

**COMMISSION MEETING
THURSDAY, OCTOBER 9, 2003
MINUTES**

Chair McLaughlin called the meeting to order at 1:37 p.m., at the Double Tree Hotel located in Spokane. She welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER LIZ McLAUGHLIN, Chair;**
 COMMISSIONER ALAN PARKER, Vice Chair;
 COMMISSIONER CURTIS LUDWIG; Kennewick
 COMMISSIONER JANICE NIEMI, Seattle;
 SENATOR SHIRLEY WINSLEY; Fircrest
 REPRESENTATIVE ALEX WOOD, Spokane;

STAFF PRESENT: **RICK DAY, Director;**
 ROBERT BERG, Deputy Director;
 ED FLEISHER, Special Assistant;
 DERRY FRIES, Assistant Director, Field Operations;
 AMY BLUME, Administrator, Communications and Legal;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

Director Day and **Chair McLaughlin** presented employee service recognition awards to Program Manager Gary Drumheller and Special Agent Supervisor Larry Boyd respectively, in recognition of their fifteen-years of service with the State of Washington.

- 1. Review of Agenda and Director's Report:** **Director Day** identified and reviewed inserts added to the agenda packet. He reviewed Thursday's agenda and noted that Item H – Default Hearing for Joe's Place Tavern has been removed from the agenda, they submitted their appropriate paperwork. **Director Day** reviewed Friday's agenda and noted there were no changes to the agenda as posted.

Director Day drew attention to the September Director's E-link message, addressing the separate but very important functions the Commission holds as both the investigator and the prosecutor in most all cases as the Commission enforces gambling laws across the state.

Decision on Public Policy Research for Charitable/Nonprofit Gambling: **Director Day** recalled that at the September Commission Meeting, the Commission had a lengthy discussion about a project to possibly conduct research relative to gambling taxes. Ultimately, the Commission slimmed down the topics, narrowed the study, and asked staff to prepare a report by bringing together existing information, and to determine if additional supplemental staff may be needed to produce the report. **Commissioner Parker** inquired when the report would be completed. Director Day anticipated March.

Director Day reported the Commission deferred action on the proposed study regarding the nonprofit issue for further discussion and final decision for the October meeting. Staff provided a recommendation and outlined the deliverables intended from the proposed study. Director Day noted that a lot of the discussion at the last meeting centered on possible out-of-state new games, and although that was one of the issues identified, he pointed out several other things that were very important to that study as identified in the deliverables developed by the committee. He addressed the item of whether the Commission passed rules that supported the Legislative intent, and as determined by the study whether the net return and suggested cash flow requirements supported the Legislative intent and/or if there were any rule changes recommended. Director Day suggested the questionnaire asks the person conducting the study to examine how Bingo and other charitable and nonprofit games are occurring today, including a comparison of large operations verses small operations. He believed the study should attempt to take a look at what has transpired in charitable and nonprofit gambling operations, and determine if that conforms with what the Legislature intended, and to give the Commission an outside point of view and recommendations that might help the Commission devise how the agency should handle and administer nonprofit gambling in the state. Staff recommends that the Commission authorize proceeding with the study in two steps. The first step would be to prepare for a request for proposals (RFP) for the study, and issue the RFP's. A contractor would be selected, and in January/February, the actual study would be proposed, at which time the Commission would see the proposed cost of the study. Staff would then intend to ask the Commission for authorization to proceed with the process if approved.

Chair McLaughlin called for public comments. **Ric Newgard**, Seattle Junior Hockey Association, emphasized that if a study was conducted, he would like to see the emphasis of the study targeted on additional opportunities for the charitable industry that already exists in North America, rather than spending time on the Legislative intent. He hoped the focus would be on what would help the industry (other things that exist) and what could be utilized that isn't currently being provided in the state. Chair McLaughlin suggested that if there were other lucrative activities in other parts of the United States and Canada, the manufacturers and distributors would be trying to sell their programs and products in the state. Mr. Newgard affirmed, however, he believed there might be things going on that the local manufacturers don't represent or have access to. Chair McLaughlin responded that to her knowledge, Bingo was not a part of the gambling industry that was booming, even out of the state.

Commissioner Ludwig verified that Mr. Newgard was in favor of the study except with the portion dealing with the previous Legislature, intent, and history. **Mr. Newgard** affirmed. Commissioner Ludwig commented that a key point about the study was to help the Commission to do its job. Step

one would be to ask what the intent was in the first instance; why did we have the law, and what was the intent of the law. **Commissioner Ludwig** didn't believe that would be an expensive piece of the study, and he felt it would be relevant background—given the intent of the law from the point of view that the public's interest could be served by the law. The next question relates to how the Commission could best serve the public interest; is the Commission primarily interested in helping the industry, or are we interested in serving the broader public interest which would include what is best for the industry. Commissioner Ludwig emphasized the driver was the public's interest. **Mr. Newgard** agreed and believed that by helping the charitable industry, the industry in turn would better serve the public. Moving to options for the future and new games added in other states, Commissioner Ludwig questioned if the Commission would be studying what the options might be for future new games, or studying what the options would be for the Commission in terms of fulfilling its obligations. He believed it should be how to serve the interests of the public, and questioned if this was properly framed and properly defined.

Director Day addressed the deliverables identified in the agenda packet, and affirmed that three-quarters of the study was dedicated toward issues the Commission had direct interest in; how the rules have impacted what is going on in charities, the statewide charitable nonprofitable works, and a view of what might be going on in other states that the Commission might at least consider for Washington. It may include new games, or it might be rule changes; it could be any one of the above and the study wasn't intended to be focused just on new games. Director Day acknowledged it may be one of the products the consultant may find; however, it was not the focus of the study.

Chair McLaughlin inquired about the cost for a consultant. **Director Day** estimated from \$25,000-\$75,000, which is not unusual for an exhaustive research study. He emphasized that until an RFP is developed and responses are received, staff wouldn't have a solid feel for the costs. **Senator Winsley** commented that the Legislature has been squeezing down the spending funds of the Commission and cautioned staff on spending a lot of money on a study. **Commissioner Orr** agreed the Commission needed to be frugal; however, he also emphasized the Commission needed to be informed.

Chair McLaughlin asked Assistant Attorney General Jerry Ackerman to answer the questions raised regarding the Commission's responsibility to the public and/or the industry. **Mr. Ackerman** explained that what the Commission chooses to study is largely a policy call for the Commission. However, he noted the Commission is one of enumerated powers—and particularly so when dealing with charitable and nonprofit gambling. The words "charitable and nonprofit gambling" are terms in the statute. Mr. Ackerman advised that what this Commission can do with regard to regulations, is limited by a number of statutes in regulation 9.46, and not just the regulative intent section. He noted that Director Day was proposing that a portion of this study would actually define for the Commissioners what the Commission's powers were, so the commissioners could then decide what regulatory scope was available. Mr. Ackerman suggested that it certainly would not avail the Commission to find a new game in Florida that was beyond this Commission's power to allow in the state of Washington. However, the information may be useful should the Commission decide to use its authority under 9.46 to make a recommendation to the Legislature to allow that game.

Director Day commented that in his two year tenure with the Commission, there have been a lot of discussions about the future of charitable and nonprofit gambling in the state of Washington. There have been questions about whether or not the Commission was moving in the right direction in reference to the experiences with cash flow and rule-making. Licensees have even suggested that the Commission didn't really understand the scope of their actions, and that this Commission essentially through its actions could put a charitable nonprofit organization out of business. He emphasized this study was designed to give the Commission an independent view—to take an overall look at what we've done as a Commission, to consider potential options, and to provide the Commission with the best facts as we move into the future. It would give the Commission an opportunity to be able to be better prepared.

Julia Puckett, Boys and Girls Clubs of South Puget Sound, spoke for the Charitable Nonprofit Voice (CNPV), a group of nonprofit games. She reported that the CNPV and the Boys and Girls Club Finance Committee were in favor of the study. They were excited about the study and thought that it would be beneficial for the Commission and staff to get a handle on “where we have been and where we are going.” Ms. Puckett believed that organizations needed to know where they have been before they could decide on where they were going.

Don Kaufman, Big Brothers, Big Sisters of Spokane, addressed the comment about manufacturers and he affirmed there are games being played in Bingo halls across the country that aren't allowed in Washington. They are using variations of pull-tab games and roll-call type games, and it is anticipated that in the future there may be some cap put on progressive type games which are played much differently in many other states. Mr. Kaufman believed this would be a helpful study and it would help the industry in the future. Regarding the cost, he believed that if it kept one more nonprofit in business over the next 5 to 10 years, the \$75,000 seemed like a drop in the bucket. He noted the industry has lost many games in the last five years, and if the industry could stabilize it would be a real step forward in terms of the services for youth, seniors, battered women, and all the other services that are being supported. Mr. Kaufman reported that he was in support of this study.

Commissioner Niemi advised that she supported most of the proposal. However, she had concerns with the option for the future of new games to be added. She didn't believe that had anything to do with what the Commission should be doing. She explained that in the short time she has been with the Commission, she has noticed a lot of changes in the figures the nonprofits are bringing in—there have been a lot of agencies that have dropped out, and the Commission has had many, many discussions on things like variances. Commissioner Niemi believed the study made a great deal of sense; however, she was not in favor of the Commission seeking new games as indicated in section two of the proposal.

Ernestine Farness, Seattle Jaycee Bingo and Vice President of the Charitable Nonprofit Voice, reported that the Seattle Jaycee Bingo supports the study. She explained the study would certainly help everyone know how the regulations came about, who brought the regulations in, and what games might be available from outside of Washington to benefit the charitable nonprofits. She commented that if there are games that are not acceptable in Washington, it would be appropriate to know why. She didn't believe it was the intent of the study to ask the Commissioners to look for

ways to make the charitable operations more profitable. However, it would certainly answer the question regarding the Commission's role in regulating—and whether nonprofit organizations were being regulated out of business.

Commissioner Ludwig expressed concern in relation to Mr. Newgard's comments regarding the Legislative intent and history time line. He suspected that the answers to these issues are already known by at least some people on the staff or the staff general. He concurred that he would hate to see the Commission spend money to do research that may have already been done, and where the information already exists and may be known by members of our staff. **Director Day** responded that as staff designed the study, part of the intent was a foundational step that wouldn't be that costly to obtain. In order to get a good grip on what recommendations might be appropriate for the Commission in relation to which laws have been passed and implemented by the Legislature, it seemed appropriate that the consultant would take a look at the history to provide that foundation, and before offering suggestions that didn't get to what the law intended in the first place. Director Day didn't believe that portion would not be all that time consuming or difficult.

Commissioner Parker inquired if that task could actually be done in-house by having staff assemble the information already available in a way that would provide a starting point for a contractor to study. Commissioner Parker believed there was value in going outside of the agency to get an independent objective analysis of the ultimate policy questions, because the Commission could tend to be a little too wedded to their own opinions about those things. He believed this portion of the study could be a straightforward library research of the rules that supported the legislative intent as determined by the study, which was determined by information referred to the legislative history. Regarding the options for future new games added in other states, he suggested there might be a way to redefine that point in a way to reach agreement; not to engage in research on what additional games were authorized in other states for the nonprofit sector (primarily assisting the industry in-house), but from the point of view of helping the Commission to see what is out there from the point of view of the Commission's primary mission. **Director Day** affirmed that staff would definitely be one of the sources a consultant would use, and staff would work with the consultant to help reduce cost and provide information where appropriate. He concurred with the concept that the Commission was not in the business of going out to find new games; on the other hand, it is also not the Commission's mission to have regulatory requirements that cause difficulty for the charitable organizations to do business. Commissioner Parker asked if staff had any examples of new games that are not authorized in this state that might be eligible to be offered. Director Day responded in the negative, noting the Commission's focus has been from the regulatory application of the rules and how that affects charitable organizations.

Commissioner Orr appreciated the concern expressed and he believed the history was already available. He supported conducting the study, knowing full well this was a skeleton that hasn't been flushed out. He emphasized the Commission didn't know what games are out there because that isn't our area of expertise. However, if in fact the Commission was supposed to be somewhat supportive of nonprofit and charitable gambling in the state and allow it or regulate it, it would be appropriate for the Commission to talk about it and have some knowledge about what is going on in other states. Commissioner Orr supported getting started today—getting the information, getting the

history, and getting together. **Commissioner Ludwig** agreed with getting moving; however, he suggested having a green light on the proposal generally, but keeping in mind some of the comments expressed. **Commissioner Parker** advised he was in favor of the study, but noted that he would prefer to see an additional draft at the November meeting before giving the green light. He suggested identifying examples of potential new games. He believed the more help the Commission could give the RFP/contractor, the more focused and productive their work would be. **Chair McLaughlin** agreed with Commissioner Parker's comments to look at it again and come back with an RFP outline. She noted the industry seemed to be in favor of the study and that it was their money paying the fees. She supported moving forward. **Director Day** responded that staff would work with the Commission to make sure it's a workable and useful document. **Ms. Blume** affirmed her willingness to provide a draft RFP to bring back to the Commission, thereby providing the Commission with more details. The next step would be to issue the RFP and bring those results back to the Commission.

Commissioner Ludwig made a motion to table this item for one month in order to give staff an opportunity to provide more information and provide a more specific outline given the comments provided. **Commissioner Niemi** seconded the motion. *Vote taken; the motion passed four to one, with Commissioner Orr voting nay.*

Director Day proceeded with his Director's Report:

Digital Surveillance Presentation - **Director Day** commented that one thing very clear about the gambling industry is that technology was always challenging and moving forward very rapidly. In response to some of those changes, the Commission recently adopted new rules concerning digital surveillance. Director Day introduced Special Agent Jim Dibble, who was present to familiarize the Commission with the technology and digital surveillance since this technology may essentially replace video surveillance in the state.

Mr. Dibble noted the purpose of the presentation was to provide a basic understanding of the agency's digital surveillance technology, and the differences between analog and digital surveillance technology. The principal feature of analog technology is that the representations are continuous in nature (examples: clock, record player, audiocassette player/recorder). In contrast to analog, digital technology consists of representations measured at distinct or discreet intervals (examples: liquid crystal diode watch, compact disc player, computer hard drive and digital recorder). Mr. Dibble provided definitions for true time (30 frames per second), real time (at the same perceptible speed that they would occur in real life, 25-30 frames per second), and time lapse (recording at a rate of below 25 frames per second which shows jerkiness). He addressed resolution, noting that black and white is clearer than color. He discussed storage measurements (bytes, kilobytes, megabytes, gigabytes and terabytes) and watermarking. Mr. Dibble also briefly discussed the major differences between analog and digital recording and described digital surveillance configurations (single and dual channel digital surveillance systems, and multiple dual and 16-channel digital video recording system, and an Enterprise Class video surveillance system).

Chair McLaughlin inquired how many licensees in the state of Washington were using digital surveillance systems. **Mr. Dibble** responded that off reservation land there were none. He reported

that some of the tribal casinos have digital surveillance and some are negotiating for future implementation. **Chair McLaughlin** asked about the cost difference for digital versus analog systems. **Mr. Dibble** indicated the costs are minimal for analog systems. Typically for a 15 table card room, expenses are estimated at \$20,000; however, a digital system for the same facility are estimated at \$50,000. Costs depend on the number of cameras and the number of DVR's that have to be used. He noted that analog systems are very labor intensive, whereas, the digital system is electronic. Other major differences include search capability and other transmissions of data. Electronic transmission is also a large area. Since recorded images are already in a digital medium they can be easily transmitted electronically for a variety of investigative and administrative purposes, such as writing them to either a CD or a DVD, or printing single or multiple images on a printer. Mr. Dibble advised that while he highlighted some of the major differences, there were many more and he closed his presentation by showing some of the typical digital recording configurations.

Chair McLaughlin addressed the estimate cost for a 15-table card room, and noted the Enterprise Class was quite a bit higher. She inquired about the cost for 100 cameras. **Mr. Dibble** estimated \$250,000 or more.

Deputy Director Berg reported that the Yakima tribe is currently using digital surveillance, while the Swinomish, Puyallup, and Kalispel tribes have done rather extensive research and development. He reported that three months ago, a presentation on the digital surveillance was provided at the Tribal Gaming Director's quarterly meeting. Mr. Berg affirmed a lot of work was being done in the tribal arena because of the size of their facilities. Mr. Berg noted that whether we realize it or not, when we walk into a mall or a bank, there are cameras. There are banks of cameras that are larger than what we have in most of the house-banked card rooms—and it's a huge industry, specifically for loss prevention. He concurred the industry would grow, possibly driving the cost for the technology down.

Commissioner Parker asked if the Commission was considering requiring digital surveillance capability. **Mr. Dibble** responded the Commission would not require digital surveillance. However, he predicted that the analog surveillance would go away because when it is compared to digital systems, it is an inefficient system. As technology develops, it would cost even more to purchase analog recorders and to maintain them. Digital is a merging technology and very dynamic. Commissioner Parker asked if these systems are wireless. Mr. Dibble affirmed. There were no further questions.

Director Day continued with his report by addressing Legislative Activities. He noted that staff appeared before the Senate Commerce and Trade Committee regarding the local authority to prohibit gambling. At the meeting, staff emphasized that the Commission was always open to discuss different approaches that might be available. Director Day reported that the Commission has also been requested to appear at a meeting before the House Commerce and Labor Committee on November 12. Director Day reported that he also received notice that the Task Force to study ways to enhance revenue from gambling is scheduled to meet on October 27. He noted that by statute, the Director of the Gambling Commission is one of the task force members, as well as a representative

from the Governor's office, the Lottery Director, and representatives of both the Senate and House. Director Day inquired if the Commission had any particular guidance, and reported that at this point, he intended to persevere with how the Commission has been approaching this issue—that the Gambling Commission is a neutral regulator, and that it is our responsibility to provide the facts and impacts to the best of our ability. He advised the task force will be required to provide a report in January 2004.

2. Group IV Qualification Review:

Mid Columbia Coalition for Children (MCCC), Pasco:

Deputy Director Berg reported this qualification review was for the year ending 2002. The Mid Columbia Coalition for Children was founded in 1974, and has been licensed by the Commission since 1976. The organization, through four childcare facilities in the Tri-Cities area provides services to low-income families employed in agriculture related work. Those services include child care, preschool nutrition, health, transportation and parent community involvement. The organization has 26 FTE's represented by over 100 part-time employees as well as 66 volunteers who provide these services. This organization holds a Class J Bingo and Class M Pull-tab license. Historically, this organization received between 15-30 percent of their operating funds from gambling. For the year analyzed, Commission staff determined this organization made significant progress towards their goals as a nonprofit and are therefore qualified as a nonprofit organization to operate with a license from the Gambling Commission. Staff recommends that Mid Columbia Coalition for Children be certified to conduct gambling activities in the state of Washington as a nonprofit organization. Since 2000, the net income available for their charitable purposes has increased from \$291,000 in the year 2000 to \$316,000 in the year 2001, and to almost \$350,000 for 2002. Mr. Berg noted they seem to have a greater return to their charities than like class-licensed establishments in the area, as well as on a statewide average. He introduced Glenna O'Neil the finance Director of the organization, as well as Terri Fleischmann the Executive Director, and Jenea Landis, Chair of the Board of Directors.

Terri Fleischmann distributed documents providing detailed history about the organization. She affirmed that times were changing and they no longer focused strictly on agricultural minded, migrant seasonal workers. The organization was moving to develop a community-wide supervised visitation center, and they were working closely with their local school district grant (*Safe Schools, Healthy Students*), and developing programs along the lines of performing programs for larger family systems, and providing bi-lingual programs. The organization was also considering application to performance, and childhood education in collaboration with the local universities, colleges and the other child network systems. The MCCC has recently been granted a collaboration grant with the Head Start program to expand their educational system for families and children. **Commissioner Ludwig** congratulated the organization on their fund raising success.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to certify Mid Columbia Coalition for Children located in Pasco to conduct gambling activities in the state of Washington as a nonprofit organization. Vote taken; the motion passed with five aye votes.

3. Manufacturer Report: Derry Fries

Gemaco Playing Card Company, Blue Springs, Missouri:

Derry Fries, Assistant Director, reported this organization has applied for a Class F manufacturer license. Gemaco manufactures primarily playing cards and table layouts for gaming tables. The company has been licensed since 1997; however, a new license is required because more than 50 percent of the organization's stock was purchased by new owners as a result of a company merger. They have applied for a new class F license. The applicants manufacture playing cards. Corporate headquarters is located in Blue Springs, Missouri. Corporate ownership is as follows: Diana Summers, President and Director owns 76 percent of the stock, Danny Carpenter, CEO owns 19 percent of the stock, and Jason Fitzhugh, Director of Sales & Marketing owns 5 percent of the corporate stock.

Special Agents of the Financial Investigations Unit conducted a personal and criminal background investigation on all officers, board members and spouses, and other substantial interest holders and initiated and completed a review of the corporate and financial records in August 2003. Financial records were reviewed for indications of undisclosed substantial interest holders and violations of Washington State laws and regulations. Criminal and personal history background checks were completed on the officers, board members, and all other substantial interest holders. There were no exceptions noted during the review. The sources of funds were verified and nothing unusual was noted. They are licensed and/or certified in 60 tribal and other jurisdictions in the states and in Canada. Based on the investigation, staff recommends licensure of Gemaco Playing Card Company as a Class F Manufacturer. Mr. Fries introduced Danny Carpenter.

Mr. Carpenter addressed the Commission and expressed his appreciation for the polite and professional dealings with commission staff especially with Agent Keith Schuster and Mr. Fries. **Chair McLaughlin** called for public comments and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to license Gemaco Playing Card Company as a Class F manufacturer. *Vote taken; the motion passed with five aye votes.*

The United States Playing Card Company, Cincinnati, Ohio:

Mr. Fries reported this organization has applied for a Class B manufacturer license to market playing cards in the state. Both the corporate headquarters and the manufacturing plant are located in Cincinnati, Ohio. The company produces playing cards for retail, wholesale, and casino distribution. United States Playing Cards is 100 percent owned by USPC Holding Inc., which is 100 percent owned by Bicycle Holding, Inc. Bicycle Holding Inc. is owned by the following shareholders: Dudley Taft, Chairman of the Board owns 16 percent of the shares, John Hancock Life Insurance holds 12.13 percent of the shares, and 71.28 percent of the shares are owned by minority stockholders, none of which own more than 6.55 percent, which is below the commission's threshold for a substantial business holder in a privately held corporation. Special agents conducted a personal and criminal history investigation on the company and all substantial interest holders. They have not previously held any licenses in the state. The company was incorporated in 1994 and has been manufacturing playing cards in its current location since 1881. They manufacture a full line of playing cards for retail, wholesale, and casino distribution.

Commission agents began their on-site investigation and review of corporate and financial records in June of 2003. Staff performed an analysis of the corporate financial statements and federal tax returns for undisclosed interests in the applicant. Personal tax returns were reviewed for undisclosed interests, verification of employment, and other sources of income. Criminal and personal history background checks were completed on key employees, officers, board members, spouses and all other substantial interest holders. No disqualifying information was noted. Financial records were also reviewed. There were no exceptions noted during the review. Based upon the review, financial documents, and criminal background information, the applicant is qualified for a manufacturer license. Therefore, staff recommends approval of the United State Playing Card Company as a Class B manufacturer. There were no representatives present. **Chair McLaughlin** called for public comments and there were none.

Commissioner Orr made a motion seconded by **Commissioner Niemi** to license The United States Playing Card Company as a Class B manufacturer. *Vote taken; the motion passed with five aye votes.*

4. House-Banked Card Room Reports:

Point Defiance Café, Ruston:

Mr. Fries reported that Point Defiance Café & Casino, LLC d/b/a Point Defiance Café, is located in Ruston, Washington. The applicant has applied for a license to operate seven tables of house-banked card games. The applicant was formed as a limited liability company in March 2003. The LLC headquarters is also located in Ruston. The Point Defiance Casino LLC consists of: Steve Fabre, LLC manager and his wife Kathleen Fabre, LLC member, each with 50 percent of the shares. This applicant has no other house-banked licenses at this time.

Special agents from the Financial Investigations Unit conducted criminal and personal history background investigations on all substantial interest holders, and initiated and completed a financial investigation on both the LLC and the personal finances of Mr. and Mrs. Faber. In the course of that investigation, no disqualifying information was found that would preclude licensure. Special agents also conducted an on-site pre-operational review and evaluation (PORE), in accordance with the rules of the Commission. The applicant was found to be in compliance with the rules of the Commission. Based on the results of the licensing investigation and the PORE, commission staff recommends that Point Defiance Café & Casino, LLC d/b/a Point Defiance Café be licensed as a house-banked public card room and be authorized to operate up to seven tables with a maximum betting limit of \$100. **Mr. Fires** introduced Jack Patterson, the applicant's Casino Manager.

Commissioner Ludwig inquired when they planned to start dealing cards. **Mr. Patterson** replied hopefully by the 18th of this month.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to license Point Defiance Café as a house-banked card room authorized to operate up to seven tables with a maximum betting limit of \$100. *Vote taken; the motion passed with five aye votes.*

House-Banked Card Room Status Report:

Mr. Fries reported that there are now a total of 79 card rooms in our state, 77 are licensed and operating and there are two that are licensed and not operating. There are a total of 12 applications pending at the present time. Two establishments recently went out of business; the Wild Goose Casino in Ellensburg and the Sunset Café & Loose Wolf Casino in Cle Elum. He reported that effective with today's action, the Commission just approved the 100th card room in the state; on the other hand, 20 have closed their doors.

5. New Licenses, Changes, and Tribal Certifications:

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve the new licenses, changes and Class III tribal certifications as listed on pages one through eleven on the approval list. *Vote taken; the motion passed with five aye votes.*

Chair McLaughlin called for a recess at 3:20 and recalled the meeting at 3:45 p.m.

5. Default Hearings:

Valerie Colson, Card Room Employee, Chips Casino:

Amy Blume, Administrator, Communications and Legal Department, reported that staff would be presenting seven default orders. Valerie Colson's is based on Ms. Colson taking several \$100 chips from the chip tray while she was acting as a dealer at Chips Casino. The Director brought charges against Ms. Colson, which were sent by regular and certified mail and they were received. Under Commission Rules service is considered complete either by certified mail or after three days when it is sent by regular mail (as long as it was properly stamped and addressed). The legal secretary also tried to contact Ms. Colson. This was a courtesy call, because staff wanted to make sure that the individual understood the process, and that staff would be requesting a default order. The telephone number on file had been disconnected, as well as the employer's number since they were no longer open. By failing to respond, Ms. Colson has waived her right to a hearing. Staff is requesting a default order be entered revoking her license.

Commissioner Niemi, presiding over the hearing, asked if Ms. Colson was present, or if anyone had anything that they wanted to add to this matter about the default. There were no comments and Commissioner Niemi asked if there was a motion that Valerie Colson's license to conduct gambling activities be revoked as of the date the order is signed. She acknowledged the APA has rules that stipulate that regular mail service is appropriate, and she affirmed there were no questions in her mind to these findings and conclusions.

Commissioner McLaughlin made a motion seconded by **Commissioner Orr** to uphold the findings and conclusions of the hearing officer and to revoke Ms. Valerie Colson's card room employee license. *Vote taken; the motion passed with five aye votes.*

Tia Seto, Card Room Employee, Wizard's Casino:

Ms. Blume reported staff was also requesting a default order be entered in the matter of Tia Seto. Ms. Seto was formerly employed as a card room employee at Wizard's Casino. While dealing the

game Fortune Pai Gow, Ms. Seto allegedly viewed her hand and then on one hand also told patrons what cards she had. The card room subsequently terminated her, charges were sent by registered mail and certified mail. The charges sent by certified mail were returned; however, under Commission rules, service was completed through the charges sent by regular mail. Licensees are required to notify the Commission whenever they have a change in address. The legal secretary tried to contact Ms. Seto and was unsuccessful. By not responding to the charges Ms. Seto has waived her right to a hearing. Staff requests a default be entered revoking the license.

Commissioner Niemi asked if Ms. Seto was present, or if anyone had anything that they wanted to add to this matter about the default. There were no responses.

Commissioner Orr made a motion seconded by **Commissioner McLaughlin** to revoke Ms. Tia Seto's card room employee license. *Vote taken; the motion passed with five aye votes.*

Ms. Blume advised that the next five cases deal with licensees failing to submit their Quarterly Activity Reports on time. These reports list the revenues and expenses and are required to be submitted once a quarter.

1986, Startup:

1986 failed to submit their reports for the first and second quarter reports when they were due in April and July 2003 respectively. Staff finally received the first quarter report, three and a half months after it was due; however, the second quarter report is still outstanding. The Director brought charges against the licensee. The licensee returned the request for hearing form, explaining that they did not want a hearing and asked that the fine be reduced. The Commission has standard fines that can be facilitated in the form of an Agreed Order which is basically a settlement document. Staff sent a response letter explaining that 1986 needed to request a hearing to preserve their rights. By not requesting a hearing they waived their right to a hearing. Staff is requesting that a default order be entered revoking their license.

Commissioner Niemi noted that apparently this license had been expired as of last September 30; however, it appeared there were sufficient findings and conclusions to support the order to revoke 1896's license to conduct gambling activities as of this date. Assistant Attorney General **Jerry Ackerman** responded that it would be appropriate for the Commission to go forward with the default, explaining this would be treated similarly to a driver's license situation where it was already expired. He affirmed that it would be appropriate for the Commission to revoke the license even though it is in a sense a license that no longer exists. That allows the Commission to consider the prior license to be revoked when they make an evaluation as to whether or not the party would be eligible for a new license. He recommended the Commission enter the record of default.

Commissioner Niemi asked if there was anyone present to represent 1896 or who wanted to say anything about the default. There were no comments.

Commissioner Orr made a motion seconded by **Commissioner Parker** to revoke 1986's license to conduct gambling activities. *Vote taken; the motion passed with five aye votes.*

Chair McLaughlin commented that when she saw five quarterly hearing reports not being submitted by small operators, she wondered how necessary they were or if there is some way the reports could be streamlined to make them simpler for people. She then requested this question be deferred until the cases had been heard. **Ms. Blume** explained the financial reporting section was looking into how much information the Commission needed to collect. **Director Day** cautioned that the quarterly reports have been around for a long time and that staff was still collecting information on what information adds value and what information is valid. Staff is also in the planning stages of putting the reports on line, which, for a certain portion of the businesses ought to help with submissions.

Alyce's Restaurant, Hadlock House, T & E Grill, and Tip Top Tavern:

Ms. Blume explained the next four defaults were grouped together because they were very similar. Alyce's Restaurant in Woodinville has a Class D license. Staff has not received the reports for the first or the second quarter, which were due on April 30 and July 30, 2003 respectively.

The Hadlock House in Port Hadlock is a Class C licensee and staff has not received their second quarter report. This establishment also entered into an Agreed Order for Violation because they were late in submitting a previous report. As part of their Settlement Agreement they agreed they would submit all future quarterly activity reports on time. They have not.

T & E Grill located in Thorp has a Class A license. Staff received their second quarter report, but has not received their first quarter report.

Tip Top Tavern in Vancouver is a Class B licensee. Staff received their second quarter report one week after it was due. This was also an Agreed Order Violation, in which they agreed they would submit future reports on time and did not.

Ms. Blume noted all the charges were sent by certified mail. Two were signed for by the people that they were addressed to, and two others were apparently signed by people that were at the businesses. The agenda packet contains a memorandum outlining staff's attempts to contact the licensees. By failing to request hearings, they have each waived their rights to a hearing. Staff is requesting that default orders be entered revoking their licenses.

Commissioner Niemi inquired if there was anyone present from Alyce's Restaurant, from Hadlock House, from T & E Grill, and from Tip Top Tavern. There were no responses.

Senator Winsley inquired if these establishments were going out of business – or if staff actually talked to anyone at these establishments. She noted that some of these establishments have been in business for a long time, which didn't add up because these restaurants usually needed their punchboard and pull-tab activities, particularly in small areas. **Ms. Blume** affirmed that in two of the cases, Hadlock House and T & E Grill, staff did speak to people. Staff left messages at Alyce's and Tip Top. She affirmed that sometimes an agent may visit the premises. Agents receive a copy of the charges and often times, depending on their work load, they will contact the licensee and let them know that they are late and ask if they need any assistance.

Commissioner Parker made a motion seconded by Commissioner McLaughlin to revoke the licenses for Alyce's Restaurant, Hadlock House, T & E Grill, and Tip Top Tavern, to conduct gambling activities. Vote taken; the motion passed with five aye votes.

7. Other Business/General Discussion/Comments from the Public:

Gary Hanson, Executive Director, Council on Problem Gambling reported that last year, the Legislature passed a pilot program on problem gambling treatment. He advised that he was present to provide some preliminary findings from a recent evaluation report. The program was funded through the Lottery in a multi-state game passed in 2002. The money was available in July of 2002, and the Council was contracted to administer the treatment program—specifically to train 25 providers from around the state. They contracted eight PhD psychologists, 11 chemical dependency professionals, and six licensed mental health counselors. An objective was to make sure that treatment was available throughout the state of Washington, and that there was some ability to deal with diverse ethnic groups. The first clients were accepted effective November 1, 2002, through June 30, 2003. The program purpose was defined as getting people into treatment, to get problem gamblers back to work (if they were off work and/or Public Assistance), and to keep families together and resolve family issues or other problems associated with problem gambling. Clients accessed the program largely through the help line and through some industry sources. Still others came through drug or alcohol treatment referrals. In the eight months, 226 individuals accessed the program. Some were family members (independent of the gambler), who only came in for a couple of assessments. Essentially there were 117 clients that received some treatment and completed evaluations. Mr. Hanson affirmed there were people in treatment when the funding was cut on June 30; therefore, there weren't funds to continue treatment or funds to complete reports from providers.

An evaluation upon intake was facilitated by Dr. Randy Stenchfield, from the University of Minnesota. The client demographics were interesting, 48 percent were male, the average age was 43, 73 percent were white, 81 percent were high school graduates, 19 percent were college graduates, and 60 percent were employed full time when they accessed treatment. The average debt was as high as \$30,000 and had a medium of \$10,000. Over half the sample clients reported that they had missed at least a few days of work due to gambling directly. One in seven clients reported being on parole, probation, or awaiting charges, trial, or sentencing as a result of gambling related legal problems.

Another set of evaluation material was taken when the client left treatment, and then there was a three-month follow up. Only a certain amount of clients were eligible for the three-month follow-up because of the June 30 cutoff. Of the 117 people, one-third of the sample on the follow-up were abstinent from gambling at the follow-up period. Another third gambled less than once a week, which showed a substantial reduction in gambling. **Mr. Hanson** affirmed the information came from the gambler themselves when the providers conducted the follow-up via telephone. There was improvement in mental health functioning at the three-month follow-up. A client satisfaction survey was provided when the client left. The majority of clients were satisfied with the treatment services they received, and attributed their improvement to the program—testimonials were provided in the

agenda packet.

Mr. Hanson distributed a graph created by Dr. Rachel Volberg comparing some follow-up survey data in other states that have expanded gambling or had a growth in gambling at the same time they had/or did not have, treatment programs or programs to address problem gambling. All showed a decline while gambling was expanding, if they had services for problem gamblers. Mr. Hanson found the information useful, citing that states can have gambling, and they can address problem gambling, and they can live together if a comprehensive program exists. He also thought the report helped to show the importance of having some type of treatment available.

Chair McLaughlin and **Commissioner Orr** noted that some employers have employee assistance programs available for drug abuse, domestic violence, and etc., in their benefit package, and inquired if that was becoming more available. **Mr. Hanson** replied that insurance programs are better than they used to be—and any pressure from the state to make sure insurance companies covered this type of treatment would be much appreciated.

Representative Wood asked if eight months was enough time to make the report statistically viable. **Mr. Hanson** affirmed it was not; however, it did offer a sense of how the program was helping people, and it also said something about the need for the program. He believed a three-year program would be much more accurate.

With no other comments, **Chair McLaughlin** called for other public comments.

Wanda Presley, Seattle Casino, spoke on behalf of over 100 casino workers. Ms. Presley advised she has worked in the industry for close to six years. The industry is asking for higher table limits because the players want higher limits. She believed higher bet limits would be better for the people and better for the dealers because it would provide greater customer satisfaction. Players wouldn't have to go out of town or out of the state for higher limits. **Commissioner Orr** and **Commissioner Parker** thanked Ms. Presley for coming to Spokane.

John Johnson, an employee at a south Seattle casino, offered his personal opinion that higher betting limits would be in everyone's interest, the players, the dealers, and the casinos; everyone would benefit. **Megan Johnson** advised she also worked at the casino, and if higher betting limits were authorized, customers would appreciate the increase, and it would bring in more business.

Ernestine Farness, spoke on behalf of the CNPV, and noted that the fees for charitable and nonprofit organizations being on pull tab license fees was being discussed throughout the industry. She inquired whether the fees could be redistributed to the manufacturers and distributors of Bingo supplies and pull tables, and whether that would require a legislative change or simply by petitioning the Commissions. **Director Day** responded that the Commission sets the fees for each of the gambling licensees. Fees are established for manufacturers and fees are established for retail purposes. He verified if Ms. Farness was asking for a higher fee to be assessed to manufacturers and lower fees for the nonprofit organizations that sell pull-tabs. Ms. Farness affirmed, and explained that when the nonprofit pays their license fee, they have no way of passing that cost on; whereas,

distributors would have a means of passing the cost on. She acknowledged that part of the costs would come back to the nonprofit; however, that could be redistributed. Director Day replied that he understood the request, and reported that the Commission had received an e-mail from Representative Wood that carried the same suggestion. He acknowledged that staff would consider the request. **Representative Wood** clarified the message was from one of his local legislators.

Gary Murray addressed the discussion on the requirements for surveillance systems. He thought it was important to point out a discrepancy regarding the costs incurred for a system. Agent Dibble stated that it would cost approximately \$20,000 for a surveillance system (20 cameras) for a 15 table card room. Mr. Murray noted that he just installed an analog system last week at a cost of \$100,000—62 cameras were required to adequately cover a 15-table card room. When Mr. Dibble talked about \$20,000 he was representing a 20-camera system with very limited things, at basically a thousand dollars a camera for that very limited system. Digital systems may be as high as \$200,000 for the appropriate amount of cameras and coverage.

Julia Puckett, Boys & Girls Clubs, noted their organizations was growing into other counties and posed as question as to whether it would be a Commission or a legislative decision to allow more than one bingo operation outside of the county. For example, if the organization had a Clubhouse in Mason County, would there a way to get a license in Mason county as well as Pierce County. **Ed Fleisher** responded that per the statute, charitable nonprofits have to conduct the Bingo in the county where their main office is located. As far as the number of facilities allowed within that home county, that was not a statutory issue. Going to a different county would require a decision by the Legislature.

George Teeney, Phoenix Last Frontier Casinos, La Center, also addressed the issue of camera systems, and reported that in his two establishments, one has 84 cameras, and the second has 81 cameras. He clarified that Pantel Zoom cameras range from \$500 to \$5,000 per camera, and that licensees are mandated to have approximately six or seven of them in one casino. He advised the per camera cost doesn't include installation, cabling, the recording system, or the monitor. He agreed with Mr. Murray that the \$20,000 would probably only buy four Panasonic cameras without installation costs. Current WAC's mandate licensees to provide camera coverage on everything from the dealing machines to every entrance into the club—they mandate count rooms to have three to cameras, and one of them must be a Pantel Zoom. He emphasized that a digital system in compliance with the WAC would cost somewhere between \$160,000 and \$250,000. He affirmed there are many variables; however, the system would cost an excessive amount of money.

8. Executive Session:

With no further public comments, **Chair McLaughlin** recessed the meeting at 5:00 p.m., to conduct an Executive Session to discuss pending investigations, tribal negotiations, and litigation. At 5:50 p.m., Chair McLaughlin recalled the public meeting and adjourned the meeting. She announced that Friday's meeting would commence at 9:00 a.m.

**COMMISSION MEETING
FRIDAY, OCTOBER 10, 2003
DRAFT MINUTES**

Chair McLaughlin called the meeting to order at 9:05 a.m., at the Double Tree Hotel located in Spokane. The following members and staff were present:

MEMBERS PRESENT: **COMMISSIONER LIZ McLAUGHLIN, Chair;**
 COMMISSIONER ALAN PARKER, Vice Chair;
 COMMISSIONER CURTIS LUDWIG;
 COMMISSIONER GEORGE ORR;
 COMMISSIONER JANICE NIEMI;
 SENATOR SHIRLEY WINSLEY;
 REPRESENTATIVE ALEX WOOD;

STAFF PRESENT: **RICK DAY, Executive Director;**
 ROBERT BERG, Deputy Director;
 ED FLEISHER, Special Assistant
 DERRY FRIES, Assistant Director, Field Operations;
 AMY BLUME, Administrator, Communications & Legal;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

9. Minutes: Regular Meeting, September 11-12, 2003 – Leavenworth:

Commissioner Niemi made a motion seconded by Commissioner Ludwig to approve the regular meeting minutes of September 11-12, 2003, as presented. *Vote taken; the motion passed with five aye votes.*

Chair McLaughlin asked if the Gambling Commission was “in the room when the odds were set for the machines that are operated in the Indian Casinos.” **Director Day** reminded the attendees that all the compacts carry a minimum of 75 percent payout for any machine in the state. When the games are produced, the payouts are built in the games and they are then tested by two laboratories, one is the Commission lab, which tests for compliance. There are a few games that can be adjusted from 75 to 100 percent; however, that is the limit for the adjustment and Commission staff work in cooperation with tribal gaming agencies across the state. If there is a reason for the Commission to

have access to a casino, that is accomplished with reasonable notice. **Chair McLaughlin** clarified that the developer of the software sets the odds or the payout when developing the software, however, the casino may set the payout at no less than 75 percent. **Director Day** affirmed the Commission would not allow a game to be approved with a payout of less than 75 percent. He explained that in most cases this would be over the aggregate, and in most cases payouts would be in the 90 percentiles. He affirmed there were a few games that allow the tribes to set the payouts between 75 and 100 percent.

Rules up for Final Action

10. Minimum Bankroll for House-Banked Card Rooms:

WAC 230-40-833:

Deputy Director Berg reported the amendment to WAC230-40-833 is proposed to make sure that sufficient cash is on hand to pay prizes. However, staff is asking this rule be held over until the November meeting. Through numerous get-togethers with the industry and our staff, the group has been struggling to develop a work sheet that works for the industry and works for the regulators because essentially the worksheet determines how the rule will be applied. Staff is continuing to work with representatives from the card rooms on this issue and should have something for the November meeting. The Commissioners concurred.

11. Promotions for Gambling Activities:

WAC 230-12-050, WAC 230-20-050, WAC 230-20-052, WAC 230-20-190, WAC 230-20-242:

Amy Blume, Administrator advised this rule was up for final action. Item 11(A) repeals the rule that restricts Bingo operators from transporting out of state Bingo players into Washington. This is an issue Commissioner Ludwig brought up several months ago. The effect of the rule would be that Bingo organizations could transport bingo players as often as they want to.

Item 11(B) is a housekeeping rule that goes along with 11(A). Item 11(C) was meant as a housekeeping change to go with the bussing rule, and staff re-wrote the remainder of the rule to make it clearer. At the last study session, staff received a number of questions about the language and licensees wanted to know if they would have to notify the Commission each time they wanted to give funds to a specific person. That was not the intent, and staff is continuing to look at this issue and may have a proposed amendment, or may withdraw the rule.

Items 11(D) and (E) deal with the rules that were passed in 2000 to streamline promotions related to gambling. 11(D) deals specifically with the free play for Bingo players, and staff is asking for it to be repealed. Item 11(E) similarly deals with creativity and originality contests and staff recommends repealing this section because they are covered in the same rule because they are promotions. Staff reviewed the concept behind this restriction and determined regulatory concerns are not sufficient to continue with the restriction. Therefore, staff recommends allowing Bingo operators unrestricted opportunity to transport players to their games, and that this rule be repealed.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to follow staff's recommendation to repeal WAC 230-20-052. *Vote taken; the motion passed with five aye votes.*

Julia Puckett, Boys and Girls Clubs in South Puget Sound, stated her organization was in favor of the decision. She explained her organization is already in contact with several senior and assisted living organizations and making decisions and arrangements. **Ms. Blume** noted the rule would become effective January 1, 2004.

12. Card Tournaments/Customer Appreciation Tournaments:

WAC 230-40-055:

Ms. Blume reported the card room tournaments/customer appreciation rule was proposed by licensees at the June study session. The rule limits the amount that may be required for a buy-in when setting up a game. The rules were originally passed in 1985—there was an increase made in 1986, however, the amounts have remained unchanged for the past 17 years. The proposed rule would increase the maximum entry fee from \$50 to \$100, and the buy in would be increased from \$200 to \$400. Ms. Blume noted that increasing the amounts is a policy call. There were no public comments.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to adopt WAC 230-40-055 as recommended by staff. *Vote taken; the motion passed with five aye votes.*

Jerry Ackerman, Senior Council with the Office of the Attorney General's Office verified the motion to be that the Commission adopted the amended (Version #2) rule, with the language as provided by staff and as proposed by the licensees. **Commissioner Parker** and **Commissioner Orr** affirmed that was their intention.

13. Petition for Rule Change by the Recreational Gaming Association - Increasing Betting Limits for House-Banked Card Games:

WAC 230-40-120: Chair McLaughlin explained she would allow 20 minutes for comments in support of the petition and 20 minutes for those against the petition.

Ms. Blume reported this rule is up for final action, it is a petition that was submitted by the Recreational Gaming Association to increase the betting limits from \$100 to \$300, and that staff recommends final action. A memorandum was provided in the agenda packet giving the history of changes that have been made with card rooms and addressing regulatory issues. The memo explains that staff is not offering a recommendation because this is primarily a policy decision. Ms. Blume highlighted the issues and considerations. One is that an increase in betting limits would be considered to be an expansion to gambling by some people. She noted the last legislative session did not authorize any changes to the statute regarding the types of games or operation of gambling in the state of Washington. Secondly, increasing betting limits for one segment of the industry may increase the pressure to raise the betting limits for another segment, and, she explained Tribal state compacts currently authorize a \$500 betting limit.

Ms. Blume explained that in August, staff was asked to provide information about what constituted an expansion of gambling. Mr. Fleisher provided a memorandum explaining that the expansion of gambling is actually a legal question that arises when the Legislature passes gambling legislation.

The state constitution requires a 60 percent vote of each house to pass legislation that would authorize lotteries, and under the constitution all forms of gambling are lotteries. She affirmed the factual and policy answer to this question is subject to a lot of opinion and debate. Referring to Mr. Fleisher's memo, Ms. Blume highlighted how gambling expansion could be defined. One is that it means those actions that require a 60 percent vote of legislature. Another is that it could be interpreted to mean any action that increases any new type of gambling activity, such as an action that increases the wagering limits for gambling. Another definition would be if it allowed additional opportunities to gamble that would allow a new location where people could gamble or something that would increase the number of gambling establishments.

The Commission received a number of e-mails about this petition; 29 that were against the petition and 68 in support of the petition. Staff sent responses to everyone notifying them the rule would be up for final action and inviting them to attend the meeting. The Commission received two letters at Thursday's meeting, one from Representative Ross Hunter recommending the proposal be rejected, and a letter from Lt. Governor Brad Owen who supported the petition. Letters were hand delivered from the La Center Police Department and Treasurer of the City of LaCenter, both in support of the change, noting that it would give them increased tax revenues. These letters and emails show that there are opinions on both sides of the issue. **Director Day** noted that the e-mail record only reflected the e-mails submitted through October 7, which is when the agenda packet was assembled.

Commissioner Ludwig referenced an editorial in the October 9 local Spokane paper, which made reference to a \$1,500 wager on a single hand. He clarified that was wrong; that wager applies to Poker only, and the petition from the Recreational Gaming Commission applies only to games such as Black Jack where a player gets a single wager.

Commissioner Niemi addressed Mr. Fleischer's memorandum about the expansion of gambling and questioned whether or not this was a legislative issue or if this was something the Commission may change. She specifically addressed the possible policy issues as to whether it's a vote for the legislature, and whether expansion of gambling means any increases of wagering limits for gambling. **Mr. Fleisher** responded that his memo was an attempt to clarify that they are two different questions. One is a legal question, acts by the Legislature, under the constitution which require a 60 percent vote and other acts that are considered by some to be an expansion of gambling but don't require that 60 percent vote. In this case the legislature through RCW's have left to the Gambling Commission the authority to set the wagering limits for all types of card games. As there is no legislative action involved here, this is not a decision that would come under the constitutional 60 percent requirement. Mr. Fleisher deferred to Attorney General Ackerman. **Mr. Ackerman** concurred, noting the legal issue is when a new type of gambling is created, such as when the Legislature decided to allow social card games, which was an expansion of gambling. However, the ability to set wagering limits is specifically by statute within the authority of the Commission. While this may be something that looks to the layman as an expansion of gambling and certainly from a policy perspective it could be considered by the Commission and other policy makers to be an expansion of gambling, it is not an expansion of gambling as that word was used in the constitution. With no further comments, **Chair McLaughlin** called for public testimony.

Robert Higgley representing the Washington Evangelicals for Responsible Government (WERG), a statewide organization for Christians, believed the expansion of gambling has been an incremental thing in our state. He commented regarding the changes that have taken place with the Tulalip and Puyallup tribes since 1992 when gambling was first talked about with the Indians. He noted that special interests have taken the industry of lumbering away, that we don't have sawmills any more, but, that we are growing in gambling. He stated that increasing the betting limits from \$100 to \$300 per hand was an expansion in everybody's mind, except for perhaps the lawyers. He reported that abundant research shows that when casinos come to town, crime, fraud, addiction, and other social ills increase. He reported that Maryland makes \$46 per adult in gambling, while the social costs associated with gambling are estimated at \$219 per adult. Maryland is actually losing money while putting its citizens at risk for problem gambling and pathological gamblers. He noted the Governor has stated that the Commission was not supposed to do this, because the Governor wanted the legislature to take action so that the state could get the money rather than local governments. Mr. Higgle emphasized that the WERG opposes this petition.

Penny Lancaster, Director for the Community Impacts of Spokane, advised she was representing hundreds of citizens in Spokane who are concerned about the issue of gambling. She noted that Spokane has 14 public card rooms, 6 house-banked mini casinos, and eight fee to play card rooms. Then there is charity Bingo, the state lottery, and the tribes, all competing for the perspective gamblers attention and money. She acknowledged the commercial outlets want to increase their take by making it easier for people to spend three times as much money, three times as fast. She noted they probably have marketing strategies already devised to celebrate this new privilege.

Ms. Lancaster suggested that the Commission should do everything they could to assist the gambler be more responsible in calculating and tracking his/her risk by: (1) Limiting the single bet to \$100 a hand or less, (2) Limiting the number of hands that can be played at a time—it was Ms. Lancaster's understanding that people may bet any number of hands at a time on some games, (3) Setting a loss limit of perhaps \$500 per day per casino, (4) Requiring the casino to remit a statement by mail to the home address of the gamblers who have lost a total of perhaps \$1,000 or more a week—listing their wins and losses, and, (5) Raise the age limit of gambling to 21. She believed these were the kinds of rules the Commission should be considering for the sake of accountability, responsibility, and public protection. She didn't believe it was the states' burden to save the economy of any enterprise, especially an enterprise that causes a negative impact on society. Ms. Lancaster indicated that gaming causes embezzlement, children being left alone while parents gamble, murders committed for insurance money, suicide, divorces, and etc.—and that all this came with a price tag to the taxpayer, in addition to the human toll. She suggested reducing and containing that kind of entertainment, not expanding it. She believed that should the commercial outlet obtain this concession, the floodgates would open with appeals by all the other categories of this broad industry. Ms. Lancaster said there has clearly been a growth in gambling in which the state has been a major player. She thought the state and its agencies should be a protector not a predator, and if the Gambling Commission should allow card rooms to raise the bets to \$300 per hand, they would be putting the special financial interests of a commercial enterprise above the welfare of the public. Ms. Lancaster concurred that raising the betting limit was not really a rules change as much as it was an effort to expand the scope and function of a restaurant, bowling alley, or tavern that originally

wanted to offer an enhancement for the food, bowling and beverage sale. She thanked the Commission for taking this issue seriously and listening to the public's opinion before casually making a simple rule change. **Commissioner Parker** recommended that Ms. Lancaster consider submitting her suggestions as rule changes.

Marilyn Montgomery, a resident of Spokane, advised she was opposed to the expansion of gambling and she believed that raising the betting limits would expand gambling. She believed that \$100 a hand was high enough for any high roller, and reported that the average annual income in Spokane was about \$27,000. Many people are without jobs and are looking for a quick way to make money, and they are enticed into the card rooms conveniently located in restaurants and bowling alleys. She suggested that increasing betting limits was probably a poor way to gain additional tax revenue. Ms. Montgomery asked the Commission to lower the betting limit and lower the number of hands that could be played at one time. She asked the Commission to vote negative on the petition.

Cindy Zapotolly, resident of Spokane, a former teacher at the Washington State University and the University of Hawaii. She introduced into the record a copy of the National Gambling Impact Study Commission final report issued in the year of 1999. The Commission of nine bipartisan appointed members met for years gathering information about the nature and impact of gambling in communities like Atlantic City and Las Vegas, as well as the historical growth of tribal gambling. The facts and figures are contained in the report along with the passionate conclusions of all the committee members. Some of these members came away with the opinion that no more people would be hurt within the communities where gambling was the main force, and that gambling would not spread any further. Others such as the former chairman of the Nevada Gaming Commission Control Board, continued to cautiously support well regulated gambling at state levels. All agreed that states needed to be extremely careful about expanding gambling. All agreed that it does hugely damage some Americans, and that damage should be studied and limited if possible.

Ms. Zapotolly emphasized that the most important Commission recommendations to note are as follows: the moratorium on further expansion of gambling, a ban on neighborhood gambling operations, restrictions on political contributions, curbs on lotteries depleting the poor incomes with deceptive advertising, and raising and enforcing the gambling age up to age 21. Ms. Zapotolly noted that her family believed that raising the betting limits expands gambling, and she asked the Commission not to do that. She asked the Commission to read the report and consider the pathological effects of gambling. She cautioned that the expansion of gambling would not lead to the prosperity hoped for, but would lead to increasing costs to deal with disenfranchised gamblers—with much of that cost being born by the many small businesses, who already are reeling from an over zealous tax structure. She noted the state is losing jobs and businesses are leaving, and if we continue to stress our remaining businesses, we would find our state a vast wasteland of wounded and unemployed. She suggested the physical, mental, and economical health of our citizenry should be a great concern to state leaders—that we need to care more and do the hard things to protect our neighbors.

Harold Maloney, Spokane resident, spoke to oppose any expansion in gambling or increasing the

bet limits. He commented that other people have already addressed the idea that gambling costs more to society than it brings in, and that people have talked about jobs the gaming industry brings in. He felt the other side of the seesaw was so heavily over-weighted with damage caused by gambling, that it shouldn't be there. Regarding increasing betting limits, he affirmed the arguments made by people in the gaming industry relate to having to compete with the tribes, however, he believed if the Commission increases in one place then the other groups will respond that they have to compete and also need an increase. Gambling is an indulgence, which is not to say that all indulgences are wrong; however, he believed we were talking about something serious. Mr. Maloney believed our society couldn't endure more indulgences stacked on top of the other indulgences and that we needed accountability. He argued that indulgences such as an increased betting limit should be severely limited. Mr. Maloney shared his personal opinion that the Commission should be working to get rid of gambling, and working with the Federal Government to limit tribal gaming. He closed by asking the Commission for consideration not to raise any limits in gambling.

Bob Tull, lawyer from Bellingham, appeared on behalf of the petitioners, the Recreational Gambling Association (RGA). Mr. Tull advised that it was his understanding, and based on the history, and based on the reading of the statute that the Gambling Commission was not established for the purpose of making moral judgments for the people in the state of Washington. The Commission exists because the Legislature and the people of this state decided years ago that under certain controlled conditions, gambling could be allowed. Over the years, the public policy expressed throughout the legal process and the Legislative process has developed a certain set of conditions for which individuals in this state may gamble in this state. There are things they can do and there are some things they can't do. As has been explained by the Attorney General, betting limits is absolutely and clearly under the discretion of this agency. Mr. Tull expressed his opinion that the debate about what a limit should be, whether it should be higher or lower, is driven by the regulatory role and whether there is a regulatory goal served by putting a burden on individual choice. Mr. Tull noted that it's been suggested that there are many religious reasons and perhaps moral reasons for restricting betting limits, and he believed that could become the preverbal slippery slope. He advised that if the Commission kept their eyes carefully focused on regulatory goals, regulatory purposes, and regulatory benefits that would help to sort these things out.

The RGA believes that the regulatory issues in this state involving the operation of card rooms and other forms of gaming have been well established. The reputation of Washington's approach to gaming regulation continues to be very strong and very high. **Mr. Tull** questioned the regulatory issues related to the petition. Staff has made it clear that the regulatory issues are under control. Operators have to watch their facilities—they have to watch their prime rib so it doesn't go out the back door, they have to watch that cheaters don't try to take money from them, and they have to report in great detail all of their activities to the Commission and to local government.

Commissioner Parker indicated that Mr. Tull was suggesting that the Commission doesn't have a policy consideration and that the petition is simply a regulatory issue. He questioned whether Mr. Tull agreed that the Commission does have the responsibility to consider the policy ramifications of the rules and rule changes. Mr. Tull agreed on that issue; however, he noted the policy field in which the Commission operates has been debated, and Mr. Tull advised it has always been his view

that Commissioners are sworn to keep gaming safe, keep the criminal element out of gaming, and to address regulatory issues. The Legislature has reserved for itself the decisions on what types of games and where they can be played and whether there can or can't be limits on the number of licenses. The Legislature designed the Commission to put together a system, hire staff, charge enough money and to regulate gaming. He advised that the RGA knew that \$500 was not a magic number—it is a number that has been working in another highly regulated segments of the industry. **Commissioner Parker** advised that he was attempting to elicit some help to understand the policy ramifications on whether or not a rule change would be perceived as an expansion of gambling, and whether that policy consideration is the responsibility of the Commission. **Mr. Tull** responded that the expansion of gaming issue is either the 60 percent vote, or it's whatever the Commission thinks it is, or whatever he thought it was. He believed there was a complete shift of rules when addressing the regulatory function of the Commission. The Commission is not expanding it, because the Legislature allowed 15-table house-banked card room games as a public policy of this state, and they told the Commission to set the betting limits. They didn't change the Commission's authority or policy. He suggested that when the petition to reconsider the betting limits was submitted, he believed the Commission needed to consider it primarily through specific language in the statute. The games are allowed, the card rooms are allowed, the size of the card rooms are allowed to be established and the Commission has the authority to set the limits. The Legislature has said keep an eye on betting limits. The Commission sets the betting limits—and the factors are something the Commission gets to consider and decide, and they all boil down to making sure that gambling is controlled and regulated, and to stop crime. Mr. Tull believed the Commissioners needed to sift the regulations through their individual backgrounds, through their experiences, and then come to a consistent policy platform, which he believed was the regulatory focus not the broad policy. The question should be what are the regulatory issues for this policy call, and if they are not regulatory, then the question is whether there is some other reason that supports it within cited goals of the agency. He affirmed this may be a policy call; however, the Commission is a regulatory body not a body charged with setting broad coarse changes for society.

Commissioner Parker believed there were ramifications to the betting limits beyond the regulatory aspect, and he believed certainly that the regulatory considerations should be primary considerations. He emphasized that he was looking for feedback in terms of other potential policy considerations that are relevant, that are in addition to simply the question of whether or not this poses a regulatory problem. **Mr. Tull** responded that players, gamblers, and citizens who like to bet, have more opportunity in terms of their own gambling strategy, if they have a higher limit. When the limits are too low, it benefits the house, whether it's a card room or whether it is a tribal facility. When limits can be raised, the players eventually have an advantage. Mr. Tull stressed that no one in this industry is suggesting not having limited stakes. The entire system has been based on limits. The question should be whether there is any reason not to have an increase after six years.

Chair McLaughlin questioned why the Recreational Gaming Association would want to raise the limits if the lower limit is in the house's favor. **Mr. Tull** responded that in the end the limit (whether \$100 or \$100,000) improves the house's position, but, on a daily basis the pushing of expenses up becomes important. As the operating expenses go up licensees need to increase volume in their operation. In the end, licensees would like to have more volume, they can't coerce the

betters to bet more, and they have a very limited ability to increase minimum bets. There are some players who would like to bet more; if they want to bet over \$500 they have to go out of this jurisdiction completely, and if they want to bet over \$100 they have to go away from that particular card room.

If they want to go to the track then they may bet as much as they want. If they want to buy lottery tickets they may buy as many as they want; but, if they want to play in a card room, in this state the limit is \$100, and the RGA is asking that it be increased to \$300. It will allow some operations to make more and to provide decent benefits. To offer decent benefits, a licensee has to continue to make the money to reinvest in their business. **Mr. Tull** didn't think an increase would have a push affect on tribal betting limits. He noted the tribes have never been afraid to come before the Commission and propose amendments when they have changes in the industry or changes in their experience. Mr. Tull reminded the commissioners that the Commission has been given the discretion and authority to negotiate with tribes, and has been given the authority to set bet limits, as long as the Commission is reasonable when going through the process. He indicated these clearly aren't expansions, they are regulations and regulatory steps. Mr. Tull deferred to other members wishing to provide testimony.

Wendy Able, Human Resources Assistant at Players & Spectators in Spokane, thanked Mr. Tull for clarifying that legally and technically what the RGA is asking for is not an expansion of gaming. Ms. Able asked the Commission to support raising the betting limits from \$100 to \$300. She affirmed the RGA was not asking for the maximum \$500 that already exists in the state of Washington. She didn't understand how a group could claim the other side would ask for higher betting limits when the RGA was asking for \$200 less than what the tribal facilities already have. Ms. Able reported that licensees are fighting to stay in business and she felt it was appropriate at this stage for the Commission to give to the private card rooms a small concession in this very unbalanced industry. The licensees have guests that wish to bet more than the \$100 limit allowed. Ms. Able asked the Commission to support the licensees in keeping some business in their corner because they are also paying taxes to the city and the state and providing jobs. She provided information on activities the employees of Players & Spectators support, and asked the Commission to allow a small concession that would give licensees back just enough to keep going.

Jake Greenwalt described himself as an average Joe-blow guy that goes to the casino to play cards. He shared his opinion that the \$100 limit is really not fair for the gambler that wishes to play higher stakes. If players want to play higher stakes they have to go to a place that has them, which takes the player out of that location and into a different place. Mr. Greenwalt believed everybody should be treated basically equal, and a player shouldn't be penalized if they want to play \$300. He referenced the comment made earlier regarding people wanting to protect their children and their religions. Mr. Greenwalt maintained that if a man or woman wished to gamble, the existing \$100 limit would not stop them from gambling, it simply forces the person to leave one establishment and go to another establishment. Mr. Greenwalt urged the Commission to consider raising the limit to \$300.

Mr. Tull distributed charts based on the business expenses and revenues at Skyway Park Bowl, located just outside Seattle's limits in the unincorporated area of King County. The chart

demonstrates the reason why it is important to card room owners and operators to ask for the bet limit increase. The RGA believes this is essentially a business decision regarding limits. The card rooms are attempting to determine how they may increase their volume in light of increasing expenses. He referred to the bar graph for the years 2001, 2002, and 2003, which addressed a few key expenses that are being increased such as labor and industries insurance, health insurance and liability insurance. **Mr. Tull** advised that Mr. Dave Pardee experienced nearly a 24 percent increase in his L&I premiums, a 21 ½ percent increase in the health insurance premium, and a 21 percent increase in his liability insurance. In 2003, he had new increases of just over 30 percent in the L&I insurance, and there is a scheduled 29 percent increase scheduled for 2004. There is a decrease in health insurance but that was because he had fewer employees and because he used a cheaper plan—he had to make some response to the combination of increased expense and decreased revenue. **Chair McLaughlin** inquired if this included the total expenses for the bowling alley and the restaurant, or just the gambling expenses. **Mr. Pardee**, owner for the Skyway Park Bowl responded that it included all of his business; the restaurant, bowling, and the lounge. He also reported that he was the third house-banked card room to get a license, over five years ago. He noted that he is down 20 percent this year and that his gross revenue downhill slide started about three years ago.

Commissioner Ludwig asked how many house-banked card rooms existed in south King County now. **Mr. Pardee** responded approximately 12 to 14 in south King County. Commissioner Ludwig inquired if the competition had any affect. Mr. Pardee affirmed there was competition, as well as the downsizing of Boeing and the dot com industry. Commissioner Ludwig asked if that was something the Commission should do anything about. Mr. Pardee responded that it was not the Commission's responsibility. He explained that it was his responsibility to try to increase his business, and an increase in the bet limits would help offset to some degree the added expenses that he couldn't control. Commissioner Ludwig noted that if the Commission approved the petition, his competitors would also have that same opportunity, which meant he would still be faced with the competitive problem. Mr. Pardee agreed; however, he indicated that a few new customers spending a little more money would dramatically help offset expenses.

Commissioner Parker verified that one of the considerations Mr. Pardee was asking the Commission to consider was the potential benefit to business operators; and that if the Commission authorized an increase in the limits, Mr. Pardee anticipated being able to compete more effectively by being able to generate a slightly higher, perhaps significantly higher profit margin, based on the fact that there should be more money on the table. **Mr. Pardee** affirmed. Commissioner Parker suggested that was a policy consideration that seemed to go beyond simply whether or not it's a regulatory issue. Mr. Pardee agreed. He reiterated that six years ago the legislation allowed house-banked card rooms. Then Director Miller's job was to set the limit—an agreement was reached to start at \$25, and after six months an increase to \$100 was possible. That was when everyone was trying to figure out the amount of wager needed to cover the expenses it takes to run a house-banked game with all the rules and regulations. Mr. Pardee advised that in his restaurant/lounge he has low priced foods and high priced foods, that he has low priced wines and high priced wines; that he offers a freedom of choice option. However, in the card room he has a few people who would like to bet a little bit more because they can financially afford it; and that freedom of choice isn't available. Because of that, he's lost those clients. He said he would like to have the chance to get a few of

those people back, or to keep the people coming in happy. There were no further comments regarding the charts.

Commissioner Niemi thought the explanation of the Commission's duties was very important, and she agreed the Commission had regulatory duties and the right to raise the bet limits. She personally didn't feel any responsibility to help card rooms stay in business—she emphasized that she didn't want to have them go out of business, but she clarified that the issue is not whether licensees would do well in business; the issue was whether the Commission was regulating gambling. **Mr. Tull** affirmed, and explained the RGA was attempting to provide an understanding of the business context, and that being able to price the product a little higher meant that the licensee would have better staying power. They may actually make a little extra money without higher expenses in other categories. It means charging more in the stake verses charging less for the stake, and people get to do what they want to do. Mr. Tull questioned if there wasn't a regulatory reason, then what was the reason for a limit. He explained the industry was going through an evolutionary process and the regulatory process continued to evolve as well. Substantial improvements have been made in how and what the Commission wanted regulated. Mr. Tull questioned if there was any reason today why there should be a particular limit and noted that it was hurting the business side of the industry. He urged the Commission to reexamine the regulatory policies and to make a regulatory decision.

Commissioner Parker verified that Mr. Tull was expressing a rational that says the limit should be at whatever the maximum level is that does not cause a regulatory problem. **Mr. Tull** responded that was essentially correct. He noted the policy of this regulatory body has been to be progressive, to start at \$25 and then to go up as the agencies, as the operators, and as the licensees demonstrated that they could handle the increased volume and higher limits. He reiterated that the staff has confirmed that they believe they can control all that. From a regulatory purpose, the Commission must then decide if there is a concern within the regulatory framework to say limits at \$500 are not okay, but \$300 is ok, or \$275. Mr. Tull acknowledged that at some point it would become the Commissioners decision as to what betting limit number they are comfortable with for 2003. He advised that the Commission is expected to be a completely independent body and not to be driven by what anyone says, and to use the regulatory purpose as a compass to define the regulatory goal.

Gary Murray responded to Commissioner Niemi's question on business concerns and likened it to an example of a child asking for a cookie. He advised that he may not see a regulatory concern about one cookie; however, if the child asks for a jar of cookies, he may then have a regulatory concern over how many cookies the child is going to consume and whether it is good or not good for him, or if it is in the child's best interest. Somewhere between the jar and the one cookie, is the right amount that would satisfy the child's need, and would satisfy the needs, wants, and desire of the parent. He noted that we have gotten to the \$100 limit. He questioned if that was one cookie, two cookies, or the jar. If the industry needs or wants something, they must ask the Commission for approval. Mr. Murray emphasized that there is a need and a desire from the industry.

Commissioner Parker confirmed that Mr. Murray was suggesting that there is equilibrium, a balance based on what is good for the child—so in using the cookie metaphor, it would be what is good for the industry. Mr. Murray affirmed, noting there is some point where the Commission has

regulatory control over the industry. There is some point of well being that the Commission is in charge of taking care of—as long as the decision doesn't jeopardize the well being of the public or the industry. He affirmed that somewhere there is a regulatory concern and the licensees have figured out that it is not at the \$100 betting limit; however, there are concerns with no betting limit.

Commissioner Parker commented that there is a perception from the public that the Commission should take into consideration public policy of expanding gambling, which goes into the whole debate about gambling as a recreational activity vs. gambling as a destructive social pathology. **Mr. Murray** suggested using the same rationale that was used by the Commission in drafting other forms of limits. He noted that pull-tabs started at 25 cents and they are up to \$1.00. Tribal betting limits started at \$25 and they have gone up. Mr. Murray asked the Commission to use the same rationale to determine if this rule is still in the best interest of the citizens of Washington.

Kris Kealy, Iron horse Casino, advised that he was just a guy that owns a business and that his prices, as other industry prices, will double every 12 years. That is the standard economic system—driven by inflationary factors. He suggested that if the Commission limits the ability of the vendor on the price side without keeping up with economic inflation, in 12 years there wouldn't be an industry. He acknowledged the industry may come before the Commission in six years looking for another increase; however, he cautioned that in approximately every twelve years the industry would need an increase. As an aside, Mr. Kealy noted the industry collects \$27 million dollars for the local economy annually, related to taxes.

Mr. Tull concluded by suggesting that the Administrative Procedures Act, coupled with the Gaming Act allows anyone to come forward to request a change in a rule. The rule in this situation was the betting limits. He suggested there would never be a clear answer as to the best regulatory solution or the strict limit of regulatory versus policy considerations—which was why there is a five citizenry Commission designed to be independent and not under the immediate thrall of elected officials or any other branch of elected government. Mr. Tull did believe there was a guideline; whether there was a strong or even mild regulatory reason to do a particular thing. He reported that a lot of the rules don't impact people in a restrictive way. When there is a restrictive rule, whether it's the business or whether it's the player, then the RGA's position would be that there ought to be consideration as to whether the burden and the benefit adequately offset each other. In this situation, Mr. Tull believed players would have a better choice, businesses could have a better pricing ability for their product, and the RGA believed there would not be any degradation of the Commission to assure the people of this state that gambling is highly regulated at all phases from licensing to operation, and to tax collection. The RGA believed all those factors combined supported the petition and the RGA was asking for the Commission's consideration.

Penny Lancaster responded to the policy/regulatory consideration comments, noting that government does have a responsibility to consider the harmful impact of any industry and then take steps to reduce those harms. The tobacco and alcohol industries were cited as examples. People may drink and smoke as much as they want, just like card players can play as many hands as they want and spend as much money as they want. However, the government does limit how much nicotine can go into each cigarette and the government does limit how much alcohol can go into

each bottle of alcohol. Ms. Lancaster suggested it would be prudent for the Commission to make sure those gamblers and their families are better protected, which could be accomplished by setting limits on how fast they can lose their money. Players could still bet as much money as they want; it would just take them a little longer to lose all their money.

Marilyn Montgomery rebutted Mr. Tull's instructive comments cautioning the Commission not to get hung up on the morale aspects of gambling. She concurred that we cannot legislate morals. She suggested however that the Commission could not in good conscience ignore the social consequences and the negative monetary consequences to the public as evidenced by the statistics of the state of Maryland. Ms. Montgomery emphasized that the decision affecting such consequences is within the Commission's purview—the Commission has the right and the responsibility to make that decision. She believed increasing stakes was an expansion, and while support has been requested in a plea for added jobs, Ms. Montgomery questioned the appropriateness of instituting and or increasing betting limits in order to provide jobs, which also provides a grave temptation daily to an addicted player. Ms. Montgomery asked the Commission to please vote against the increase.

Chair McLaughlin called for further public comments and there were none. Chair McLaughlin called for a recess at 11:00 a.m., and called the meeting back to order at 11:20 a.m.

Commissioner Orr made a motion to do two things; to amend the rule proposal and to hold the matter over until November's meeting. The rule shall be amended to reflect a proposal allowing \$200 betting limits, and limiting the amount of tables that may have a \$200 increase as follows: a facility that has 5 or less tables would be allowed to have one table at the \$200 betting limit, a facility with up to 10 tables would be allowed two tables at the \$200 betting limit, and a facility with 15 tables would be allowed three tables with the \$200 betting limit; and that such increased betting limits shall sunset at the end of the 2004 calendar year. **Commissioner Niemi** seconded the motion.

Commissioner Orr noted that having just completed labor negotiations at his workplace, he understood the concerns expressed associated with increasing health care insurance. He also commented that he has heard a lot about what the Commission does and how the Commission does its job. However, he believed our society was in flux—we've changed considerably, and he felt confident that when the legislators wrote the legislation in 1973 and ultimately the \$100 bet limit was offered, no one could have anticipated limits would actually be as high as \$100. However, as has been noted, costs continue to go up, and Commissioner Orr appreciated the industry's business concern. He expressed frustration with the potential one-up-man ship, and frustration with the legislators putting the burden on the Commission.

Commissioner Niemi explained why she would vote for this motion; noting that while she didn't feel responsible for individual gambling organizations or the people who run gaming tables, she did believe it was like any other business. Everybody's taxes go up and therefore businesses also have to make appropriate adjustments. Commissioner Niemi affirmed this is not 1973, and while the Commission abides by the laws that were passed then, gambling is a lot different. Gambling exists throughout the United States and it is increasing—there are mini-casinos and Native American casinos throughout the country, which is another issue. Commissioner Niemi didn't think it would

make any sense to walk away from the laws on the books. She believed the Commission needed to take a look at these regulations and determine what should be done in this instance. She advised that she might have been supportive of an even higher increase in the limit, but, that Commissioner Orr's motion was is a good compromise.

Representative Wood addressed the comments on whether or not this would be considered an expansion of gambling. He noted that some of the legislative legal experts have been following this issue for a long time, and have provided a memo that spells things out. As someone in the political world, he advised that he looked at this issue a little broader. He commented that there is an old phrase that says the constitution is what the Supreme Court says it is. Similarly, the expansion of gambling is kind of what the public and what the Legislature says it is. If the vote on this issue is taken next month, and if the rule became effective January 1, he noted the Legislature would be back in session two weeks later. Representative Wood drew attention to correspondence submitted by various legislators and noted there is a difference of opinion whether the legislature might want to get involved in this issue and make some statutory changes. He confirmed we are in a state of flux—and it is a very complicated area. Hopefully the public was finding that out through discussions like this, and hopefully there will be some legislative reaction to whatever is done here. Representative Wood affirmed that Commissioner Orr has made a very good compromise offer, and Representative Wood advised that he is a legislator who always looks for a compromise. However, he didn't believe the argument over whether or not this was an expansion of gambling was finished. Representative Wood thanked everyone for a spirited and very civilized debate.

Chair McLaughlin advised she would support the motion, and questioned the proper procedure for facilitating discussion next month. **Assistant Attorney General Ackerman** advised it would be at the Chair's discretion. If the motion passes, the Commission would be setting this over until next month for a decision. At the Chair's discretion the commissioners could chose to take public testimony on the new version of the statute at that time. That provides both notice and an opportunity for the public to be heard regarding the amendment. Chair McLaughlin affirmed her desire to receive testimony and asked for concurrence from her fellow commissioners.

Commissioner Parker suggested providing a testimony sign-up/witness sheet. **Commissioner Ludwig** responded that this issue was a tough call that wouldn't get any easier; he advised that he was ready to vote. Mr. Ackerman explained that at this point a motion was before the Commission; however, actual language has not been drafted. If this is held over until next month, presumably to present language which implements Commissioner Orr's motion, people could focus their testimony specifically on the exact language of the statute, and if there is a problem with the language, it could presumably be fixed at the next meeting. **Director Day** affirmed that staff could facilitate the sign-in sheet and publish the amended version of the rule on the agency website. Commissioner Parker inquired about the likely effective date should the Commission consider and adopt the amendment in November. **Commissioner Orr** clarified his intended motion was for an effective date of January 1 through December 31, 2004. **Mr. Ackerman** affirmed that if the Commission passed the amended version of the rule at the November meeting, it could be affective January 1.

Commissioner Parker stated that he fully supported the motion and the comments of the other members of the Commission. He affirmed this has been a challenging issue and the testimony was

exceptional and very helpful. He appreciated the broad range of representatives, particularly from the general public, who took time out of their lives to be present and share their views. Commissioner Parker thought it was important to note that this has not just been a dialogue between the Commission and representatives of the industry.

Chair McLaughlin called for the vote. *Vote taken; the motion passed with four ayes, Commissioner Ludwig voted in the negative.*

Chair McLaughlin reported this item would be placed first on Thursday's November agenda. She also expressed her appreciation for all the testimony and affirmed this single issue had been contemplated at various times for over two years. She advised it was put back on the table because there was an interest by a lot of groups to go to the Legislature and seek changes in what the enhanced card rooms and others could offer.

14. Audits and Reviews of Financial Statements for House-banked Card Rooms:

WAC 230-40-823:

Bob Berg, Deputy Director advised this rule was up for discussion only, and deals with audited financial statements from house-banked card rooms. The current rule requires entities with five million dollars or more in gross receipts to submit audited receipts to the Commission annually. The proposed change would require house-banked card rooms with gross receipts over three million to submit audited financial statements, while card rooms with gross receipts of three million or less would only be required to submit reviewed financial statements. At the last Commission Meeting a question came up as to whether there were any natural break points within the industry as to \$5 million, \$4 million, or \$3 million. In the year 2002, 18 house-banked card rooms had gross receipts of greater than \$5 million, five had between \$4 and \$5 million, and 12 had receipts from \$3 to \$4 million. Another question posed had to do with the Commission having adequate staff with expertise in this area. Mr. Berg reported that out of the agency's Special Agent compliment there are 14 certified public accountants, 17 certified fraud examiners and six that hold both certifications. Seven of the CPA's are in our Special Investigation Unit, the unit that analyzes these returns. Public testimony was provided at the last meeting, there were some questions raised by those who testified as to what the right threshold would be, and it was suggested it should be at the \$5 million level. Staff has asked that it be lowered to \$3 million and upon reflection of that testimony, the staff still feels comfortable with a \$3 million dollar threshold.

Chair McLaughlin called for public testimony.

Gary Murray, President of the Recreational Gaming Association, reported that the RGA had some concerns over the level that is required for a financial audit instead of a financial review situation. He estimated the expense between the two would be approximately 30 to 40 percent higher for one over the other. The RGA believed that \$5 million was appropriate; however, since the \$3 million was proposed the RGA offered a compromise at \$4 million.

Dubs Ari Tanner Herschlip, Attorney, advised that he would only be addressing the under \$3

million threshold. He advised this requirement has stimulated some response regarding the estimated cost for CPA services—he believed it would actually be between \$8,000-\$15,000 for the reviewed financial statements for the smaller card rooms with gross receipts under \$3 million dollars. **Mr. Berg** affirmed such “review” would capture data from every card room that has a card room license so that their total business picture could be analyzed by the Commission.

Dubs Ari Tanner Herschlip advised this requirement would be an undue hardship and questioned how this requirement would actually approach the purpose of this proposal. He presumed the purpose of the proposal was to keep gaming legal and honest in Washington State. He indicated the request may seem appropriate for card rooms with over \$3 million in gross receipts but would be disproportionate to those smaller card rooms and would offer no additional assurances as to the truth of those statements. By asking a CPA to review the numbers, he suggested the Commission would be no closer to requiring the licensee’s honesty. If a licensee wanted to defraud his CPA, he could be just as capable of that as he is defrauding the Commissions’ highly skilled and trained investigators who have familiarity with the gambling regulations. In fact, he believed that licensees would likely be more able to defraud their independent CPA, than they would the Gambling Commission. Therefore, in his opinion, the proposed rule didn’t approach the purpose of assurance of honesty that the Gambling Commission would like of their licensees—specifically trying to keep their financial statements free of fraud.

Mr. Dubs Ari Tanner Herschlip suggested that staff’s request offers no assurances that aren’t secured by a statement made under penalty of perjury. Such a requirement would be closer to the purpose of the rule than requiring an \$8,000-\$15,000 burden to be carried by a small business. He suggested that it would be prudent to tailor this rule for the smaller card rooms. The regulations already require the licensee to submit quarterly activity reports, under the penalty of perjury. Staff’s proposal would have independent CPA’s certify the reviewed statements, but, this lends no additional assurances of honesty for three reasons. First, the Gambling Commission’s list of preferred CPA’s is not limited to licensed service providers, so there are no guarantees that the CPA’s that are conducting the reviews and are certifying this information have any familiarity with the Commissions regulations, or how to comply with them, or what it looks like when a licensee is altering the books. A complete novice could be signing the statement, certified by a CPA. He questioned to what affect that would verify that it was more legal, more honest than if the licensee signed under penalty of perjury. Secondly, CPA’s don’t necessarily offer assurances of honesty. Unfortunately lately there have been plenty of instances where companies have defrauded the government and defrauded the public (Enron). There was no guard against the fraud by having a certified public accountant stamp their name and then disclaim all liability for those statements. Lastly, the penalty of perjury is a sufficient safeguard for many other agencies. The Federal Internal Revenue Service doesn’t require every taxpayer to submit their tax papers to a Certified Public Accountant. They require a signature under penalty of perjury. Federal Bank loans don’t require an audit, and they don’t require a CPA across the board.

Mr. Dubs Ari Tanner Herschlip again noted this rule applies to all card rooms and is not tailored for the smaller entities. It is a rule of general application, with no suspicion, just a burden and he asked that the Commission not approve staff’s request for reviewed financial statements reviewed by CPA’s for card rooms under \$3 million. **Commissioner Orr** affirmed the penalty for perjury was

significant; however, he suggested that if a guy is already a crook, that wouldn't scare him. Commissioner Orr understood the burden to small business, but he also understood the obligation of the Commission to make sure licensees are regulated, and if they aren't checked, he questioned how the Commission would assure the public that this was an honest deal. Mr. Dubs Ari Tanner Herschlip acknowledged that concern. He also broached the topic of CPA's and backward mapping—a CPA clarifying questions and getting to the desired result. **Mr. Dubs Ari Tanner Herschlip** believed the Commission was not shooting for desired results, but trying to prevent fraud with this rule.

Commissioner Parker reported that he has had the opportunity to be in private business for a number of years (on the banking side). He explained that it was his experience that CPA's guard their standing as the "do or die" of their ability to be in the business. He affirmed there are the Arthur Andersons of the world, and the profession has been reacting to that, and has been policing itself. Commissioner Parker believed CPA involvement was meaningful in the real world of business; it plays an important role and makes the operator make that extra effort to make sure their books are in order. Commissioner Parker stated that he didn't interpret this as a gotcha rule in terms of trying to catch or detect fraud, or to detect illegal operators. He believed it was a question of what is the best practice.

Chair McLaughlin called upon Mr. Pardee and asked if he employed an auditor for a complete audit or a review annually. **Mr. Pardee** affirmed that Moss Adams performs a complete audit annually and has been doing so for three years at a cost of approximately \$20,000. However, because the business enterprise includes a bowling center, a miniature golf course, a restaurant, lounge and card room, the bill usually ends up at about \$23,000-24,000 for the complete audit. He noted however that most of the house-banked card rooms have restaurants only. He estimated between 15 to 18 house-banked card rooms would be doing a review audit for approximately \$16-\$17 thousand dollars and up. **Director Day** addressed testimony provided by Assistant Director Cass-Healy last month and noted the audit was basically a higher level of examination and therefore more expensive. The review statement was estimated between \$8,000 to \$11,000. Director Day agreed with Commissioner Parker that this isn't about a gotcha, it isn't about catching someone after something has gone wrong, its about prevention—which is why gambling regulation is so detailed, and although the system does not guaranteed perfection, it does raise the level of being able to detect and discourage, and to encourage compliance.

Mr. Pardee offered his personal belief that the threshold should be under \$5 million for a review, because it would be a financial burden on quite a few of the small places. He suggested this might be the final straw that would do them in because they are already losing money.

Representative Wood questioned whether the phrase under penalty of perjury had been used in the past and if it had proven effective, and could the rule change be rewritten to keep that in effect if appropriate. **Mr. Berg** responded that it still exists on the quarterly reports. He could not personally recall a fact where the phraseology was used, signed, and ended in any criminal prosecution from the Gambling Commission. He affirmed that staff actually looked at this as a very valuable preventative regulatory tool. Mr. Berg explained the principal about this issue has been a

point of discussion for about six or seven months with the RGA. It was questioned if the Commission had sufficient staff at the present time to investigate perjury cases. **Commissioner Ludwig** suggested the perjury would probably be related to something else the Commission was already investigating. However, Commissioner Ludwig wasn't sure a Prosecutor would prosecute on a perjury charge and deferred to the Assistant Attorney General. **Mr. Ackerman** responded that the case law on perjury demands the second highest burden of proof of any crime in existence—only treason is higher. **Mr. Ackerman** advised that he could also understand why the Commission may not have had a perjury case prosecuted based upon a signature block on a form. He commented that he thought it was a disservice to our accounting profession to say (as suggested by a speaker) that they are all going to do whatever the business that hires them wants them to do, because they all have liability insurance policies and liability insurance carriers that would jettison them in a second if they thought these people were either not doing what they were paid to do, or were doing fraudulent work. He felt it was instructive, since the name Arthur Anderson came up, to think about where Arthur Anderson is today—it doesn't exist, and former employees are still facing the potential of going to prison. Mr. Ackerman believed the preventive aspect of this type of a rule was its most important feature.

Sally Herschip, Buzz Inn Steak House, a small card room in East Wenatchee, asked the Commission to consider changing the proposed rule for card room operators under \$3 million. She reported that she reviewed the Website information for the 2nd quarter of 2003, and of the 76 house-banked card rooms reporting, there were 26 that averaged less than \$2 million in gross receipts. That means 34 percent of the house-banked card rooms are under \$2 million dollars in gross receipts. Of those 26 licensees, 17 reported net operating losses, three reported an income of less than \$10,000. She also believed passing this rule would put an undue burden on the smaller operators and agreed there may be several of them that would not be able to stay in business any longer. She emphasized another \$10,000 fee for an audit would be a lot of money if a business is already losing money, or if the business is only making \$10,000. Ms. Herschip reported that for 22 years, she has been preparing all of the financial statements for the Buzz Inn Steakhouses—all the tax reporting required by all the local, state, federal requirements, and the punchboard, pull-tab quarterly gambling reports, and she has never been required to have a CPA do an audit or a review of her information. She believed that staff could obtain the information they are hunting for by another means of information that is already prepared by licensees (through income tax returns to the Federal Government). Ms. Herschip requested that the Commission reconsider putting this extra burden on the smaller card room operators.

Bill Tackitt, President of Buzz Inn Associates and principal operator of the casino in East Wenatchee, noted this rule has been discussed for six months; and apologize, noting the licensees should have tried to get with staff prior to this discussion and tried to work out a better solution. He affirmed that he understood the need to fulfill the regulatory mission; however, he believed that could be accomplished in a different manner. He believed the quarterly reports have been flawed for years and years, and noted they don't really give a real good picture of the total operation. Generally speaking, if a business loses money in one aspect of a corporation, they may make money in another portion of their business. Mr. Tackitt supported a good end of the year financial report, or even good quarterly reports that cover the whole operation, which would provide staff with a look at

what really went on in the business, not just one aspect of it. He believed that wouldn't require the burden the Commission appears to be ready to ask the smaller operators to shoulder. He noted that he has his tax statements signed by his CPA, as well as by himself, and those statements are valid, they have been audited by the IRS, and they get audited several times by the Department of Revenue. Mr. Tackitt reiterated that staff could accomplish what they needed to accomplish without the severe financial burden being posed. He reported that approximately 450 licenses have been lost since 1997. **Mr. Tackitt** cautioned that this industry was not going to survive on the same route they are currently on. He affirmed that good honest debates, discussions on how business was doing, and whether licensees felt good about it were warranted. He asked the Commission to consider the impact on the little businesses. No other comments were offered.

15. Other Business/General Discussion/Comments from the Public:

Chair McLaughlin called for other discussion/comments from the public and with no other business, Chair McLaughlin adjourned the meeting at 12:03 p.m. The next meeting is scheduled for November 13-14, 2003, in Seattle.

Minutes submitted by:

Shirley Corbett
Executive Assistant