NEW YORK STATE GAMING COMMISSION

May 19, 2020

Held at

NEW YORK STATE GAMING COMMISSION
ONE BROADWAY CENTER
SCHENECTADY, NEW YORK 12305

Transcript of Recording

PRESENT:

New York State Gaming Commission
One Broadway Center
Schenectady, New York 12305

BY: John A. Crotty
John J. Poklemba
Barry Sample
Jerry Skurnik
Peter J. Moschetti
MR. WILLIAMS: New York State Racing, Pari Mutuel and Breeding Law

Section 102 provided that the New York State Gaming Commission shall consist of seven members appointed by the Governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are necessary to afford the Commission an ability to establish decorum and undertake action.

The present meeting of the Commission is now called to order.

This meeting is being conducted in conformity with Governor Andrew Cuomo's executive order 202.1 which is entitled, Continuing Suspension and Modification of Laws Related to the Disaster Emergency. The order contains portions of the open meeting law and specifically allows the conduct of meetings by telephone or other similar service. The Governor's executive order regarding first Article 7 of the Public Officers Law to the extent necessary to prevent any public body to meet and take such actions authorized by
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the law without permitting public in-

person access to meetings and authorizing

such meetings to be held remotely by

conference or similar service provided

that the public has the ability to view

or look into such proceedings and that

such meetings are recorded and later

transcribed. Accordingly the

Commissioner of the Commission meeting is

being conducted in conformance with

special allowance and we are recording

today's meeting for transcription as

required.

Ms. Secretary, will you please call

the roll?

MS. SECRETARY: John Crotty?

MR. CROTTY: Here.

MS. SECRETARY: Peter Moschetti?

MR. MOSCHETTI: Here.

MS. SECRETARY: John Poklemba?

MR. POKLEMBBA: Here.

MS. SECRETARY: Barry Sample?

MR. SAMPLE: Here.

MS. SECRETARY: Jerry Skurnik?

MR. SKURNIK: Here.
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MR. WILLIAMS: Ms. Secretary, please let the record reflect that a quorum of qualified members is present, thus enabling the transaction of business.

Chairman Sample has requested that Commissioner Moschetti preside over today's meeting. Unless there's such an objection to this, Commissioner Moschetti?

MR. MOSCHETTI: Chairman Sample, thank you for the opportunity to temporary fill your position today. The first item is consideration of minutes from our meeting of February 10th, 2020. Minutes of the Commission meeting conducted on February 10th, 2020 have been provided to the members in advance. At this time, I would like to ask the members if there are any edits, corrections, or amendments.

Hearing none, Ms. Secretary please let the record reflect the minutes were accepted as presented.

Item number 2, ruling New York State Racing, Pari Mutuel Wagering and Breeding
Law Section 104.19 authorizes the Commission to promulgate rules and regulations as deemed necessary to carry out its responsibilities. Consistent with that, the Commission will from time-to-time promulgate rules and rule amendments pursuant to the New York State Procedure Act. Today we have an active rulemaking agenda with six rules for adoption, consideration, and several for proposed.

Mr. Williams will you please outline the items?

MR. WILLIAMS: Certainly. For the Commission's consideration is the adoption of a rulemaking that would allow a claimant to void any claims of a thoroughbred horse that is discovered to have epistaxis due to an exercise induced pulmonary hemorrhage and claim the race. Under the proposal the proclaimed horse would go to the test spot. After the appropriate cooling out period before which lameness is not always apparent, the State veterinarian would examine the
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horse for lameness. Such an examination
would include a visual appraisal of the
horse at rest and in motion on soft and
hard surfaces. If the veterinarian
determines that the horse has grade two
or higher lameness or has experienced
epistaxis, he or she will inform the
claimant who will then be permitted to
void the claim. If the claimant voids
the claim, then the owner who entered the
horse in the race and will continue to be
responsible for the horse. The claimant
could also decide not to void the claim
and may take the horse. These new
provisions would not waive any other
objections that might later be identified
as possible objections to the claim. One
public comment was received during the
public comment period, which expired on
April 20th. The New York Racing
Association would afford (indiscernible)
expanding the scope of the void claim
rule to include horses deemed to be
unsound or to have (indiscernible) by the
state veterinarian or other designated
veterinarians. The opposed utilization grading level for evaluating lameness, rather NYRA (phonetic) suggested the Commission adopt the Association of Racing Commissioners International Model Rule. And we note that no racing jurisdiction has adopted the model rule suggested by NYRA. The purpose of (indiscernible) the (indiscernible) is to standardize the criteria used and to remove subjectivity from (indiscernible) of the horse. The Commission says they'll (indiscernible) the scale of American Association of Equine Practitioners, which has published its criteria since 1999. While other scales exist, only the AAEP Lameness Scale has acceptance in use in the United States. Staff recommends adoption of this rule proposal.

MR. MOSCHETTI: If there's any questions on the adoption of the rule regarding a board claim for lane thoroughbred horses.

Hearing none. May I have a motion
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to adopt the rule.

UNIDENTIFIED SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED SPEAKER: Second.

MR. MOSCHETTI: Thank you. Any objection on motion?

Hearing none. All in favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed?

The motion carries. Next item please.

MR. WILLIAMS: For the Commission's consideration is the adoption of a rule providing optional match the dealer wager in the game of Spanish 21. When the side wager is placed the player wins the bet. If the rank of either or both of their initial two cards matches the rank dealer's top card. If the cards matching both rank and suit, the player wins the bigger payout according to a pre-determined payout table. No public comments were received. Staff recommends the adoption of this rule proposal.

MR. MOSCHETTI: Any questions on the
adoption of the rule authorizing the
optional max the dealer side wage Spanish
21?

Hearing none. They have a motion to
adopt this rule.

UNIDENTIFIED MALE SPEAKER: So
moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any questions on the
motion?

Hearing none. All in favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? The
motion carries. Next item please.

MR. WILLIAMS: For Commission's
consideration the adoption of amendment
related to the provision of Social
Security numbers. The use of Social
Security numbers will continue to be
required when necessary to comply with
tax laws and be allowable when
voluntarily given. This proposal is
consistent with the Federal Privacy Act
of 1974 and the New York State Personal
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Privacy Protection Law. All public comments were received. Staff recommends the adoption of this rule proposal.

MR. MOSCHETTI: Is there any questions on the adoption of the rule relating to the provision of Social Security numbers?

Hearing none I propose to adopt this rule.

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any discussion about the rule?

Hearing none. All in favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? The motion carries. Next item please.

MR. WILLIAMS: For Commission's consideration is the adoption of the consensus rulemaking amending rule 4024.1(b)(1) to broaden the requirements of a lip tattoo for thoroughbred horses to race in New York with digital tattoos.
The rule will (indiscernible) Commission rules with a nationwide digital tattoo system which was introduced by The Jockey Club first apply to the horses that will be two years old in 2020. As mentioned during consideration no change to the Commission's harness racing rule is necessary as it is broad enough to permit any tattoo whether lip or digital. A notice to the proposed rule has been published in the State register on January 8th. Being that the public comment area closed on March 9th. No public comment was received. Staff recommends the Commission adopt the consensus rule.

MR. MOSCHETTI: May I have a motion to adopt the rule proposal to permit thoroughbred horses with digital tattoos to race in New York?

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

UNIDENTIFIED MALE SPEAKER: Second.
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MR. MOSCHETTI: Any discussion on
this motion. Hearing none. All in
favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? The
motion carries.

MR. WILLIAMS: For Commission's
consideration is the adoption of a
rulemaking regarding certain drug
injections in thoroughbred races. If you
recall, the proposal has three parts.

With respect to the first part, the
proposal amended the restricted time
period for the use of cortico joint
injections (indiscernible) from the
current restriction of seven days before
a thoroughbred horse's next race. The
purpose of the proposal is to enhance the
perfection afforded for a horse by
allowing veterinarians and horsemen a
greater time frame following
administration of a cortico joint
injection to evaluate effectiveness.

With respect to the second part, the
proposal would amend a restricted time
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period for the inter-articular injection
of any substance to a thoroughbred horse
to max the proposal with a fourteen-day
time period for a cortisone joint
injection. Again the purpose of this
proposal is to allow veterinarians and
horsemen time to evaluate horses
following treatment before returning them
to high-speed exercise and competition.

With respect to the third part, this
proposal would require the reporting of
every intra-articular joint injection.
Current rules only require submission of
cortico joint injections within forty-eight hours of treatment. Parts 1 and 2
have been advanced as part of the Mid-Atlantic strategic plan to reduce equine
fatalities by the regulated sportsman and
race track operators from the seven
states that comprise the Mid-Atlantic
region. Part 3 simply applies parts 1
and 2 for existing reporting
requirements. No public comments were
received. Staff recommends the adoption
of this rule proposal.
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MR. MOSCHETTI: Do the commissioners have any questions on the adoption of the rule regarding thoroughbred joint injections?

Hearing no questions. May I have a motion to adopt this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

UNIDENTIFIED MALE SPEAKER: Moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any discussion on this motion? Hearing none. All in favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? The motion carries. Next item please.

MR. WILLIAMS: For Commission's consideration the adoption of a rulemaking regarding thoroughbred Pari Mutuel wagering rule for pick five and pick six wagers. The current rule prohibit a race track from displaying wagering information about pick five or
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pick six combinations other than will-pays after the penultimate race in the sequence. The proposed revision would permit a race track to display publicly combinations wager wise, amounts wagered on such combinations wagered upon, the amounts wagered on such combinations, the number of tickets sold or the number of tickets still capable of winning a pick five or pick six pool. No public comments were received. Do I have recommend adoption of this rule proposal?

MR. MOSCHETTI: Do any of the Commissioners have questions on the adoption of the rule regarding thoroughbred Pari Mutuel wagering rule for pick five and pick six wagers? There are no discussions. May I have a motion to adopt this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Is there any discussion on this motion?
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Hearing none. All in favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? Motion carries.

Next item please.

MR. WILLIAMS: For Commission's consideration is a proposal to restrict the administration to thoroughbred horses of nonsteroidal anti-inflammatory drugs or NSAIDS such that only one clinical dose may be administered during the weeks before the horse races. The proposal would limit the administration through an intravenous treatment and adopt stricter thresholds for the two months commonly used NSAIDS, flunixin and phenylbutazone and has been recommended by the Racing Medication & Testing Consortium and has adopted as a model rule by the Association of Racing Commissioners International. The proposal also reduces the list of NSAIDs that can be administered lawfully within one week before the horse races to only three for which the appropriate laboratory
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threshold is unclear. The current rule permits the use of two NSAIDs from the (indiscernible) list of six NSAIDs (indiscernible) before a horse races, if one is not used within ninety-six hours of the race and the other is administered outside forty-eight hours. Staff recommends the Commission authorize the proposal of this rulemaking.

MR. MOSCHETTI: Do any of the Commissioners have questions on the proposal or the rule to amend the administration of nonsteroidal anti-inflammatory drug in thoroughbred horses? Hearing no questions, may I have a motion to propose this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any discussion on this motion? Hearing none. All in favor?

ON UNISON: Aye.

MR. MOSCHETTI: Anybody oppose? The
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motion carries.

The next item please.

MR. WILLIAMS: For Commission's consideration is a consensus rulemaking to correct cross-references in our gaming regulations that were left unchanged when we recently moved the (indiscernible) gaming self-exclusion provisions from part 5326 to a new part 5402. The proposal also made blanket statements to be consistent with other rules. Staff recommends the commission authorize the proposal of this rulemaking.

MR. MOSCHETTI: Do any of the Commissioners have questions of the proposal of a rule to make technical changes to rule cross-referencing? Hearing no questions, may I have a motion to propose this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any discussion on the motion? Hearing none. All in favor?
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IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? The motion carries. The next item please.

MR. WILLIAMS: For Commission's consideration as emergency and consensus rulemaking to extend the date upon which a harnessed horse must (indiscernible) by 30 days to a date as determined appropriate by the Commission. In layman's terms, all (indiscernible) at which a horse must establish its ability to participate in a race meeting consistent with the qualifying standards established for that class of horse. (Indiscernible) pandemic has shuttered specific racing activity without a rule change, virtually all harnessed horses will be required to requalify. When racing is all right to resume the requalification requirement with necessitate event gathering of owners, trainers, and riders and associated personnel (indiscernible) requalify their horses. To alleviate this potential gathering staff suggests an allowance to
establish a longer qualification period.

Accordingly, we suggest the (indiscernible) an emergency and a consensus rulemaking. We believe the emergency rulemaking is appropriate to safeguard the health of the participants in the horse racing industry and believes this proposal also has widespread support in the industry. Hence, we suggest this proposal also as a consensus rule. Staff recommends the Commission authorize the proposal as emergency and consensus rulemaking.

MR. MOSCHETTI: I am going to call the proposals individually. Any questions on the proposal of the harness qualifying rules? Hearing no questions. May I have a motion to propose this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any discussion on
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the motion? Hearing no discussion. All in favor?

IN UNISON: Aye.

MR. MOSCHETTI: Any opposed? The motion carries.

Next -- let's see. Can I have -- this is the next one. Any questions on the consensus proposal on an amendment to the harness qualifying rule? Hearing no questions. Do I have a motion to propose this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

If any person is going to move it.

MR. MOSCHETTI: Any discussion on the motion? Hearing none. All in favor?

UNIDENTIFIED MALE SPEAKER: Aye.

UNIDENTIFIED MALE SPEAKER: Aye.

UNIDENTIFIED MALE SPEAKER: Aye.

MR. MOSCHETTI: Any opposed? The motion carries.
Next item, please.

MR. WILLIAMS: For Commission's consideration the rulemaking to remove certain penal aspects of horses coming off of and returning to races administration.

As you might recall, certain racetracks have considered (indiscernible) races wherein a condition would be that no horse receives race day Lasix administration. Present rules allow a horse to be removed from Lasix administration list, but only allow return after an additional (indiscernible) triggers a mandatory horse layoff. This penal aspect might (indiscernible) trainers would, found that they're (indiscernible) Lasix. Accordingly this proposal would permissibly allow a horse to be removed from the Lasix eligible list for the limited purpose for competing in a non-Lasix race. And allow them to return to the list without incurring any potential mandatory layoff. Staff recommends the
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Commission authorize this proposal of this rulemaking.

MR. MOSCHETTI: Any questions before we move onto the amendment to the Lasix administration rules? Hearing none. May I have a motion to propose this rule?

UNIDENTIFIED MALE SPEAKER: So moved.

MR. MOSCHETTI: Second?

UNIDENTIFIED MALE SPEAKER: Second.

MR. MOSCHETTI: Any discussion on the motion? Hearing none. All in favor?

UNIDENTIFIED MALE SPEAKER: Aye.

UNIDENTIFIED MALE SPEAKER: Aye.

MR. MOSCHETTI: Any opposed? The motion carries.

All right then. That concludes the rulemaking portion of our agenda.

UNIDENTIFIED MALE SPEAKER: Correct, sir.

MR. MOSCHETTI: So we're going to move onto communications. That is the next scheduled. Today we have four items for adjudication. Mr. Williams.

MR. WILLIAMS: On June 10th, 2019,
the presiding judge at Monticello Raceway suspended standardbred trainer Dennis Washington for 730 days and fined him $2,000 dollars for numerous violations of the Racing Pari Mutuel Wagering and Breeding Law and the Commission standardbred racing rules. These violations involved two horses under Mr. Washington's care. With respect to the horse it will be said Mr. Washington was accused of mistreatment and endangerment of the horse by permitting an unsafe and dangerous treatment that led to the horse's infection and subsequent death euthanasia.

With respect to the second horse, Billy Button, Mr. Washington was accused of selling the horse without authorization and falsely and fraudulently obtained or attempting to obtain payments for the horse at (indiscernible) he was no longer being trained by Mr. Washington. Mr. Washington was also accused of possessing or directing someone to possess equipment
usable in connection or acting with financial irresponsibility and failing to cooperate with the Commissioner's investigation. Mr. Washington first requested a hearing, which was adjourned twice at his request. The hearing was conducted on December 19th, 2019.

Mr. Washington failed to appear at the hearing and later claimed that he did not receive notice. The hearing officer submitted a report, dated February 18, 2020, finding that Mr. Washington's contention that he did not receive notice of the hearing date was without merit. That the Commission had met its version of establishing the various violations of the laws and the rules and recommended that Mr. Washington's license be revoked for a minimum period of two years. The hearing officer also recommended that Mr. Washington not be granted a license thereafter unless he satisfactorily (indiscernible) for the disappearance of Billy Button to the Commission (indiscernible). The Commission
considered this matter at a meeting

conducted in judicial or quasi-judicial

proceedings exemption of the New York

Public Officers Law Section 108.1.

MR. MOSCHETTI: The Commission duly
deliberated and considered this matter to
determine upon a vote of 5 to nothing to
modify the hearing officer's report and
recommendation. We got the factual
findings report. However, we vote to
modify the recommendations of
(indiscernible) revocation and we modify
as follows, that the revocation be ten
years and that the fine is $5,000
dollars.

MR. WILLIAMS: The next matter on
December 20th, 2019, the Bureau of
Licensing denied the application of
Brewster Love (ph.) for a gaming employee
registration to work as a dealer at the
del Lago Casino Empire. The denial cited
New York (indiscernible) section
1318(1)(a) and 1318(1)(c), which provided
the applicant must prove qualification by
clear and convincing evidence and for
disqualification on the grounds of the
conviction of the applicant of any
offense in any jurisdiction which is or
will be a felony or other crime involving
public integrity embezzlement, theft,
fraud or perjury.

The applicant requested a hearing
which was conducted on January the 29th
of 2020. The hearing officer submitted a
report to the Commission secretary dated
April 13th, recommending that the
registration denial be adopted. The
Commission considered this matter at a
meeting conducted judicial or quasi-
judicial proceedings exemption of New
York Public Officer's Law Section 108.1.

MR. MOSCHETTI: The Commission
deliberated and considered this matter
upon a vote of 5 to nothing to sustain
the hearing officer's report and
recommendations.

UNIDENTIFIED SPEAKER: On September
25th, 2019, the judges at the Batavia
Downs disqualified Rock'n Roll Rosie
following her winning second place. The
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judges prepared action following a
determination that the horse was
ineligible having failed to comply with
the conditions of the race. Horse owner,
Henry Conrad (ph.), challenged the
disqualification and requested a hearing
which was conducted on December 17th,
2019. The hearing officer submitted the
report dated March 12th, 2020,
recommending that the decision of the
judges to disqualify and (indiscernible)
the horse declare the purse winnings of
$3,650 be forfeited and direct
(indiscernible) mount to return to
(indiscernible) to Batavia Downs and
redistributed to eligible entries be
upheld.

The Commission considered this
matter at a meeting conducted judicial or
quasi-judicial proceedings exemption of
New York Public Officer's Law Section
108.1.

MR. MOSCHETTI: The Commission
deliberated and considered this matter
discovered upon a vote of 5 to nothing to
sustain the Hearing Officer's report and recommendation.

MR. WILLIAMS: The next matter and final adjudication for today, on January 15th, 2020, the Bureau of Licensing denied the application of Steven Shoemaker (ph.) for gaming employee license and registration to work as a dealer at the Tiago Downs Casino Resort and Nightclub. The denial cited New York Racing, Pari Mutuel Wagering and Breeding Law Section 1316(1)(a), 1318(b), 1318(l) which provides that the applicant must prove qualification by clear and convincing evidence, provide information required by the racing law, and for disqualification on the grounds of failure by the applicant to repay any debt owed to the State unless the applicant can provide proof to the executive director satisfaction of payment or arrangements to pay such debt prior to licensure.

Mr. Shoemaker requested a hearing which was conducted on March 11th, 2020.
The hearing officer submitted a report to the Commission secretary dated April 22nd, recommending that the registration be granted. The Commission considered this matter at a meeting conducted pursuant judicial or quasi-judicial proceedings exemption of meeting Public Officers Law Section 108.1.

MR. MOSCHETTI: The Commission duly deliberated and considered this matter and determined upon a vote of 5 to nothing to sustain the hearing officer's report and recommendation. However, there's one small modification on page 16 of the report. The last sentence there's a typographical error. Instead of Steven Shoemaker, it should say Steven Richard Shoemaker (indiscernible).

Next, we have old business. At the previous meeting we started some discussions regarding Lasix use nationwide and the use of the crop. Considering the length of today's agenda and the fact that the crop used to (indiscernible) continue to motivate
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stakeholders and to get (indiscernible) further discussions for the next meeting. (Indiscernible) we're all looking forward to that (indiscernible).

Does anyone have any other old business to consider?

Hearing none. Any new business? If there's no new business mentioned does anyone have any business?

UNIDENTIFIED MALE SPEAKER: I'd like to (indiscernible) the third chair. This is a vast improvement over our (indiscernible) chair.

UNIDENTIFIED MALE SPEAKER: We need to make this more permanent.

MR. SAMPLE: Yes, absolutely not.

UNIDENTIFIED MALE SPEAKER: Barry (indiscernible) he wants to chair. Peter did. I commend him for today's performance.

MR. SAMPLE: Thank you.

UNIDENTIFIED MALE SPEAKER: (Indiscernible).

UNIDENTIFIED MALE SPEAKER: I second that.
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MR. SAMPLE: Thank you.

MR. MOSCHETTI: That concludes our agenda. Anything else you want to talk about other than that? All right.

So traditionally we meet on the fourth Monday of each month. So today's meeting for May, the June date will be June 22nd for planning purposes. You recall (indiscernible) arrange it for us and get it all set up. So I hear no other items for consideration. The meeting is adjourned. Thank you, guys.

UNIDENTIFIED MALE SPEAKER: Thank you.

(End of recording)
CERTIFICATION

I, Allison Bloodworth, certify that the foregoing transcript is a true and accurate record of the proceedings.

Allison Bloodworth (-)
AAERT Certified Transcriber
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