staff and bringing it back to
21 the Commission.

22 COMMISSIONER SOWELL: Excellent point.
23 Because my contention is our job is to do what's right,
24 but it's got to be done on a fair basis to everybody
25 involved. And we're not doing that at this point, it

1 seems to me.

2 MR. FENNER: Anything else?

3 All right. Returning to the proposal for
4 decision, we have Conclusion of Law No. 52.

5 CHAIRMAN ROGERS: Where would that be
6 found?

7 MR. FENNER: Page 159. This is a
8 parallel to the one we just talked about. This would
9 change -- let me read it to you. "Because only one
10 licensed facility in Webb County is economically
11 viable, it is not in the public interest for the
12 Commission to issue licenses to both Laredo Race Park
13 and LRP Group."

14 This would, of course, be the same
15 discussion that you just voted on. So I would
16 recommend deleting that.

17 CHAIRMAN ROGERS: And you're recommending
18 we delete this. Whether we issue one license, two
19 licenses, or no license, we still would delete that.

20 MR. FENNER: Yes, sir, based on your
21 previous vote on the findings of fact.

22 CHAIRMAN ROGERS: Is there a motion to
23 that effect?

24 COMMISSIONER ADAMS: So move.

25 MR. ARCHER: Second.

1 CHAIRMAN ROGERS: Moved by Commissioner
2 Adams, seconded by Commissioner Archer.

3 All in favor?

4 COMMISSIONERS: Aye.

5 CHAIRMAN ROGERS: The motion passes.

6 MR. FENNER: Now, the other changes that
7 might have to be incorporated depend upon the vote you
8 make on the applications. If you vote to grant a
9 license to Laredo Race Park, we may need to discuss how
10 the two-license restriction is going to be
11 interpreted. If you vote to grant a license to LRP
12 Group, I think we need to discuss the number of stalls
13 and determine what the appropriate number is, whether
14 it's 600 as recommended by the ALJ's or some other
15 number.

16 Beyond that, I mean, right now we need a
17 vote on the substance.

18 CHAIRMAN ROGERS: Okay. Well, let's
19 discuss that. And why don't we first just have --

20 COMMISSIONER ADAMS: Mr. Chairman, I'm
21 prepared to move that we split these two so that we can
22 talk about them individually.

23 CHAIRMAN ROGERS: Would you like to make
24 a motion to that effect?

25 COMMISSIONER ADAMS: Yes, sir.

1 COMMISSIONER CARTER: I didn't hear
2 that. I'm sorry.

3 COMMISSIONER ADAMS: I move that we split
4 the two cases so that we can visit each one
5 individually.

6 CHAIRMAN ROGERS: Okay.

7 MR. FENNER: Commissioners --

8 CHAIRMAN ROGERS: Can that be done that
9 way?

10 MR. FENNER: Yes, sir. You may split the
11 two cases. Let me make sure we understand about the
12 implications of doing that.

13 Right now you have one proposal for
14 decision, one order before you, and it has the two
15 applications mixed together so that the proposed order
16 is to grant a license to Laredo Race Park and deny the
17 license to LRP Group.

18 I believe what you're intending by
19 severing the two applications is to give them separate
20 destinies. Therefore, if you grant a license to
21 Laredo -- to LRP Group, for example, and you come to
22 some other conclusion with Laredo Race Park, whether it
23 is to a contingent license or come back in 45 or 60
24 days or something else, and they come back in 45 or 60
25 days and have something satisfactory that their meeting

1 that condition does not affect the finality of granting
2 a license to LRP Group. Was that what you --

3 CHAIRMAN ROGERS: So maybe what we should
4 do is we should have this discussion first of whether
5 we want to grant one, two, or none; and then depending
6 on that, we sever. Will that be okay?

7 COMMISSIONER ADAMS: That's fine.

8 CHAIRMAN ROGERS: Okay. I am open to
9 discussion here. And I think we've heard all of the --
10 all the evidence in this one. And so open to
11 discussion on what you think we should do.

12 And everybody doesn't have to start at
13 the same time. That would be okay.

14 COMMISSIONER CARTER: I will make an
15 observation --

16 CHAIRMAN ROGERS: Okay.

17 COMMISSIONER CARTER: -- that in the
18 minutes from the last meeting, I thought that the
19 verbiage was pretty clear that the Maxxam group was
20 advised that before they came towards us today or
21 before us today that they would have a satisfactory
22 conditions of sale for the Valley Race Park. And the
23 attorney, Mr. VanMiddlesworth, said that he understood
24 those conditions of sale would be completed -- it was
25 recommended they would be completed, but they were not

1 able to get it done by this meeting.

2 And I think that with that in mind and
3 with the amount of effort that was expended on
4 convincing us that they didn't need to do that, maybe
5 if they would have put that effort in towards getting
6 the sale done that we would have more information to
7 deal with today. I just don't see how they qualify
8 personally.

9 CHAIRMAN ROGERS: Do you have an opinion
10 on the Laredo -- on the other group?

11 COMMISSIONER CARTER: I think that it
12 came out that the staff said that they qualified.

13 COMMISSIONER ADAMS: Mr. Chairman?

14 CHAIRMAN ROGERS: Any other thoughts?

15 COMMISSIONER ADAMS: Yes.

16 CHAIRMAN ROGERS: Mr. Adams?

17 COMMISSIONER ADAMS: In my motion to
18 sever the two discussions, my thought process has been
19 all along that I personally feel that both applicants
20 deserve an opportunity, both applicants deserve a
21 license. We did have a long -- a lengthy discussion;
22 and if I'm not mistaken, we've had -- we had counsel
23 presenting us information regarding the sale at the
24 last meeting and there was, I thought, an understanding
25 that that would be resolved when they came here today.

1 So I'm not prepared -- personally, I'm
2 not prepared to grant a license to Laredo -- to the
3 Laredo group unconditionally. I do see some merit in
4 the conditional aspect of that license granting. But
5 I'm a believer in free enterprise and I feel that it's
6 not our position as a Commission to determine which of
7 these two will be more successful, which one will be
8 more profitable, and which one would survive.

9 They have the right and I think we have
10 the obligation to grant them the license and see -- let
11 the chips fall as they may. And for that reason, I
12 would ask -- I would move that we sever the two and, in
13 my opinion, approve both either conditionally or
14 nonconditionally depending on the whims of the
15 Commission.

16 CHAIRMAN ROGERS: Mr. Angelo?

17 MR. ANGELO: I agree with what
18 Commissioner Carter said a moment ago about his
19 feelings about what happened at the last meeting. I
20 thought it was very clear. But I do think that they
21 deserve a chance to have a license approved if they can
22 come in with a sale that the Commission approves.

23 Now, I wouldn't want to do something
24 today that would deny them that right. But can we --
25 can the Commission postpone that decision until they

1 come back with a contract?

2 CHAIRMAN ROGERS: That's a question I
3 guess we need to ask Mr. Fenner. I'm assuming we can,
4 but I don't know that.

5 MR. FENNER: Yes, sir, you could postpone
6 the decision. We're here. You're discussing it in
7 public. So as far as the 60-day directory instructions
8 from the APA, the Administrative Procedures Act, are
9 satisfied that, yes, you could give an instruction to
10 the party that achieve a certain -- these objectives by
11 a certain date and, if you don't, you don't get a
12 license or at that point we will make a final
13 decision.

14 MR. ANGELO: That's what I'd prefer to
15 do.

16 CHAIRMAN ROGERS: Okay.

17 VICE-CHAIRMAN RUTHERFORD: That also says
18 if they do come back and the sale contract is
19 satisfactory to who? Our staff or us or --

20 CHAIRMAN ROGERS: It's going to have to
21 be satisfactory to the Commission.

22 VICE-CHAIRMAN RUTHERFORD: To the
23 Commission? Then they would get the license, right?

24 CHAIRMAN ROGERS: That would depend on
25 what we do.

1 VICE-CHAIRMAN RUTHERFORD: If it's
2 satisfactory. So we're really giving them a license.
3 What I'm trying to say is we're really giving them the
4 license with some restrictions on it.

5 CHAIRMAN ROGERS: Well, I don't think --
6 I don't think we can -- I don't think we can give them
7 a license with restrictions and I don't think that we
8 can give a conditional license because I don't think
9 that exists. I mean, I keep hearing that word, you
10 know, "conditional"; but I don't see it anywhere in the
11 statute. I mean, the statute says you get a perpetual
12 license. So then you've got to go around and try to
13 figure out how to discontinue the license and how to
14 revoke it and another SOAH hearing revocation.

15 If we can delay -- I mean, if we sever
16 them and we -- and you grant -- let's just -- as an
17 example, you grant something to the LRP Group and you
18 say to the other folks, "We will consider your license
19 when you do this," or you can say we will -- you know,
20 we get the consensus of the group here that we're going
21 to grant a license if they come back with the right
22 deal.

23 But I'm not sure that you can say we're
24 going to grant you a license when you fulfill these
25 things. I don't know. Unless you make -- you'll have

1 to answer that question because I don't have that
2 answer.

3 MR. VANMIDDLESWORTH: May I address the
4 Commission?

5 CHAIRMAN ROGERS: Sure.

6 MR. VANMIDDLESWORTH: I would note there
7 are three parties to this proceeding: The staff and us
8 and the LRP Group. And I think we all should have an
9 opportunity to visit with the Commission. I think the
10 ALJ --

11 COMMISSIONER CARTER: Speak up, please.

12 MR. VANMIDDLESWORTH: I'm sorry. I think
13 the ALJ's have addressed this and I don't think there
14 was a difference. You could do it the way the ALJ's
15 proposed, which is it would be a non -- what's called
16 an interim order, in which you would take whatever
17 action you proposed. We would hope adopting the PFD on
18 that. But it would be subject to meeting the
19 Commission's satisfaction on the criteria. And then
20 if, at the next meeting, we met the Commission's
21 satisfaction, then that order would become final.
22 You'd probably take another vote on it.

23 It would be -- I would urge that you do
24 that if for no other reason than to give us the ability
25 to assure our buyer that this is a serious prospect,

1 that this is going to go through, that we'll get the
2 license, that they should spend the time sitting down
3 with us and talking with us about this because this
4 isn't -- I mean, this isn't out of the realm of
5 possibility. So I would urge the ALJ approach -- if
6 you go this route, the ALJ approach.

7 CHAIRMAN ROGERS: Let me ask you a
8 question along those lines. Do you -- what is a
9 reasonable time frame -- should we agree to grant you a
10 license with a final order being a successful sale of
11 the property, what is a reasonable time to sell the
12 other license or the other track?

13 MR. VANMIDDLESWORTH: I think that is
14 within your discretion.

15 CHAIRMAN ROGERS: But I'm asking what do
16 you think is reasonable. We're unreasonable all the
17 time. So what do you think is reasonable? I don't
18 know the right -- I'm really asking.

19 MR. VANMIDDLESWORTH: The ALJ's suggested
20 45 days. I would suggest one thing for your
21 consideration because part of the difficulty in coming
22 to a conclusion is different valuations on what will
23 happen with legislation, if anything. I would think it
24 would be reasonable to have until sometime after the
25 end of the legislative session so the buyer and the

1 seller both know what came out.

2 But that's within your discretion. I'm
3 not insisting on it, but I think it would be reasonable
4 and helpful to have it held -- what's sine die? May
5 25th or thereabouts. And, you know, in a short time
6 thereafter. I would suggest that, but it is within
7 your discretion.

8 COMMISSIONER BOYD: Mr. Chairman?

9 CHAIRMAN ROGERS: Yes.

10 COMMISSIONER BOYD: I would like to ask
11 Mark Fenner another question.

12 Clarify again for me, Mark, this issue
13 concerning the stalls being nonsufficient possibly and
14 what our options are there in granting.

15 MR. FENNER: May I defer that question to
16 Ms. Fritsche? She --

17 COMMISSIONER BOYD: Sure. I'm sorry.

18 MS. FRITSCHE: And your question is about
19 what are we required to do with the stalls as far as
20 quantity?

21 COMMISSIONER BOYD: No. If I --
22 Mr. Brown and I had a conversation up here where I
23 relayed a concern to him about the stalls and areas for
24 our horsemen or lack thereof. How can we then go
25 forward and approve something contingent upon changes

1 in this area?

2 MS. FRITSCHER: Well, you can require the
3 applicant, by rule, to comply with the rules. And that
4 is, 309.243 requires sufficient stalls to house twice
5 the amount of starters. So based on their race dates,
6 if that's 800 stalls, then that's what they're required
7 to do. Now, you do have the discretion to go below
8 that if you think it's correct.

9 COMMISSIONER BOYD: And my concern was
10 not only with the stalls. It was with the horsemen as
11 well. And I don't know if they can't expand where they
12 are that it's -- that we can hold them responsible for
13 adding that, those facilities.

14 MS. FRITSCHER: Well, quarters for grooms
15 is an option. It's not a requirement of the rules. So
16 it's discretionary on the part of the association.

17 VICE-CHAIRMAN RUTHERFORD: Just the
18 stalls.

19 MS. FRITSCHER: Stalls are required.

20 CHAIRMAN ROGERS: And you could -- I
21 guess theoretically you could just approve it with the
22 basis that they would comply with all rules and they
23 would come back in and ask for adjustments on anything
24 that they needed an adjustment on, could you not?

25 MS. FRITSCHER: Yes, sir.

1 CHAIRMAN ROGERS: And then you would have
2 time to actually consider those items on a one-by-one
3 basis.

4 MS. FRITSCHER: Yes, sir.

5 VICE-CHAIRMAN RUTHERFORD: That's the
6 best way to do it.

7 CHAIRMAN ROGERS: Because, I mean, I
8 would think -- just off the cuff, I would think that in
9 the Valley, if you've got 60 percent of your horses for
10 the whole state coming to the Valley, chances are
11 you've got 60 percent of your grooms and your jockeys
12 and so forth. So a lot of them are living pretty close
13 by. They may not need as much as they would if they
14 were 200 miles from home or 300 miles from home. But I
15 think we could delve into that in a request for an
16 exemption.

17 So I think if we approve something, we
18 could approve it based on the fact that they comply
19 with all the Texas Racing Act rules and then modify
20 it.

21 MR. ANGELO: Mr. Chairman, could we
22 settle the question about -- I turned it on that time.
23 That was a mistake, huh?

24 Could we settle the question about what
25 we're going to do with Laredo Race Park? Or at least

1 get a consensus on that so we can have the motion to --

2 CHAIRMAN ROGERS: I mean, we've got --
3 three people have said kind of where they are. Why
4 don't we go through the rest right quick as to where
5 they are. And I know that you're on a very tight
6 schedule and we'll try to do this very quickly.

7 But do we have some other thoughts here
8 so we can kind of tell how to craft this motion
9 perhaps?

10 COMMISSIONER SOWELL: I'd suggest we
11 follow the recommendations of the ALJ. Page 27.

12 MR. ANGELO: Did the ALJ have -- were
13 they familiar with the position taken by the Commission
14 at the last meeting?

15 CHAIRMAN ROGERS: No.

16 COMMISSIONER CARTER: That was before.

17 CHAIRMAN ROGERS: Okay. Commissioner
18 Sowell?

19 COMMISSIONER SOWELL: Yes, sir.

20 CHAIRMAN ROGERS: Why don't -- not just
21 on Laredo -- not -- the two groups are too close
22 together in the name here. Okay? So I'm just calling
23 one the group and one Laredo Race Park because I can't
24 seem to keep it straight. But what is your position on
25 two license, one license, no license and your thought?

1 Or are you prepared to say where you might be?

2 COMMISSIONER SOWELL: I don't know yet.
3 I'm still creeping up on it.

4 CHAIRMAN ROGERS: Okay. When you were
5 saying take the position of the ALJ, what position was
6 that?

7 COMMISSIONER SOWELL: I'm talking about
8 with respect to the conditional type of licensing,
9 which is what they had said that it's possible for us
10 to do. At the bottom of page 27, they kind of get into
11 it. They don't go through the whole thing that we've
12 talked about, like number of days and that sort of
13 thing.

14 But if you'll look at the bottom of page
15 27, it talks about "The ALJ's concur with Commission
16 staff that Laredo Race Park may show compliance with
17 the ownership limitation based on the testimony offered
18 at hearing that it would sell Valley Race Park, and as
19 confirmed by Commission approval of the sale prior to
20 or simultaneous with the issuance of the final order in
21 this proceeding, which should officially notice that
22 approval. At that point, Laredo Race Park would be
23 qualified for licensure. The ALJ's acknowledge that
24 this approach effectively shields any pertinent issues
25 relating to the sale of Valley Race Park from

1 consideration in this proceeding. It appears unlikely,
2 however, that any such details would be relevant here,
3 so long as Maxxam retains no more than five percent
4 ownership in that track."

5 Mark, does that substantially coincide
6 with the staff recommendations? I haven't tried to
7 look them up.

8 MR. FENNER: Staff did recommend that the
9 parties -- or Laredo Race Park in this case be required
10 to divest itself of at least one of its -- 95 percent
11 of at least one of its two racetracks -- Valley Race
12 Park is obviously the candidate here -- before any
13 order becomes final granting them the license.

14 Staff was not enamored of the idea of a
15 contingent license because of the potential for
16 complexities about arguments about whether -- how do
17 you revoke a perpetual license when it's contingent.
18 But we can work through that process.

19 VICE-CHAIRMAN RUTHERFORD: We need a
20 deadline.

21 MR. FENNER: We need a deadline? Yes, we
22 need a deadline. The ALJ's recommended 45 days.

23 COMMISSIONER SOWELL: Excuse me. I don't
24 think it says --

25 MR. FENNER: It's in the order.

1 MR. VANMIDDLESWORTH: There's an October
2 27 supplemental order that -- supplemental PFD that
3 addresses this in a little bit more detail and sets out
4 the ALJ recommendations.

5 COMMISSIONER SOWELL: I was just looking
6 here in the big book.

7 MR. FENNER: If you were to take
8 Mr. VanMiddlesworth's suggestion about the end of the
9 session, the end of the session is May 28th. The
10 Governor has 30 days in which to veto after May 28th,
11 for your consideration.

12 COMMISSIONER SOWELL: I didn't offer a
13 motion. I'm just expressing a view because you asked
14 for it.

15 CHAIRMAN ROGERS: On your view then are
16 you saying that you would support a license for Valley
17 Race Park provided --

18 COMMISSIONER SOWELL: Yes.

19 CHAIRMAN ROGERS: So you would support
20 that license.

21 COMMISSIONER ADAMS: You're saying
22 Laredo?

23 CHAIRMAN ROGERS: The Laredo Race Park.
24 Laredo.

25 COMMISSIONER CARTER: Can I ask a

1 question?

2 CHAIRMAN ROGERS: Sure.

3 COMMISSIONER CARTER: Why are we tying
4 this deadline to the legislative session? My
5 understanding was they wanted to build a racetrack
6 regardless. I ask that question directly.

7 MR. VANMIDDLESWORTH: It is entirely up
8 to Your Honors what time frame to set. The only reason
9 for that was because -- and I'm not divulging anything
10 about the negotiation -- about the complications in the
11 negotiations with the buyer and the difficulty of doing
12 a valuation in a restructured deal consistent with what
13 the Commission views.

14 So it would be helpful in that regard to
15 know for sure what came out of that because it would
16 greatly simplify the process of evaluating the future
17 value of it. That's the only reason, and I submit it
18 for your consideration.

19 COMMISSIONER CARTER: Either they do or
20 they don't.

21 CHAIRMAN ROGERS: I think what he's
22 saying is that the value of Valley Race Park, whether
23 this is a place that is -- might be worth a lot if the
24 Legislature did something, it might be worth a lot less
25 if they didn't. I'm not sure it has to do with whether

1 they build or not, but it certainly would have to do
2 with what they can sell it for or not.

3 COMMISSIONER CARTER: Or whether they
4 would want to sell it.

5 MR. VANMIDDLESWORTH: That's the issue.

6 CHAIRMAN ROGERS: Right, or whether they
7 would want to.

8 MR. ANGELO: Why couldn't they make that
9 a contingency, since we're dealing with that word
10 today?

11 COMMISSIONER CABRALES: I think they
12 tried that.

13 MR. VANMIDDLESWORTH: You're right. All
14 I can say is when you get two principals and two
15 parties together and you try developing a contingency
16 on what might happen and there are an infinite number
17 of possibilities, it's complicated.

18 MR. ANGELO: I've been there.

19 CHAIRMAN ROGERS: Any other thoughts?

20 COMMISSIONER CABRALES: Mr. Chairman,
21 I'll chime in.

22 Go ahead, Jimmy. You do it.

23 CHAIRMAN ROGERS: Go right ahead.

24 MR. ARCHER: Mr. Chairman, I would agree
25 with Mr. Angelo and the other Commissioners. I think

1 we should look at issuing both licenses. However, I am
2 a little bit disappointed about the sale not being
3 consummated today and I believe it was pretty clear
4 when we left the Commission meeting last time that that
5 would take place. Now, for whatever reason, they
6 decided not to.

7 The only thing that kind of bothers me a
8 little bit, the issue of what the Legislature might do
9 hasn't come up until the last 15 minutes, you know, I
10 mean, waiting until after the session is over or not
11 over or whatever else. I mean, that hasn't been on the
12 table today unless I've been asleep for a little bit.
13 And I don't think I have.

14 So I mean, I believe that a deadline
15 needs to be given for the sale if we're going to do
16 that and it needs to be -- we need to hold them to it.
17 And, you know, it's either the sale is made by a day
18 certain or that's it, there's no license, there's no
19 appeal, there's nada, is the way I feel about it. I
20 mean, we've been dealing with this for three and a half
21 years now. I mean, the concept of selling the five
22 percent of one of these tracks is not new.

23 So I think that we need to -- you know,
24 I'm for granting both licenses; but I'm disappointed
25 about the sale not being consummated. I think the

1 concept of having both licenses granted is a good one.
2 But they need to sell their -- they need to take care
3 of their business of getting rid of that other track.

4 COMMISSIONER CABRALES: I'll chime in.
5 With regard to Laredo Race Park, I also came in here
6 thinking we were going to see something. And I don't
7 agree with the ultimate conclusions with regard to how
8 the statute was interpreted with regard to what our
9 rule means. But I do think there was enough
10 uncertainty that the ALJ's approach to it certainly
11 makes sense to me with regard to Laredo Race Park.

12 And I do remember some -- when we talked
13 to Mr. VanMiddlesworth about why we didn't see
14 something, I do remember him saying something about
15 valuation being a problem because of this contingent
16 issue. So I think the legislative issue did at least
17 indirectly come up. It was somewhere between
18 Kaska-esque and a big discussion about 307. But -- and
19 so I think, you know, if we wait another hundred days
20 or however long it would be to get to our July meeting
21 or whenever our next meeting is around that time frame
22 I think makes sense to me.

23 But I think with regard to both of these
24 licenses, I'm inclined to grant them both but I do want
25 to keep both sets of parties on a short leash and see

1 dirt flying and see horses running as quickly as we
2 can. And I don't know how much we can do at this point
3 to make sure that happens, but that would be my goal
4 for both of these.

5 CHAIRMAN ROGERS: Okay.

6 COMMISSIONER BOYD: Mr. Chair?

7 CHAIRMAN ROGERS: Yes.

8 COMMISSIONER BOYD: I'd like to throw my
9 hat in on my impression of the last meeting. Okay?
10 And not getting hung up on the law and all of that.
11 But my impression at the last meeting was that we would
12 come back here and we would have something on the sale
13 of Valley Race by this -- to be considered in our
14 packets before this meeting. And I was very clear
15 about that in my own mind anyway.

16 I think that when you say we're ready to
17 go, you're ready to go. And now it's hinging upon, you
18 know, the VLT's and the Legislature. I mean, we can't
19 depend on that. I think we need to make our decision
20 separate from that. And so I would like to see an
21 earlier deadline.

22 CHAIRMAN ROGERS: Okay.

23 VICE-CHAIRMAN RUTHERFORD: When will the
24 next Commission meeting be?

25 CHAIRMAN ROGERS: That's the last thing

1 we're going to handle today.

2 COMMISSIONER CABRALES: And I'd like to
3 see full compliance on the rules with regard to the
4 group.

5 MS. KING: We are going to be shooting
6 for the second or third week of May.

7 MR. ARCHER: What's the date? Do you
8 know? I'm going to be gone the whole first week.

9 MS. KING: Of May?

10 MR. ARCHER: Yeah.

11 MS. KING: Okay. We haven't put that out
12 yet. Sorry.

13 VICE-CHAIRMAN RUTHERFORD: The Derby is
14 the first Saturday in May.

15 MS. KING: Right.

16 CHAIRMAN ROGERS: Okay. Well, has
17 everybody had their opportunity to weigh in? It seems
18 everybody but you, Mr. Rutherford.

19 VICE-CHAIRMAN RUTHERFORD: Well, I want
20 to give both licenses. I'm for giving both licenses.
21 And I agree with everybody basically. I think we ought
22 to give two licenses. At the next Racing Commission,
23 if they haven't got a legitimate sale, then their deal
24 is off.

25 CHAIRMAN ROGERS: I want to disagree with

1 everybody.

2 VICE-CHAIRMAN RUTHERFORD: I think that's
3 what everybody has been saying, isn't it?

4 CHAIRMAN ROGERS: I'm going to weigh in,
5 too. I think I really agree with Commissioner Boyd in
6 that I really thought that we would have something more
7 definitive. I do understand your problem with it,
8 though. But if -- but for a valuation to work, for you
9 to have a sale on something -- I mean, I'm just
10 opinionated here a little bit.

11 You are saying you presently are not
12 making Valley Race Park or Valley Greyhound work. It's
13 getting better. But according to the testimony in the
14 record, it is losing money. And then you are going to
15 lose 38 percent more. So if -- according to the
16 document that you put in our package. So a potential
17 buyer that doesn't have legislation is going to have to
18 have a real love for dogs or has got to have a
19 different plan.

20 And I understand that you have discussed
21 the possibility today of possibly converting that to a
22 combination track or to a horse track. That's
23 something that may well have some merit to look at or
24 consider or something at a later time.

25 I agree with Commissioner Cabrales that

1 even though I really fully believe this says three
2 licenses and that's the rule, that you can't have
3 three, you can't have more than five percent in three,
4 that conditioning would be okay.

5 I don't believe that there is a chance in
6 the world that two racetracks in Laredo are actually
7 going to work. So I mean, I believe in the end that
8 what we're going to have is we're going to have one
9 built and I don't know what's going to happen with the
10 other one. But when we get down to the administrative
11 penalties for not doing and the security for not doing,
12 I personally want to make that as difficult as possible
13 so that we don't have this papering of licenses and
14 either we'll become a license or -- I mean, it will
15 become a track or it will come back into the fold, one
16 or the other.

17 And I guess I -- what I don't want to do
18 is, if we condition this license on the fact that
19 Valley Race Park -- or Valley Race Greyhound will be
20 sold in a certain period of time, then it's -- in my
21 opinion, it's going to have to be a real sale, really
22 done, that's going to be approved by that date for some
23 closing that might happen 30 days further out or
24 something. But it would not be something that says we
25 will -- if that doesn't happen, then we do another 30

1 days and we do another 60 days. I mean, we either have
2 it or we don't have it done. And if we have a date
3 certain, then I'm fine with both licenses. But I think
4 we definitely need a date certain.

5 Okay. What I'm hearing from everybody is
6 that if we -- that we would amend this proposal to say
7 that the LRP Group should be granted, which is No. 55.
8 Is that right? I'm just trying to craft a motion
9 here.

10 MR. FENNER: Well, I certainly don't want
11 to leave you with the impression that we have to go
12 through line by line and do all 300 findings of fact.
13 I mean, the ALJ's have already determined that both
14 parties are qualified to receive and they've endorsed
15 basically the findings of fact that would be necessary
16 to achieve that.

17 So if you want to say we want to grant a
18 license to, for example, Laredo Race Park and modify
19 the findings of fact and conclusions of law
20 accordingly, I don't see a problem with that. We're
21 going to be able to make that. I think that's clear
22 authority and I don't see -- I don't see that as being
23 changing of the finding of fact. It's more of a --

24 CHAIRMAN ROGERS: Also the full
25 compliance that they're talking about? So --

1 MR. FENNER: Right. Now, that you have
2 discussed. I think you could incorporate that into
3 your motion. We want to grant -- we want to sever the
4 licenses. I'd make that a separate motion and then a
5 motion to grant the license to LRP Group with the
6 requirement that we are going to change the finding of
7 fact to require 800 stalls in accordance with the
8 rules.

9 CHAIRMAN ROGERS: How about just we're
10 going to comply with all the rules. There may be
11 something else out there.

12 MR. FENNER: Including the rule on the
13 stalls. I think you're there.

14 CHAIRMAN ROGERS: Okay. Why don't we do
15 this. Why don't we -- why don't you craft up that
16 motion while we take about five minutes so that we'll
17 actually have something we can vote on.

18 COMMISSIONER SOWELL: You've got a long
19 time to work.

20 COMMISSIONER CABRALES: Why don't you
21 give him some marching orders on --

22 CHAIRMAN ROGERS: Okay. Wait a minute.
23 Okay. The motions that I believe that I'm hearing
24 would read something like this: One, we would have --
25 we would be separating the motion -- we'd be separating

1 the applications.

2 MR. FENNER: Yes.

3 CHAIRMAN ROGERS: We would be approving
4 the Laredo group, the LRP Group. We would be approving
5 them contingent on them complying with all of the rules
6 of the Racing Act.

7 MR. FENNER: Yes, sir.

8 CHAIRMAN ROGERS: And then -- and that
9 would become effective now. Then we would have the
10 Laredo Park that we would defer -- we would do a motion
11 that it would only become effective if they sold Valley
12 Race -- or Valley Greyhound within a certain time
13 period and a date certain. That could be -- 45 days is
14 what the ALJ's said. You all may have a different
15 thought.

16 COMMISSIONER CARTER: The next Commission
17 meeting.

18 MR. ARCHER: It might not be 45 days,
19 though. The next Commission meeting may be more than
20 45 days.

21 CHAIRMAN ROGERS: It may be a lot longer
22 than that. I mean, we're going to -- we're also going
23 to have to approve it. But I would say that that sale
24 would need to be tentatively approved by staff within
25 that period and I guess it could be appealed to the

1 Commission. But how would we -- how do we do that?

2 MR. FENNER: We'll work on that and I
3 will get together with Mr. VanMiddlesworth.

4 And do you have --

5 MR. VANMIDDLESWORTH: My suggestion would
6 be that we just come to the Commission and so you would
7 know. We'd present it. You would set that at the
8 meeting. But it seems to me it would be better for us
9 to come to the Commission with our proposal and know --
10 you have to approve the transfer of the license. I
11 mean, it's something that requires action. And it
12 seems to me that that approval by you, you know, has to
13 be at a meeting.

14 So as I said, we have a preference on
15 when it would be -- when the best time would be to
16 allow us to better negotiate this; but it's your
17 discretion. But I do think it would be appropriate to
18 do it at a final order meeting so you can say this is
19 acceptable or this is not acceptable.

20 CHAIRMAN ROGERS: Is that okay in your
21 thought process here?

22 COMMISSIONER SOWELL: I think we'd have
23 to do it that way.

24 MR. FENNER: So, Rex, you would be --
25 find it acceptable to say the next Commission meeting

1 after the passage of 45 days from today?

2 MR. VANMIDDLESWORTH: My preference would
3 be after the end of the legislative session, but
4 that --

5 CHAIRMAN ROGERS: We may not meet until
6 July after that. It may be a long time. And I
7 understand your preference and why.

8 Guys, I need a little direction here.

9 MR. ANGELO: I'm going to vote against it
10 if it's a conditional approval and reserve the right to
11 approve it if they come back with an acceptable
12 contract. But I don't think -- I don't think it's
13 right to -- or at least I don't, in my own mind, feel
14 good about voting to give them a conditional approval
15 when I feel that they should have known that they
16 should have a contract today.

17 I mean, that doesn't mean that I won't
18 vote in favor of their application if they come back
19 with an acceptable contract; but I'd like to see the
20 contract before I even get that far. That's my
21 opinion.

22 MR. VANMIDDLESWORTH: I don't think
23 anyone is asking for final order approval at this
24 point. I mean, given where you're going in your
25 interpretation of 6.06(h), what we're talking about is

1 a non-final order that just -- whatever your decision
2 would be, then the final order would be after you
3 approved the sale.

4 MR. FENNER: That is a viable
5 alternative. The staff has always had concerns about
6 the idea of a contingent license. Our position has
7 always been: Make them do the sale. Then they come
8 forward and discuss whether or not they get a license.
9 The sale would be, of course, contingent upon execution
10 of the granting of a license.

11 COMMISSIONER CABRALES: I mean, I'm going
12 to advocate for giving them through the legislative
13 session. We're sitting here talking about an extra 45
14 to 60 days on top of the 45 that the ALJ was talking
15 about. I mean, if it helps them come to some finality
16 with their buyer and allows them to bring us a cleaner
17 deal that doesn't have all of the contingencies that
18 created the heartburn that we saw in the last draft, it
19 just seems more efficient from a Commission standpoint
20 to give them that additional time, let them come
21 back -- they know what we're looking for. They know
22 what they've got to bring us -- and have them bring it
23 to us in July and it will either pass muster or it
24 won't then.

25 I think a motion that gives them a

1 conditional interim granting of this with the need to
2 come back in July with that is something that I would
3 be in favor of.

4 CHAIRMAN ROGERS: Any other thoughts?

5 MR. ANGELO: Mr. Chairman, you know, the
6 conditions that -- the conditions that were troubling
7 to me were not the ones that involved contingencies as
8 to the value. The troubling conditions to me were the
9 ones that allowed them to buy it back, in essence, and
10 the manner in which those would be executed.

11 MR. FENNER: Chairman?

12 CHAIRMAN ROGERS: Yes.

13 MR. FENNER: Mr. Sullivan.

14 CHAIRMAN ROGERS: Yes, Judge.

15 MR. SULLIVAN: And perhaps not directly
16 on that point. But you all were indicating that you
17 would be accepting generally the findings with respect
18 to LRP Group; and if it is the Commission's decision to
19 issue a license to LRP Group in addition to or
20 potentially instead of Laredo Race Park, I do believe
21 you would need to invite probably Mr. Moltz to submit
22 additional proposed findings in support of LRP Group
23 because our findings that we have submitted to you all
24 in detail indicate that Laredo Race Park's application
25 meets the requirements and, in our view, was superior

1 in the ways that we had indicated and that only one
2 license should be issued because it would -- the track
3 would only support that one and therefore it should be
4 issued to Laredo Race Park.

5 We expressly did not make those detailed
6 findings with respect to LRP Group because, based upon
7 our analysis, we weren't recommending that that license
8 be issued; and so therefore your proposed findings
9 don't contain those detailed findings of compliance by
10 LRP Group.

11 So it may be that you all are -- may wish
12 in order to have an order that would comply with all of
13 the requirements that you would need additional
14 findings with respect to LRP Group since you are going
15 in a different direction than we had recommended.

16 CHAIRMAN ROGERS: That would be presented
17 to you or to our staff?

18 MR. SULLIVAN: The --

19 CHAIRMAN ROGERS: Or to this Commission?

20 MR. SULLIVAN: Our recommendation is what
21 our recommendation was, and so the usual way that would
22 be would be for the site who is prevailing to present
23 those to perhaps your general counsel to then have
24 signed.

25 I mean, Mr. Moltz submitted detailed

1 proposed findings of fact and conclusions of law to us
2 and I'm sure would be delighted to resubmit them
3 directly for you all for your signature and, you know,
4 in an appropriate form for you to do that.

5 And I don't mean to take up all of your
6 all's time, but I just wanted to make sure that --

7 CHAIRMAN ROGERS: No. Thank you.

8 COMMISSIONER CABRALES: That's a good
9 point.

10 Mark, I think we can build that into our
11 order, can't we? Instructions to the group's counsel
12 to submit proposed findings in support?

13 MR. FENNER: Let's see what Mr. Moltz has
14 to say.

15 MR. MOLTZ: Mr. Chairman, that's not a
16 terribly unusual proceeding. We've done it many times
17 before. I would be happy to prepare those, submit them
18 to Mr. Fenner for his approval or whatever, and then
19 Mr. Fenner submits them to you if this does what you
20 want to do. That's pretty standard and I have no
21 problem doing that.

22 CHAIRMAN ROGERS: So the question --
23 we're fine there. The question that we have -- we
24 understand what we're looking at with the LRP Group.
25 What we -- the question we have has to do with Laredo

1 Race Park and how we attack this license issue.

2 And what I'm hearing from Commissioner
3 Angelo is that he would prefer that they came back with
4 a license first -- I mean, they came back with a sale
5 and we basically table their issue until they came
6 back. What I've heard from some other people is that
7 they want to give them a license but it would not
8 become final until they came back with a sale.

9 Would somebody like to weigh in on that a
10 little bit so that we know which way we're going for
11 Mr. Fenner here?

12 COMMISSIONER CABRALES: I mean, I'm in
13 favor of the second option just because I think
14 anything we can do on the other side to give them the
15 indication they need to go back to their buyer and get
16 over whatever their impasse is, I think, it seems to me
17 would be helpful to move this thing along. And so --

18 MR. VANMIDDLESWORTH: Yes. I mean, if I
19 may, Your Honor, it would be very helpful to have an
20 indication of support, that if we can do the deal then
21 the deal will go forward because the Laredo Race Park
22 proposal would be -- so that would be helpful in
23 convincing the buyer that this really will happen.

24 COMMISSIONER SOWELL: I agree with that.

25 CHAIRMAN ROGERS: Do we have a

1 consensus?

2 Okay. So that's what we're looking at
3 for your motion. Okay?

4 MR. FENNER: We're going to take a little
5 break?

6 CHAIRMAN ROGERS: We're going to take a
7 little break and you're going to work on the motion.

8 (Recess from 6:16 p.m. to 6:36 p.m.)

9 CHAIRMAN ROGERS: Okay. Let's come back
10 together, please.

11 Mr. Fenner, do you have a motion for us
12 to consider?

13 MR. FENNER: Yes.

14 COMMISSIONER SOWELL: As a matter of
15 fact.

16 MR. FENNER: We have a variety of
17 motions. Actually the one I haven't worked through yet
18 is this sever one. We need to get through that. Give
19 me just a few more seconds. I'm sorry. It's pretty
20 simple.

21 Okay. Sorry for the delay.

22 The first motion that I believe that you
23 all are interested in entertaining would be a motion to
24 sever the two applications for Class 2 horse racetrack
25 license applications in Webb County into two separate

1 orders.

2 COMMISSIONER CARTER: I'd so move.

3 CHAIRMAN ROGERS: Moved by Commissioner
4 Carter.

5 COMMISSIONER SOWELL: Second.

6 CHAIRMAN ROGERS: Seconded by
7 Commissioner Sowell.

8 All in favor?

9 COMMISSIONERS: Aye.

10 CHAIRMAN ROGERS: The motion that they be
11 severed into two orders.

12 MR. FENNER: Okay. I'm going to take the
13 easier of the two now. A motion to approve a Class 2
14 horse racetrack license in Webb County for LRP Group
15 and deny the request for an exemption from the stall
16 requirements described under Section 309.243 of the
17 rules.

18 COMMISSIONER CABRALES: So move.

19 COMMISSIONER BOYD: So move.

20 COMMISSIONER SOWELL: One question.

21 Weren't we going to make it subject to all the rules?

22 MR. FENNER: Well, they're already --
23 this was just kind of an easier way. They're already
24 subject to all of the rules. They've only requested
25 one exemption.

1 CHAIRMAN ROGERS: So we have a motion by
2 Commissioner Cabrales and a second by Commissioner
3 Sowell to that.

4 I'd just like to have one point of
5 discussion before we do that. My -- I am assuming that
6 they will have the right to come back before this
7 Commission and ask for an exemption and try to prove
8 their case for any exemptions that they choose to do.
9 We're not closing that door finally. We're just
10 approving the license that way.

11 MR. FENNER: That is correct.

12 CHAIRMAN ROGERS: Okay. We have a motion
13 on the floor and a second.

14 All in favor?

15 COMMISSIONERS: Aye.

16 MR. FENNER: You already know the general
17 gist of this one, but there is one piece of information
18 that we need to fill in. And that is the due date.
19 Now, I'll give you the general trend of this thing,
20 which will be a motion to approve an interim order
21 granting a Class 2 horse racetrack license in Webb
22 County to Laredo Race Park pending the final Commission
23 approval of the Valley Race Park sale in compliance
24 with Section 6.06(h) of the Texas Racing Act. Further
25 ordered that the final draft of the sale and management

1 contract must be presented to Commission staff on or
2 before 10 calendar days before the Commission meeting
3 date in --

4 CHAIRMAN ROGERS: May.

5 MR. FENNER: -- May. That's your
6 motion.

7 CHAIRMAN ROGERS: Is there a motion
8 there?

9 VICE-CHAIRMAN RUTHERFORD: So move.

10 COMMISSIONER SOWELL: Second.

11 CHAIRMAN ROGERS: Moved by Commissioner
12 Rutherford, seconded by Commissioner Sowell.

13 All in favor?

14 COMMISSIONERS: Aye.

15 CHAIRMAN ROGERS: Opposed?

16 COMMISSIONER BOYD: No.

17 CHAIRMAN ROGERS: So noted.

18 MR. FENNER: I think that concludes this
19 matter.

20 CHAIRMAN ROGERS: Okay. Thank you.
21 Thank you all for your patience through this whole
22 process.

23 Okay. We have a few other items on the
24 agenda. Let's go ahead and take care of No. 4 right
25 now, proceedings on racetracks. We're going to skip

1 just a little bit out of order. A request by Retama
2 Park for approval of Thoroughbred race dates for 2008.

3 Mr. Brown?

4 MR. BROWN: I really hate keeping you
5 here late.

6 CHAIRMAN ROGERS: I know you do.

7 MR. BROWN: But this is important to us
8 and the industry, I believe.

9 Bryan Brown with Retama Park.

10 I just want to take you back as quickly
11 as I can. And again, it's been a long day, so I'm
12 going to go through this quickly. This past year the
13 Commission staff set up what I thought was a wonderful
14 process where we all got together. By all of us I mean
15 breed representation, horsemen representation,
16 Commission staff representation, racetrack
17 representation, and, in addition to that, which was
18 wonderful to have, two Commissioners.

19 We met at each Class 1 racetrack over the
20 course of the year. We discussed all the various
21 aspects of race dates and purses and many other things,
22 where the industry was headed. I think we all agreed
23 that absent favorable legislation at some point that
24 something needed to be done differently to stem the
25 tide of the loss of horses and stem the tide of

1 reduction in purses that we were all seeing.

2 After that process -- or I'd say probably
3 75 percent of the way through that process, we were all
4 asked to apply for -- not apply for. To submit what we
5 would at that time think we'd be applying for race
6 dates. So we all submitted, for the most part, the
7 same race dates we've always had, with the exception of
8 Retama Park. And we came up with a fairly novel or
9 crazy, however you want to put it, idea of a
10 combination of a straight Quarter Horse meet, a mixed
11 meet, and a Thoroughbred meet.

12 We looked at that and we liked some of
13 the aspects of it. I think some people in the industry
14 liked some of the aspects of that. But in that
15 process, the TTA, led by Dave Hooper, came up with the
16 idea that we all know we need to do something
17 differently, so let's look at Retama taking some race
18 dates that it's always wanted but never thought it
19 could have, which would be the January, February, March
20 Thoroughbred dates, and taking just a few dates in 2007
21 so that we'd be able to save enough purse money for
22 2008 to get those dates. And I can't remember
23 exactly. I know we originally talked about maybe
24 Retama having 12 dates or so, but a few number of dates
25 in 2007 and then transitioning into 2008.

1 We took a look at that and went back to
2 the TTA and the other groups and said, "12 days is
3 really not enough to race. Why don't we look at racing
4 no dates and just jumping into 2008 -- no dates in 2007
5 and jumping into Thoroughbred dates in January of
6 2008."

7 After that, both the TTA board and the
8 Texas HBPA, the Texas Thoroughbred HBPA, voted to
9 support that concept of Retama not racing in 2007, of
10 transferring purse money to Sam Houston Race Park so
11 that Sam Houston Race Park could pick up 12 extra days,
12 and we would start with our Thoroughbred meet in 2008.

13 Both boards have since, in different
14 fashions, which they will describe before you,
15 reaffirmed their original vote and stand here today, I
16 think, to be supportive of our request. But I'll let
17 them speak.

18 So we've gone through all that process.
19 There were different times where some representatives
20 of Sam Houston Race Park weren't at the meetings.
21 Where they were not at the meetings we made it a point,
22 myself and John Ferrara, to call Mr. Bork every step of
23 the way, let him know what was happening. Every step
24 of the way he never said yes, he never said no, to what
25 we were talking about. He gave us a willingness to

1 look at proposals.

2 And I think the key point to us at the
3 time was he never voiced opposition to what we were
4 doing. Again, he never agreed to it but never voiced
5 opposition.

6 We feel it's important for the Commission
7 to act on our request today in some fashion because if
8 we are granted those dates, it affects the lives of a
9 lot of horsemen. They'll need to make plans. Retama
10 Park will need to make plans and Sam Houston Race Park
11 will need to make plans about how to deal with both
12 2007 and 2008.

13 We believe that the request that we have,
14 which effectively allows us to race for a heck of a lot
15 more in purse money, average purse money, per day in
16 2008, potentially down the road provides for the
17 opportunity for Sam Houston Race Park to reduce its
18 number of days and race for a higher average daily
19 purse per day than it currently does. It's something
20 that the industry needs.

21 And I think that's where the group came
22 up, that the industry needed to do something. The
23 horsemen felt that this was a good way to get purses
24 up, albeit a difficult way, but we needed a transition
25 year to get there.

1 And that's why Retama agreed not to race
2 in 2007, to transfer purse money. We didn't do it
3 because we didn't want to race. I mean, believe me, we
4 love our Thoroughbred racing. We did not want to take
5 a year off. But it was the only way that we felt we
6 could transition into the new race dates.

7 So I'd be happy to answer any questions
8 that you have and I know there's others that certainly
9 will testify.

10 Yes, sir.

11 MR. ARCHER: Mr. Brown, you said
12 something about funds being transferred to Sam
13 Houston. Did that happen?

14 MR. BROWN: Absolutely.

15 MR. ARCHER: How much was it?

16 MR. BROWN: \$500,000.

17 MR. ARCHER: And that came from who?

18 MR. BROWN: From Retama's purse account.

19 MR. ARCHER: Okay. Thank you.

20 CHAIRMAN ROGERS: Thank you.

21 VICE-CHAIRMAN RUTHERFORD: When was that
22 transferred?

23 MR. BROWN: The second week or so of
24 January. I don't know. Somebody from the HBPA is
25 here. It was -- you know, and quite frankly, there was

1 an agreement drafted that provided for it. There were
2 a couple of little changes that needed to be made. We
3 sent the money before we even signed the agreement
4 because we had agreed to it. We didn't need to have an
5 agreement that was signed.

6 VICE-CHAIRMAN RUTHERFORD: Have they
7 signed the agreement?

8 MR. BROWN: I believe they have, yes.
9 And the only technical change that needed to be made,
10 the agreement provided for purse money to be sent in
11 steps; and what our suggestion was, why don't we just
12 send one 500,000-dollar lump sum because we knew it was
13 coming pretty quickly. So that's what we did. We just
14 sent one wire of \$500,000.

15 CHAIRMAN ROGERS: Okay. Thank you.
16 Others that want to testify on this
17 subject?

18 MS. McGOVERN: I hate to be the first
19 person to say good evening. Good evening,
20 Commissioners.

21 CHAIRMAN ROGERS: Just don't say good
22 night.

23 MS. McGOVERN: My name is Ann McGovern.
24 I'm vice-president of operations for Sam Houston Race
25 Park.

1 And unfortunately, Sam Houston Race Park
2 cannot support Retama's request for them to race in
3 January, February, and March. We really believe that
4 doing so will cause a serious shortage for us from a
5 horse population standpoint.

6 A large number of our horsemen that
7 participate in our fall season, they come from tracks
8 that are typically just ending their seasons or just
9 about to end their season before ours begins. That
10 means they're shipping to Sam Houston Race Park. Then
11 we would race for a month and a half and then they'd
12 have to ship again. So that's twice in less than three
13 months the horsemen would have to ship.

14 They've told us that this is just too
15 expensive for them to consider when you consider the
16 number of racing possibilities that would be available
17 to them and that they'd most likely end up going to
18 tracks that had longer racing seasons.

19 That loss of horses will result in short
20 fields. And our experience has shown that short fields
21 significantly impacts our live racing handle as well as
22 our host handle.

23 Bob Bork sent you a letter last week that
24 included a summary of what happened in 2005 when we
25 were experiencing very short fields. And that page

1 indicated that our live racing handle -- our average
2 live racing handle dropped \$28,000 a day and our host
3 handle dropped almost a million dollars a day. And not
4 only is that an economic impact -- not only does it
5 have an economic impact on Sam Houston Race Park. It
6 represents over \$10,000 a day in purses for horsemen.

7 In his letter, Bob also included a survey
8 from the horsemen that are at our racetrack. Eric
9 Johnston, our racing secretary, personally spoke to 48
10 of the 71 horsemen that have horses stabled on our
11 facility. They told us that -- or he asked them would
12 they be likely to bring a full stable or even split
13 their stable if we were to race in November and
14 December; and a very large portion of them, 31 percent,
15 said that they wouldn't be able to do that. And that
16 represents 34 percent of the horses in our stable
17 area. That's a significant loss for us.

18 CHAIRMAN ROGERS: Ms. McGovern, let me
19 ask you, when you say "horsemen," are you talking
20 trainers or --

21 MS. MCGOVERN: Yes, specifically
22 trainers.

23 CHAIRMAN ROGERS: Okay.

24 MS. MCGOVERN: In addition to the loss of
25 horses and the impact on our racing fields, you've

1 heard us say several times that January is not a
2 particularly good month for us. And that is true. But
3 we've come to accept that January is a necessary bridge
4 between November and December and the January,
5 February, and March dates; and without January, it's
6 hard to keep those two seasons together. So, yes,
7 we've said it's not a great month for us; but as I
8 said, it holds the other five months together that are
9 better months for us.

10 Another concern is moving the Grade 3
11 Connally and the Maxxam Gold Cup. Both of those races
12 have become highlights of our Thoroughbred racing
13 program; and moving them would make it difficult, if
14 not impossible, to keep the strength of those races.

15 Prior to the September 26th Commission
16 meeting, Bryan Brown contacted us and requested the
17 12-day dates transfer. At that time Bryan did indicate
18 that Retama was interested in racing January, February,
19 and March. Our response was to agree to the 12-day
20 dates transfer and the 500,000-dollar purse transfer
21 and we also agreed to investigate the feasibility of
22 not racing in January, February, and March.

23 We've taken a long hard look at that
24 change; and as much as we'd like to accommodate Retama,
25 we just don't think it's in our best interest or in the

1 best interest of horsemen.

2 It seems that some people have perceived
3 our willingness to transfer the 12 days as a
4 willingness to also not race in January, February, and
5 March. And that really was never our intention. You
6 know, I'm personally sorry if there was any confusion
7 about that. Bob Bork participated in all of the
8 working group meetings and I think he'd like to address
9 this subject a little bit as well and try and clear up
10 where some of the confusion may have come in.

11 So I'm going to let Bob speak a moment
12 and then I'll be more than happy to answer any
13 questions.

14 MR. BORK: Commissioners, hello again.

15 I think this sort of comes under the
16 heading that no good deed goes unpunished because, I
17 mean, the horsemen approached us, Retama approached us,
18 the staff of the Racing Commission approached us trying
19 to figure out new ways of doing things for the year
20 2008.

21 We did say we would consider a date
22 switch. But it's something that we had to look at and
23 study. And I think Bryan Brown just admitted to that a
24 couple of minutes ago and I don't think there's any
25 question about that, that it was something that we

1 would look at. If it was going to be better for
2 everybody, it certainly would be something that we
3 would want to do.

4 But as we started to study it and look
5 into it, we came up with a conclusion that if we opened
6 up the end of October or early November, what happened
7 is all the horses that normally would have gone to
8 Retama Park for the fall meet, they had to make a
9 decision to go somewhere else, either to Louisiana
10 Downs or to Oklahoma or to New Mexico or other parts
11 unknown. So consequently, when we get to November,
12 those horses are not available.

13 So we're faced even this year with the
14 fact that we're going to have -- if we have to stop on
15 December 31st, we're going to race for seven or eight
16 weeks and then close. Almost all the -- a lot of the
17 horsemen in our stable area right now have said, "We're
18 not going to do that. We're not going to -- we're not
19 going to go to your track for six or seven weeks, turn
20 around and leave and have to go somewhere else."

21 In the past, when we continued going from
22 November into January, February, March, they could do
23 that because they would split their stables between
24 Louisiana Downs and Remington or other places, send in
25 the horses that were not going to participate in that

1 meet anymore, and still not get in trouble with the
2 tracks that they're leaving.

3 So now we're faced with a situation that
4 they don't want to come for a short meet because they
5 can't afford to. They talk about the cost of doing
6 that. We're faced with short fields. Short fields, as
7 I'm sure you know, results in a severe drop in the
8 handle. Like Ann McGovern just said, our host
9 handle -- that's sending our signal out -- in November
10 of 2005 when we faced short fields dropped by a million
11 dollars a day. That's just a lot of dollars.

12 We were able to increase our purses this
13 year and we're pretty confident we can increase them
14 again next year by maintaining the same dates because
15 the number of days we would be applying for are seven
16 or eight days less than we would have had this year.
17 That's an automatic increase of about 10 or 15 percent,
18 plus the fact that, you know, we keep working on our
19 business and keep promoting and trying to get it to
20 grow. And I just don't think it's a good decision, a
21 good business decision, for us or for the Commission to
22 make a transfer of this type at this time.

23 You know, we did look at it. We studied
24 it seriously. After we talked about it, after the
25 proposal was made to us, we went back and I took our

1 racing secretary, I took our accounting department, I
2 took Ann McGovern and myself and even our admissions
3 department and other department heads. We sat down and
4 said, "Give us all the good stuff about it and give us
5 all the bad stuff about it."

6 The only good thing was maybe we did
7 eliminate some bad weather in January if we did it.
8 But the months around it are the good months that we
9 never wanted to lose and that's why we've always fought
10 for that December period and March and April.

11 You know, I just don't think that we
12 could financially struggle and I certainly don't want
13 to go into a fall meet this year racing for a month and
14 a half or two months, having short fields. I'm afraid
15 we wouldn't be able to even put on a meet if we can't
16 continue into January, February, and March. I mean, I
17 just don't want to come up with -- I mean, if we have
18 35 percent of our horses that aren't going to come,
19 where do we replace them with? There's nobody else to
20 bring in that is of equal quality or even the ability
21 to come in.

22 So we're in a very difficult situation
23 here. I'm sorry that we even -- at this point I'm
24 sorry that we tried to be proper and agree to look at
25 it when we come up with a conclusion that it's not the

1 good thing to do. And, you know, maybe we should have
2 said no right up front; but we were trying to be
3 cooperative and work on it and that's being
4 misinterpreted now that we had agreed to it. I just
5 don't think that's right.

6 VICE-CHAIRMAN RUTHERFORD: How long have
7 you all had those dates? How many years?

8 MR. BORK: As long as I've been here.

9 VICE-CHAIRMAN RUTHERFORD: How many years
10 is that?

11 MR. BORK: This is my 12th year.

12 VICE-CHAIRMAN RUTHERFORD: I think a lot
13 of the Commission -- the Commissioners who don't race
14 horses don't understand maybe and I'll try to explain
15 it because you really didn't. You've got Asmussen with
16 a hundred and something horses. You've got Bret
17 Calhoun and Stidham with Stonerside's and this year I
18 think you've got the Stone Ridge or Stone something.
19 He brought in a van the other day with four or five
20 million dollars worth of two-year-olds.

21 Those kind of people, they move in there
22 in January and you all let them train there and they go
23 back and forth to those big tracks, like New Orleans,
24 Louisiana Downs, after New Orleans closes to Louisiana
25 Downs. And if they move in there, they won't let them

1 move out. Once they move out, they won't let them back
2 in the stalls. And that's the reason that Houston
3 racing has done so well, because you've had those
4 superstar stables in there with much better horses than
5 anybody else besides Dallas. And I think it would be
6 terrible to let Sam Houston lose those race dates.

7 MR. BORK: I think it would jeopardize
8 our financial picture.

9 VICE-CHAIRMAN RUTHERFORD: You all pay
10 five times -- I looked it up. You pay five times the
11 State and local tax as Retama does. And for the State
12 to lose that kind of money and to lose that revenue, I
13 think it would be criminal. I can't understand why you
14 even talked to them about it personally.

15 MR. BORK: We had three or four joint
16 meetings with all the tracks and the Racing Commission
17 and two of the Commissioners. And, you know,
18 seriously, Bryan was right. We all tried to come up
19 with a conclusion. And we did agree that we would --
20 it would be something we would look at to see whether
21 or not we could make it work.

22 VICE-CHAIRMAN RUTHERFORD: I called three
23 people. I called Heiligbrodt and he's with Asmussen
24 and they said, "Well, we're not coming in there if we
25 have to bounce back and forth. We can't move those

1 horses." I called Stidham, who has McNair's horses.
2 He said, "I'm not coming in there if we have to do
3 that." He said, "I can't believe they're going to do
4 that." And then Heiligbrodt told me that Bret
5 Calhoun's horses -- he told him he couldn't afford to
6 do that. And those horses are not going to San
7 Antonio. None of those horses are going to San
8 Antonio, I can promise you, Retama.

9 MR. BORK: We have some trainers here
10 tonight that I think are going to testify about what
11 they would do, too.

12 CHAIRMAN ROGERS: Let me -- I think we're
13 probably going to hear from some people who were on the
14 race date committee. But I went back and reviewed the
15 transcripts, and I told you that I would. And
16 Ms. McGovern was very clear that there wasn't a firm
17 agreement on these dates. There is no indication that
18 there was a firm agreement on the dates.

19 But there's 30 pages of discussion, and
20 all of that discussion was centered around we were
21 looking at an 18-month approach. And in that
22 discussion -- and there was a real lengthy discussion
23 by Mr. Hooper. Imagine that. But -- we've got to have
24 a little levity somewhere.

25 COMMISSIONER SOWELL: It's hard to get

1 him to talk, isn't it?

2 CHAIRMAN ROGERS: It is.

3 But there was a rather lengthy discussion
4 that he gave the seven or eight good reasons why he
5 thought it was best for the horses at Retama and why it
6 was best for the horses at Houston. And in that
7 discussion, he was talking about the Connally being
8 used as a prep cup for the Breeders' -- or prep race
9 for the Breeders' Cup and he was talking about the idea
10 that you would be running in September, October,
11 November, and December. But when you're talking now,
12 you're talking about November, December.

13 And throughout this whole discussion it
14 was to get a consensus -- although we could not legally
15 assign 2008 dates, it was to get a consensus of how the
16 Commission felt about those dates, how would we look
17 at, you know, them transferring 12 dates and \$500,000,
18 moving into this in the transition period. It would
19 make good for year-round racing. There wouldn't be the
20 gaps that you're talking about now from November,
21 December because we'd be starting in September,
22 October, November, December. And nowhere in those
23 discussion Ms. McGovern did not say, "We agree to
24 this." I couldn't find it anywhere in the transcript,
25 although I actually thought I would.

1 MR. BORK: We looked, too.

2 CHAIRMAN ROGERS: I'm sure you did.

3 But nowhere in there did somebody stand
4 up there and say, "Hey, time out. We're not looking at
5 doing this at all." And we had a consensus of the
6 Commission that that's how that would be, but it was --
7 but it was supported by every horsemen group. The
8 HBPA, the TTA, everybody supported it. The other
9 tracks got up and supported it. There was no
10 opposition of any kind and it looked like that was the
11 situation. And even Ms. McGovern, who very eloquently
12 just stated her position, didn't say, "Hey, we're
13 absolutely not agreeing to this. We're not looking at
14 it." It was kind of like it was a done deal.

15 Could you kind of address that?

16 MR. BORK: Sure. I'd like to. First of
17 all, even if we had agreed to it at that time and then
18 we went and looked and found that it couldn't work
19 because of the horse shortage, shouldn't it be undone
20 while we have the opportunity before those dates are
21 assigned? What we're saying is it won't work for those
22 dates.

23 CHAIRMAN ROGERS: Well, what happened to
24 September, October, November, December? You're saying
25 all the horses are gone by November because they were

1 doing something else. What -- I thought everybody
2 wanted to run during the Breeders' Cup.

3 MR. BORK: That's always nice.

4 First of all, during the month of
5 September we don't end our Quarter Horse meet until
6 after Labor Day; so we'd have to turn the track around,
7 turn the stable area around. We wouldn't be able to
8 run in September anyway. So I don't know where
9 September came from.

10 CHAIRMAN ROGERS: Well, I think this was
11 talking about the end of September and the discussion
12 was centered more around you could keep all your
13 employees for six months at a time and you might save
14 quite a lot of money that way as opposed to having two
15 totally separate meets and having to hire and unhire.
16 Those were the discussions that we were having.

17 MR. BORK: There's no question about it.
18 Those were some of our considerations that we looked
19 at. And I think there is some benefit to that. But
20 after we look and find out that we don't have any
21 horses because all those horses that normally would
22 have gone to Retama in August and September, they had
23 to make up -- they had to make a decision to go
24 somewhere else. And where else would they go but New
25 Mexico, Oklahoma, Louisiana, or some other state? So

1 they weren't there.

2 You know, was it something we -- it was
3 part of our consideration. We had to look into all the
4 different segments of what was going on. And that was
5 probably one of the -- one of the items that came up
6 that was the turning point, like we can't do this if we
7 don't have the horses because Retama didn't run. And,
8 you know, they start in August and go up to a week or
9 so before we started and now they weren't. So all
10 those horses disappeared.

11 VICE-CHAIRMAN RUTHERFORD: Another thing
12 that worries me, if our purses go down next year and
13 we're in line to maybe get a Breeders' Cup and Sam
14 Houston is in line, it's a huge economic benefit for
15 Houston and Texas, 70, 80 million dollars, economic
16 benefit. We're going to lose that if our purses go
17 down --

18 MR. BORK: That's right.

19 VICE-CHAIRMAN RUTHERFORD: -- if you're
20 right.

21 COMMISSIONER SOWELL: Mr. Chairman?

22 CHAIRMAN ROGERS: Yes.

23 COMMISSIONER SOWELL: Some of these
24 discussions took place in our working groups. And my
25 recollection is that there was -- let's put it this

1 way -- a lot of pressure on everybody to bend over
2 backwards to try something new. Everybody had the
3 attitude "We've got to do something different. We've
4 got to find something better. We need to try
5 everything we can think of."

6 And that was kind of the spirit of what
7 everybody was caught up with. And I don't think
8 anybody was looking at the downside about, "Well, what
9 do we do if it doesn't work?" I don't recall any of
10 those discussions. Maybe there were some of them. But
11 I think everybody got caught up in a "Let's play
12 outside the box for a change and see if we can't come
13 with something really good." In this case, it just
14 didn't work. That's what my memory is.

15 MR. BORK: That's exactly right.

16 CHAIRMAN ROGERS: Jesse, were you in
17 those meetings?

18 COMMISSIONER ADAMS: Yeah. Maybe I was
19 sleeping because I know that we met numerous times. We
20 traveled all over the state. We talked about a jillion
21 different ways to try to help the industry. And I,
22 like Dyke, felt like there was a consensus and that the
23 Commission had made a decision to support the new
24 calendar and we couldn't officially -- we couldn't
25 officially state that because it was not time to do

1 that yet, but it wasn't a situation where we were going
2 to wait three more months or six more months and see
3 whether it would work. We were making a commitment to
4 make it work. Okay? And that meant that we had to go
5 out there and everybody had to sacrifice a little along
6 the way to make it happen.

7 COMMISSIONER SOWELL: I would say that
8 you're not wrong, but you're a little bit -- a little
9 too much emphasis on that would be my recollection.
10 Sure, that existed; but it was always clear to me that
11 this was a trial thing rather than a commitment to
12 continue in operation.

13 COMMISSIONER ADAMS: But how is it a
14 trial, Sonny, if you never let it happen? How is it a
15 trial if we're not even into 2007 already and we're
16 already deciding that 2008 is not going to work?

17 VICE-CHAIRMAN RUTHERFORD: Welcome to the
18 horse business.

19 MR. BORK: Because we know our horse
20 population.

21 CHAIRMAN ROGERS: Well, here was my take
22 before, whenever I got my first call on this. And it
23 still is. And that is, the horsemen are the people who
24 have the most to lose or the most to gain; and I really
25 would like to hear from the different horsemen's

1 organizations to see what they support or what they
2 don't.

3 And I don't want this to sound this way,
4 because I'm very supportive of tracks in general; but I
5 think we have a real obligation to the horsemen; and if
6 they're worried about purses or they're worried about
7 running, I think we ought to listen to what they have
8 to say. And I think you have some here and we --

9 MR. BORK: I think you should listen to
10 some of the individual horsemen, too, and I really
11 think --

12 CHAIRMAN ROGERS: And I think we should.

13 MR. BORK: You have to think about our
14 economic, our business model, too, that I don't think
15 the Commission ever wants to put us in a position of
16 not being able to run a successful racetrack.

17 CHAIRMAN ROGERS: I don't think so
18 either. But you're going to make so much money on the
19 sale of Valley Greyhound that it's not even going to be
20 a problem.

21 MR. BORK: Did you have to say that?

22 CHAIRMAN ROGERS: I'm sorry. It's just
23 getting late.

24 COMMISSIONER SOWELL: Mr. Chairman, that
25 was wonderful.

1 CHAIRMAN ROGERS: No, we do not want to
2 put you in an awkward position.

3 MR. BORK: And that's what I'm afraid
4 of.

5 CHAIRMAN ROGERS: The problem in this
6 position up here is that every time you help somebody,
7 you hurt somebody. There is no way to help.

8 MR. BORK: Let's go back to the status
9 quo. I mean, let Retama pick up those days this year.
10 That's fine with me. I'll give them back their 12
11 days. That -- again, we didn't ask for those 12 days.
12 They came to us and said, "Hey, look, help out the
13 situation. Will you take 12 days?" And I don't know
14 whether it was them or the horsemen. It might have
15 been both of them together. They asked us to do it.

16 That half a million dollars doesn't
17 really even cover the purse money that we're going to
18 use for those 12 days. We did sacrifice something
19 right there. If they want it back, I'll give it back.
20 They can have it tomorrow. I'll send them a check.
21 I'll give them cash if they want. It was purse money
22 anyway.

23 So, you know, again, no good deed goes
24 unpunished. We tried to do something good and it's
25 being interpreted as that was part of the agreement.

1 No, it wasn't. It was just part of the big
2 consideration.

3 CHAIRMAN ROGERS: Why don't we hear from
4 some horsemen.

5 VICE-CHAIRMAN RUTHERFORD: 12 years
6 you've had those dates, though, you think?

7 MR. BORK: Yes, sir.

8 CHAIRMAN ROGERS: Okay. Mr. Christopher,
9 good to see you back here again.

10 MR. CHRISTOPHER: Mr. Chairman, it hasn't
11 changed.

12 Mr. Chairman, Commissioners, I'm Larry
13 Christopher. I'm currently president of the Texas
14 Thoroughbred HBPA and chairman of the Texas Horsemen's
15 Partnership.

16 Before I kind of get into where we think
17 we got here, I think there's some misunderstanding
18 between horsemen and tracks that they don't own the
19 race dates. Race dates in this state are owned by this
20 Commission. You can award as many or as few, any way
21 you want to do it. And, Mike, the reason you have to
22 go through this dance every year is because I think
23 there was anticipation that things would change, for
24 the better, for the worse. So each year everybody
25 comes in trying to figure out what's going to work best

1 this year. And that's where all of this arise from --
2 originated from.

3 My board is a hundred percent for this,
4 to support Retama. That's both HBPA and Texas
5 Horsemen's Partnership. The HBPA, we felt like --

6 VICE-CHAIRMAN RUTHERFORD: I have no idea
7 who's on the board or how many horses they race. I
8 don't know who's on that board.

9 MR. CHRISTOPHER: Well, they're elected
10 by all the horsemen. We're elected by the horsemen.

11 VICE-CHAIRMAN RUTHERFORD: How many
12 horses do you race?

13 MR. CHRISTOPHER: I've got 35 horses
14 right now.

15 VICE-CHAIRMAN RUTHERFORD: On the
16 racetrack.

17 MR. CHRISTOPHER: No. Breeding and
18 getting ready to go to the racetrack.

19 VICE-CHAIRMAN RUTHERFORD: I'm talking
20 about we've got people like Heiligbrodt and we've
21 got --

22 MR. CHRISTOPHER: Well, you know, I
23 talked with Bill. And 25 of those horses are
24 two-year-olds that he's got at Sam Houston. He's not
25 really racing at Sam Houston.

1 VICE-CHAIRMAN RUTHERFORD: And I talked
2 to McNair and I talked to all these people that want to
3 race at Sam Houston at that time.

4 MR. CHRISTOPHER: Well, we're of the
5 opinion --

6 VICE-CHAIRMAN RUTHERFORD: I don't think
7 they're properly represented.

8 MR. CHRISTOPHER: Then they should get
9 somebody else elected to the board. It's a no-paying
10 job. Okay?

11 VICE-CHAIRMAN RUTHERFORD: I've learned
12 my lesson.

13 MR. CHRISTOPHER: I know you have.

14 VICE-CHAIRMAN RUTHERFORD: Now, let me
15 tell you another thing, too. And I love you. I think
16 you're a great guy.

17 MR. CHRISTOPHER: I respect you wholly.

18 VICE-CHAIRMAN RUTHERFORD: But you're
19 partners with Retama and you're up here --

20 MR. CHRISTOPHER: No, I'm not a partner
21 with Retama.

22 VICE-CHAIRMAN RUTHERFORD: You just got
23 through given a track. We just gave you a license out
24 here. You're a partner. Or don't you own an interest
25 in it?

1 MR. CHRISTOPHER: I am one of the
2 noncontributing partners.

3 VICE-CHAIRMAN RUTHERFORD: Don't you want
4 them to make money?

5 MR. CHRISTOPHER: I want them to make
6 money.

7 VICE-CHAIRMAN RUTHERFORD: I think you
8 ought to disclose that.

9 MR. CHRISTOPHER: I did disclose it. I
10 disclosed it this morning. I'll also disclose to you
11 I'm not making any more cash calls. Okay? So you draw
12 your own conclusions from that.

13 VICE-CHAIRMAN RUTHERFORD: I believe I
14 would now.

15 MR. CHRISTOPHER: Okay. But what we were
16 attempting to do by making the change -- and we really
17 were talking about September. Okay? And Bob's
18 argument that there won't be any horses I think is
19 somewhat overblown. I visited with Scott Wells, who's
20 the manager of Remington Park; and he told me he
21 anticipated turning down more stall applications than
22 he accepted. Now, where are those horses going? If
23 Bob starts in September and runs through December, I
24 personally believe, and so does my board, that he'll
25 have plenty of horses.

1 He's talking about a shortage of horses.
2 He's running right now up against the Fair Grounds and
3 Delta Downs and they're all paying a lot more money
4 than he is. I've got a horse running Thursday at the
5 Fair Grounds, 12,500 maiden claiming. The purse is
6 31,500 and Bob would be about 8,000.

7 VICE-CHAIRMAN RUTHERFORD: I ran one in a
8 60,000-dollar maiden the other day. Unfortunately,
9 it's still running.

10 MR. CHRISTOPHER: Mike, this is what
11 we're trying -- it's what we're looking at. This is
12 why the Commission started these discussions. Short of
13 getting VLT's, we have got to make some changes or
14 Texas racing is not going to be around.

15 VICE-CHAIRMAN RUTHERFORD: I agree with
16 you. And I'm glad you did that.

17 MR. CHRISTOPHER: What I see this doing,
18 okay, for both Sam Houston and Retama to get purses up,
19 it would shorten -- if Bob started in September, he
20 would shorten his meet by 25 percent. Okay? Also, if
21 he waited -- he ends in March of '07. He doesn't start
22 up until September of '08 -- he's had time, five and a
23 half months, to build additional purse money. Same
24 with Retama. They've got additional months to build
25 purse money.

1 And we kind of felt like, my board, that
2 we had an agreement, that it -- in fact, Ann
3 McGovern -- I was out of the country -- called Carl
4 Moore, our vice-president, and said -- we had voted
5 originally to support Retama and support Lone Star on
6 the race date issue. So it was our understanding that
7 if we would support Sam Houston's application for that
8 date that they would be for the change. And that was
9 the last we heard of any -- Bryan sent the money. And
10 it was only a couple of weeks ago that we find out no,
11 that wasn't the deal. And I don't think it's that bad
12 a deal. And Bob can also adjust his Quarter Horse
13 dates. He can.

14 VICE-CHAIRMAN RUTHERFORD: I don't know
15 whether it's a good deal or not, but I don't want to
16 tell a track how to manage their racetrack either. I
17 don't want to tell them how to micromanage their
18 racetrack, especially one that's been successful, and
19 to replace it with one that's not successful.

20 MR. CHRISTOPHER: When you say
21 successful --

22 VICE-CHAIRMAN RUTHERFORD: I think
23 Houston is a pretty nice track, racetrack.

24 MR. CHRISTOPHER: It is a nice track.
25 They're paying a hundred thousand dollars a day.

1 VICE-CHAIRMAN RUTHERFORD: They're paying
2 a hundred thousand a day and that looks pretty good.

3 MR. CHRISTOPHER: Well, it doesn't to
4 most of my people, because we're all ready to go to
5 Louisiana.

6 VICE-CHAIRMAN RUTHERFORD: You go ahead
7 and go to Louisiana. I'm going to Sam Houston if I
8 ever get off this damn board.

9 MR. CHRISTOPHER: And that's a problem,
10 right?

11 VICE-CHAIRMAN RUTHERFORD: I want to go
12 to Sam Houston. We've got a beautiful track there.

13 MR. CHRISTOPHER: I agree.

14 VICE-CHAIRMAN RUTHERFORD: I love Retama,
15 too. But the purses are not as good.

16 MR. CHRISTOPHER: Mr. Rutherford, if we
17 got VLT's, I think Sam Houston would be the premier
18 racing venue in the country for the winter. But we
19 don't have VLT's. And he's running up against New
20 Orleans and Delta, both paying two to three times more
21 for racing than he is.

22 VICE-CHAIRMAN RUTHERFORD: In September
23 and October you're running against Keeneland.

24 MR. CHRISTOPHER: Well, I don't think
25 there's many Keeneland horses coming to Houston

1 anyway.

2 VICE-CHAIRMAN RUTHERFORD: I know people
3 that race both, Temple Webber, McNair.

4 MR. CHRISTOPHER: The same horse?

5 VICE-CHAIRMAN RUTHERFORD: They bring
6 them down here, a lot of horses. Heiligbrodt does.

7 MR. CHRISTOPHER: Yeah, those that can't
8 run at Keeneland.

9 VICE-CHAIRMAN RUTHERFORD: They may be a
10 little sore by the time they get there, but anyway --
11 and I don't want to micromanage Sam Houston Race Park's
12 business for them.

13 COMMISSIONER BOYD: Mr. Chair?

14 CHAIRMAN ROGERS: Yes.

15 VICE-CHAIRMAN RUTHERFORD: I just can't
16 imagine us taking their track away from them -- I mean,
17 their dates away from them after 12 years.

18 MR. CHRISTOPHER: We're of the opinion
19 that they had agreed to do that. Okay?

20 VICE-CHAIRMAN RUTHERFORD: They said
21 right here they didn't.

22 MR. CHRISTOPHER: I understand what they
23 said up here. I also know what they said elsewhere.

24 COMMISSIONER ADAMS: Mike, I thought they
25 did. And I was on the committee and I was at every one

1 of those meetings. I thought they agreed.

2 COMMISSIONER SOWELL: Well, I was there
3 with you; and I didn't.

4 VICE-CHAIRMAN RUTHERFORD: Somebody was
5 asleep.

6 MR. CHRISTOPHER: All I know is that you
7 own the dates and it's up to you to make the most
8 equitable distribution of those dates as you see fit
9 for both the tracks and the horsemen. So with that,
10 I'll --

11 CHAIRMAN ROGERS: Commissioner Boyd, you
12 had something you wanted to --

13 COMMISSIONER BOYD: Hello. It's good to
14 see you again.

15 MR. CHRISTOPHER: Good to see you again.

16 COMMISSIONER BOYD: I was just going to
17 make a comment that I was in that meeting as well and I
18 went back through the transcript because I really
19 remember that meeting. I remembered us trying to get
20 it all together and trying to -- you know, for an
21 agreement later. And when I read the transcript, I
22 didn't find anything. But nonetheless, I still had --
23 I still came away from that meeting thinking that we
24 were going to be able to swing the other way the next
25 year.

1 MR. CHRISTOPHER: That was our feeling up
2 until about two weeks ago.

3 COMMISSIONER SOWELL: That's what hope
4 will do for you.

5 MR. CHRISTOPHER: Pardon?

6 COMMISSIONER SOWELL: That's what hope
7 will do for you.

8 MR. CHRISTOPHER: It springs eternal,
9 though, especially in the horse business. If you don't
10 have that, you don't have anything.

11 COMMISSIONER SOWELL: It will resprout
12 every other week.

13 MR. CHRISTOPHER: Thank you.

14 CHAIRMAN ROGERS: Thank you.

15 Ms. McGovern? Just for what it's worth,
16 this isn't going to last all night. So you're entitled
17 to a rebuttal here, but then we're going to listen to
18 the other people who are --

19 COMMISSIONER ADAMS: Are we going to have
20 a rebuttal to each speaker?

21 CHAIRMAN ROGERS: No.

22 COMMISSIONER ADAMS: Why don't we wait
23 until we have the rest of the speakers then and then
24 we'll let Ms. McGovern.

25 MS. MCGOVERN: If that makes it easier,

1 I'll be happy to wait.

2 CHAIRMAN ROGERS: Okay. We'll just have
3 you wait a moment.

4 Do we have someone else that would like
5 to testify on this? Fresh blood? Mr. Hooper?

6 I've got so many cards here, I have no
7 idea which ones they're sorted for.

8 Thank you. Okay. Well, we have about a
9 night's supply. Okay. Frank Betancourt? And I'm
10 going to ask everybody -- Mr. Betancourt, I hate to
11 start with you to pick on you on this; but I'm going to
12 ask that we hold this to about three minutes apiece
13 just so that we can kind of get through this before the
14 evening is over.

15 MR. BETANCOURT: That will be fine.

16 CHAIRMAN ROGERS: Thank you, sir.

17 MR. BETANCOURT: My name is Frank
18 Betancourt. I'm a trainer. And I actually have a
19 house five minutes from the racetrack at Retama, too,
20 so I'm kind of caught in the middle.

21 But whenever -- for one thing, whenever
22 our HBPA reps agreed to this, we had that meeting with
23 the management at Retama and stuff and the only one
24 that was happy or pleased about it was our rep. The
25 other trainers that were there, which to my

1 recollection was about 35 to 40, they were all visibly
2 upset. I don't know if it was because we weren't told
3 until after the fact. But I know personally I didn't
4 agree with it. And nobody ever asked my opinion. But
5 that's, I guess, what our reps are for.

6 And in my opinion -- and I'm just a
7 simple trainer and stuff. Whenever we had that
8 meeting, I visited with the management of Retama and
9 stuff and I just stated my opinion. And I told them if
10 I take my horses to -- after the Lone Star meet to
11 Remington or Zia Park or Louisiana Downs or whatever
12 and I do well, I'm not going to come back to Houston
13 for six weeks or whatever or whatever the period of
14 that meet is. If I'm doing well, I'm going to keep
15 them where the purse money is better or where I can
16 stay for a period of at least six months or a
17 substantial amount of time.

18 The main reason being is the cost is
19 astronomical to move every -- if you're going to move
20 every three to four months, it eats you up. It takes
21 you about six weeks to recover from the initial move.

22 And another thing, personally, I like my
23 family. I like to see them more than once every three
24 months. And moving once, twice a year is bad enough,
25 but if you're going to have to move four times a

1 year -- like I said, I like my family and this is the
2 first time that we've actually had to leave Retama in
3 10 years. And I can't -- I can't imagine how other
4 trainers do it year in and year out. It's bad enough
5 to move once or twice; but to be in the position to
6 move four times, it's hard on everybody.

7 And we trust you guys' judgment. That's
8 just -- like I said, that's just my opinion. And
9 that's all I have to say on my behalf. Thank you.

10 CHAIRMAN ROGERS: We appreciate your
11 opinion. Thank you.

12 Calvin Klein?

13 MR. KLEIN: I live in north Harris County
14 in the Klein community and I've raced horses since 1959
15 and I think the Sam Houston racetrack and the people
16 there are first class. And when you have to move three
17 or four times a year -- I run Quarter Horses and
18 Thoroughbreds. And the longer you can stay at any
19 first-class track, it's a big advantage to the trainer
20 and the owners.

21 And I would certainly hate to see them
22 lose the days that they had for 12 years. I've been
23 running there 12 years and I worked hard to get the
24 pari-mutuel to the State of Texas and I sure hope you
25 all consider to leave it right the way it is. I think

1 they're doing a great job.

2 Thank you all very much.

3 CHAIRMAN ROGERS: Thank you, sir.

4 Mindy Willis?

5 MS. WILLIS: Hello. I'm Mindy Willis.

6 I'm an owner and a trainer. I have raced at Lone Star,
7 Retama, and Houston. I love all three tracks. But I
8 love Houston in particular because I'm there five to
9 six months out of the year. We get to run decent
10 horses.

11 Granted, Asmussen, Calhoun, those big
12 guys have got a lot of young horses that come in; but
13 they run a lot of older horses, too. They run a lot of
14 good horses. I personally get horses who come from
15 Fair Grounds to run there.

16 I like Retama; but when we were at that
17 meeting over there, I was made to feel like it was a
18 done deal and we had no say in it whatsoever as
19 horsemen. I thought there was going to be a riot in
20 there. I really did. I mean, Mr. Brown came in there
21 and made us feel like it was a done deal. And I didn't
22 think that was fair. And I don't know who
23 representing -- supposedly this man back here said he
24 was representing us. I never said that. I never
25 wanted that to happen.

1 I like running at Houston; and if they
2 mess up the dates the way they're going to mess them
3 up, I'm going to go somewhere else because I can't
4 afford -- it costs me two to three thousand to move my
5 stable of horses every time. Dorm rooms, hot walkers,
6 shavings, feed, you've got to set them all up every
7 time you move. And when you go somewhere -- after Lone
8 Star, if you go somewhere and you get set up at a good
9 racetrack, you're not going to want to come back. You
10 can't for those little bits of months.

11 And I think they run decent horses and
12 it's a good long meet. I hate to see it change.
13 That's just my opinion. There's good trainers there,
14 good quality stock. They run a nice facility.

15 I like Retama. Personally, I think they
16 need to advertise more. Nobody even knows it's there.
17 I mean, we've said that a million times. And I love
18 Mr. Pollock. I love the place. I love the facility.
19 My owners like to go there. That was one bargaining
20 chip I had. They could go to Retama. They could take
21 their families. They could go to the riverwalk and go
22 to Sea World and at night they go to the races. What's
23 so much different about everybody else that goes down
24 there? They can go to the races at night.

25 Anyway, that's my opinion. Thanks.

1 CHAIRMAN ROGERS: Let me ask you one
2 question. You said you didn't want to go somewhere for
3 a short meet. And that's assuming that this meet is a
4 two-month meet. What if it were a four-month meet? Is
5 that long enough or is that still too short for you?

6 MS. WILLIS: Everything gets jumbled up.
7 You know what I'm saying? The dates, the way they
8 were, were good because you could go from Houston to
9 Lone Star and then you go to Retama.

10 And Retama, personally, I think the
11 summer dates are perfect. They've got beautiful
12 weather. It's absolutely gorgeous there in the
13 evening. We loved, as horsemen, going there to race.
14 But there was no draw there. They can't get nobody in
15 there. I don't know if they don't try. I don't know
16 what the deal is.

17 VICE-CHAIRMAN RUTHERFORD: It's
18 air-conditioned, though.

19 MS. WILLIS: Huh?

20 VICE-CHAIRMAN RUTHERFORD: It's got good
21 air conditioning.

22 MS. WILLIS: It's going to have real good
23 air conditioning in January, February, and March.
24 There's not enough room upstairs -- well, they're not
25 going to have to worry about it because people aren't

1 going to leave their houses to go there in bad weather
2 to watch the races there in January, February, and
3 March. I don't think so. That's my opinion. I'm not
4 the smartest person in the world, but that's my
5 opinion.

6 Anyway, for four months, you know, if the
7 purses are really good, yeah, you'll go for four
8 months. But if you're going to do good somewhere else,
9 like Louisiana or Remington Park, you're going to stay
10 there. I like Houston the way it is.

11 Thank you.

12 CHAIRMAN ROGERS: Thank you.

13 Eric Johnston?

14 MR. JOHNSTON: Good evening. I'm the
15 racing secretary at Sam Houston Race Park. I've been
16 there in that capacity since fall of 1994. I was there
17 when we opened the track in 1994, in the spring of
18 1994.

19 I want to talk about one issue, the
20 Connally. The Connally is a race that I developed in
21 1995 and we have run that race every year in the spring
22 with the exception of its inaugural running when it was
23 run in September of 1995 and it was moved in 1996 to
24 the spring.

25 We have fought consistently to keep that

1 race in the spring; and by doing so, we were able to
2 get it graded. Two years ago we got a Grade 3 status
3 for that race and it continues to get better. This
4 year, if everything comes together and the stars line
5 up right with some of the horses that we'll be getting
6 out of the Fair Grounds, we're hoping to go for Grade 2
7 status for next year. This race has really developed
8 well.

9 By moving that to the fall, that race
10 will fall apart. There are a lot of races already in
11 place, prep races, and already set for the Breeders'
12 Cup. When the Breeders' Cup comes around, it runs.
13 Those horses from the Breeders' Cup get turned out and
14 forgotten about, put on the shelf until the spring. So
15 the horses of that caliber will not come to that race.
16 We are basically geologic -- or geographically
17 challenged as to how we can draw horses.

18 When we do run against the Fair Grounds,
19 we do have the opportunity for some of those outfits
20 that bring the better turf horses down for the Muniz to
21 bring them over to Sam Houston.

22 And as far as the purse money goes, if we
23 make the switch, the purse money would be higher for
24 2008; but unless the betting goes up and the
25 simulcasting goes up, in 2009 purse levels are going to

1 be right back to where they were. They're going to be
2 taking a cut. Unless there's something new to increase
3 those purses, it's going to be a one-year fix and then
4 it's going to be right back where it was.

5 Thank you.

6 CHAIRMAN ROGERS: Let me -- go ahead.

7 VICE-CHAIRMAN RUTHERFORD: The better
8 grass horses go to Santa Anita in October and November,
9 right?

10 MR. JOHNSTON: That is correct.

11 VICE-CHAIRMAN RUTHERFORD: They've got
12 all the big purses out there.

13 MR. JOHNSTON: That is correct.

14 VICE-CHAIRMAN RUTHERFORD: They go to New
15 York at the end of the year, and we won't get any of
16 those horses.

17 MR. JOHNSTON: That is correct. Or
18 they'll be headed already south to Florida or Churchill
19 or Keeneland or wherever.

20 VICE-CHAIRMAN RUTHERFORD: A few will run
21 at Florida the first of the year and then they'll go to
22 New Orleans and Houston. And then there will be a few
23 run Derby Day, one or two on the grass. And then that
24 fall, October, they pick up at Santa Anita and New
25 York. And you can't compete with that.

1 MR. JOHNSTON: Absolutely.

2 VICE-CHAIRMAN RUTHERFORD: Unless we had
3 VLT's, and then we could.

4 MR. JOHNSTON: If we had VLT's, it's a
5 whole new ball game. I'm looking forward to it,
6 believe me.

7 CHAIRMAN ROGERS: Mr. Johnston, there was
8 some discussion earlier about how Sam Houston was
9 applying for a Breeder Cup status. You're not telling
10 me that if you got the Breeders' Cup, you wouldn't move
11 this thing to -- you wouldn't move your meet to the
12 fall, would you? I mean, you're not saying that you
13 think enough of the winter meet that you'd give up the
14 Breeders' Cup to do that, are you?

15 MR. JOHNSTON: We would certainly do
16 whatever we could to embrace the Breeders' Cup. I
17 mean, that's a great opportunity for any racetrack.
18 For some reason, it has eluded spots like Pimlico and
19 some other very large tracks and very prominent tracks
20 around the country. Why, I don't know.

21 We would certainly do whatever we could.
22 We've made arrangements -- we helped out when Lone Star
23 had the Breeders' Cup several years ago, picked up some
24 of their Quarter Horse dates; so we would certainly
25 hope that we would work with an effort of cooperation

1 with Lone Star or whoever at that time.

2 But as far as my opinion on the racing
3 situation, as things progress and things change, the
4 winter dates are the dates that are going to be the
5 premier dates; and we have been in those dates for 13
6 years, 12 years; and I don't see any reason really to
7 change it right now.

8 CHAIRMAN ROGERS: Okay. Thank you.

9 John Locke?

10 MR. LOCKE: Commissioners, my name is
11 John Locke. I'm an owner/trainer trying to grind out a
12 living on the Texas racing circuit. In addition to
13 that, I was one of the board members that voted to try
14 something different. And so the board voted
15 unanimously to try different racing dates and I was
16 part of that and I was for it at the time.

17 In retrospect, you look at that and you
18 say anything that would raise purses in Texas has to be
19 good. And that was our thought at the time: Let's try
20 and do something different, reduce the racing dates,
21 get the purses up. And how can that be bad? And the
22 way it turned out to be bad was for some of the people
23 at Retama.

24 It didn't hurt me. I can go -- that
25 downtime between Lone Star and the beginning of fall

1 racing at Houston, I can go to Remington Park and I
2 have that option. Not everybody at Retama has that
3 option. And that's the person you hurt.

4 And I got a lot of feedback for voting
5 the way I did. And it was negative feedback. I
6 haven't had anybody come up to me at the racetrack and
7 say, "Locke, you did a hell of a job voting to get
8 those dates changed." Everybody that comes up to me
9 says, "What were you thinking? What were you
10 thinking?" And I'm not sure I knew what I was thinking
11 when I did that.

12 CHAIRMAN ROGERS: Thank you.

13 Mr. Hooper?

14 (Discussion off the record)

15 MR. HOOPER: Mr. Chairman, members of the
16 Commission, I'm David Hooper, the executive director of
17 the Texas Thoroughbred Association.

18 And first of all, let me put on the
19 record that our executive committee, acting on behalf
20 of the board of directors of the Texas Thoroughbred
21 Association, met in executive session -- or a
22 conference call, I should say, both on Friday as well
23 as this past Monday and revisited this issue at
24 considerable length and, with some reluctance, finally
25 agreed that we would follow the lead of the Texas

1 Thoroughbred HBPA and support the dates as they were
2 originally laid out for 2007 which would lead into an
3 early January, February, March of 2008 at Retama
4 because, for the reasons that were stated when we
5 discussed dates and for the encouragement that had been
6 given to us by the staff and the Commissioners who
7 worked on the race date working group, we were asked to
8 think out of the box, analyze the problems that
9 currently existed in Texas racing and the competition
10 in neighboring states and purse levels and length of
11 meets and all those things that you try to take into
12 consideration and try and help your industry. And
13 that's when we did think out of the box and came up
14 with a different plan.

15 I know that our executive committee also
16 wants me to state for the record that we absolutely
17 believe that Houston is the right place for winter
18 racing when there is sufficient purse money because it
19 will be preeminent, preeminent racing in the winter.

20 They have one of the best dirt surfaces
21 in North America, one of the best turf surfaces in
22 North America. The tracks that they compete with here
23 in this area do not have those kinds of
24 accommodations. Delta Downs is a bullring. It has no
25 turf course. Oaklawn Park's dirt course is marginally

1 good. It has no turf course.

2 The Fair Grounds, for the first time I
3 heard complaints about its dirt surface this year.
4 Usually it has an excellent reputation for a dirt
5 surface. As far as the turf course is concerned, I've
6 walked a number of them; and I can assure you it is one
7 of the lumpiest turf courses I have ever walked across
8 in my life.

9 Therefore, Houston has a lot of things
10 going for it. And when we get purse revenue from some
11 new revenue stream that will carry us to where we can
12 compete with California and New York and Kentucky, the
13 winter racing place to race will be Sam Houston. So we
14 supported this change in dates only for one year with
15 some reluctance.

16 And I do want to share one other thought
17 that, you know, if you're going to revisit this, one
18 thing that you need to consider is where's the purse
19 money going to be in the future. It's going to be very
20 difficult to go back and forth, one year we're racing
21 at Retama in the winter, the next year we're racing at
22 Houston in the winter.

23 If we race at Retama in 2008 the first
24 three months of the year, you can't race at Retama in
25 the fall. There's no purse money. It's gone. It's

1 exhausted in January, February, and March.

2 So, you know, you've got to take those
3 kind of things into consideration. It's not an easy
4 decision. But our board did vote to support what was
5 originally allocated for 2007, which really ended
6 Retama with a January, February 2008 schedule.

7 I'll be happy to answer any questions.

8 VICE-CHAIRMAN RUTHERFORD: Your executive
9 committee voted both ways, though, at different times
10 last week, I know.

11 MR. HOOPER: It did both vote ways. We
12 had -- we had five --

13 VICE-CHAIRMAN RUTHERFORD: It wasn't a
14 unanimous decision.

15 MR. HOOPER: We had five people vote on
16 Friday, and they voted three to two in favor of
17 Houston. And we had seven people vote on Monday, and
18 they voted to support as I have testified.

19 VICE-CHAIRMAN RUTHERFORD: I think that
20 New Orleans is not a very good place to live right
21 now.

22 MR. HOOPER: That's correct.

23 VICE-CHAIRMAN RUTHERFORD: And Florida
24 has got a terrible racetrack. And that place has gone
25 down a lot. And I think even near purses -- you don't

1 have to have Kentucky purses. Even like 300,000 or
2 something, they would all be in Houston. They'd all be
3 at Houston. We'd have the best winter racing in the
4 world right there. It would be like Santa Anita.

5 CHAIRMAN ROGERS: Are you going to make
6 up that extra 200,000 a day so that we can make that
7 work?

8 VICE-CHAIRMAN RUTHERFORD: No, sir. If I
9 had that, I wouldn't be here.

10 MR. HOOPER: Let's get the VLT's passed
11 and then that will be a happy issue to address.

12 CHAIRMAN ROGERS: Okay. Yes, sir.

13 MR. MOORE: My name is Carl Moore and I'm
14 an owner and I run 10 to 15 horses at a time at a
15 track. And also I'm a board member of the Texas
16 Thoroughbred HBPA.

17 And last year our board unanimously did
18 vote to support Retama having those spring dates next
19 year and, you know, this year Retama taking those 12
20 dates and Houston take them, if you will, and we
21 clearly supported that. Our understanding was that
22 this was going to happen and that Houston, in good
23 spirit, was going to allow Retama to have these dates
24 in 2008.

25 And I'll share something with you. You

1 all can probably go back. We also had an issue last
2 year on who got the 2007 date -- whether they got their
3 Connally Cup date or Lone Star got their opening date
4 they wanted. There was a conflict there.

5 Our board voted initially to give Lone
6 Star that date. That's when Mr. Christopher while ago
7 said he went out of the country. We understood we had
8 an understanding with Retama and Houston and they had
9 an understanding and we were happy.

10 I get a call from Ms. McGovern because
11 Mr. Christopher was out of town. And she called and
12 she said, "Well, we understood that you all were
13 supporting us on that date. And if you don't support
14 us on that date, we're not going to be wanting to take
15 and do these other things you're wanting to do."

16 And I said, "So you're telling me that if
17 we voted for Lone Star right now, you're not willing to
18 do that -- doing what we call this transition year, if
19 you will, take those dates and support Retama in
20 2008."

21 She said, "That's correct."

22 So I said, "If we'll support your date,
23 if we give you all the Connally Cup date, will you all,
24 in fact, support this?"

25 And I went through it very clear. I had

1 a clear understanding that they were going to support
2 Retama getting the 2008 dates and they were going to
3 take the dates in 2007 and take that money. That was
4 the clear understanding I had.

5 Okay. I called an emergency meeting, had
6 a conference call, shared that with my board; and we
7 unanimously voted to give them that Connally date, with
8 the understanding they were supportive of what we're
9 talking about here.

10 Our board is clearly looking for -- we
11 want better quality of racing for our horsemen and our
12 state. And we're looking at the big picture. And we
13 felt like when you all had that committee, that racing
14 committee, you know, looking at the dates, they spent
15 timeless hours researching to get outside the box and
16 look for something different. So we were looking for
17 quality in the state and for horsemen. And that's how
18 it happened. We understood we had the support. And
19 now they're saying no. That concerns us.

20 So the Texas horsemen, through our
21 partnership, is in favor of Retama getting those dates
22 in 2008.

23 CHAIRMAN ROGERS: Any questions?

24 Okay. Thank you.

25 I will say all through the transcript it

1 mentions transition year numerous times.

2 VICE-CHAIRMAN RUTHERFORD: They can go
3 back, though? They have the choice to go back? That's
4 what he just said.

5 CHAIRMAN ROGERS: Ms. McGovern? We're
6 going to have you say something and then we're going to
7 let Bryan say something if he chooses to and then we're
8 going to figure out what we're going to do.

9 MS. McGOVERN: I'll be quick.

10 CHAIRMAN ROGERS: Okay.

11 MS. McGOVERN: I have a lot of respect
12 for Larry Christopher and Carl Moore. I think they're
13 both good horsemen and they know the industry. But I
14 also know what I remember about our conversations. And
15 I appreciate that they feel strongly they remember one
16 thing, but I clearly remember things another way.

17 And I remember discussing the 12-day date
18 swap. I remember discussing the closing weekend and
19 the first weekend in April as a date for the Connally.
20 And I was quite surprised when those two dates or those
21 two issues were tied together. I personally did not
22 feel that they should have been tied together and they
23 had anything to do with each other.

24 And I do recall Mr. Christopher -- I did
25 talk to him before he left the country; and then when

1 he left, I talked to Mr. Moore. He was the first one
2 who had mentioned to me that, "Hey, we thought that if
3 we supported you for the April date for the Connally
4 that you would be supportive of taking the dates for
5 Retama."

6 And I explained to him at the time that I
7 didn't think that those two needed to be connected but,
8 if that's what it took to get the Connally date, then
9 that was fine but it was only for the 12-date swap. I
10 never talked about January, February, March. If they
11 thought because we were talking about those 12 dates
12 that it was connected, then I apologize for that; but
13 we never discussed January, February, March being
14 connected to the April -- the April Connally dates.

15 Now, I can see, by reading the
16 transcripts and listening to Commissioner Adams and
17 Commissioner Sowell, how there's obviously differences
18 of opinion as far as how the whole concept of the
19 transitional year and 2008 changing might be seen
20 differently from everybody's perspective. But I can
21 tell you there was no intent on Sam Houston Race Park's
22 part to mislead anybody or to make anyone think that we
23 were committing to a January, February, March change.

24 That is not something that we had enough
25 information to make a decision on. We couldn't have

1 made a decision then. We just didn't have enough
2 information. I mentioned it twice during the
3 Commission meeting in September, perhaps not as
4 strongly as I should have. But, Commissioner Rogers,
5 you had asked me on two -- you asked me point-blank is
6 anything we're talking about -- actually I have it
7 right here. "Is that agreement in any way contingent
8 on how race dates come out this week?" And my answer
9 was, "Not from our standpoint."

10 CHAIRMAN ROGERS: We were -- I read that
11 pretty carefully. We were talking about whether the
12 weekend affected the 12 days. That was the only thing
13 we were talking about in that exchange, I believe.

14 MS. McGOVERN: And at the end of the
15 conversation regarding the whole 500,000-dollar
16 transfer, you made a point -- I made a comment that we
17 do want the opportunity to continue to discuss 2008
18 fall dates, how they fall in place after this
19 agreement; and you made the comment that "We understand
20 there's no commitment for 2008 dates from either you or
21 from us."

22 I thought that that said everything we
23 needed to say. If I need to say it more clearly,
24 perhaps I should have. There was never any intention
25 on Sam Houston Race Park's part and not -- and I can

1 speak for me. There was never any intention on my part
2 to commit to anything about January, February, and
3 March. Our conversations were strictly -- or my
4 conversation with anybody was strictly regarding the
5 12-day swap and the April dates.

6 And if you recall, the April date
7 controversy, as I'll call it, came up shortly before
8 the September meeting. Prior to about 10 days -- I
9 guess 10 days before that September meeting, we didn't
10 realize there was a conflict about that date and we
11 spent our entire time talking to people about losing
12 the Connally, that Connally weekend, and that we didn't
13 want to do that.

14 So all of our energy was put into that
15 and the 12-day swap and the \$500,000. With enough
16 consideration given to the connection that might have
17 been thought by other people or from the 12-day swap to
18 the January, February, March, probably we could have
19 sat down and thought about that a little more.

20 CHAIRMAN ROGERS: I can see how that can
21 come about. I would ask you, though -- I mean, you
22 reread all the transcript, as I did.

23 MS. McGOVERN: Sure.

24 CHAIRMAN ROGERS: And all through the
25 transcript we talked about transition year --

1 MS. McGOVERN: Yes.

2 CHAIRMAN ROGERS: -- and you would take
3 the 12 days and the \$500,000 and that would transition
4 into '08. What did you -- what did you think that
5 transition year discussion was about? What were we
6 transitioning?

7 MS. McGOVERN: I recognized that there
8 was a request by the Commission staff, by the
9 Commissioners, and probably everybody in racing
10 recognized that things are not going well in Texas and
11 that we can't rely on VLT's and we need to maximize
12 whatever dollars we can and use the dates as best we
13 can to maximize revenues for everybody, horsemen and
14 racetracks.

15 I think, in my mind, the discussion
16 centered around how can we do that and what changes can
17 we make to make that happen. We heard from the TTA
18 suggesting that we need to shorten our racing meet.
19 And we've tried to do that. We're down, I think Bob
20 said, seven or eight days from last year and
21 significantly more if you go back several years.

22 I think it was obvious that Retama wanted
23 to do something different; and by not racing in 2007,
24 it allowed them to gather some purse money so whatever
25 dates they ended up running, either in 2007 or 2008,

1 their purse levels would be higher.

2 I'm not sure that I ever felt that there
3 was a decision made on what those Retama dates were. I
4 knew that they were interested in January, February,
5 March; but I'm not sure that I ever thought that, "Hey,
6 maybe they'll still come back in August." Whatever
7 they do, they'll have more purse money to do it; and
8 that could be considered a change by giving them 2007
9 off.

10 CHAIRMAN ROGERS: Okay. Any questions?

11 Okay. Thank you.

12 (Discussion off the record)

13 CHAIRMAN ROGERS: Would the staff like to
14 address this issue at all? Am I putting you right on
15 the spot?

16 MS. KING: I think our director of racing
17 would like to. He's got some comments.

18 CHAIRMAN ROGERS: I think it would
19 probably be a good idea.

20 COMMISSIONER SOWELL: He's been quiet all
21 day.

22 CHAIRMAN ROGERS: He hasn't been feeling
23 well.

24 MR. FERRARA: Actually I got here at five
25 o'clock.

1 Good evening, Commissioners.

2 Bob Bork said we were in a bad
3 situation. And I agree with you, Bob. It is a bad
4 situation. Last September we had a meeting over the
5 '07 race dates. And the staff came up with a proposal
6 and I wish at that time I had argued more for it but I
7 didn't. In September we listened to the Texas
8 Thoroughbred Association, their testimony. You
9 listened to the Horsemen's Partnership and their
10 testimony. And they both supported a transition for
11 the possibility of Retama running, in 2008, January,
12 February, and March. And we went along with that and
13 the Commission voted for that.

14 And now today we listened to the same
15 testimony from the Texas Thoroughbred Association and
16 the Horsemen's Partnership supporting the January,
17 February, March Retama 2008 race dates. However, today
18 we're also seeing that there's two -- there's two
19 horsemen: One that wants to go and sit someplace as
20 long as they can and one that wants to go in town and
21 run for as much money and get out as quickly as
22 possible.

23 And so we are in a bad situation because
24 we can't satisfy both. And I'm not too sure -- I'm not
25 positive flip-flopping those dates is the best move and

1 I don't know that it's not. But --

2 CHAIRMAN ROGERS: Thank you for
3 clarifying that for us.

4 MR. FERRARA: Well, what I do know is the
5 horsemen at Retama, they're the losers because they did
6 sit home all year long. And so I don't know what the
7 answer is. But they lost. And I'm not too sure if the
8 horsemen at Retama were represented as much as they
9 probably should have at the time. And I'm just going
10 to close with we've always gone by what the horsemen
11 has asked for.

12 COMMISSIONER CABRALES: John, can I ask
13 you one question?

14 MR. FERRARA: Sure.

15 COMMISSIONER CABRALES: And I don't know
16 if maybe you're not the right person to answer this.
17 But what does running in January, February, and March
18 get Retama that they can't get running whenever it is
19 they normally have been running, September, October? I
20 don't know when that is, but I'm assuming it's
21 somewhere around that time frame. What is the issue
22 here other than the passage of time, you know, away?

23 MR. FERRARA: I can't answer that because
24 I've never been able to answer that.

25 COMMISSIONER CABRALES: So is there any

1 magic? Does everybody get lucky in March? What
2 happens? I don't understand.

3 MR. FERRARA: I mean --

4 COMMISSIONER CABRALES: Is it weather?
5 Or what are we --

6 MR. FERRARA: That was one of the --
7 yes. I can't answer that. But I guess maybe --

8 COMMISSIONER CABRALES: Maybe Mr. Brown
9 can.

10 MR. FERRARA: Mr. Brown can or --

11 COMMISSIONER CABRALES: Okay. That's the
12 part I don't understand.

13 VICE-CHAIRMAN RUTHERFORD: One thing,
14 Commissioner, the bigger Texas stables that race at the
15 better racetracks, they leave after that. They're not
16 going to come here in the fall and go to -- so we're
17 going to lose --

18 COMMISSIONER CABRALES: But are they
19 going to go to Retama in January, February, March?

20 VICE-CHAIRMAN RUTHERFORD: No. They're
21 going to be at New Orleans. New Orleans goes until --
22 let's see. Help me. When does New Orleans quit?

23 MR. FERRARA: March.

24 VICE-CHAIRMAN RUTHERFORD: The end of
25 March. It goes until the end of March.

1 COMMISSIONER CABRALES: Would they go to
2 Sam Houston?

3 VICE-CHAIRMAN RUTHERFORD: Yes. They'll
4 sit at Sam Houston and run a few horses over there,
5 back and forth. They're not going to do that from San
6 Antonio.

7 COMMISSIONER CABRALES: Does that sound
8 about right?

9 VICE-CHAIRMAN RUTHERFORD: I've been
10 racing horses for 40 years. Believe me, I can tell
11 you. I want to ask Sammy in a minute --

12 MS. KING: See, I told you that's where
13 he's headed. I just said "Get ready."

14 VICE-CHAIRMAN RUTHERFORD: Which way is
15 the State going to make the most money?

16 MR. JACKSON: I'm sorry?

17 VICE-CHAIRMAN RUTHERFORD: Which way is
18 the State -- are we going to lose funds racing -- where
19 will the State get the most revenue?

20 MR. JACKSON: Well, Mr. Commissioner,
21 since the State gets effectively no pari-mutuel tax off
22 live racing, it really doesn't matter where you run
23 them.

24 VICE-CHAIRMAN RUTHERFORD: It's what we
25 sell.

1 MR. JACKSON: We get no tax off that
2 either.

3 VICE-CHAIRMAN RUTHERFORD: So it really
4 doesn't make any difference to the State.

5 MR. JACKSON: Not from a pari-mutuel tax
6 standpoint, no, sir.

7 VICE-CHAIRMAN RUTHERFORD: That's what I
8 wanted to know.

9 MR. FERRARA: But the horsemen did think
10 it was -- I know Sam Houston never committed to it, but
11 the horsemen did think it was a done deal.

12 CHAIRMAN ROGERS: Okay. Mr. Brown?

13 MR. BROWN: I keep forgetting this isn't
14 the microphone.

15 Let me try to answer the question. The
16 goal was to split up that time period that we both race
17 differently so that we took chunks of the year that
18 made sense, reducing our race dates, and our average
19 daily purses went up. And let me explain that a little
20 bit because I know it probably didn't make a bit of
21 sense.

22 If you take what Houston races right now,
23 they go November -- parts of November, December,
24 January, February, March. It's a long, long time.
25 Okay? They've always said they really love December

1 and they really love March and now I'm hearing
2 February, too. So they hate January and maybe part of
3 February. But to get December and March, you've got to
4 have January and February and November.

5 So we're willing to race just January,
6 February, March. We don't have to race December as
7 well. That gives us three months of -- basically we've
8 applied for 38 days of racing. It puts our purses at
9 about \$110,000 a day, which is much higher than what we
10 have right now. It allows Houston to slide back into a
11 roughly three-, three-and-a-half-month period of time,
12 both in 2008 and maybe thereafter, and get their purses
13 up real, real high.

14 But you can't do that -- you can't have
15 them race just three and a half months unless they
16 start -- I guess they could start really late in
17 December.

18 COMMISSIONER CABRALES: I mean, getting
19 your purses up, that was done by not racing in '07, is
20 my understanding, right? You were saving up that
21 money?

22 MR. BROWN: It's two things, sir. It's
23 not racing in '07 and then, going forward, it's racing
24 fewer days. We raced a 51 -- we raced --

25 COMMISSIONER CABRALES: Right. You could

1 race fewer days in September and October. I mean,
2 what's the magic about January, February, March? Why
3 do your fewer days of racing in '08 have to come then
4 as opposed to where you had been running?

5 MR. BROWN: It's our fewer days and their
6 fewer days and how you end up filling that whole time
7 period.

8 COMMISSIONER CABRALES: I'm not hearing
9 them say they want to run fewer days.

10 MR. BROWN: Mr. Bork just testified
11 earlier that his plans are to race fewer days.

12 COMMISSIONER CABRALES: Fewer days?

13 MR. BROWN: Yes.

14 COMMISSIONER CABRALES: But I mean, I
15 guess why do the fewer days -- I don't understand the
16 relationship between the fewer days and the wholesale
17 flip-flopping of the seasons. Why can't your fewer
18 days come when -- in the same period that you've always
19 run?

20 MR. BROWN: I suppose they could. But
21 again, both organizations -- both horsemen and breed
22 organizations felt that -- maybe it's us being further
23 south. Maybe it's us that first time we do this, which
24 will be 2008, bumping those purses way up. Maybe it
25 was because of those. They felt this was the best

1 setup, and we agree with them, going forward.

2 COMMISSIONER CABRALES: But I mean, what
3 is it? I don't understand. From your standpoint, from
4 Retama's standpoint, what is the significance of having
5 the January, February, March period as opposed to where
6 you had -- what does it get you that you don't get if
7 you just run in the fall of '08?

8 MR. BROWN: Let's take the alternatives.
9 I mean, we could race September, October, November.
10 Okay? We could do that. Houston would then pick up
11 December, January, February, March. Okay? They're
12 still racing four months, about the same number of
13 dates that they race now.

14 COMMISSIONER CABRALES: So you're doing
15 them a favor by taking their dates in January,
16 February, March.

17 MR. BROWN: We're doing the industry a
18 favor. Maybe we are doing them a favor taking January,
19 which they don't want. I don't know.

20 COMMISSIONER CABRALES: I don't
21 understand. You keep talking about shortening, but
22 this isn't just about shortening. It's also about
23 moving into a whole different part of the calendar. I
24 don't see the relationship.

25 MR. BROWN: Again, let's go back to what

1 I just said. Let's say we race September, October,
2 November and shorten our meet to 38 days. We were 51
3 days. Let's say we shorten it to 38 days. Our purses
4 would go up. Ours would. Okay?

5 If they race December, January, February,
6 March, and April, part of -- maybe a week in April,
7 they've got the same number of race days. Their purses
8 don't go up. It doesn't satisfy what the horsemen
9 want. It doesn't satisfy what the Texas Thoroughbred
10 Association wants. It doesn't work.

11 In addition to that, what it does for us,
12 we've coveted these dates for years. We've never
13 gotten the support of the horsemen or the Thoroughbred
14 association to have them. We had extensive
15 discussions -- I'm talking probably six, seven, maybe
16 eight years ago -- with Mr. Bork, trying to figure out
17 a way. And he tried to be helpful then. We tried to
18 figure out a way to transfer purse money. We couldn't
19 get to a reasonable conclusion that would work for
20 everybody, so we dropped it. We've wanted these dates
21 for a long, long time.

22 COMMISSIONER CABRALES: Why? That's what
23 I don't -- you've coveted them. Why?

24 MR. BROWN: Sure. Outbound handle and
25 our weather at that time period. Very simple.

1 COMMISSIONER CARTER: January, February,
2 March.

3 MR. BROWN: January, February, March. We
4 think we're the best track in terms of weather in those
5 time periods. I've lived in Houston, Dallas, Austin,
6 and San Antonio. I've sat out in bus stops when I was
7 13 years old on the corner in Houston in January. And
8 when it's cold in January and when it's hot in
9 January -- or when it's cold in Houston and when it's
10 hot in Houston, it's hotter and colder than just about
11 anywhere else because of the humidity and the wetness
12 of the air.

13 CHAIRMAN ROGERS: Mr. Jackson?

14 MR. JACKSON: Yes, Mr. Chairman.

15 I was just going to try to clarify some
16 of the questions that Mr. Cabrales had, which is that
17 it's a known common knowledge in the pari-mutuel
18 industry that January, February, and March are great
19 months to export your races out if you live in the
20 southern part of the United States.

21 Most of the off-track betting parlors --
22 many of your horse tracks along the east coast do not
23 run that time of the year and a lot of times those that
24 do run that time of the year get closed because of
25 snow, ice. And when that occurs, that means our signal

1 ends up becoming one of the preeminent signals in those
2 markets. And the export handle, although we don't get
3 any State pari-mutuel tax off of it, it's revenue to
4 the racetrack and purse amount to the purse account
5 that does go off of it.

6 Houston's export signal is huge that time
7 of the year when these conditions occur. They could
8 have as much as two million dollars in export handle in
9 a day.

10 COMMISSIONER CABRALES: Do we -- does the
11 State --

12 MR. JACKSON: The State gets no money off
13 of that.

14 COMMISSIONER CABRALES: Off the export
15 handle.

16 MR. JACKSON: That's correct.

17 VICE-CHAIRMAN RUTHERFORD: Not directly.

18 MR. JACKSON: Not directly.

19 VICE-CHAIRMAN RUTHERFORD: But they won't
20 get the horses in San Antonio that Houston would get at
21 that time. People want to see superstars run. People
22 want to go out and see Earl Campbell run with the
23 football, not some guy -- you know, like the pro team
24 we had in Houston. We had the Oilers and -- I forgot
25 what they called them.

1 (Discussion off the record)

2 VICE-CHAIRMAN RUTHERFORD: That's what
3 I'm trying to tell you is that the Bret Calhouns, the
4 Asmussens, the boys that have the big horses will be
5 sitting there in Houston and we're able to sell more
6 and they won't be going to -- they'll send a few
7 horses, but their big horses won't be going to San
8 Antonio.

9 MR. BROWN: I'd like to dispute that. I
10 mean, if --

11 VICE-CHAIRMAN RUTHERFORD: Well, they
12 told me they weren't.

13 MR. BROWN: I mean, if Bret Calhoun and
14 Mr. Asmussen will go to Houston for, let's say, 105,
15 110 thousand dollars, they'll come to Retama for the
16 same amount. They've both been to Retama before.
17 They've enjoyed racing at Retama. I would
18 categorically --

19 VICE-CHAIRMAN RUTHERFORD: He told me he
20 wouldn't. I don't know if he's lying or not.

21 MR. BROWN: I don't understand why one
22 would go for the same purse money to one racetrack and
23 not the other when they've been to both our
24 racetracks.

25 CHAIRMAN ROGERS: Any other comment?

1 Any other questions?

2 Okay. I think the question -- if there's
3 no other comments here, the question is that Retama is
4 looking for an issuance of these dates, either the 38
5 days or something that says that they can run in
6 January, February, and March. One or the other motions
7 would be acceptable if that's what you choose to do.
8 If we choose not to do that, then I guess no motion is
9 acceptable because we're not doing race dates.

10 So one or the other. Either somebody
11 needs to make a motion that we allot race dates in that
12 time period or we don't have a motion, either way.

13 COMMISSIONER ADAMS: Mr. Chairman, I move
14 that we allot those race dates to Retama per the
15 agreement that I understood we had during extensive
16 meetings last year with the special committee.

17 MR. ARCHER: I second.

18 CHAIRMAN ROGERS: There is a motion on
19 the floor and a second. We're going to discuss it just
20 a second before we get there. There is a motion on the
21 floor by Commissioner Adams, a second by Commissioner
22 Archer, that race dates -- I'm assuming that you're
23 talking about just the period of time January,
24 February, March and we would agree on dates later.

25 COMMISSIONER ADAMS: It doesn't matter

1 whether we talk about the number of dates now or
2 whether we just talk about the time slot. The time
3 slot is fine.

4 CHAIRMAN ROGERS: Okay. The only reason
5 I would prefer the time slot is because all the parties
6 aren't at the table. The horsemen aren't saying how
7 many they'd like to have. So if your motion would be
8 just to do the time slot, it would be -- I think it
9 would be easier to do.

10 COMMISSIONER ADAMS: Okay.

11 CHAIRMAN ROGERS: Is that okay with you
12 on the second?

13 MR. ARCHER: That's fine.

14 CHAIRMAN ROGERS: Is there any discussion
15 on this?

16 COMMISSIONER CARTER: What happens to the
17 Connally Cup if that happens?

18 MS. McGOVERN: Well, as Eric mentioned
19 earlier and I mentioned as well in my opening comments,
20 it's definitely not something we want to do with either
21 the Connally or the Maxxam Gold Cup is to move it from
22 the early spring dates and April specifically for the
23 Connally.

24 Obviously, if we're forced into dates
25 that we're not comfortable with, we will do whatever we

1 can to make those races work. But we feel strongly
2 that both of them will be hurt significantly by moving
3 them out of their current time slots. We'll do what we
4 have to do, but I don't think they're going to be the
5 same races that you've seen.

6 COMMISSIONER CABRALES: When do they
7 currently run right now?

8 MS. McGOVERN: The Connally is scheduled
9 for the last Saturday -- or the first weekend in April,
10 which I believe is Saturday, April 7th, and the Maxxam
11 Gold Cup is January -- January what? January 27th this
12 year.

13 VICE-CHAIRMAN RUTHERFORD: What are those
14 purses? I forgot how much they are.

15 MS. McGOVERN: The Connally is 200 and
16 the Gold Cup, 100.

17 I'm not sure I answered that as you would
18 have liked it, but --

19 CHAIRMAN ROGERS: Just for clarity, just
20 to confuse it with one other issue --

21 MS. McGOVERN: Sure.

22 COMMISSIONER ROGERS: -- is NASCAR's
23 opening that same week, just so that we've got it all
24 in here?

25 MS. McGOVERN: Actually I can answer

1 that. We don't know yet. NASCAR -- I talked to Drew
2 earlier and NASCAR typically times their opening with
3 Easter and they haven't said when their 2008 date will
4 be.

5 CHAIRMAN ROGERS: That has been a
6 continual conflict.

7 COMMISSIONER CABRALES: I know.

8 CHAIRMAN ROGERS: Okay. Thank you.

9 Commissioner Boyd, you had something to
10 say or ask? Discussion?

11 COMMISSIONER BOYD: Yes. I wanted to --
12 I wanted to back up just a minute. I know these --
13 with our working groups, we've been trying to look at
14 some innovative ways to change racing and I just don't
15 want it to get too far off, Mr. Locke, that I really --
16 although it may not have worked out, I really applaud
17 you for trying something different. That's what we
18 were trying to do with the greyhounds and it kind of
19 caved. But I really -- you know, with the circuit
20 business.

21 But I really -- I don't think you need to
22 beat yourself up because not many people stand up and
23 do -- you know, make change. So I really appreciate
24 you -- or, you know, being brave enough to do that. I
25 really appreciate you doing that, trying to help.

1 CHAIRMAN ROGERS: Is that the only
2 comment?

3 COMMISSIONER BOYD: That's my comment.

4 CHAIRMAN ROGERS: So we have a motion on
5 the floor to award this time slot in January, February,
6 March to Retama and a second.

7 All in favor?

8 COMMISSIONERS: Aye.

9 CHAIRMAN ROGERS: All opposed?

10 COMMISSIONERS: Aye.

11 CHAIRMAN ROGERS: Why don't you call the
12 roll, please.

13 MS. GIBERSON: Jesse Adams?

14 COMMISSIONER ADAMS: Yes.

15 MS. GIBERSON: Treva Boyd?

16 COMMISSIONER BOYD: No.

17 MS. GIBERSON: Kent Carter?

18 COMMISSIONER CARTER: No.

19 MS. GIBERSON: Mike Rutherford?

20 VICE-CHAIRMAN RUTHERFORD: No.

21 MS. GIBERSON: Sonny Sowell?

22 COMMISSIONER SOWELL: No.

23 MS. GIBERSON: Jimmy Archer?

24 MR. ARCHER: Yes.

25 MS. GIBERSON: David Cabrales?

1 COMMISSIONER CABRALES: No.

2 MS. GIBERSON: Dyke Rogers?

3 CHAIRMAN ROGERS: Yes.

4 The motion fails. So we don't award any
5 dates at this moment.

6 Okay. Discussion and consideration of
7 possible items, so the proposal -- or the proposal of
8 amendment to 309.6, security for compliance.

9 Mr. Fenner?

10 MR. FENNER: Commissioners, we've heard
11 from you at past Commission meetings about your concern
12 about the inactive licenses that are out there. We
13 have new racetrack licenses that are coming on line, so
14 it became opportune for us to take a look at the
15 security that is required under the act and under the
16 rules for new licenses to ensure that they comply with
17 the act and with our rules.

18 Now, one of the rules that we require is
19 that they actually operate a racetrack facility; and
20 yet the security rule that's in place only applies to
21 brand-new licenses. The act also talks in terms of new
22 licenses. But I believe it is reasonable to extend
23 this to existing licenses as well. It hardly seems
24 reasonable to say you only get one shot at them and if
25 they pay their security and they forfeit it that you

1 can't ask them to then build a racetrack license.

2 So we are proposing an amendment to this
3 rule that would clarify a number of things. First of
4 all, it would clarify that the Commission can require a
5 security bond or security to ensure they build their
6 track and comply with the rules from both new and
7 existing licensees or associations.

8 Now, this is going to require security
9 from an existing association that does not have a
10 racetrack facility and does not have security currently
11 posted. It would also apply to an existing licensee
12 that does have a racetrack facility but that did not
13 conduct live racing within the previous calendar year.
14 And of course, it would also apply, as the current rule
15 does, to brand-new association licensees. This would
16 have no effect on your associations that are currently
17 operating. Those that already have a facility and are
18 doing racing, it won't affect them at all.

19 This change will also define the types of
20 revenue that the agency would consider in determining
21 the amount of required security. Now, right now the
22 rule is a little vague on that point. I think that it
23 would be appropriate to tie that to, first of all, the
24 amount of revenue to the State, the State tax revenue,
25 which primarily comes from the simulcasting tax, and

1 also to the Texas-bred incentive program, which, of
2 course, goes through the Commission's appropriation.

3 The change will clarify that any interest
4 earned on security that is posted as a Treasury bond or
5 through irrevocable assignments of insured deposits --
6 that that interest will remain the property of the
7 association. That would not go to the Commission. Any
8 remaining security would be returned to the association
9 after they complete their first live race meet after
10 the posting of the security.

11 And then as part of this process, when
12 you require the bond, the Commission would approve a
13 date on which they must complete their racetrack
14 facilities. They would -- the Commission would approve
15 a date by which the association must start simulcast
16 racing. And the Commission would approve a date by
17 which the association must begin live racing.

18 Do you all have any questions regarding
19 that?

20 CHAIRMAN ROGERS: I have one.

21 MR. FENNER: Yes, sir.

22 CHAIRMAN ROGERS: In order to simulcast,
23 you always have to issue dates. Okay?

24 MR. FENNER: Yes, sir.

25 CHAIRMAN ROGERS: So if you issue the

1 dates in a year and you know you're not going to
2 race -- and we all know that that isn't going to
3 happen, just like we talked about on these licenses
4 today -- do they forfeit their security because they
5 didn't race in that calendar year? And do we have the
6 right to waive that? Because you have -- you pretty
7 well have to simulcast a year before you begin to
8 conduct live racing or you don't have any purse money.

9 MR. FENNER: You would always have the
10 opportunity to come back and revisit the issue of
11 whether or not it is appropriate to have them forfeit
12 the security under the -- under those circumstances.
13 Say, for example, circumstances beyond their control
14 prevented them from completing the racetrack facility
15 on time and they were pushed back a few days.

16 CHAIRMAN ROGERS: This is an on-purpose
17 event. I mean, what I'm talking about is when you
18 issue the license, these three licenses that we issued
19 today or two that we've issued and one conditional so
20 far, if they're going to race, they're going to
21 build -- let's say they build in '07. They're not
22 going to race in '07.

23 MR. FENNER: Yes.

24 CHAIRMAN ROGERS: But if you -- or let's
25 say they build in the first part of '08. They're not

1 going to race in '08 even though you're going to have
2 to give them race dates in '08. They're going to race
3 in '09. And they will just forfeit those dates. Under
4 this provision would they forfeit their security
5 deposit?

6 MR. FENNER: No, sir. What the intent of
7 this is is that they would come forward, like Bill
8 Moltz mentioned earlier today, that they would be
9 prepared to start simulcast racing by the end of the
10 first calendar quarter of '08. They would begin --
11 they would be prepared to begin live racing by the end
12 of the first calendar quarter of '09. And so you would
13 incorporate that into the dates that you approve. We
14 expect you to follow the commitments you are making.

15 And so they would not forfeit any bond
16 until after -- say, for example, they did not begin
17 simulcast racing at the end of the first quarter.
18 Well, then at the beginning of the second quarter, this
19 is revenue, simulcasting tax revenue, that otherwise
20 would be going to the State but the State is not
21 getting; so therefore we might start taking those
22 amounts and turning them over to the General Revenue
23 Fund.

24 CHAIRMAN ROGERS: So you're counting
25 simulcast racing as racing under this provision.

1 MR. FENNER: We're counting both kinds.

2 COMMISSIONER SOWELL: Question. Is this
3 something that could be -- instead of a one-time
4 amount, could we have a monthly fee?

5 MR. FENNER: A monthly fee?

6 VICE-CHAIRMAN RUTHERFORD: Prorated, is
7 what he's trying to say.

8 MR. FENNER: You're trying to say that
9 you would pay -- we need you to get up to, say,
10 \$150,000 and you would contribute \$25,000 a month for
11 six months until you reach it?

12 COMMISSIONER SOWELL: I was thinking more
13 like a hundred thousand a month. We want them to do
14 something, don't we?

15 MR. FENNER: Yes, sir.

16 COMMISSIONER SOWELL: Or be hit with
17 severe consequences.

18 MR. FENNER: Yes, sir. Well, we're
19 walking kind of a delicate balance there. On the one
20 hand, we want to make sure that they actually begin
21 racing. On the other hand, we don't want to post it so
22 high that they say, "Never mind."

23 By tying it to the simulcast tax as well
24 as the Texas-bred incentive funds, I'm estimating it's
25 going to be somewhere in the 150,000-dollar to

1 200,000-dollar range.

2 VICE-CHAIRMAN RUTHERFORD: For what size
3 track?

4 MR. FENNER: And that's for -- that's for
5 a Class 2.

6 COMMISSIONER SOWELL: In the program here
7 we're talking about 100 to 200 thousand is the way you
8 put it. So you're saying 150 is really what you had in
9 mind?

10 MR. FENNER: Well, somewhere in that
11 range. We would look to the application to determine
12 what was the amount of the simulcast tax.

13 CHAIRMAN ROGERS: That's what I was going
14 to ask is what do you determining to be reasonable, and
15 you're saying their estimate on their application is
16 the number you're going to consider to be reasonable.

17 MR. FENNER: Yes, sir.

18 CHAIRMAN ROGERS: Okay.

19 MR. FENNER: And the 100 to 200 thousand
20 dollars would only be a single calendar quarter's
21 worth. So that would give you enough time so that if
22 they forfeited the entire amount, we would have a
23 Commission meeting coming up soon at which we could
24 come to you and say, "We're going to have to require
25 additional security deposit from these folks because

1 they have not begun their simulcast or live racing on
2 schedule."

3 VICE-CHAIRMAN RUTHERFORD: Shouldn't it
4 be a set amount?

5 MR. FENNER: Should it be a set amount?

6 VICE-CHAIRMAN RUTHERFORD: Yeah. I mean,
7 you said that the Commission can negotiate with them.
8 If they have -- if, for some reason, they want to say,
9 well, they didn't get finished in time and we're going
10 to let them off this time or something for two more --
11 we're going to give them 60 more days. I think it
12 ought to be in black and white or we're going to have a
13 bunch of lawsuits.

14 COMMISSIONER SOWELL: I think you need to
15 have some sort of force majeure situation there because
16 there's some things you just can't do anything about.

17 MR. FENNER: I'm not sure that you all
18 are -- that I've got you both on the same page. Force
19 majeure in the sense that it's beyond their control and
20 therefore we should not be forfeiting their security
21 bond and you're --

22 VICE-CHAIRMAN RUTHERFORD: I don't
23 disagree with that. I think basically I don't want the
24 Commission saying, "Okay. We're going to let so-and-so
25 off. They were five months late. We're going to hit

1 so-and-so because they're a month late." I just think
2 it opens the door for lawsuits. I think we ought to
3 have it black and white with some type of force majeure
4 and I don't know what that would be.

5 MR. FENNER: Anyone else agree or
6 disagree? How do you all feel about that?

7 COMMISSIONER CARTER: I think we ought to
8 set an amount and a date and stick to it. And then
9 there won't be any question.

10 MR. FENNER: Okay.

11 CHAIRMAN ROGERS: But the amount would be
12 different for every track?

13 MR. FENNER: Yeah.

14 CHAIRMAN ROGERS: And the date would be
15 different for every track.

16 COMMISSIONER ADAMS: It has to be,
17 Mr. Chairman. The amount has to be different.

18 CHAIRMAN ROGERS: And the date would be
19 different.

20 COMMISSIONER ADAMS: I think the staff's
21 recommendation is a logical way.

22 CHAIRMAN ROGERS: What he's asking for
23 here is to publish this in the Register. Is that
24 correct?

25 MR. FENNER: Yes, sir.

1 CHAIRMAN ROGERS: Okay. Other comments
2 on this?

3 COMMISSIONER CABRALES: Mark, just one.
4 I mean, maybe this isn't what we'd like to do; but I
5 would think that we would like to separate -- have a
6 separate deadline and forfeiture scenario for simulcast
7 and for live racing, I would think, and right now it
8 doesn't read that way. It says if they fail to conduct
9 simulcast or live racing by the dates approved, then
10 they may forfeit. And I don't -- maybe it's the "or"
11 that gives me trouble because that always means, "Well,
12 I did one or the other, so now I'm in compliance."

13 MR. FENNER: May I ask you which --

14 COMMISSIONER CABRALES: It's (e), Subpart
15 (e). Because I think we're going to give them one date
16 for simulcast and one date for live and both of those
17 are forfeitable events.

18 MR. FENNER: Yes.

19 COMMISSIONER CABRALES: I mean, you could
20 meet up -- you could meet your simulcast date and still
21 be out of compliance if you don't meet your live racing
22 deadline. I just want to make sure if (e) --

23 COMMISSIONER ADAMS: But, Mark, we would
24 still have those dollars there.

25 COMMISSIONER CABRALES: I mean, I see

1 that we broke it out in Part (a) but we didn't break it
2 out in Part (e); and I'm just worried that we're going
3 to hear a lot people say, "Well, wait a minute. I" --

4 MR. FENNER: You have to fail on both
5 before you could start forfeiting?

6 COMMISSIONER CABRALES: Right.

7 MR. FENNER: We can certainly clarify
8 that. If an association fails to conduct simulcast
9 racing on the dates --

10 COMMISSIONER CABRALES: By the date
11 approved.

12 MR. FENNER: -- or if the association
13 fails to conduct live racing on the dates approved by
14 the Commission -- we can probably finesse that a little
15 bit. But I understand exactly what you're saying.

16 Let me make sure we got that right. If
17 an association fails to conduct simulcast racing by the
18 dates approved by the Commission or if the association
19 fails to conduct live racing by the date approved by
20 the Commission, the Commission may forfeit to the
21 State's General Revenue Fund and to the Texas-bred
22 incentive programs any portion of the security that's
23 appropriate for the amount of revenue lost to those
24 funds. Would that --

25 COMMISSIONER CABRALES: Right. Yeah.

1 And if we're going to do this force majeure issue, I
2 would think we would change that "may forfeit" into
3 "shall forfeit" except as provided in some other
4 section, which will be the force majeure provision, the
5 act of God provision, so that it's compulsory except
6 for some very limited excuse.

7 MR. FENNER: It sounds like I need to go
8 back and do a little more work on this. I'm certainly
9 not objectionable -- objecting to doing that. We could
10 bring it back to you at the next Commission meeting.

11 CHAIRMAN ROGERS: I think it's a good
12 idea. We want to do this. I mean, and I guess this is
13 better, because we get funds, than it would be to have
14 people forfeit a license after a certain length of time
15 without building because this forfeits -- eventually
16 they say, "I'm tired of paying." But why don't -- if
17 it's okay, we'll just work on it for the next meeting
18 and come up with that force majeure wording in the
19 process.

20 MR. FENNER: Okay. Sounds fine.

21 CHAIRMAN ROGERS: Okay. The only other
22 thing that we have would be to schedule our next
23 meeting?

24 MS. KING: Yes, sir. Here are those
25 dates.

1 CHAIRMAN ROGERS: Okay. You did or
2 didn't ask on the 14th?

3 MS. KING: Jimmy said he could come.

4 CHAIRMAN ROGERS: Could or couldn't?

5 MR. ARCHER: I can.

6 CHAIRMAN ROGERS: Okay. We're looking at
7 Tuesday, May 14th.

8 MS. KING: Monday.

9 CHAIRMAN ROGERS: I'm sorry. Monday, May
10 14th, the day after Mother's Day.

11 VICE-CHAIRMAN RUTHERFORD: You want to
12 leave home.

13 CHAIRMAN ROGERS: That's what I'm
14 thinking.

15 COMMISSIONER CARTER: Mr. Chairman?

16 CHAIRMAN ROGERS: Yes.

17 COMMISSIONER CARTER: Could I ask that in
18 the future those lists that you are given be on these
19 so we can consider them before we come?

20 CHAIRMAN ROGERS: Actually we've probably
21 done that several times. This time we just got it
22 fouled up. But I agree with you a hundred percent. We
23 ought to get that done.

24 MS. KING: We do, too. We just didn't
25 get to it.

1 COMMISSIONER CARTER: It's hard to figure
2 those out when the first time we hear about them is
3 here.

4 COMMISSIONER SOWELL: May 14 looks good
5 from this end.

6 VICE-CHAIRMAN RUTHERFORD: Fine.

7 CHAIRMAN ROGERS: Okay. May 14th is the
8 date. It won't be near as long as this meeting,
9 whatever. Okay?

10 MR. ARCHER: Are you sure?

11 CHAIRMAN ROGERS: Yeah.

12 Anything else?

13 We're adjourned.

14 (Proceedings concluded at 8:23 p.m.)

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1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

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