

**COMMISSION MEETING
THURSDAY, OCTOBER 13, 2005
DRAFT MINUTES**

Chair Ludwig called the meeting to order at 1:35 p.m. at the Clarion Hotel located in Yakima. He introduced the following:

MEMBERS PRESENT: **COMMISSIONER CURT LUDWIG**, Chair, Kennewick
 COMMISSIONER ALAN PARKER, Vice Chair, Olympia
 COMMISSIONER JANICE NIEMI, Seattle
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Quilcene
 SENATOR MARGARITA PRENTICE, Seattle
 REPRESENTATIVE ALEX WOOD, Spokane
 REPRESENTATIVE JOHN SERBEN, Spokane

STAFF PRESENT: **RICK DAY**, Director
 NEAL NUNAMAKER, Deputy Director
 CALLY CASS, Assistant Director - Field Operations
 ARLENE DENNISTOUN, Acting Administrator-Legal
 DAVE TRUJILLO, Assistant Director - Licensing
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

1. Review of Agenda and Director's Report:

Director Day reviewed the agenda for Thursday and Friday and identified new inserts to the agenda packet.

Presentation – Rules Simplification Process:

Director Day introduced Rules Simplification Project Manager Beth Heston, and noted this presentation is intended to start the series of formal presentations before the Commission to revise the Commission's governing rules. The entire process will be completed around August of 2007.

Ms. Heston reported that staff has been working on the rules simplification process for some time with an emphasis to maintain the Commission's mission of protecting the public by ensuring that gambling is legal and honest by making the rules more clear and to allow for more voluntary compliance. In the coming month, Chapter 5-Licensing will be sent under

separate cover for Commission review and consideration. The rule proposals will look different than the existing rules. She advised that no other law enforcement regulatory agency in this state is doing what the Commission is doing. In essence, the Commission is re-writing the WACs in plain English. The Governor is currently calling it “Plain Talk” which is writing in plain language and falls in with the Commission’s mission statement and staff’s intent to make the rules easier to follow and easier to understand. Commission staff used the Code Reviser’s *Bill Drafting Guide* as a tool—they obtained expert advice, received training, and looked at other state agencies. In 1997, Governor Locke issued an Executive Order regarding clear writing in our work with the public. The staff looked back to those agencies for advice and to find the best method for implementation. In March of this year, Governor Gregoire issued her “Plain Talk” Executive Order, which is a portion of her Government Management Accountability and Performance Program (GMAP), which completely restructures the way government deals with citizens. Her goals include understanding what our customer’s need, which includes using simple language and providing only the most important information—keeping sentences short, using an active voice, using personal pronouns, and designing clear pages.

The Commission established small groups of subject matter experts within the agency and included external stakeholders from the gambling industry to help review the rewritten rules. Drafts were posted on the Internet for public comment and input. The agency’s Rules Team and the Communications and Legal Division reviewed Chapter 5.

The first thing staff did was take Title 230 and rearrange the information—rules were moved, sections of rules were moved, and paragraphs were moved in amongst the chapters so they were in a more logical order. Groups of rules were created that could be lumped together under a heading, which created a more logical internal order. **Ms. Heston** explained that some of the old rules had 14 or 15 sections and that each section might have dealt with a different aspect of licensing. Staff tried to break those up so that they were easier to find in the table of contents and easier to read and understand. The new rules are much shorter because staff tried to avoid making the reader read more than they wanted to—there are fewer references that sent readers flipping through the rules manual to other pages, and staff reduced the number of outline levels to three—Arabic numeral, followed by a small alphabet, and followed by a small Roman numeral. Ms. Heston compared several samples of the existing rule language versus the proposed language.

Ms. Heston affirmed that she continues to receive input from the internal and external stakeholders as the process goes forward; however, she planned to provide a new packet in November for consideration and filing.

Representative Wood inquired whether any thought had been given to making two versions of the WACs—one as described to serve as a layman’s guide to the WACs in short simple terms, and the “real” WACs that have the legal standing. He commented about lawyers who have acknowledged that while everyone wants simpler language, when that is done, it leads to interpretation problems and potential lawsuits. The legalese is legalese because it is very finely defined. **Ms. Heston** responded that staff has certainly taken legal sufficiency into account. She advised that Attorney General Ackerman and the agency’s Communications

and Legal Division have been involved in the review process. **Director Day** commented that instead of the two versions, the Commission is attempting to come up with one version for both masters.

Jerry Ackerman, Assistant Attorney General, responded that Representative Wood raises a good point and one that has troubled him throughout the review and rewrite process. He advised that staff will confirm that he has not been shy about expressing his skepticism if he feels it is warranted. He affirmed he will continue to review the drafts and make his thoughts known to Ms. Heston and staff prior to the next Commission meeting. **Mr. Ackerman** acknowledged that certainly plain language is an admirable goal; however, in the end we must end up with a WAC that can be enforced. **Director Day** emphasized that staff has appreciated the internal and external assistance in reviewing this document.

Presentation - Internet Gambling:

Director Day reported that in mid-September, staff provided a presentation to the House Commerce and Labor Committee regarding Internet Gambling. That presentation is being provided to update the Commission as well. Reports identify that Americans spend somewhere in the area of \$73 billion a year on legalized gambling. In 2004, in the state of Washington, approximately \$1.5 billion was spent on legalized gambling. Illegal gambling activity expenditure estimates range from \$30 billion to over \$380 billion a year. The Internet is a worldwide network made up of electronic interconnections—and when the extensive illegal gambling activities are added to an Internet network which allows individuals from everywhere to visit and actively participate, enforcement becomes a challenge. Part of what we are facing with the interconnected world wide network is the ease of access to gambling activities—in particular, unlicensed and regulatory activities. Director Day demonstrated an on-line gambling site, which at the time of access immediately revealed approximately 24 million immediate searches and site locations associated with on-line gambling activities. It is merely a process of clicking on one of the sites and an individual could be ready to start gambling over the Internet. He demonstrated live access to various advertisements which would actually start getting the individual to play.

Director Day pointed out the sophistication of the graphics and commented that the representations were remarkably like something an individual would see if they were standing in the lobby of any type of casino—only it is virtual. The availability is very significant, in fact, estimates place the number of players in the millions. The site accessed identified that approximately one-third of the players were probably from the United States. One summary of on-line activity for one poker site documented over 3,000 players on any given day in the month of August in 2004. Director Day emphasized all of this poses a significant problem in and of itself since Federal Law prohibits Internet gambling in the United States. He noted the scope of the activity changes almost daily; however, one source identified that there are over 250 on-line casinos, 139 sports books, 64 lotteries, and 20 Bingo games/gambling activities provided over the Internet. Director Day reported there were over 1,800 Internet gambling sites achieving in the area of over \$4.2 billion in operating revenue. He accessed and demonstrated a live single deck Black Jack activity, noting how simple it is for individuals to locate a gambling activity and actually participate over the Internet.

Director Day estimated that by 2009, the existing Internet sites will be worth over \$24 billion

dollars. *USA Today* has estimated the amount wagered on Internet sports betting at approximately \$100 billion.

Director Day focused on the primary concern noting that Internet gambling is illegal in the state and federally. The basic mission of the Commission is legal and honest gambling. Players on Internet sites have no assurance that the game is honest and it provides a secluded opportunity for addicted and underage gamblers. Director Day commented that as law enforcement agencies have tried to identify the worldwide flow of cash, it seemed odd that Internet gambling would continue to be such a popular activity. Additionally, he noted that Internet gambling brings illegal competition to licensed and regulated businesses; many of them pay a substantial amount of money and go through a significant investigation to have the privilege to engage in gambling activities in Washington.

One of the challenges of Internet gambling relates to where the activities take place.

Director Day accessed an Internet connection titled *Aloha Casino and Sports Book* and traced the activity (from point to point across the United States) through various servers back to the original or home based server of the operation located in Costa Rica. He reported that the movement of the Internet gambling sites off shore is often to escape jurisdiction issues—ownerships themselves are hidden and may be located in foreign corporations which makes it difficult for law enforcement agencies to trace and take action against those particular organizations because of the bank secrecy laws. The nature of the Internet makes this activity an extremely complex area to investigate.

Director Day reported the Commission has proceeded with enforcement in 12 different investigations from 2002 through 2005. The Commission has used cease and desist orders largely with media outlets for the most part (radio stations that may carry advertisements referring customers to dot.com Internet gambling sites). The Commission has also traced third party credit transactions through financial records or other money movements, and has actually sent agents (in some cases) to knock on doors to speak with people that appear to have been gambling over the Internet. The response has been surprise and amazement by the citizen that we found them and that the activity is not legal in the first place.

Director Day emphasized that Internet gambling is illegal according to federal criminal law, and in most cases, illicit gambling implicates at least six federal statutes—the best known is the Federal Wire Act. Washington law is a little outdated, the statute affirms the activity is illegal; but, it specifically refers to telegraph, radio, and semaphores—so it's clear although Internet gambling wasn't around when the statutes were enacted, the activity was something that was intended to be made illegal. Director Day also noted we do have a progressive gambling statute, which makes it a crime to materially aid in an illegal activity of this kind. He noted that several states have modernized their statute or at least directly addressed Internet gambling. The Commission authorized staff to continue to work with Senator Prentice who last session introduced Substitute Senate Bill 5878. One clear improvement to the law would be adding the term Internet. In discussions with the House members and other agencies across the state it has also been suggested that we look at making language changes that would be technology neutral that may last through the advances in technology. Director

Day affirmed that it would also be important to look at whether the current penalties provided are sufficient.

Director Day affirmed the Commission asked him to explore Internet gambling with other states because this is something that expands beyond state and international boundaries. He reported that he checked with other states to see if there is interest in establishing a multi-state task force approach to this illegal activity. A teleconference call was conducted on October 5, and 13 state agencies participated. A meeting has been set for December in Indiana. Director Day believed that partnering up with various law enforcement gambling agencies around the United States would be very successful because a state task force may be able to focus in on disrupting the channels (those who provide the internet connection, internet service providers, or the search engines), and focusing in on the third party financial sources in this process. He also reported that there seemed to be a significant interest in looking at the federal law and the changes necessary to make them clearer.

Director Day acknowledged there is always the debate regarding outlawing the activity versus taxing and regulating. He suggested that to tax and regulate, the law enforcement entity must first have the ability to stop the activity or dramatically interfere with it—and he believed the first step would be to develop clear law. **Commissioner Parker** asked if Director Day's suggestion was to criminalize the activity of the people who operate the Internet servers or similar types of nodes and to make it a crime to offer Internet gambling on those servers. **Assistant Attorney General Jerry Ackerman** responded that was certainly one approach. He commented that the classic approach to activities of this type was to follow the money. If the flow of money can be interrupted and if the law enforcement agency can penalize the people that facilitate the activity by providing the transmission service for money or the infrastructure that lets it happen, that would have a significant impact. Mr. Ackerman agreed the need for clearer laws is evident by the decade long debate that has gone on within the Justice Department as to whether or not the Wire Act applies to activities of this type. The Justice Department continues to maintain that it does. Some federal courts say that it does not. He noted there are certainly other statutes that may be implicated if the facts are right. However, Mr. Ackerman believed the most immediate way to affect offshore crime was by going to the sources of funds and through the infrastructure that facilitates the activity. **Commissioner Ellis** commented that in looking at the 2002 General Accounting Office report on Internet gambling, they indicated that there are 50 countries or more where Internet gambling is legal; including many countries in Europe, the Caribbean, and Asia. He questioned whether there is any debate in this country as to whether Internet gambling should be legal or illegal across the board. **Director Day** affirmed the debate involves those that want to tax and regulate, and those that do not want to permit Internet gambling.

Senator Prentice commented that there are continuing efforts within our own state. She reported that the Director of the Lottery Commission has been approached by a group who wanted to encompass Internet gambling in their bill. Senator Prentice pointed out that during the last legislative session; a lot of people asked her why she was trying to regulate something that she couldn't prevent from occurring. She recalled the *I Love You* virus that decimated the computer industry, and when they found the two people responsible in the

Philippines; they couldn't do anything because it wasn't against the law there. **Senator Prentice** speculated that we may have to let a lot of the scoundrels escape; however, her desire was to get the ones that we can catch and send the appropriate message. She agreed that finding the exact language necessary will be difficult especially as the Internet technology continues to change. Senator Prentice endorsed the regional approach as a practical one.

Commissioner Parker addressed the point that there is no evidence, or that it's not known who is actually making the profits from these operations. He asked if there was any evidence that might indicate an international mafia being involved. **Director Day** responded that he was not directly aware of any specific information; however, he noted that in many cases we actually do not know who is behind the site at all. **Mr. Ackerman** commented that in some cases we know; however, he confirmed that in most cases we don't know who is behind the sites. The United Kingdom, Australia, and other areas have sites that are legal within that jurisdiction and they export the signal supposedly only to those countries where gambling is legal in their jurisdiction as well. Unfortunately the Internet doesn't work like that—it goes wherever it goes. Because some jurisdictions do allow Internet gambling and do regulate, in some instances it can be determined who is offering the activity. Mr. Ackerman reported that the information he has seen from the Justice Department suggests they certainly believe there are some individuals who have criminal ties beyond Internet gambling who are participating in Internet gambling. He noted that when the kind of money that has been discussed is at issue, this could be a classic money laundering situation—and if someone wanted to wash money, this would be a great way to do it. He affirmed it certainly makes the federal law enforcement community very suspicious. There were no further comments and Director Day continued with his Director's Report.

Agency Request Legislation:

Director Day reported the enclosed "Z draft" of the Agency Requested Legislation was provided for informational purposes. The Commission authorized staff to present the conceptual legislation that would clarify NCAA bracket pools and fantasy sports. The concept as outlined would be placed in the current sports pool section of the statute. It allows for both bracket pools and Fantasy sports if they were privately conducted, and if they were player operated where all funds go back to the players. The statute would maintain the current limit for sports pools at \$100. Title 9.46 of the Washington statutes do not directly refer to either one of these activities, and, in the past, the agency commented that this was an activity allowed via player exception. The Commission has more recently been advised by legal counsel that there does not appear to be any authorization for this kind of activity in the laws themselves. Staff looked at the administrative rules to determine whether there was authority for the Commission to clarify this themselves and found no foundation for that, and believed it was therefore necessary to bring this issue to the Legislature to determine the legislative intent/policy regarding these two activities. Director Day reported the Commission receives 200 to 300 calls a year about whether it is lawful to participate in these types of events. The proposed legislation has been submitted to the Governor's Office for consideration—their authorization is required in order for the proposed legislation to be presented to the Legislature for their consideration. Director Day noted that if that doesn't take place, the Commission's position next season would be that this activity is not allowed

in the state of Washington. He clarified the Commission would not be pursuing dramatic enforcement agendas.

House-Banked Card Room Financial Statements:

Director Day introduced Tina Griffin, Special Agent Supervisor from the agency's Financial Investigations Unit. He addressed the spreadsheet contained in the agenda packet and noted that the Commission enacted a rule to require financial statements from all house-banked card room licensees. We have just reached the first complete year that required the card rooms to supply their financial statements in conjunction with their fiscal year data. The spreadsheet provides a compilation bringing together the net win and expense data the licensees filed in their audited and other forms of financial statements. Director Day reported that 88 of the 91 licensees filed. The Commission is pursuing a Statement of Charges against three licensees. Of the 88 licensees, 44 percent reported a positive net income and 53 percent reported a negative net income. Director Day reviewed how the data was assembled and noted that some licensees report tax expenses individually, while others may put it in another operating expense area. He commented that with some of the financial statements it may look like there are licensees that are not paying taxes, which would not be accurate from the information supplied. He noted that expense information is not required to be displayed in the same fashion on all of the financial statements.

Director Day reported that the Commission receives quite a bit of public interest and requests for this information. Subsequently, staff is considering how to best display the information on the Internet for the public access. Staff is proposing the expense information be condensed into one category, which makes the data a lot easier to read and be more user friendly. Director Day provided a sample condensed spreadsheet for consideration

Representative Serben inquired whether the Commission is required by statute or WAC to post this information publicly. He commented that these are privately held businesses and asked if it would be problematic to post the financial statement on the Internet. **Director Day** responded that the Commission is required to post the information that used to be on the quarterly reports. He explained the quarterly reports only displayed net win and taxes and did not itemize expenses for the entire business. Many licensees felt it did not display the total status of their business—and many of the licensees have asked the Commission to post more complete information. He affirmed that most of the information is public record. Director Day noted that when the Commission reduced its reporting requirements, a bill was introduced in the Legislature that would have required the Commission to go back to the more significant quarterly reporting process. The Commission advised the Legislature that with the new rule implemented, the information would be more complete and more available. Director Day inquired if the Commission had any thoughts regarding the extent of the information that should be posted. He indicated that staff could present a report combining all of the quarterly reports and displaying tax information.

Commissioner Niemi responded that from her perspective she believed the Commission would want to know the tax expenses. **Director Day** called upon Ms. Griffin to briefly describe the spreadsheet format and the advantages and disadvantages. **Ms. Griffin** explained that the financial statements are required to be presented in accordance with

generally accepted accounting principals; however, the accounting principals don't talk about presentation. Licensees have to submit a balance sheet, an income statement, a statement of cash flow, and footnotes. Some accountants choose only to present line items like operating expenses or general and administrative expenses—they may choose not to give individual line items of expenses such as tax expenses, which doesn't mean they don't have any, it is simply that the expense is reported in a different column. Director Day emphasized staff's desire to find a mechanism to fairly report the information received as accurately as possible. He asked the commissioners to provide him with some independent feedback after they have had a chance to digest the information and format suggested.

Correspondence:

Director Day addressed the correspondence contained in the agenda packet and reminded the commissioners that the Governor's Office has extended an invitation for a Commission/Board Member training opportunity as well as a reception on December 15, 2005. He addressed a letter from the State Auditor noting the Commission once again received a clean audit with no exceptions or omissions. This is the second or third consecutive year. Director Day complimented the Commission's Business Operation Division. **Chair Ludwig** called for public comments and there were none.

2. **Qualification Review:**

Big Brothers Big Sisters of the Inland Northwest, Spokane:

Assistant Director Dave Trujillo reported that Big Brothers Big Sisters of the Inland Northwest is located in Spokane. This report is for the year ending December 31, 2004. Big Brothers Big Sisters of the Inland Northwest has been authorized to operate bingo, punch-board/pull-tabs, and amusement games. This organization was previously known as Big Brothers Big Sisters of Spokane County. In January 2004, they merged with Big Brothers and Big Sisters of Northern Idaho to create the new organization of the Inland Northwest. Based on the status of the audited financial statements, staff recommends that Big Brothers Big Sisters of the Inland Northwest be certified to conduct gambling activities as a nonprofit organization. Mr. Trujillo introduced Don Kaufmann. **Mr. Kauffman**, CEO for Big Brothers Big Sisters of Inland Northwest shared presented information on three special programs now in operation.

Representative Wood congratulated the organization on their outreach programs.

Commissioner Parker congratulated Mr. Kauffman on the organization's great initiative in terms of their service programs—noting they were targeting areas where there is need.

Commissioner Ellis echoed Commissioner Parker's sentiments. **Chair Ludwig** noted that at a time when the bingo industry was struggling, this organization has able to show some improvement in their net profit and net gambling income. **Mr. Kauffman** affirmed the organization has tightened things up as tight as possible.

Commissioner Parker made a motion seconded by **Commissioner Ellis** to certify **Big Brothers Big Sisters of the Inland Northwest to conduct gambling activities in the state of Washington as a nonprofit organization.** *Vote taken; the motion passed with five aye votes.*

3. New Licenses, Changes, and Tribal Certifications:

Commissioner Niemi made a motion seconded by Commissioner Parker to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-23. Vote taken; the motion passed with five aye votes.

Chair Ludwig called for a recess at 3:05 p.m. and recalled the public meeting at 3:18 p.m.

4. Defaults:

Arlene Dennistoun, Staff attorney and Temporary Acting Administrator for the Communications and Legal Department reported she would be asking for default orders on all seven of the default orders listed in the agenda packet. She reported these are all licensees who have been charged by the Director either by mail or by personal service with either a Summary Suspension or Administrative Charges. All seven of the licensees failed to respond to the charges. All seven of the licensees were properly notified and staff also made courtesy phone calls to each licensee to remind them of their rights to hearings. None of the licensees responded, and staff recommends a default order to be entered on all seven of the licensees.

Kosol Meas – Card Room Employee: (Mr. Meas was not present)

Chhany Sar – Card Room Employee: (Mr. Sar was not present)

Ms. Dennistoun reported both of the licensed card room employees were summarily suspended for their involvement in a cheating scheme that involved a prearranged deck of cards. The charges of the Summary Suspension were sent by mail. In both cases the Commission received a return mailing receipt. Staff placed courtesy calls and did not receive a response.

Commissioner Niemi made a motion seconded by Commissioner Ellis to enter a default order revoking the license issued to Kosol Meas to conduct authorized gambling activities. Vote taken; the motion passed with five aye votes.

Commissioner Niemi made a motion seconded by Commissioner Ellis to enter a default order revoking the licenses issued to Chhany Sar to conduct authorized gambling activities. Vote taken; the motion passed with five aye votes.

Reginald Ngeth – Card Room Employee: (Mr. Ngeth was not present)

Ms. Dennistoun reported Mr. Ngeth was personally served with a Summary Suspension.

Commissioner Niemi made a motion seconded by Commissioner Ellis to enter a default order revoking the licenses issued to Reginald Ngeth to conduct authorized gambling activities. Vote taken; the motion passed with five aye votes.

BBQ Pete's, Tacoma: (A representative was not present)

Ms. Dennistoun reported the licensee failed to submit quarterly activity reports for the second quarter of 2005. As of October 12, the Commission has still not received their report.

Commissioner Niemi made a motion seconded by Commissioner Ellis to enter a default order revoking the licenses issued to BBQ Pete's-Tacoma to conduct punchboard/pull-tab gambling activities. *Vote taken; the motion passed with five aye votes.*

Childers Inc., d/b/a CJs Pub N Grub, Renton: (A representative was not present)
Ms. Dennistoun reported the licensee failed to report their quarterly activity for the second quarter of 2005. This licensee has reported late six times out of the last six quarters.

Commissioner Niemi made a motion seconded by Commissioner Ellis that the licenses issued to Childers Inc d/b/a/ CJs Pub N Grub to conduct Class E punchboard/pull-tab and Class C amusement games, gambling activities be revoked by a default order. *Vote taken; the motion passed with five aye votes.*

Flight Deck, Yakima: (A representative was not present)
Ms. Dennistoun advised this is another licensee who has failed to timely submit their quarterly activity reports. As of October 12, this licensee has also not submitted their report.

Commissioner Niemi made a motion seconded by Commissioner Ellis to enter an order revoking Flight Deck's punchboard and pull-tab license. *Vote taken; the motion passed with five aye votes.*

O'Finnigan's Pub, Everett: (A representative was not present)
Ms. Dennistoun reported this licensee is a Class F licensee. Staff placed three courtesy phone calls to the licensee because of the level of their license class—staff received no response to the charges.

Commissioner Niemi made a motion seconded by Commissioner Ellis that the license issued to O'Finnigan's Pub to conduct Class F punchboard/pull-tab gambling activity be revoked by court order. *Vote taken; the motion passed with five aye votes.*

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

Chair Ludwig called for general discussion or comments from the public.

Max Faulkner, President of Kegler's Incorporated and service supplier for Nob Hill Casino introduced Susan Whitman.

Susan Whitman, a member of the Yakima City Council and the Promotions Director at Nob Hill Casino welcomed the Commission to Yakima—the undiscovered jewel of Washington because of the agriculture and fine arts, the racetracks and rivers, and the snow and sunshine. She provided some background information regarding the Nob Hill Casino and highlighted some of the some of the community activities the casino partners with and supports. Ms. Whitman reported that the Nob Hill Casino and the Wild Goose Casino will be providing shuttle vans for a short wine tour following the meeting and she invited the Commissioners to participate.

6. Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/Adjournment:

At 3:40 p.m. **Chair Ludwig** called for an Executive Session will for the purpose of discussing pending and potential litigation. No further action will be taken, the Commission will be called back to order following the Executive Session merely to adjourn and we will be back in session again tomorrow morning at 9:30. The meeting was adjourned at 5:45 p.m.

Minutes submitted by,

Shirley Corbett
Executive Assistant

**COMMISSION MEETING
FRIDAY, OCTOBER 14, 2005
DRAFT MINUTES**

Chair Ludwig called the meeting to order at 9:35 a.m. the Clarion Hotel located in Yakima.

MEMBERS PRESENT: **COMMISSIONER CURT LUDWIG**, Chair, Kennewick
 COMMISSIONER ALAN PARKER, Vice Chair, Olympia
 COMMISSIONER JANICE NIEMI, Seattle
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Quilcene
 SENATOR MARGARITA PRENTICE, Seattle
 REPRESENTATIVE ALEX WOOD, Spokane
 REPRESENTATIVE JOHN SERBEN, Spokane

STAFF PRESENT: **RICK DAY**, Director
 NEAL NUNAMAKER, Deputy Director
 CALLY CASS, Assistant Director - Field Operations
 ARLENE DENNISTOUN, Acting Administrator-Legal
 DAVE TRUJILLO, Assistant Director - Licensing
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

7. Approval of Minutes – September 8 and 9, 2005:

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to approve the September 8 and 9, 2005 Commission Meeting Minutes.

Commissioner Ellis offered an expansion of the minutes. He noted that on page 19 at the bottom of the page there was a description of the action taken on the pricing and credit recommendations from staff. The description of the action by the Commission was fine as to the three WAC sections that were repealed. He noted there was a reference to two WAC sections that were amended with no further information as to what the content of the amendments were. Commissioner Ellis recommended adding a comma after the reference to WAC 230-12-350, and then adding “in the form recommended by staff,” and then continuing on with the existing item to make it clear that the action the Commission took was in fact to

adopt the amendments to the WACs as recommended by staff. The Commissioners concurred with the amendment. *Vote taken; the minutes as amended were unanimously approved.*

8. Consideration of a Declaratory Order:

ZDI Gaming, Inc., Lynnwood:

Paul Goulding, Assistant Attorney General and **Arlene Dennistoun, Acting Administrator-Communications & Legal** presented the petition from ZDI Gaming. **Joan Mell**, Attorney representing ZDI Gaming in this matter responded. A recording and a transcript of the hearing is available upon request.

Staff recommended that the Commissioners set this matter for fact finding and conclusions of law by an Administrative Law Judge (ALJ) and that staff be directed to set the hearing within the 90 day time frame and send proper notice. **Chair Ludwig** called for an Executive Session to deliberate the matter and subsequently reconvened the public meeting.

Commissioner Ellis explained that he was very concerned about the prospect of an unnecessary delay in resolving the issues and he advised that if there was a way for the Commission to resolve the issues he would be quite willing to do so today. However, he didn't think that would be a responsible way for the Commission to proceed given the fact that there are factual as well as legal issues that need to be resolved. He encouraged the Commission staff and the Attorney General's Office to take whatever steps it can to expedite the matter and to address whether or not it's possible to resolve at least the factual issues by stipulation, if not all of the issues.

Commissioner Ellis made a motion that the Commission refer this matter to an Administrative Law Judge for a decision consistent with the requirements of the pertinent statute or WAC that staff have cited. **Commissioner Niemi** provided a second; however, she asked that the motion be broader—to also accept the recommendations of staff—she noted the Commission has an Assistant Attorney General and staff who have gotten together and Commissioner Niemi wanted to take the recommendation of the Commission's own attorney. **Commissioner Ellis** concurred on the statement of the motion.

Chair Ludwig called for a vote on the motion to refer this matter to an ALJ to be heard on or before December 19, 2005. *Vote taken; the motion passed unanimously.*

9. Petition – Drift on Inn Casino – Increasing a Card Rake from \$1 to \$2.

WAC 230-40-610:

Assistant Director Cally Cass explained that Item 9 (a) is a petition by John Mitchell of the Drift on Inn Casino in Shoreline requesting the PSJ rake limit be increased from \$1 to \$2. A player-supported jackpot is a poker game in which players contribute a set amount per pot or hand, typically taken through a PSJ rake to a jackpot prize pool. The prize pool is won through pre-established criteria, and may be awarded in increments or as a whole depending upon the criteria. Ms. Cass defined a house rake as a set amount taken by the card room from each pot as fees to play the game—this is pure revenue to the card room. A PSJ rake is the amount that is taken for the actual jackpot and is considered the players money. Currently up

to \$1 may be raked in each hand and put toward the PSJ. Of the \$1 PSJ rake, card rooms may retain up to 10 percent as administrative fees. For example, if wagers total \$60 in the pot, a card room could rake \$6 from those wagers, \$5 for the card room rake and \$1 for the PSJ or the jackpot. The card room would keep \$5 and 10 cents would be charged as an administrative fee. The 90 cents would go to the actual jackpot.

The petitioner is requesting the PSJ limit, which is the jackpot, to be increased from \$1 to \$2. This petition deals solely with the amount being placed in that PSJ jackpot. **Ms. Cass** believed this could potentially double PSJ prizes available to players and double the administrative fees card rooms could collect. She noted the petitioner is stating the increase would enable him to develop promotions, to ensure strong guest relations, and to continue growth of his player base. He also notes that his customers are asking for the higher PSJs. The Commission received several letters from players, dealers, and other patrons supporting the petition.

Ms. Cass noted that Gary Murrey of the Recreational Gaming Association has asked that the \$1 rake limit be removed and that the amount of the rake be unlimited; therefore leaving the limit decision up to each card room. Ms. Cass advised that staff takes no position on increasing the rake from \$1 to \$2. Staff opposes an unlimited rake because it would divert more of the player's money from the original player pot and potentially increase the administrative fees. She noted that whether or not to allow the increase is a policy decision for the Commission. **Chair Ludwig** called for questions and for public testimony.

John Mitchell, Petitioner, advised he originally filed the petition in July before he had any knowledge of other petitions coming forward. He advised there was not a hidden agenda. He emphasized the players desperately want the increased rake. **Chair Ludwig** asked Mr. Mitchell if he was hoping to increase the size of the player supported jackpot so that everyone could enjoy the chance of winning more money. Mr. Mitchell affirmed it would allow licensees to have higher jackpots.

Chair Ludwig announced that there will be another opportunity to comment on the petition at the November meeting.

10. Petition – Increasing Administrative Fees for Player-Supported Jackpots from 10 percent to 35 percent.

WAC 230-20-610:

Ms. Cass explained that Item 10 (a) is a petition proposed by the Recreational Gaming Association asking to increase the percentage allowed for administrative fees for a PSJ. Administrative fees are a set amount taken from the actual PSJ pot for the administrators of that PSJ. In games that offer a player supported jackpot, the one dollar may be raked from each hand and put toward that PSJ. Of the \$1 PSJ rake, card rooms may currently retain up to 10 percent as the administrative fees. PSJ funds must be kept in a separate bank account and the 10 percent administrative fee is intended to allow licensees to recover the administrative expenses incurred with maintaining a separate bank account, including the banking fees and recordkeeping. Staff believes the 35 percent administrative fee is extremely high. Ms. Cass noted the petitioner has provided no justification to support the increase in

these fees. PSJ funds are considered the players funds and staff feels these funds should be returned to the players and not kept as an additional revenue source for the house. She noted that if the petition is approved in conjunction with the previous petition, there would be the potential for significant dollar amounts going towards administrative fees.

Ms. Cass noted that staff received a letter from Ms. Chiechi explaining that a 35 percent administrative fee for player supported jackpots would make the administrative fee consistent with what is now taken for house-banked progressive jackpots. Ms. Cass pointed out that in a house-banked progressive jackpot, it is a voluntary bet, and with a PSJ that is not the case. Staff recommends denying the petition. **Chair Ludwig** called for public comment.

Kris Kealy, Iron Horse Casino, advised he was representing the RGA on this particular topic. He stated the petition wasn't intended to be dovetailed to the previous petition. He went on to explain that about half of the enhanced card rooms in this state are losing money. In some areas they cannot afford to offer PSJ accounts because they don't have enough administrative fees to cover the cost. He stated the hidden costs in running an enhanced card room do not necessarily show up in a particular event; however, they do show up on the bottom line. Mr. Kealy indicated the smaller market clubs are more interested in this petition. He suggested they might need a 22 percent administrative fee in their PSJ account to even bother running this activity. He emphasized the intent was to give the business owners the discretion to run their businesses and offer the products.

With no further comments, **Chair Ludwig** noted the audience will have another opportunity to discuss this matter again next month.

11. Petition – Card Games Rules of Play.

WAC 230-40-010:

Ms. Cass reported that Item 11(a) is a petition submitted by the Recreational Gaming Association to change card game rules of play for house-banked card games. She explained that players are no longer required to receive their own hand of cards. Players would still be responsible for their own decisions regarding the game. The petition would remove the prohibition of players bidding on the house's hand, although a player would still be prohibited from bidding on another player's position. She clarified the Commission prohibits side bets.

Ms. Cass advised the proposed change would allow all kinds of card games such as Mini-Baccarat, Craps style games played with standard cards, and other games in house-banked card rooms with one or more decks of standard playing cards. Currently Commission staff review each new card game before it is put into play to make sure it meets Commission requirements. Staff would continue to do that even if the petition is adopted.

Ms. Cass identified policy and regulatory considerations; noting approving the rule change may be perceived as an expansion of gambling because it adds new card games where players are not required to have their own hands. The regulatory consideration is that it may increase the complexity of the games and additional wagering options may make it more difficult to detect cheating for both the house and the staff. Ms. Cass suggested that it might

also increase staff time investigating cheating allegations, processing administrative actions, and actually reviewing the card games themselves. She introduced Special Agent Mark Harris who demonstrated how Mini-Bac and Yo Eleven Super Craps would be played and how winnings are paid. Ms. Cass noted this would also be a policy decision that may be considered as an expansion of gambling. **Chair Ludwig** called for questions and public comment.

Gary Murrey, representing the Recreational Gaming Association, explained this proposal was initiated as a result of many customers who have asked the industry why certain games aren't offered. Licensees have responded that the games were not authorized. When the RGA looked at why they weren't authorized, it was determined that two minor changes would allow the game(s) without changing what the social card game was intended for when house-banked card rooms were initially authorized. He explained it would still be a social event with players sitting at the table playing with chips, with a live dealer. The minor difference is whether or not the player has to get their own two cards and bet, whether or not the player beats the dealer or not, or whether the player may say "this hand over here is going to beat this hand over there." He affirmed there have been 30-40 games approved for operation over the last eight years. Only eight or nine of the games are in operation because most of them don't work and they go by the wayside. Baccarat has proven to be a customer driven desire throughout the gaming operations in the United States and the world for many years. It is a simple, easy to see and understand through surveillance, and players bet in one spot, and either get paid or not. It is also already available in the tribal venues. Approval would provide licensees another opportunity to offer customers what they want.

Commissioner Parker asked Mr. Murrey to address staff's documentation suggesting that by increasing the complexity of games and offering additional wagering options, it may make it more difficult to detect cheating, that it may increase staff time investigating such allegations, processing administrative actions, and reviewing and approving new games. **Mr. Murrey** responded that the fundamental number of bets that can be placed on a layout in a single hand has not changed. The current rule allows three wagers to be placed in a bonus bet as the maximum allowed. The Yo Eleven game only has three bets. Based on the outcome of the hand, certain ones get paid and others don't, based on a pre-determined table of payouts. Mr. Murrey acknowledged it takes staff time to learn and understand new games; however that is true with the current rules—numerous games are looked at/approved every year by staff, as well as the submissions that don't get approval because they don't conform to the rules. He didn't believe there was a greater opportunity for cheating because the games offer the same number of bets and the same odds; they simply have different pay scales and different options on whether the player is betting on their own hand or a different outcome.

Mr. Murrey noted that Internet poker is popular because it involves interaction and players can see what is going on. He believed people trust more when they are playing against individuals rather than a house on-line. He acknowledged on-line gaming is huge, and he acknowledged that some of the petitions brought forward were an effort to give the players in Washington the opportunity to play the games that they want legally instead of having to play on the Internet, or alternatively to drive 30 or 40 miles to a tribal casino. Mr. Murrey

suggested that the RGA was trying to allow games that still fit within the context of social card games, allowing people to stay within the social venue that card rooms were approved for—no dice, no roulette, or anything beyond the Commission’s authority to authorize.

Commissioner Parker asked if the increase in Internet gambling has impacted the card room industry. **Mr. Murrey** believed it had to some extent; however, he reiterated that it is an illegal market and many people aren’t aware that it is illegal and/or they don’t think they’ll get caught. He suggested that the more the industry can do to provide legal entertainment at the demand the patrons want, that would be better for the patron, better for the industry, and better for the Commission because there would be less illegal gambling.

Senator Prentice advised that she had heard it was the RGA’s intent to bring forth a bill to permit Internet gambling—to legalize something that is illegal. **Mr. Murrey** responded in the negative. He recalled that in the 1990’s there were a lot of back room poker rooms that had higher limits—and the main focus of the Commission was to bust all the backroom poker games. He emphasized the RGA is interested in offering games that players want. Players have a choice to go where the activity is allowed; whether it is legal or illegal.

There were no further comments and at 11:15 a.m. **Chair Ludwig** recessed the meeting. He called the meeting back to order at 11:30 a.m.

12. Petition – Increasing Poker Wagering Limits.

WAC 230-40-120:

Ms. Cass reported that Item 12 (a) is a petition submitted by the Recreational Gaming Association to increase poker-wagering limits from \$25 to \$100 for poker and house-banked card games rooms only. Non-house-banked card room poker would remain at \$25 under this petition. She reported the change would significantly raise the stakes in poker games. For example, a poker player in a game with five wagering rounds and four wagers and raises per wagering round could bet as much as \$2,000 per person. Currently a person’s maximum wager is limited to \$500. **Ms. Cass** advised there could be additional security concerns for players, card rooms, and employees due to the increased amount of cash in the card room. The policy consideration is that this may be perceived as an expansion of gambling because it increases the current betting limits. Staff has regulatory concerns pertaining to the need for stricter card room controls such as surveillance and internal controls because the amount of cash would increase significantly in these types of games. **Ms. Cass** noted it may increase the incentive to cheat and it may increase staff time spent on investigating cheating allegations and processing administrative actions.

Whether or not to allow this is a policy decision for the Commission. Research revealed that 19 other states authorize poker with wagering limits ranging anywhere from \$5 to an unlimited amount. Many are determined by the local jurisdictions or the casino themselves in these states. Washington is one of the most conservative states when compared to the 19 states at the \$25 wagering limits. **Ms. Cass** noted that in tribal casinos in Washington, poker is a Class II or Class III activity—for Class II, according to IGRA, they must follow the state limitations. Therefore, this petition would also impact their abilities to raise their Class II

poker wagering limits. Class III is limited to \$500 by compact along with all the other Class III games.

Chair Ludwig questioned what the maximum wager per player would be. **Ms. Cass** replied that it is very difficult to determine in poker because of the way the game is played; but, potentially under this petition it could be \$2,000 per player--and if there were six people at the table, the pot could be \$12,000. **Chair Ludwig** called for public testimony.

Mr. Murrey representing the Recreational Gaming Association, reported this petition was brought forward at the request of customers who wish to play at the higher limits. Traditionally, the majority of the players enjoy the card games at the lower limits. However, there are a few people that wish to play at a higher limit—hence the reason tribal casinos provide the Class III tables for those selected players. He commented that by making this a legal activity and by expanding and giving the customers what they want in the field they want, it is another opportunity to keep people from going to an illegal activity. **Mr. Murrey** affirmed that while it's true that the maximum could be \$2,000 for each player, and if there were six players, the pot could reach \$12,000—it rarely happens, the average pot is far less than the maximum allowed. Additionally most poker players will be selective in the hands they play; they are smart enough to throw the hands away, they get out, and they only play the hands that they like.

Mr. Murrey reiterated this is driven by market demand. The current trend in the gaming industry is to have a bet that is called a spread limit game. Traditionally there is a set bet where a player may bet \$5 in a round then \$10 the next round. The current trend in the industry is to give the players an option—it gives the player the feel of control on how much they are going to risk and what that player will do, and it creates more of a mental game inside the card game and allows different spreads for different customers. He emphasized this is customer driven, the house does not get more money from this, the rake is still the same, it is limited in statute. This is an opportunity for the industry to give the public the games they want in the card rooms.

Commissioner Parker inquired if the rule passed whether there would be an advertisement campaign about high stakes gambling now being authorized. **Mr. Murrey** responded that he couldn't speak for the other operators. He advised that he personally won't put the game in play because it isn't something that fits within his model. He believed that currently, there are probably only four tables in the state that would be in this position, and they may advertise that they have higher limits available to educate the customers. He acknowledged it is the nature of advertising to tell the public what you can offer and your amenities.

Kris Kealy spoke as a consumer of poker products, and he reported that he has never seen a table where six players go to the maximum bet. He explained the bigger limit betting is mostly designed around the better players who think they are better players. The typical pots being played never get above \$60—a \$75 pot is a really big pot. Most players go out at around \$20. **Mr. Kealy** commented that this really addresses an “all-in” type of a bet as seen on TV and he went on to describe the potential wagering option process.

Senator Prentice cautioned that the decisions that get made here are interpreted in a very different way—and no matter how we say it; it will be viewed by many people as an expansion of gambling. “Those people will wonder what the devil we are doing.”

With no further comment, it was noted final action on the proposed petition is scheduled at the January 2006 meeting.

13. Petition – Increasing House-Banked Card Game Wagering Limits.

WAC 230-40-120:

Ms. Cass reported this petition was submitted by the Recreational Gaming Association for an amendment to WAC 230-40-120, Subsection 5, requesting an increase from a limited number of tables at each house-banked card room at \$200 wagering limits, to the ability to have \$200 wagering limits at all 15 tables or whatever amount of tables they are licensed at. Three card rooms had regulatory violations when they offered \$200 wagering limits at more than the authorized number of tables. Two were issued a notice of violation settlement, and one licensee had administrative charges issued. Some licensees have said that it is difficult to keep track of which tables have the \$200 limits because of shift changes and other such situations. The Recreational Gaming Association is asking that the limits be authorized for all house-banked tables. They feel having the ability to offer the \$200 wagering limits at all the tables will simplify the rules. **Ms. Cass** explained that of the 93 house-banked card rooms operating, 71 are taking advantage of the \$200 limits in some fashion. She identified the policy consideration that this may be perceived as an expansion of gambling because it would increase the wagering limits. With no further comments, **Chair Ludwig** called for public comment.

Steve Griffiths addressed the petition on behalf of the Recreational Gaming Association. Acknowledging the fact that this matter will not be decided until January, he advised the RGA would defer their comments for a subsequent meeting. He anticipated the comments would center around some of the confusion on the part of operators and players, and at times irritation on the part of players regarding some table limits being at \$200 and others at \$100. He commented that because the issue is also tied up with the emotional expansion of gaming issue, the RGA will try to quantify for the Commission what the impact of the \$200 betting limits have been on the industry—to provide a handle on what this decision actually means.

14. Petition – Cash Defined.

New Section:

Ms. Cass reported this petition was submitted by Harmon Consulting Inc., requesting that cash be defined in the rules. This definition of cash would expand the methods players could use to participate in gambling activities and/or receive their winnings. **Mr. Harmon** has indicated to staff that the intent of the change is to allow patrons to use guest cards to purchase pull-tabs and allow pull-tab winnings to be added back to these guest cards. **Ms. Cass** cautioned that if this proposal is approved, it would apply to all gambling activities—it is in the general definition. The petitioner states the change would modernize industry and take advantage of current security benefits with the paid cashless systems. He has also expressed the intent for the guest card to be purchased and used by patrons of a licensed business. For example, a guest card could be used to purchase food, beverages, pull-tabs, or

any other gambling activity. A patron could add additional funds to the guest card if they desire, but more importantly, they could add their winnings back to the guest card. Ms. Cass affirmed there would be an accounting system associated with this activity to ensure the accuracy of the customer guest card balance; and at a patron's request, the system would also provide a guest card fund balance. Staff is recommending denial of this petition because standards have not been developed for this accounting system. Rules must be reviewed to determine other necessary changes and the impact on the other gambling activities. Such considerations have not been addressed in the current petition.

Commissioner Parker questioned whether a guest card system is being used in other jurisdictions. **Ms. Cass** affirmed that there are variations that are used. **Chair Ludwig** called on the petitioner.

Monty Harmon, President of Monty Harmon Incorporated, explained that the state recently passed a law that required gift certificates not to expire at businesses. He suggested that since they don't expire, the pieces of paper or ticket books will be a cumbersome hindrance to the conduct of the business and the electronic systems that have been developed to allow businesses to track and monitor their gift card systems. He noted gift cards are prepaid and there is no opportunity for a credit system. The asset protection that is available to the business allows a tracking system—there is a date and time for every transaction and the remaining balance of the gift card is printed on every receipt. Mr. Harmon explained these types of cards are used throughout other types of industries such as Target, Costco, and Starbucks. It's the same concept and established industry standards already exist. He commented that there are gambling industry licensees that already have this type of a system in place and which have been reviewed by Commission staff. He explained that by moving the definition of cash from the card room rule section alone and placing it into the general definitions, it would allow the cash equivalent definition to apply to all areas.

Historically the Commission has allowed some liberal interpretation on the payout of some prizes with pull-tabs. If a player has a winning pull-tab, they are able to give that pull-tab to the operator and ask for more pull-tabs. The payment is not in cash, the payment is on a winning pull-tab. Mr. Harmon suggested that "grace" has been extended. He advised the amended rule would allow for approval of the monitoring system.

In response to staff's concerns, **Mr. Harmon** didn't believe standards for the system were needed because WAC 230-12-070 stipulates that no operator shall employ a device or scheme that will defraud the customer. If a cashless system defrauded a customer, he believed the Commission has ample authority to punitively tackle that problem. He also noted that Section 3 of that rule says that no operator shall engage in any act, practice or course of operation as would operate as a fraud. **Mr. Harmon** supported amending his proposed rule to eliminate the approval of staff from the second paragraph. In reference to the concern with rules that might be impacted in other areas, he thought that the greatest concern would be in the area of house-banked activity, which is where cash equivalent/debit cards are already allowed. He noted that licensees may conduct a raffle and sell on a credit card system. Addressing staff's last concern regarding monitoring the systems, Mr. Harmon believed the customers would help to do that. He suggested that the businesses that use these

types of systems would not want to jeopardize their customer's trust. If there were problems, they would not be in existence today. Mr. Harmon believed the security provided with the date and time of all transactions is an enhancement and an improvement for the industry and for the Commission. If there was a theft or other problem, one could go back and review the system, especially if the transactions were recorded.

Ms. Cass affirmed that staff has concerns about the other types of gambling activities, because staff did not know how the system would apply or interact with gambling equipment or other potential devices. She commented there may be other considerations; however, staff has not had time to adequately look into them.

Commissioner Parker noted that generally when a petition is presented for filing, the Commission normally will agree to file the petition unless there is some clear contravening policy or question of legality. He questioned whether staff would have a problem if the Commission filed the petition so that it can then be officially considered. **Ms. Cass** responded in the negative.

Commissioner Niemi advised that she would support a motion to deny the petition; however, she was interested in hearing what the other members have to say about this matter. She indicated her reason to deny relates to the discussion regarding the ZDI declaratory order. One of the main points in that discussion related to the definition of cash. Commissioner Niemi advised she saw a tremendous overlap between ZDI's request and this petition. She advised she would be more comfortable waiting for the findings and conclusions at least from the ALJ before considering a change to this WAC.

Chair Ludwig inquired what effect not filing the petition would have on ZDI's overall time table. **Mr. Ackerman** didn't think that it had any effect upon the time frame for holding the hearing that has already been ordered by the Commission. Chair Ludwig acknowledged that while this isn't Mr. Jerow's petition, he certainly thought the Commission should consider how his machine would function and whether or not the rules would permit a debit card, credit card, guest card or cash card. Mr. Ackerman agreed the issues appear to overlap at least somewhat. However, he stated that unless the Commission decided to grant Mr. Harmon's petition and amend the WACs in the manner indicated, it probably would not affect Mr. Jerow's petition. If the Commission adopted Mr. Harmon's proposal, then that may bring forth some of the concerns that staff has raised—or that were raised today with regard to the ZDI petition for declaratory order. He noted the Commission has ordered the hearing for ZDI to take place on or before December 19, and unless the Commission decides to adopt Mr. Harmon's petition and amend the WACs prior to that date; it would not affect the hearing already ordered. If the Commission denied the petition, again, Mr. Ackerman also didn't believe that would affect the ZDI petition for declaratory order, because the interpretation of the existing WAC would still have to take place in front of the Administrative Law Judge. The Commission's denial of Mr. Harmon's petition would not change the law in any manner.

Commissioner Ellis asked staff if the Commission were to deny this petition, or if the petition was still pending at the time a decision is made by the Commission, and the

Commission adopted ZDI's petition that cash includes their view of cash equivalents—to what extent have we resolved all of the issues presented by Mr. Harmon's definition of cash equivalents. **Mr. Ackerman** responded that he was not completely sure. He believed the Commission would resolve the issue with regard to the pull-tab reader device. As to other potential uses of the cash card that are not currently allowed, he advised that he did not know that a decision from the ALJ would necessarily resolve the issue before the Commission.

Chair Ludwig commented that as a general rule he has always been in favor of filing petitions so they may be further discussed. In this case today, because there is a bit of uncertainty regarding the schedule that Mr. Jerow's/ZDI's petition is on, he still favored and was more inclined to keep this petition alive, regardless of what the final decision may be. He believed further discussion won't hurt anyone; however, failure to file may jeopardize somebody else. **Chair Ludwig** called for public comment.

Bill Tackett, Buzz Inn Steakhouses Inc., advised that he has been licensed by the Commission since 1974. He reported that regarding the issue being discussed, he "kind of got it through the back door." He passed around a gift card that Buzz Inn uses in 14 locations around the state. He also demonstrated a receipt and a gift card that he purchased at West Marine, noting they are very similar. He drew attention to the time and date stamps. Mr. Tackett advised that he has been operating his gift cards for over two years, in response to an incident of fraud. He explained he had a manager recreating his gift certificates and selling them. He suggested that with the modernizations to printing processes, it is fairly simple to duplicate gift certificates. Ultimately, Mr. Tackett reported that he came up with a certificate that automatically rings on the cash register; it identifies where it was sold, what time it was sold, and where and when it is redeemed.

Mr. Tackett asked the Commission not to penalize him for modernizing his business and doing what every other business does. He pointed out that Safeway has a whole stand of dining out cards, merchandise cards, and clothing cards. He suggested that no matter what gift card it is, it is a cash card and the individual may purchase whatever cash will buy at that store. If the person doesn't spend all the value, they get their change in a gift card. Mr. Tackett believed this system is safer and is a modernization. He advised he would hate to think the Commission would deny the gambling industry the opportunity to move into the future like companies such as Starbucks, Nordstrom's, and Lowes. He reported that Commission staff has been wonderful—he was notified and he had to make some changes to his system. He affirmed that he is making the necessary changes until this issue gets resolved. Mr. Tackett emphasized this is not a gambling issue, this is an industry issue. He likened it to advances from cash to writing checks to credit cards. He believed the gift card was in that same realm, and he asked for the Commission's careful deliberation.

Ms. Niemi inquired if someone gave her one of Mr. Tackett's gift cards, could she take it back and get cash. **Mr. Tackett** responded absolutely yes. **Chair Ludwig** verified the card could be used just as cash. **Mr. Tackett** affirmed that he is using his gift cards for everything where cash could be used—to play pool, to purchase pull-tabs, to go to the snack bar for coffee and a sandwich, or to go to the bar for a drink—it's a cash card and individuals are welcome to spend it as they see fit, or get the money back. **Chair Ludwig** verified that

an individual would not get any pull-tab winnings credited to the card, and **Mr. Tackett** responded, not now. Chair Ludwig asked if the proposed Harmon petition would change that in any way. Mr. Tackett believed it would.

Ms. Cass clarified this petition would not affect Mr. Tackett's ability to use gift cards. That is currently allowed. This petition does suggest that pull-tab winnings could be placed back on the gift card. Commission staff objects to that, and that is not what Mr. Tackett is currently doing. She reiterated that many of the issues regarding the operation of gift cards have not been addressed and that is another reason staff recommends denial. **Chair Ludwig** commented that he agreed with Mr. Tackett, this appears to be good business on his part; however, he didn't think it should be used to violate the existing gambling laws. He verified that staff is not suggesting that it does, or this petition does. Ms. Cass responded that this petition would allow something that the Commission does not currently allow—putting the winnings from a gambling activity back on to a gift card. Chair Ludwig verified that a person could take his money and invest it in a gift card. Ms. Cass affirmed.

Joan Mell commented that the cash card debate has apparently raised the issue where the Commission is concerned about the crediting of value back on to a cash card as somehow conceptually new, and as avoiding the whole purpose of the Gambling Commission which is to ensure that the gambling activities are not corrupt. She believed the cash card instills security within the regulatory process. By putting the winnings earned, which are a cash equivalent, onto a plastic card rather than requiring the player to go up to the retail cashier and ask for cash back that the cashier then takes and puts back onto the card, is an extra exchange of US currency that would no longer need to occur. That also minimizes the money changing hands and the opportunity for someone to actually get their hands on cash that exists now, and the accounting systems are inherent in the process. She emphasized the computer database already exists, there is no need to create a new accounting system, it is inherent in the system, and it is already available.

Chair Ludwig commented that he didn't see how Mr. Harmon's petition permits automatic credits to his cash card. **Mr. Harmon** responded that the section reads prizes must be paid in cash for merchandise. Cash not being defined would not allow a debit card credit back on to a customer card. He recommended strictly looking at cash as being dollars. He emphasized that his interest was in allowing an accounting system for customer accounts and it does not involve the gambling activity, per say. He explained that pull-tabs themselves determine whether they are winners or not, and then an employee in Mr. Tackett's business decides whether he is going to pay out in cash or put it on a card. It's that simple—it is not an automatic crediting. He advised that he was not seeking anything more than the ability to define cash as a debit card system. Chair Ludwig noted the documentation says the purchases will reduce their account balance and their winnings could be added to their balance. He noted the last part, "winnings added to their balance" would suggest that a machine could do that. **Mr. Harmon** agreed that he could amend that language.

Chair Ludwig stated that he was in favor of filing the petition for discussion and to take care of the questions/issues that are being talking about. He hoped the language might be amended before the rule came up for final approval.

Commissioner Ellis advised that he had gotten the impression from the preceding comments that there was no issue; but, that it is appropriate for the guest cards to be used to purchase pull-tabs. He believed the focus seems to be on how pull-tab winnings are credited onto the cards. Commissioner Ellis noted staff's description of the purpose of the rule mentions that the petitioner has indicated that the intent of the change is to allow patrons to use guest cards as pull-tabs, among other things. He asked if it was staff's view that it is improper or illegal for guest cards to be used to purchase pull-tabs. **Ms. Cass** responded in the negative and explained the Commission currently allows pull-tabs to be purchased with that kind of gift/guest card, as long as it is a generic gift card for the business and not specifically for a gambling activity.

Commissioner Parker made a motion seconded by **Commissioner Bierbaum** to file the petition for further discussion. *Vote taken; the motion passed with three aye votes. Commissioner Niemi and Commissioner Ellis voted nay.*

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

At 12:30 p.m. **Chair Ludwig** recessed the public session to conduct an Executive Session for the for the purpose of discussing pending and possible litigation. He explained the meeting will only be reconvened for the purpose of adjournment. He noted the November 17-18 meeting will be conducted at the Double Tree Guest Suites at South Center/Seattle. He advised the Commission anticipated a very full and time consuming docket, and suggested that the public watch the meeting notices and double check the website to affirm the meeting start times.

The meeting was adjourned at 2:00 p.m.

Minutes by,

Shirley Corbett
Executive Assistant