

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
THURSDAY, OCTOBER 9, 2008  
MINUTES**

**Chair Peggy Ann Bierbaum** called the meeting to order at 1:35 p.m. at the Red Lion Hotel at the Park located in Spokane and introduced the members present. Chair Bierbaum welcomed new Commissioner Mike Amos from Yakima.

**MEMBERS PRESENT:**     **Commission Chair Peggy Ann Bierbaum**, Quilcene  
                                  **Commissioner Keven Rojecki**, Tacoma  
                                  **Commissioner Alan Parker**, Olympia  
                                  **Commissioner John Ellis**, Seattle  
                                  **Commissioner Mike Amos**, Yakima  
                                  **Senator Margarita Prentice**, Seattle  
                                  **Senator Jerome Delvin**, Richland  
                                  **Representative Gary Alexander**, Olympia  
                                  **Representative Geoff Simpson**, Covington

**STAFF PRESENT:**       **Rick Day**, Director  
                                  **Mark Harris**, Assistant Director – Field Operations  
                                  **David Trujillo**, Assistant Director – Licensing Operations  
                                  **Amy Hunter**, Administrator – Communications & Legal  
                                  **Jerry Ackerman**, Senior Counsel – Attorney General’s Office  
                                  **Gail Grate**, Executive Assistant

**1.     Agenda Review/Director’s Report**

**Director Rick Day** welcomed Commissioner Amos and said he was looking forward to working with him as Commissioner Amos moves through his term as Commissioner. Director Day pointed out that from 2000 to 2007 Commissioner Amos was President of the Washington Council of Police and Sheriffs, noting that the group represents 5,000 law enforcement officers. Commissioner Amos also previously served on the State Criminal Justice Training Commission, appointed to that post by Governor Gary Locke. Currently Commissioner Amos serves as Vice-President for the State Lodge of Fraternal Order of Police in Eastern Washington. Commissioner Amos retired after 37 years of service with the Yakima Police Department as Sergeant.

Director Day reviewed the agenda for Thursday and Friday, noting there were no staff recommended changes to the agenda, but pointed out the Friday start time of 9:00 a.m. Director Day explained Item 5 is a demonstration of the PokerTek poker table that will be held in a different room and will not be recorded, but handwritten notes will be taken. Any discussion on the PokerTek rule will take place tomorrow.

**November 12, 2008 Commission Work Session Agenda Review**

**Director Day** explained that staff has tentatively scheduled a work session for Wednesday, November 12, at 6:00 p.m. A Revised Draft Work Session Agenda, a copy of the Work Session Agenda that the Commissioners used on November 15, 2006, and a copy of the minutes from the 2006 work session has been provided. The Commission has been conducting these work sessions about every two years to provide an opportunity for Commissioners and Ex-Officios to plan and discuss future topics – an opportunity to discuss issues between the Commissioners. It is an open public meeting, but testimony from the public is not permitted at the work session, unless there is a direct request from a Commissioner or an Ex-Officio. At this point, staff is looking for a the direction the Commissioners would like to go, what changes they would like on the agenda, and what background information they would need so staff and Mr. Ackerman can prepare that information for the work session. The agenda will need to be posted early enough to give sufficient public notice of the work session. Director Day briefly reviewed the agenda and went over a few changes/additions that were made.

**Chair Bierbaum** pointed out that the first bullet under Item 3 should read “net receipts 1997 – 2008.” Chair Bierbaum indicated that to get a sense of where our state is in relation to other states, she would be interested in knowing, in some kind of summarized way, how many states have gambling, how many of them have just Indian gaming, how many of them have Indian and non-tribal gaming, the mission statement of the regulatory agencies that regulate them, and the magnitude of the tribal gaming and the non-tribal gaming. **Commissioner Ellis** agreed that information would be interesting. **Director Day** replied that staff has previously attempted to put some of that information together, so it should be possible to bring it together in a summary package. **Chair Bierbaum** explained she was suggesting the topic because she thought it would be helpful in the discussion about the role of the Commissioners, their relationship to tribal gaming and to non-tribal gaming, and how other states handle it. Chair Bierbaum felt the materials that Ms. Hunter emailed the Commissioners, in response to a request from Commissioner Ellis, regarding the expansion of gambling issue were very helpful, and it would be beneficial to frame a discussion around that issue. **Director Day** indicated staff would do its best to provide the background material in advance so the Commissioners have time to review the material before the work session.

**Commissioner Parker** asked for staff to include a comparative analysis of the Washington State Gambling Commission as compared to neighboring states; primarily looking at Oregon, California, and possibly Arizona. In particular, comparing the role of Washington State’s Commission to states that have something similar and states that have something very dissimilar and analyze that from the point of view of how they are performing. How would we rate their performance given we would have a common goal as State Gambling Commissions, but they go about it differently; they are dealing with a different environment in their state in terms of the gaming but also in terms of the state/tribal relationships. For example, California has 105 tribal entities and they have a different structure very much in place. California does have a debate over the issue of revenue sharing in effect, or whatever term you may want to use, and it is an example of

a trend that is out there. Commissioner Parker thought it would be good to have the Commission as informed as possible in terms of comparing these things. **Commissioner Ellis** asked if Commissioner Parker was looking for data on the size of the staffing. **Commissioner Parker** affirmed he would like to see some data on the size of the staff when talking about the role of the Commission and other similar things like the infrastructure. **Ms. Amy Hunter** responded that staff has some of the information; it will just need to be refreshed. We have good contacts, but Ms. Hunter thought other states are like ours; when the information was collected three or five years ago the different states may have been doing one thing but have had changes since then. Staff will certainly do its best.

**Chair Bierbaum** was concerned that as we lose Commissioners with a lot of knowledge, like Commissioner Parker who knows more about these issues just by virtue of what he knows to ask for, the Commissioners at least have an ability to keep some of that knowledge behind. **Director Day** asked if it would be acceptable to the Commission, as staff starts to prepare the comparison, that it start with neighboring states and then, to the extent there is time between now and the work session, expand the information.

**Representative Alexander** asked where the work session would be held. **Director Day** replied it was tentatively scheduled for the DoubleTree Guest Suites at Southcenter at 6:00 p.m. on Wednesday before the regular Commission meeting. **Chair Bierbaum** asked why Director Day kept referring to the work session as tentative. **Director Day** replied it was tentative until the Commission decided. **Chair Bierbaum** asked if a motion was needed. **Director Day** affirmed that would probably be best, but the Chair could just direct staff to do it.

**Commissioner Rojecki** suggested starting the work session earlier, at about 4:00 p.m. **Director Day** responded there was no problem with getting the meeting room earlier, but the start time would be up to the Commissioners. The time was at 6:00 p.m. to make it easier on any Commissioners who had to get there from work, plus allow time to eat before attending the work session. Staff will be there at whatever time is decided. **Chair Bierbaum** indicated she was going to have to take a half day off no matter what the start time is set at. **Commissioner Ellis** agreed 4:00 was fine with him.

**Commissioner Parker** asked if this was a public session. **Director Day** replied the work session is open to the public, but is not for public participation. **Commissioner Parker** asked about the size of the room for the work session. **Senator Margarita Prentice** noted in 2006 everyone was squeezed into a small room. **Director Day** replied staff recognized the room last time was too small and a larger room has been reserved for this work session. It is not the large meeting room because the purpose is to encourage discussion among the Commissioners; not to be so far away from each other that they have to talk into a microphone. Director Day asked if the Commissioners wanted to change the time to 4:00 or keep it at 6:00. **Chair Bierbaum** suggested splitting the time to 5:00 p.m., that way if the work session goes to 10:00 it is not completely past

everybody's bedtime. **Director Day** understood the Chair's direction was to move forward with the agenda as discussed, with a starting time of 5:00 p.m.

**Chair Bierbaum** asked for a nod of the Commissioners heads; there was a consensus to start at 5:00 p.m. and go with the revised agenda.

### **Bingo Adjusted Cash Flow Status**

**Director Day** explained the bingo adjusted cash flow report was for reporting purposes, to keep the Commissioners aware of the progress of the larger charitable/nonprofit organizations. The report shows actual figures for the first two quarters and projected figures for the last two quarters. Halfway through the calendar year, staff are projecting that all, except for one, will meet and actually exceed cash flow requirements per the Washington Administrative Code. One licensee who moved locations earlier in the year may end up below the cash flow requirements, but staff believes the licensee will be able to qualify for the 25 percent, one-time waiver. Staff is cognizant of the national financial situation and is trying to keep an eye on the reports and our licensing trends to see if there is any dramatic change in revenue or licensees that should come immediately before the Commission. At this point, when comparing the last 12 months to the previous 12 months, staff have not noticed a significant decline in licensees, which shows some stability. Staff does not see the dramatic crisis in the licensee and financial side that is being seen in some other areas of the economy, which may be that gambling does not go along with the trends of national finances. Obviously, as people's disposable income is impacted, that could have an impact on both revenue and businesses, and on gambling. So staff needs to watch it very carefully, and will let the Commission know if anything is seen in that regard.

**Chair Bierbaum** asked if the phrase cash flow was a bit synonymous with net profit, and asked for a description of cash flow. **Director Day** explained that adjusted cash flow is a creature of commission rules, and is supposed to be the actual dollars that go to the nonprofit activity, which is different from net profit.

### **Agency Customer Service Survey**

**Assistant Director David Trujillo** reported the survey is a draft of a new agency customer service survey. Several meetings back the Commissioners had asked what some of the methods were for the public to make comments to the Commission. Subsequent to that, Ms. Hunter provided a presentation on the various types of surveys the Commission offers. One is a survey primarily designed for licensing services that was available online as well as in paper format. Because of its availability, licensees and members of the public often used the licensing survey to comment on other segments of the Gambling Commission. This draft survey is an evolution of the licensing survey, expanded to encompass all of the Gambling Commission. The survey is designed so anyone can comment anonymously or can leave contact information. The goal is to hear their experiences with the Commission – good or not so good – so staff can reinforce the

positive and work on the not so good experiences people may be having with various segments of the agency.

**Commissioner Parker** asked if there was a report from the last time it was done, whether it was something that was sent to the Commissioners. **AD Trujillo** replied there is no report, that this is a draft of a survey that the agency is looking to implement. **Commissioner Parker** asked if it was done before. **AD Trujillo** affirmed the agency has done various surveys, one of which was the licensing survey. Specific results from that particular survey were not presented to the Commission; however, in the presentation that Ms. Hunter did, she talked about overall concepts of that survey, plus a couple of other surveys as well.

**Commissioner Rojecki** asked if the Commissioners had requested this survey or talked about it three, four, or five months ago and AD Trujillo had said the survey would be updated. **AD Trujillo** responded there was some discussion about the survey itself but did not remember if the Commission specifically requested staff to update the licensing survey because those other surveys were in place. Staff felt it made reasonable common sense that if the agency was going to continue with that survey, it should be broadened.

**Director Day** recalled summary information on some of the licensing results being provided, noting that the number of surveys returned has not been very large. He remembered Commissioner Rojecki asking questions about the survey and the possibility of broadening it. Director Day explained that staff looked at this as a way to modify the tool we already had and then making it available electronically. Every month staff sends out notices of the Commission meeting to licensees in the area where the meeting is being held, and the link to this online survey will be included on the notices. The survey will also be available in hard copy to encourage more participation. **AD Trujillo** clarified that the notices sent to licensees refer to an online survey, but that is the existing survey, not this expanded one yet.

**Chair Bierbaum** asked if staff was looking for input. **AD Trujillo** affirmed. **Chair Bierbaum** suggested dividing number 8 into two sections: one that says "I am treated fairly by WSGC staff in the following areas:" and include from (b) to (g). And include a new number 9 that says "I am treated fairly by the Washington State Gambling Commission in the following areas:" licensing, petitions for rule changes, and quasi-judicial reviews like licensing revocation processes, and then the Commission's review of those (how the staff conducts it and then how the Commission itself conducts it). Chair Bierbaum was attempting to encompass all of the activities that the Commission does. **AD Trujillo** thought those items could be incorporate easily.

**Representative Alexander** asked if the survey only for licensees. **AD Trujillo** replied it is also available to the public. **Representative Alexander** noted that with question number 7, as a licensee he would know what was expected of him, but he may not know what answers to respond to if he was not a licensee. **AD Trujillo** hoped, at that point, that the person might check not applicable. **Chair Bierbaum** agreed, pointing out that at

the top of the survey it says if you cannot decide about a statement or if it doesn't apply to you, mark not applicable. **Representative Alexander** asked when it was expected to have results. **AD Trujillo** responded it was typically an ongoing survey. For example if a survey was completed and received today, and if it was a positive comment and the person left contact information, staff would call that person and thank them for their input. Staff would also let the person know that we plan to recognize the process or the staff person that did the positive performance. If it is anonymous, then obviously that call would not be made, but staff would forward the information to the particular segment of the agency that did impact it. Because they are received infrequently, staff has not compiled them over a specific period of time. The hope is that this particular format increases the returns, which may determine that a report be prepared regularly.

**Representative Alexander** asked if the results of the survey would be brought back to the Commission on a six month basis or quarterly basis telling what the results of the survey were. **AD Trujillo** affirmed that could be done if it was the Commission's desire.

**Commissioner Ellis** focused on the first sentence in the introduction of the survey that indicated this was really directed to licensees and many of the specific questions on page 3 of the survey are clearly directed to licensees, such as 6, 7, and all of the subdivisions of 8. Without knowing why a member of the public was contacting the Commission, it would be hard to know what question to ask them as to whether or not their experience was helpful. What are left are some very general questions such as number 4; the Commission protects the public by ensuring that gambling is legal and honest. It is obviously important, but is an awfully broad thing to respond to. Commissioner Ellis supposed if the person was just a member of the public who for some reason was going to the website or contacting the Commission, in the comment section they would be able to give more specific information. Maybe this is the best staff can do. **AD Trujillo** provided a couple of examples: An applicant that does not make it through the licensing process is not a licensee, but would be a member of the public, and they often make comments as to their experience. Another area where staff saw an increase was a few years back when there was internet gambling legislation ongoing. Because of that, they would use the existing survey as a method for contacting the agency. **AD Trujillo** offered to rework the wording a little bit and take the Commissioners input and try and flesh it out a bit, and then bring this back next meeting. **Chair Bierbaum** thought that would be useful.

**Commissioner Parker** asked if staff would like the input from some of his students. **AD Trujillo** replied he would be happy to have input from all segments. The survey was discussed at the study session last month and this morning and some feedback was received.

**Director Day** explained that as people physically contacted the office, staff would hand them a survey and ask them to turn it in. To expand that after our discussion with the Commission, staff started remodeling the licensing survey in an attempt to broaden it. Realistically, our licensees are the largest group that communicates back and forth, so it is important for staff to capture their opinions in the process, but still provide an

opportunity or tool for someone else wanting to weigh in for some reason. Some people contact the agency with complaints about something or another, and this would provide amenability. Director Day suggested that, given the number of surveys received, every six months might be the most informative route because there would be more numbers.

**Chair Bierbaum** thought that of all the people who would have reason to be in contact with the Commission; 90 percent were going to be licensees. But those are not the totality of the people that the Commission interacts with. There have been people who have done petitions for rule changes who were not licensees, but were customers. Dolores Chiechi is not a licensee; she is here in another capacity. There are tribal representatives who, technically, are not licensees. There are all kinds of ways that people could come in contact with the Commission. Chair Bierbaum was trying to capture questions that would get their input, as well as that of the licensees – recognizing that the licensees would be the biggest point of contact. **Director Day** explained the agency did a public opinion survey in 2005. Washington State University had asked if the Commission was going to consider redoing that survey, which may be something to keep in mind, to go back at some point and have those questions renewed and possibly add some new ones. Staff found the survey to be a useful tool to capture some important information, and it would be available to do again.

**Commissioner Ellis** thought it might be useful, picking up on what the Chair just said, to ask a question about the reason why the person came in contact with the Commission: (a) as a licensee; (b) as an operator of a licensed facility as opposed to a card room employee. So the first one would be an employee and the second one would be an operator. The third one would be a member of the public concerned about gambling or with a gambling issue. Staff would be better able to anticipate the major categories of people that would be contacting the Commission. But for most of the people covered by the survey, that should give an idea as to what their point of view is and then let staff add specific questions that would address their particular situation. **AD Trujillo** agreed. He thought this could be approached a couple different ways; by reworking it a bit and bringing it back next month; or rework it and having staff send it out. **AD Trujillo** preferred bringing the document back to the Commission for their input.

**Chair Bierbaum** agreed she would like to see the revised document next month, noting there were no pressing time constraints to get this done. **Commissioner Rojecki** agreed it should be done right. **Chair Bierbaum** added even if it needs to be brought back a lot of times. **Director Day** said the revised survey would be brought back next month, and he would also include some of the information we had before because time is running and it might be helpful.

**Commissioner Ellis** asked if staff had thought about having an expert in this area, similar to the people from WSU who are experts in general polling techniques, take a look at the survey when staff get close to what they think is a final product and have the expert(s) give their reaction to the survey and ways to improve it, without turning it into a huge expensive project. **AD Trujillo** responded that, interesting enough, the version that

preceded what is in the agenda packet was a very rough draft prepared by Monty Harmon's daughter who works in an area where she does surveys. She designed the appearance of the survey, but the particular questions came from staff. At this point, staff did not contemplate going that route, but we certainly could, if that would be the Commissioners' desire. **Director Day** added that Commissioner Parker had also suggested using his students, and confirmed that the operative word so far has been inexpensive or free. **Chair Bierbaum** agreed, adding that we may be beating this horse to death, but there are two different things being discussed. One is a public opinion survey about gambling in general that was done three years ago. That is not what the contemplation was, which is more like when a person goes to a hotel and they have one of those cards there that asks about the customer's contact with the hotel staff, did the person use the restaurant, did they use the restaurant, did they go to the front desk, what did they think about it, that kind of thing. Versus a public opinion survey that asks what the customer thought about hotels, that kind of thing. At least that's what Chair Bierbaum thought we were doing. **AD Trujillo** affirmed that was correct, and in fact the current survey that is used has one open-ended question in order to get the comments, feelings, or perceptions that people have when dealing with the Commission. Staff has broadened those open-ended questions for people to describe their experience more and to get at the type of information the Commissioners were just talking about. **AD Trujillo** noted that was all good input and he would be happy to come back next month.

#### **House-Banked Card Room Financial Summary of Activity**

**Assistant Director Trujillo** reported that currently the rules require house-banked card rooms to provide us with financial statements for their business year. These statements are to be prepared in accordance with generally accepted accounting principles. The financial statements must be audited by a CPA if gross receipts are over three million dollars; they must be reviewed if gross receipts are one million to three million; or they must be compiled if gross receipts are less than a million. The primary difference has to do with cost and the level of review done by the independent auditor or CPA. As indicated in this particular summary, 53 house-banked card rooms reported a positive net income in 2007 versus 40 in 2006. Thirty-one (31) reported a net loss in 2007, which are 8 fewer than in 2006. The highest net income in 2007 was \$3.9 million versus \$1.8 million in 2006. The highest net loss in 2007 was \$4.3 million versus \$1.8 in 2006. The primary factors impacting those with higher net losses include those businesses that have sought protection in bankruptcy court while undergoing reorganization. Another area involves a change in accounting guidelines or practices that require a business to annually value its business at a market level or value. **AD Trujillo** indicated this report was included as a **summary** of information only and is a snapshot for the prior business year.

**Commissioner Ellis** said he was curious as to whether the impairment of good will was something that staff knew was a factor in the particular net losses that are shown by some of the casinos in these figures. **AD Trujillo** affirmed it was a factor in several of the licensees at the lower end of the spectrum. **Chair Bierbaum** indicated the report was very useful. **Commissioner Ellis** wondered if it would be helpful in future years to add to the summary of activity information on how the average card room is doing.

Commissioner Ellis said he did not undertake to figure out the average revenue for all of the licensees or for those that were on the profit side of the page and those on the loss side of the page, but the median on the profit side of the page is about a net income of close to \$275,000, which sounds good. If you look at all 84 card rooms, the median is a net income of about \$75,000, which sounds fairly good as a statewide median. **AD Trujillo** thought the Commission had actually mentioned that last year, and apologized for not including the information this year, assuring it would be in future reports. **Commissioner Ellis** thanked Assistant Director Trujillo. **Director Day** added there were 79 house-banked card rooms currently operating compared to 84 on the list. **AD Trujillo** affirmed that was correct.

### Correspondence

**Director Day** pointed out two items under the correspondence tab: first is Commissioner Amos' appointment letter; second is confirmation from the Governor's office that our proposed agency request legislation for penalties for gambling under the age of 18 has been approved. There has been no word yet on the amusement games legislation request.

### Monthly Update Reports

**Director Day** pointed out that the federal bill on internet gambling (entitled HR 6870, Payment System Protection Act 2008) has gained a little movement. The bill was introduced and has been referred to the House from committee on a vote of 30 to 19. **Director Day** was not positive but thought that if the bill was passed it would prohibit implementation of the Unlawful Internet Gambling Enforcement Act provisions until regulations are in effect. The bill would also require a definition of an unlawful internet gambling activity and include a list of unlawful internet gambling businesses, except for those that are relative to internet sports gambling.

**Commissioner Ellis** noted in past years the overview of pending federal legislation usually had several pending bills that would have given the National Indian Gaming Commission express jurisdiction to regulate Class III gaming addressing the Colorado River decision of a few years ago. **Commissioner Ellis** asked if all those bills were now dead because he did not see any reference to it in the federal update. **Director Day** explained he was not aware that it was currently moving forward in any capacity, noting that when there appears to be no movement on legislation, the items are dropped from the report.

### Comments from the Public Regarding the Director's Report

**Chair Bierbaum** called for public comment on **Director Day's** report.

**Mr. Max Faulkner**, President of the Recreational Gaming Association (RGA), commented that when he was familiar with surveys. When he came out of college he worked for Market Fax, Incorporated, a market research company, and he also worked with surveys as a professor at Eastern for four years. **Mr. Faulkner** volunteered his service if staff wanted another set of eyeballs to look at the survey, adding his price

would be right. **Chair Bierbaum** thanked Mr. Faulkner for his offer – the more eyeballs the better.

**Mr. Faulkner** commented that the minimum wage is going up 48 cents an hour and although a lot of dealers make quite a bit more than minimum wage, the owners still have to give them the raise, which will pretty much wipe out that \$75,000 median shown on the financial report. It will wipe out about half of that across the board and the card rooms cannot raise prices or house edge on a blackjack table like a restaurant can. The \$75,000, if that was a single owner, would be a pretty good income. Most of the places that Mr. Faulkner was affiliated with, including a lot of other card rooms, there is a number of stockholders, sometimes as many as 10 to 15, and when you divide that out, it is not much, so \$75,000 on the return that some of the owners put in is not very substantial either. Some of the weaker card rooms have closed and culled out some of the negative profits or the losses, and it is kind of like the black plague – when the black plague killed so many people, the average income went up.

**Chair Bierbaum** explained it was almost impossible to see what any individual owner is making from the reports the Commissioners get. The licensees are mostly corporate entities, which mean they may have two hats: they may be a shareholder, they may also be getting management salary, and they may also be getting officer compensation. So unless somebody had the wherewithal to sit down with all these audit reports and pour through them, there is really no good way of telling whether these card rooms are making money or not making money. **Mr. Faulkner** agreed that was correct and, to be honest and forthright, in some of his, they were just the management company and when they take a service supplier fee, that goes as a cost to the licensee. Mr. Faulkner said the minimum wage was really worrying a lot of our licensees, our card rooms.

**Director Day** provided a picture of how the landscape has changed over the past few years – since January 2004 individual licensees have increased by 5,230 (to 18,218) while organization licensees have dropped 549 (to 3,774).

2. **New Licenses and Class III Certifications**

**Commissioner Ellis** made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-23. Vote taken: the motion passed unanimously.

3. **Defaults:**

**Ronald G. Mitchell, Class III Gaming Employee, Revocation**

**Ms. Hunter** reported Mr. Ronald Mitchell's certification expired on September 11 and he is not currently working. He previously worked as a security guard for the Nisqually Tribe. Ms. Hunter explained there is a two-part process for employees working at tribal casinos where the Tribe is licensing the individual and the Commission is certifying the individual. The revocation is based on Mr. Mitchell picking up a hundred dollar bill, taking it and putting it in his pants pocket. He was questioned by a tribal gaming agency

agent and said he had only found a one dollar bill. The Tribe terminated Mr. Mitchell. The Director issued charges to revoke his certification. Mr. Mitchell returned the form, waiving his right to a hearing. Staff is requesting a default order be entered revoking Mr. Mitchell's certification.

**Chair Bierbaum** asked if Mr. Ronald Mitchell or anyone on his behalf were present. No one stepped forward.

**Commissioner Ellis** asked whether, when Mr. Mitchell was subsequently interviewed by the tribal gaming agency personnel, he admitted it had been a one-hundred dollar bill and not a one dollar bill that he found. **Ms. Hunter** affirmed that was true, that when Mr. Mitchell was questioned by the tribal gaming agent, he said he had only found a one dollar bill, but when he was interviewed five days later by the Tribal Gaming Agency Director, Mr. Mitchell said he thought it was one dollar, but later discovered that it was actually a hundred dollar bill.

**Commissioner Ellis** made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Ronald Mitchell's Class III employee certification to conduct gambling activities. *Vote taken the motion passed unanimously.*

#### **Travis Oles, Card Room Employee, Revocation**

**Ms. Hunter** reported that Mr. Travis Oles actually had two different types of licenses, a card room employee license and a gambling service supplier representative license. Both licenses have expired. Mr. Oles formerly worked as the Director of Surveillance and Security at Chip's Casino in Lakewood, a house-banked card room. Mr. Oles admitted to turning off the closed-circuit television system on several occasions. Our Commission agent determined that at least \$7,000 was missing from the house-banked card room's count room during the time the closed-circuit television system was turned off. The house-banked card room estimates that the missing amount was much higher than that. Mr. Oles denied taking the money, and the card room terminated him. A criminal case was referred to Pierce County Prosecutor's office in June for three counts of Theft 1 and three counts of Cheating, which so far has not been filed. The Director issued charges to Mr. Oles to revoke his licenses. Mr. Oles responded to the charges, stating he did not want a hearing. A staff attorney spoke with Mr. Oles confirming he understood that he waived his right to a hearing. Staff is requesting a default order be entered revoking both of his licenses.

**Chair Bierbaum** asked if Mr. Travis Oles or anyone on his behalf were present. No one stepped forward.

**Commissioner Ellis** made a motion seconded by **Commissioner Rojecki** to enter a default order revoking the two licenses of Travis Oles to conduct gambling activities. *Vote taken the motion passed unanimously.*

## Other Business/General Discussion/Comments From the Public

**Chair Bierbaum** called for public comment.

**Mr. Frank Miller**, Miller, Malone and Tellefson, on behalf of PokerTek, reported that the poker table had been set up in another room and invited everyone to take a look at the product and have a chance to see how it performs. Mr. Miller explained his firm has been working on this project with PokerTek for a few years. Mr. James Namchek flew in from South Carolina to provide an overview of the product. Mr. Miller pointed out that the enhancements of this product go a long way in removing the regulatory concerns of underage gambling. Mr. Miller would like the Commission to focus on items like when play is initiated and how a customer opens an account (actually having a driver's license scanned so the player's photo will actually be in the file and be a permanent record).. The player will get an identification card, which at that point has no credits on it. The player will use that card to sit at the table, open up an account, and wager. When the player is done, they take the card back to the cashier's cage where it will be swiped and the player will enter their PIN number for identification. The player's photo will show on the screen and the cashier will know whether the card belongs to that player. There are a lot of factors today that Mr. Miller would like the Commission to really focus on as far as the regulatory enhancements that this product brings forth. Mr. Miller explained that the product is now in play in Iowa, Indiana, and in Nevada under a field test at the Excalibur where there is a 12-table card room. The table has been approved, but is under a field test provision by the Nevada Gaming Control Board. Mr. Miller encouraged the Commissioners to look at the table, and sit down and see how it plays. It is quite an expense to bring the table here, but PokerTek wanted the Commission to really be able to see it in operation.

**Commissioner Parker** asked when the field test was started. **Mr. Miller** replied the test started approximately the beginning of September, and it is potentially 180 days.

**Chair Bierbaum** explained that after the break, the demonstration of the PokerTek poker table would take place, then following the demonstration, the Commission would reconvene for an executive session discuss pending investigations, tribal negotiations and litigation and will then adjourn the meeting. Chair Bierbaum reminded the audience that the meeting would start at 9:00 a.m. tomorrow.

**AAG Ackerman** pointed out that because there will be a quorum of the Commissioners downstairs viewing the machine, this will still be an open public meeting. Because the table is set up in another room, Ms. Grate will not have the ability to tape record it, but will be taking handwritten minutes to comply with the Open Public Meeting Act. AAG Ackerman reminded Chair Bierbaum that she would need to call the meeting into session in the other room after the break. Ms. Grate will need to record the names of Mr. Namchek or anyone else that will be part of the presentation. AAG Ackerman asked everyone to bear in mind that this matter will come up again for consideration at Friday's meeting, so if there are detailed questions about the product or the presentation, those questions should be delayed until tomorrow to facilitate the ease of taking the minutes. AAG Ackerman said it would be best to consider holding off on taking any public comment until tomorrow when again the meeting will be taped. **Chair Bierbaum** agreed that sounded good.

**Chair Bierbaum** called for a break at 2:50 p.m.

**5. PokerTek – Demonstration of Poker Table**

**Chair Bierbaum** reconvened the meeting at 3:10 p.m. for the PokerTek table demonstration, reminding everyone that it was not possible to tape record this portion of the meeting. Handwritten minutes were taken and are reproduced below.

Members in attendance included Chair Bierbaum, Commissioners Ellis, Parker, Amos, and Rojecki, and Representatives Simpson and Alexander. Also present were Director Day, Assistant Directors Harris and Trujillo, Ms. Hunter, Mr. Ackerman, and Ms. Grate.

**Mr. James Namchek** explained how the poker table works. First a player must open an account by providing ID in the form of a driver's license, military ID, or taxpayer ID, and a social security number. A player can decline giving their social security number, but if they do so the operator must report it. The record will include an image of the player, their name, their address, etc. The ID is scanned and verified and a player card is printed.

**Representative Alexander** asked about the security of information in the system and on the card. **Mr. Namchek** explained the information is in an isolated, restricted system that never leaves the card room. The system prints a card which is then verified that the card actually works, then a deposit is submitted. The players' hands are played against other players, not the table.

**Chair Bierbaum** asked what happens if the time goes off because the table has a time limit for making betting decisions. **Mr. Namchek** replied that the system will take the "least action."

**Representative Simpson** asked whether the owner would be able to print out a data base on the players. **Mr. Namchek** replied that the operator cannot print out all of the sensitive information. **Representative Simpson** said there was a difference between not being able to do something and choosing not to do it. **Mr. Namchek** replied that casino management cannot do it, but a player can request a player transaction be printed.

**Representative Simpson** asked whether anyone else can access the account information. **Mr. Namchek** explained that the information cannot be accessed by the card room owner or staff.

**Ms. Hunter** noted that the written materials state that a library card can be used, and wondered how under-age gamblers could be checked if a library card could really be used to set up an account. **Mr. Namchek** replied that a person could use any card with a magnetic strip, but ID still has to be provided.

**Commissioner Ellis** asked how the information would be provided to the IRS. **Mr. Namchek** explained how the system deals with social security numbers, pointing out that only non-compliant information would be provided. **Commissioner Ellis** asked what

determined that a social security number is non-compliance. **Mr. Namchek** replied it would be numbers that are all the same, repeating numbers, numbers like 01234, etc., or if a duplicate number is already in the system.

**Representative Alexander** asked about the protection of the random shuffling. **Mr. Namchek** replied it is an encrypted mechanism within the system. The system has been certified by GLI, New Jersey, and Nevada. The card room employee has the ability to see the game on the screen, can replay the last 50 hands or previous 24 hours, and can step through the game to where the question or dispute arose and show each individual play for that hand. Over the past four years, this has only had to be done about two times at each casino the system is in. When there are questions, once people see the play back ability, they do not ask again to see the hands that were dealt. **Representative Alexander** asked how protected the player card is if it is misplaced. **Mr. Namchek** responded that lost cards are not valuable, the player only needs to tell the cashier and they would look up the account and place the correct amount on a new card. If the card were stolen, the person would have to know the player's PIN number because a pin number has to be entered to both play and cash out. When cashing out, the player card is scanned and the player's photo shows up on the screen, making it difficult for someone other than the player to be able to cash out the winnings. **Mr. Namchek** finished the demonstration by explaining how deposits and withdrawals are done.

#### **Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation, and Adjournment**

At 3:40 p.m. **Chair Bierbaum** called for an Executive Session to address pending investigations, tribal negotiations, and litigations. **Chair Bierbaum** called the meeting back to order at 4:40 p.m. and immediately adjourned.

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
FRIDAY, OCTOBER 10, 2008  
MINUTES**

**Chair Bierbaum** called the meeting to order at 9:05 a.m. at the Red Lion Hotel at the Park located in Spokane and introduced the members present.

**MEMBERS PRESENT:**     **Commission Chair Peggy Ann Bierbaum**, Quilcene  
                                  **Commissioner Keven Rojecki**, Tacoma  
                                  **Commissioner Alan Parker**, Olympia  
                                  **Commissioner John Ellis**, Seattle  
                                  **Commissioner Mike Amos**, Yakima  
                                  **Senator Margarita Prentice**, Seattle  
                                  **Senator Jerome Delvin**, Richland  
                                  **Representative Gary Alexander**, Olympia  
                                  **Representative Geoff Simpson**, Covington (arrived late)

**STAFF PRESENT:**       **Rick Day**, Director  
                                  **Mark Harris**, Assistant Director – Field Operations  
                                  **David Trujillo**, Assistant Director – Licensing Operations  
                                  **Amy Hunter**, Administrator – Communications & Legal  
                                  **Jerry Ackerman**, Senior Counsel – Attorney General’s Office  
                                  **Gail Grate**, Executive Assistant

**6.     Approval of Minutes – Regular Meeting, September 11-12, 2008**

**Chair Bierbaum** asked if the Commissioners had an opportunity to review the minutes from the September meeting.

**Commissioner Ellis** indicated he had a couple of routine/administerial suggestions on the minutes, which he did not think justified taking the time to discuss them, so he would just pass his comments on to staff.

**Commissioner Ellis** made a motion seconded by **Commissioner Parker** to approve the minutes of the September 11 and 12, 2008, regular commission meeting. *Vote taken; the motion passed with four aye votes (Commissioner Rojecki was away from the table and did not vote).*

7. **Petition for Rule Change – Recreational Gaming Assoc. – Allowing Mini-Baccarat and allowing nickels and dimes to be used in all commission games**

*Original Proposal filed at the May 2008 Commission meeting*

- a) *Amendatory Section WAC 230-15-035 – Requirements for authorized card games*
- b) *Amendatory Section WAC 230-15-145 – Making wagers with chips or coins*

*Alternative #1 filed at the July 2008 Commission meeting*

- c) *Amendatory Section WAC 230-15-035 – Requirements for authorized card games*

*Alternative #2 filed at the August 2008 Commission meeting*

- d) *Amendatory Section WAC 230-15-035 – Authorizing new games or changing game rules*
- e) *Amendatory Section WAC 230-15-040 – Requirements for authorized card games*
- f) *Amendatory Section WAC 230-15-045 – Withdrawing approved card games authorization*

**Assistant Director Mark Harris** reported the petitioner is requesting to be allowed to use community cards to play mini-baccarat in house-banked card rooms. Currently players must have their own hand and cannot bet on another player's hand. The petition would also allow nickels and dimes to be used in games that charge a commission. This type of game is allowed under the Tribal State Compact. Staff would need some additional training on the game. Staff and the RGA worked together to file Alternative 2 to clarify what the petitioner originally requested, which basically changes the order of two of the WAC rules (230-15-035 and 230-15-040) in the Rules Manual so it flows better, changes the word "approved" to "authorized" in WAC 230-15-045 so all three rules use the same language, and requires mini-baccarat to be played in a manner that is described under baccarat in the Book of Hoyle but would limit the number of players allowed per WAC Rule. During the study session it was brought to staff's attention that under WAC 230-15-040 (4)(b), subsections (1) and (2) were excluded, but did not need to be excluded. Staff requests that the verbiage be changed under (4)(b) to include only subsection (3) as not applying. Since the last meeting the Commission has received five new letters supporting this petition, which are included in the agenda packet. The Commission should consider whether or not betting on community cards rather than on the player's own hand is a social card game as defined under RCW 9.46.0282. Staff does not have any significant regulatory reasons to not support this petition. The petitioner has requested an effective date of January 1, 2009.

**Commissioner Ellis** asked AD Harris to repeat the revision to (4)(b) in section WAC 230-15-040. **AD Harris** replied that the change would be that subsection (3) of this section does not apply; basically crossing the "s" off subsections (1), (2), and adding an "es" to the word "do".

**Commissioner Parker** asked AD Harris to elaborate on what the distinction would be to his statement the Commission should consider whether betting on community cards

rather than the player's own hand is a social game. What would be the basis for concluding it is or is not a social game? **AD Harris** defer that question to AAG Ackerman, although, he knew the prior Director made the determination that he did not think it was a social card game based on that fact. **AAG Ackerman** assumed this issue had come up because of prior rules that were in place and the determination of a former Director that he felt that with mini-baccarat a player could bet on someone else's hand and that took it out of the realm of a social card game. AAG Ackerman said he had not advised the Commission at that time, so was not sure what the former Director was thinking nor what the basis of his decision was. In the first sentence of RCW 9.46.0282, the definition of social card game in the Code appears to be dispositive of that issue. It states that social card game as used in this Chapter means a card game that constitutes gambling, which clearly mini-baccarat would. It has all the elements of gambling and is authorized by the Commission under RCW 9.46.070, which is the general authority of the Commission to license and to regulate activities and to determine hours and wagers. It appears to AAG Ackerman that the only criteria for this is whether it is a card game; and if it is a card game, does it constitute gambling. AAG Ackerman did not want to cast any aspersions on former Director Bishop's opinion on this matter, but as he read the definition, AAG Ackerman could not see anything that would prohibit this Commission from authorizing mini-baccarat as a social card game under RCW 9.46.0282 and RCW 9.46.070.

**Chair Bierbaum** called for public comment.

**Mr. Max Faulkner**, President of the Recreational Gaming Association, commented that the RGA has worked with staff on mini-baccarat for quite awhile now, and they appreciated the support and help with smoothing out any rules. Mini-baccarat is obviously a social card game and is a highly social game. The players obviously want it because there is some demand in the market. There will certainly be some mini-baccarat tables around if this passes. Mr. Faulkner thought in his places they were going to try one. Mr. Faulkner did not think it was a regulatory concern and requested the Commission pass the rule.

**Mr. Gary Murrey** provided some background on house-banked card games, which were first started back in 1997-1998, and baccarat was one of the games that was played in the house-banked card rooms. At the time house-banked card rooms were in what was called a pilot program where different sets of rules were set up for each organization, which were going to be combined into one complete set of internal controls that would govern all the card rooms. The plan was to take the best of everything and put it together, but that became complicated because every card room was different and every count room could be located differently. So a different program was designed, which was just the outline of the internal controls. At that time, the Director was very conservative on what was being played and what was being allowed, and this determination was made mostly on the current criteria that he thought would be best served at the time. However, if you look at the letter of the law and what is currently in place – and baccarat was not in demand everywhere – it was a personal judgment at the time. Mr. Murrey thought it was

outdated and that it was time the card room industry be allowed to have the games the players want because that is what the card rooms are there for; to serve the public in the best interests of the public and what they want out of a social card game.

**Commissioner Ellis** commented that both Mr. Murrey and Mr. Faulkner indicated that mini-baccarat is a social card game, and asked what they meant by that in the context of mini-baccarat. **Mr. Murrey** responded that he has read the RCWs several times over, and as the Commission knows, he is much into the rules and how they work together. By law, as AAG Ackerman said, mini-baccarat falls within the legal parameters of a social card game. When looked at from the standpoint of a player, Mr. Murrey would look at a social game as being intermixed with people that are interested in the same thing. A non-social game would be playing by yourself against a machine one-on-one, as in a slot machine. When playing with other people or against another person, that becomes a social interaction, and when there is social interaction, that was what the onus of social card games was about; to bring people that had the same interest together in a legal and regulated environment so they could enjoy the same activity together. That is where Mr. Murrey would look at a social card game as achieving that goal, and this fits within the letter of the law. When those are brought together, there should be no reason not to allow this in a regulated environment. **Commissioner Ellis** felt that, based on the definition of social card game that AAG Ackerman alluded to, it is essentially a circular definition in the sense that the Commission is required by law to limit its authorization of social card games, but the definition of social card game starts with the proposition that it is any game the Commission has authorized, which does not tell a great deal. There is the provision that is probably more important in the first section of the gaming act which indicates that the purpose of the gaming act is to authorize social pastimes. That seems to have a little bit more substance to it than the definition of social card game. Mini-baccarat seems consistent with most concepts of social activities, and Commissioner Ellis was sure that at the time that the gambling act was authorized and card games were authorized back in the '70s and '80s, that some legislators at least may have had in their mind when they were talking about social card games the concept of a group of friends sitting around a table outside the context of a card room and playing poker. And it was that context that was to be extended as opposed to professional gamblers and that kind of thing, but it is very hard for the Commission to extend that concept. **Mr. Murrey** thought that in 1972 it went beyond that – the social card game at the time included hearts, cribbage, rummy, all the games that were originally listed in the old set of rules of all the social card games. A couple years later the restaurant industry said their sales were down and they needed something to hold their customers and increase sales. So the poker areas in licensed card rooms became the advent of trying to increase the restaurant sales. So we will take the poker out of the other rooms and put it into an ancillary business or a restaurant area there. And then things changed year after year, and over 30 years later, the landscape has changed dramatically in gaming and in entertainment and everything. So 30 years ago there were one room theaters; now they have multiplexes. Games before that were pinballs where a player could earn money and now they are video games within it. So everything changes in relative and scope and nature of what was designed back 30 some years ago to what we have now. Although the industry has

followed the laws that were put forth, unless they change this fits within that law. We also have to look at the bigger scope of what is changed in our environment around us; in our environment, social acceptability has become the norm, which is that gaming is an acceptable activity in a controlled environment with friends that want to do a like activity.

**Commissioner Rojecki** asked what has changed in the regulatory aspect from the Commission's concerns that would make this a different request. In the past five years there have been roughly two Commissions that voted this down in some way or fashion; one was withdrawn. **Director Day** replied the biggest thing is the proposal. One of the biggest concerns when the Commission first considered this proposal was the question of social card game, which has always been there; the other side was the rule was broad enough that it could possibly include games the Commission did not want to authorize. Even looking at the Alternatives and some of the initial testimony regarding this rule, it also started out this way. Staff attempted to bring a rule back for the Commission to consider that was specific enough and just authorized mini-baccarat. That is probably one of the big regulatory areas that was of concern in the past rules. **Commissioner Rojecki** said he understood that, but thought some of the concern from past Commissions was that it was, in fact, an illegal game regardless if we agree or not – that was what prior Commissions ruled, correct? **Director Day** explained the other issue that has been described was the difference in this game. As you might recall from the demonstration was that in baccarat, the players do not have their own cards but are playing the cards on the table, either the dealer or the player, and are betting on those hands as opposed to having and making decisions over cards they each hold. That was the other primary concern that was reflected in Director Bishop's decision at the time. **Commissioner Rojecki** rephrased his comment about illegal gaming; it wasn't considered a social game. **AAG Ackerman** agreed with Director Day, recalling that when this has come up in the past it was that the proposed rules were more general and they were not as focused on a specific game as this petition has now become, which is that it is limited to the game of mini-baccarat as opposed to community card type games, whatever they may be. Which Mr. Ackerman thought was the concern before. After looking at the minutes from prior meetings, Mr. Ackerman thought that in a legal sense what he has said when asked to give an opinion on this has been consistent. Mr. Ackerman has always felt this was within the Commission's legal authority to do, but the Commission, of course, has a lot of policy considerations. Mr. Ackerman thought that in prior petitions there was a concern that perhaps the Commission could not get its arms around exactly what it would be authorizing once it started down this path. Mr. Ackerman recalled the Commission has expressed some concern about whether this was consistent with the intent section that Commissioner Ellis alluded to; the nature of permitted gambling in this state to be more for a social pastime than gambling for profit. But legally, the Statute has not changed in that time, and it appears that the legal advice the Commission has gotten has always been that – at least in the time that Mr. Ackerman has been advising the Commission – the Commissioners have the authority to do this if they choose to do it as a policy matter.

**Chair Bierbaum** asked if the Commissioners had any other questions, then called for public comment.

**Mr. Chris Kealy**, Vice President of the RGA, commented that on this particular proposal when this vote is being considered, the RGA has worked very diligently over these rules over the years; they have come with petitions, have found out why they did not work, have gone away and come back a couple years later with a like petition with a similar subject. Before, the petitions were very broad and could have allowed other games, but this petition has been narrowed down to a specific game that is being operated and is in social demand. Mr. Kealy said the industry would like to see this rule go forward. The five letters on record that are supporting the petition, the lack of any negative public testimony over this, the lack of any negative press over this, the lack of any negative anything anywhere outside of any fear that something else is going to jump out of the box, which cannot happen because this rule has been narrowed down to a specific game that people understand. Mr. Kealy asked the Commission to approve this petition and let the card rooms operate this game.

**Mr. Max Faulkner** responded to Commissioner Ellis' question about the social part of the game, noting that it seemed to Mr. Faulkner like the most social of the card games. Mr. Faulkner thought if five people were playing blackjack, they would all be betting on their own hands, but in pai gow they might all be betting for the player hand or the banker hand. Mr. Faulkner thought that what makes baccarat even more of a social game is that element.

**AD Harris** asked if the Commissioners would like him to spell out which rules are being put forward, since there are quite a few listed.

**Chair Bierbaum** thought it was Alternative 2 with three Amendatory Sections that the Commission was voting on. **AD Harris** clarified staff are asking for action on WAC 230-15-145 under Item (b) of the Original Petition and Items (d), (e), and (f) under Alternative 2, with the change to the one rule for subsection (4)(b). **Chair Bierbaum** asked if it was WAC 230-15-035, WAC 230-15-040, and WAC 230-15-045. **AD Harris** affirmed, but added WAC 230-15-145, which is the one for using nickels and dimes that has been the same all the way since the original.

**Commissioner Ellis** made a motion, seconded by Commissioner Amos, to adopt proposed amendments to WAC 230-15-035, WAC 230-15-040, and WAC 230-15-040 as presented by staff, understanding that WAC 230-15-040 will be revised so that section (4)(b) reads subsection (3) of this section does not apply – effective January 1, 2009.

**AAG Ackerman** indicated there were various Alternatives in this petition and he wanted to make sure the motion encompassed what Commissioner Ellis intended. AAG Ackerman asked if the intent of the motion regarding WAC 230-15-035 was that it is Alternative 2 that is being proposed for adoption. **Commissioner Ellis** affirmed that was his intent. To be very specific, it is Alternative 2, which revises the number of the rule

that was previously WAC 230-15-040 and renumbers it to WAC 230-15-035; and makes the change to the previous version of WAC 230-15-035, renumbering it to WAC 230-15-040.

**Commissioner Parker** wanted to make sure the motion was clear because there seemed to be some question yet on exactly what the motion does. **Chair Bierbaum** replied it was to adopt WAC 230-15-145 as originally proposed, and to adopt Alternative 2 with respect to WAC 230-15-035, WAC 230-15-040, and WAC 230-15-045. **AD Harris** affirmed that was correct. **AAG Ackerman** added that was his understanding also.

**Commissioner Ellis** clarify the intent of the motion was designed to 1) adopt the original version of WAC 230-15-145 as presented; 2) authorize mini-baccarat to be played; 3) to renumber WAC 230-15-035 and WAC 230-15-040, switching the numbering of those two sections.

*The Vote was taken; the motion passed with four aye votes and one nay vote (Commissioner Rojecki opposed).*

8. **Petition for Rule Change – Recreational Gaming Association – Increase the number of players at house-banked card tables**

*Original Proposal filed at the May 2008 Commission meeting*

a) Amendatory Section WAC 230-15-055 – Limit on number of players at each table

*Alternative #1 filed at the August 2008 Commission meeting*

b) Amendatory Section WAC 230-15-055 – Limit on number of players at each table

**Ms. Hunter** reported that originally the Recreational Gaming Association (RGA) submitted a petition to increase the number of players at house-banked card tables from 7 to 9, and increase the number of players for poker games or non-house-banked games from 10 to 12. At the RGA's request at the August meeting, the Commission filed Alternative 1, which is a narrower request. The petition now requests an increase in the number of players from 7 to 9 and withdraws the request to increase the number of players at the poker games. The RGA's reasoning was that this would allow players to wager on multiple hands so there could be three players who were wagering on three different hands; it might allow development of new games; and then for Eastern Washington in particular, the RGA thought that being able to add two other spots might help the card rooms because they would not have to add additional tables. The card room might have a game that does not have a lot of play, but if they are limited to 7 and have 9 people who want to play, then the card room would have to open up a second table to accommodate those additional players. Staff does not anticipate that all licensees will offer the additional betting spots – this would be something that each card room would decide. Cheating typically occurs when dealers are occupied with other duties, so more betting spots could make it more difficult for dealers and surveillance to monitor the table. Ms. Hunter recalled the discussion last month that if the Commissioners were inclined to pass this rule change and staff finds out two years from now that there has

been a lot more cheating when there have been 9 players, then the Commissioners could anticipate staff would be back asking for a change.

**Ms. Hunter** explained that staff contacted other jurisdictions to see what they allow. In Nevada it is typically the game rules that determine wagering spots, but the casino can limit wagering if it wants to for game protection. Typically, the number of spots at house-banked tables is up to 7. In New Jersey, state rules set the number of players and most games are set at 7 players, except for mini-baccarat and three-card poker, which allow 9 players. Washington State Tribal casinos typically have a maximum of 6 or 7 spots, except for blackjack that allows 9 players. Staff received four letters of support for this: one from State Representative Dave Upthegrove, State Representative Steve Kirby, State Representative Brendan Williams, and one from Dave Wilkinson who is with Skyway Park Bowl and Casino. These letters are included in the agenda packet. The Commission has also heard testimony in support of the change. Staff did receive two e-mails from players against the proposed change – the second email was from Andrew Kimmerle opposing increasing the number of players at non-house-banked games, which the RGA has taken off their request. Staff recommends final action.

**Commissioner Parker** indicated that in the policy considerations paragraph staff says if a licensee operates 15 tables and all the tables are blackjack or a blackjack derivative, the licensee would have 30 betting spots above where they are currently authorized, which would be the equivalent of four additional tables. Commissioner Parker asked how the Commission would interpret this in the context of an expansion of gambling when considering what the impact of the proposed rule change would be in light of the policy considerations that go to the question of whether or not this would be perceived or determined to be an expansion of gambling. In discussions yesterday, for example, staff referred to the policy definition of expansion of gambling and referred to Mr. Fleischer's memo that was part of the Commission's consideration of this question several years ago.

**Ms. Hunter** responded that the additional 30 spots would be assuming that every single card room does all blackjack tables or a blackjack derivative. Ms. Hunter did not think there were many card rooms currently that have it set up that way; the different poker games have become very popular. It probably would not end up being 30 betting spots unless there was a card room that was at 15 tables and all they did was blackjack. Ms. Hunter had been told that the novelty games – the poker games – are very popular right now, so a card room might have five poker games and the number of spots is not going to change. As far as the expansion of gambling question, Ms. Hunter thought, as she looked back at the Legislature's rulings and a conversation with AAG Ackerman, that once the Legislature has passed something, the Legislature has already made that expansion of gambling determination. As the Commission looks at what its duties are, staff talk about expansion of gambling because it is an important policy consideration – but that the Commission does not have, for example, a requirement of a super majority vote with that. Ms. Hunter said the Legislature's rulings showed an expansion of gambling was determined when one of two things occurred: 1) if a new form of gambling was being allowed that was looked at as being an expansion of gambling and needed the higher vote; 2) When looking at the number of occurrences, if you are suddenly looking at

something that happened five times a year and now it is allowed to happen 20 times a year, then that would be looked at as an increase in the number of occurrence and then also considered an expansion of gambling. Ms. Hunter felt this proposal was different – it is not dealing with the number of occurrences and it is not dealing with a new form of gambling.

**Senator Prentice** said she had a regulatory and fiscal concern because didn't the Commission vote last month to allow surveillance to not always have somebody present in the surveillance room – or was that just being considered? **Ms. Hunter** replied that was just being considered. **Senator Prentice** said she was certainly conscious of the Commission having some financial difficulties and just having enough people out there on the ground taking a look at things. Senator Prentice asked if this would make it more difficult to figure out who is cheating. She hoped the Commission is not directing itself into a perfect storm. Senator Prentice admitted she had not thought this one through, but wondered if it would compound potential problems. She was thinking about purse strings also. **Ms. Hunter** agreed, explaining that was something that was noted in the rule summary, and it gets back to the issue that with more people there is more potential. If staff saw that as a reality, then something would need to be done with it. **Senator Prentice** was concerned with less agents being available. **AD Harris** affirmed the increased number of players at the table could cause some problems, but staff does not expect all the card rooms to be fully implementing it – there may be a couple at a couple card rooms. The impact on those card rooms would be that they would most likely have to adjust their surveillance system to add a couple more cameras and either digital recorders or VCRs to cover the wider table layouts because their current cameras probably would not cover the bigger tables. **Senator Prentice** asked if this aspect was a discussion staff has had with the RGA yet because what is being said is that if the card room is going to get this, it is going to have to spend more money first. **AD Harris** did not believe this had been discussed. **Ms. Hunter** pointed out that the rule summary includes in the impact of licensees that card rooms must closely monitor gambling activities, that licensees may need to increase surveillance coverage to meet this requirement, and that additional supervision requirements may be necessary to monitor activity at the tables. **Senator Prentice** indicated she was nervous because she has been hearing about how we are going to have fewer agents, which is a big concern where the Commission is changing the game – it may not sound like much, but Senator Prentice has to deal with the fiscal aspect and that is a big worry to her.

**AAG Ackerman** thought it may help in the deliberations to remember that the expansion of gambling term typically has two aspects to it; one is a legal component and one is a policy component. When the Legislature is considering an expansion of gambling, they have to consider both the legal aspect and the policy aspect. Expansion of gambling comes from a constitutional provision that says if the Legislature is going to expand gambling it must do so by a super majority. That is really the only legal issue that surrounds expansion of gambling, and it is one that is for the Legislature's consideration. We start with the constitutional prohibition that says all gambling is illegal unless it has been made legal, which happens through the super majority. So the Legislature always

has to deal with that legal issue if it is going to expand gambling. Once the Legislature enacts a Statute by that super majority, it vests authority in this Commission. This Commission does not have an ability to expand gambling in a legal sense; it is beyond the Commission's authority and is not and cannot be delegated to the Commission because of the constitutional restriction on expanding gambling. However, this Commission has historically given a great deal of consideration to the policy aspect of the term 'expansion of gambling' and certainly tries to give effect to the legislative intent that is embodied in the Statute that the Commission administers. One of the Statutes that comes to mind with regard to this particular proposal, in a policy sense, is the legislative action that took place when the number of tables in house-banked card rooms was increased to 15. The Legislature did not say how many seats could be at those tables, but clearly they would be presumed to be cognizant of what the rules provided at that time, which was the current number of seven seats. So again, there is nothing legally to prevent the Commission from changing that number; it is within your authority. But the increase in tables and the legislative recognition of how many seats were at those tables may be something to consider as a policy matter when making your decision regarding expansion of gambling and how you feel about it. It is not a legal consideration; the Commission either has the authority or it does not; and if not, the Commission cannot obtain it without a legislative super majority vote. AAG Ackerman believed the Commission has the authority, so the consideration is really a policy consideration not a legal consideration.

**Director Day** said that Senator Prentice was correct on the budget side, and it is probably one thing that is not noted in the rules summary but has been discussed on a number of occasions. The Commissioners know that because of the limitations on fee increases, the Commission is prevented from adding additional fees to cover any additional costs as activities are added – which is a challenge the Commissioners are aware of. But on a practical side, since this is not presently allowed in house-banked card rooms – the additional spots – there would have to be a change in the licensee's internal controls. Our agents would also be involved to determine those changes and the resulting surveillance changes to ensure the views of the cameras would clearly take in the entire gaming area with the expanded size of the table. Each change would have to be approved by an agent. It is not something that would just be put in play without the agent's involvement and review as to whether it provides that level of surveillance. Of course, with the declining number of agents, how fast that process would occur might be another area all together, but there obviously would be additional pressure on a staff that is on a steady decline through the next couple years.

**Commissioner Ellis** understood that it seemed clear by decisions made in the past by the president of the Senate, that the Legislature – the Senate – was treating an increase in the number of tables in a gambling establishment to be an expansion of gambling, and at least one measure that increased the number of tables was required to meet a 60 percent vote in order to be enacted. Commissioner Ellis had a little trouble with the concept that on one hand an increase in the number of tables can be treated as an expansion of gambling, but an increase in the number of seats at a table is not seen to be an expansion of gambling. There are obviously some differences for the casino that is operating the

game between having more tables or having more seats at a smaller number of tables. The bottom line seems to be the same; the casino would have more gamblers gambling regardless of which approach was taken. Commissioner Ellis asked for help in resolving that dilemma. **AAG Ackerman** replied that, only in the sense that the Legislature when it has acted, has acted on the number of tables, it has never, to the best of AAG Ackerman's knowledge, tried to determine the number of seats at a table. When the last increase in the number of tables to 15 took place, WACs were already on the books establishing the number of seats at the table. And the presumption would be that the Legislature knew that the Commission had acted in that area and had set a specific allowable number of seats at a table to be 7. Clearly, if the Legislature wanted to alter either the Commission's authority to set the number of seats, or to provide a specific number of seats by Statute, Legislature could have done so, but did not. So, given the general authority the Commission has in 070 to determine the conduct and play of the games, everything from hours of operation to wagers to virtually anything to do with a permitted game, AAG Ackerman did not view the fact that the Legislature set the number of tables as limiting the Commission's authority to set the number of seats at the table – only in a legal sense. In a policy sense, it may very well be significant for the Commission to think about the fact that the Legislature did affirmatively act to increase the number of tables and set a fixed number, and when they did so, WACs existed and the number of seats allowed were known, or would presume to be known, to the Legislature. That would perhaps be an indication of a policy intent on the Legislature's part, but it also is somewhat ambiguous. **Commissioner Ellis** did not mean to imply that he considered the expansion of gambling issue, to the extent there is one that applies to this petition, to be dispositive of what the Commission should do on the petition, but in his mind it raised an issue.

**Senator Prentice** recalled the increase to 15 tables was a result of the 1993 task force, and the number of seats never came up; it was not part of the discussion. And the task force had toured everywhere, including Canada and Oregon. The idea was to let the card rooms expand to the extent of their limited space – because it was extremely limited what they were able to do. But the number of seats at a table was not part the discussion – just the number of 15 tables.

**Representative Alexander** thought, from his limited times of observing, that this petition is more from an efficiency standpoint than it is an expansion of gambling. Adding the ability to have one dealer to handle more people, basically the efficiency standpoint might be that if there are only a certain number of people in the room that want to play poker or blackjack, that rather than having two dealers dealing with six people each, one dealer could be dealing with 12 players. Representative Alexander did not think that was an expansion of gambling, just an efficiency issue.

**Commissioner Rojecki** asked, regarding the phone calls Ms. Hunter made around the country, whether Nevada and New Jersey only allow it for mini-baccarat and three-card poker, and wondered what the advantage would be to have 9 on those games and 7 on

every other game. That seems so much more specific than the proposal before the Commission today.

**Ms. Hunter** replied that it seemed to be that just like with big baccarat, which has a lot more number of spots, it would work well to have 9 players for mini-baccarat. **AD Harris** added that some of the games are limited because they are single deck games, which would only accommodate a certain number of seats at a table because of the number of cards in a deck. **Ms. Hunter** said that was a much better answer. **Director Day** pointed out it was important to note that neither Nevada nor the tribal casinos limit the number of spots by Compact, rule, or law, but are limited more by the practice of the game itself. The closest common number staff came up with was 9 players at a spot.

**Commissioner Parker** said he was inclined to ask for more time to consider this proposal and to ask our staff and the Attorney General to give us an opinion that specifically addresses the question of expansion of gambling in light of this discussion. Commissioner Parker did not think a formal opinion was needed, but felt it would be helpful to have a written informal opinion from the Attorney General. Commissioner Parker would like to defer action on this rule today to allow time to ask our AG to produce such an opinion. Commissioner Parker thought it would be helpful in terms of his being comfortable with moving ahead.

**Chair Bierbaum** thought that was a pretty good idea, so long as there was agreement by the Commission that they want to pass this, provided they get an opinion from the AG that says the Attorney General's office does not think it is an expansion of gambling. On the merits of the rule, Chair Bierbaum was torn between the expansion of gambling concern, which she understood was a policy issue not a legal issue, but was not sure if the Commission should have policy considerations when considering these topics. Chair Bierbaum was also thinking about the horrible economic crisis we are in right now, and the horrible shortfall of revenue and expenditures. It seems that any state agency, or any commission, should not take action that would limit its ability to get increased revenue. If this proposal is going to bring in greater gambling revenue for our licensees, then Chair Bierbaum would hate to be the person who said no to the request in a time when revenues are needed more than ever. Having said that, Chair Bierbaum would be happy if other members of the Commission want that opinion, to just simply by action of the Chair, push this over another month.

**AAG Ackerman** pointed out that the Commission can set this over until November; they would still be within the six month rule. AAG Ackerman corrected something he said - both AD Harris and Mr. Murrey reminded AAG Ackerman that the WAC setting the number of currently permitted number of seats at a table came into place after the increase from 5 to 15. AAG Ackerman thought the Commission was still in the pilot project at the point of the increase, so disregard what he said about the WAC being in place and the Legislature considering it.

**Chair Bierbaum** asked if there was not a WAC that covered the number of seats before the increase to the number of tables was put in place. **AAG Ackerman** replied that his understanding was that house-banked card rooms came into existence in 1997. Maybe Director Day or AD Harris could speak to this better – there was a pilot project for about three years; there was an accepted number of seats at the tables but there was not a specific WAC fixing the current number until April of 2000. **AD Harris** clarified the original WAC used a fairly complicated formula that allowed up to 10 players at 5 poker tables, but if there were only so many tables operating, the card room could have up to 12 players at a poker table if there were less than 5. **AAG Ackerman** offered to write a memo addressing the legality of this, but did not want to mislead anyone. He was perfectly comfortable that this was not a legal expansion of gambling issue for the Commission, but was going to be purely a policy call – the Commission has the authority to do this or to not do this. But AAG Ackerman said he would be very happy to put that into a memo, if it helps the Commission, but thought they would be back facing the exact same issue in November.

**Chair Bierbaum** asked Commissioner Parker if that was what he asked for, or if he wanted something more official. **Commissioner Parker** responded that was what he was looking for in terms of his own interest in it and if other members of the Commission are in agreement that it would be helpful before moving ahead to the actual vote on an approval. Commissioner Parker also thought a bit more time might help address the question raised about the ability to regulate as licensees take advantage of the opportunity to expand. It seems there is a kind of is it a chicken or an egg question in terms of when do you generate a revenue capability and the timing of that in relation to what people are doing out on the street. That would be Commissioner Parker's interest in the motion, but he did not know how to put it in so many words. Commissioner Parker hoped the intent of the motion was clear.

**Senator Delvin** observed from reading through the material and listening to the comments from staff that it sounds like it is all about the efficiencies. Senator Delvin appreciated the staff response that the number of seats at a table has always been about managing the game and managing the card room. It has been about what efficiencies there are and was never regulatory in the sense that the Commission was trying to stop or curb something – it is about letting the card room owner run his card room. It sounds like because the tribal casinos can have up to 9 players at house-banked card rooms and 10 players at poker, the casino operators would like to be allowed the flexibility to make the decision on how to manage the tables for games. It is not about allowing more players or trying to increase the number of players. Senator Delvin felt the Commission was getting lost on the expansion concern and throwing up an issue that he did not see exists and was having a hard time getting to where the concern about expansion is. It is just allowing those card rooms to make decisions based on what is best for their business. Senator Delvin did not see a tough choice here.

**Commissioner Parker** noted his intent in the motion was not to propose that the Commission deny the proposed regulation, but just to have more specific information in

front of them when the Commission acts on the petition. **Director Day** said he thought the requested information was in two parts: one was relative to the expansion question; and second one was relative to the staff's ongoing ability to monitor the additional players and regulate the game. **Commissioner Parker** affirmed.

**Mr. Chris Kealy**, as the petitioner for this particular change, indicated that he has been watching this discussion and affirmed that Mr. Alexander and Mr. Delvin have it absolutely correct. The industry is looking at the efficiencies from a business standpoint; as the minimum wage goes up tied to the inflation indicator, costs are rising. Mr. Kealy explained that as far as the expansion issue that has gone on here, they are in a declining mode as card rooms – they are shrinking. The reports yesterday mentioned that there are 84 house-banked card rooms in the report and 79 are operating. Director Day has pointed out that there are declining revenues coming into the Gambling Commission and declining agents available to go out. The chicken and egg here is there are declining revenues coming in to the Commission, there are declining agents to go out and investigate; there is declining activity in the card room, then there is the declining revenue going back to the Commission – so what we are really doing is shrinking an industry. The history behind this request goes back to the pilot process and the increase to 7 spots on the table, again with the supervision of Mr. Bishop who held that line and felt that, at that time, the regulatory situation was that was what they could do. That was fine and that was what the card rooms did – it was really a regulation decision. If Mr. Kealy had all 15 tables and 7 spots filled, he would not even be asking for this petition, but that is not the case whatsoever. Mr. Kealy's average head count is declining all the time, so this change is really just about being more efficient. And the onus is on the operators to regulate their card rooms; as licensees, they are the ones obligated to have clean, safe, regulated, and taxed gaming going on. The Commission's role, and they do it very well, is to check and make sure that if there are holes in the situation, they help the operator stop it, they help arrest people, and at particular times if the card room does not have the coverage that is necessary, they also fine the operator. Are agents going to get a bunch of calls coming in that say, "hey, I'm going to 9 spots, I need you to come out and check all this" – Mr. Kealy did not think so. Agents are in his facility, on average, at least once every other week. So if the operator has changed something, they are obligated to notify the agent; and if the agent feels like they need to check it, they will tell the card room not to operate that game until the agent can check it. Sometimes the agent will just give approval. Because during a week the operator may pick up a table, recover it, move it to vacuum, do other things, put it back in place, change a camera lens, etc. The agents can't be running out every single time the operator does a single operation – it all gets taken care of in the course of business. We are really just down to the efficiencies of our card room – can we regulate it? Yes, we can. That has been agreed upon. The technology is there; digital surveillance systems have increased through this whole phase of the past ten years. So from a regulatory standpoint, staff and our group have figured out this works. From a labor standpoint, the industry is pursuing this and asks the Commission to approve this sooner than later. The RGA has asked for approval as of January 1, 2009, which should not cause any problem in making sure that this does not do something else. Mr. Kealy had absolutely no problem with that, and would just

like the Commission to be aware that he is really just talking about the efficiencies. **Commissioner Parker** thanked Mr. Kealy, noting his testimony was very helpful.

**Mr. Monty Harmon**, Harmon Consulting, explained there are tables for particular novelty games at the card rooms where they have only 6 spots. They have limited it because of the interest level of the players who are playing the game. When it comes to the number of spots at a table, if it were blackjack with 9 spots, experience has been that the table moves slower and it is not necessarily a desirable aspect for the players. However when business is slow and only a few tables are open, there may be more players willing to sit at a table – maybe 9 – and it is more of a social gathering and is a quieter time for the business. It is more cost effective. Mr. Harmon sees how this works when he is out in the industry. Having a business that is going to have 15 tables with 9 spots all full (135 players), was not likely to happen; at least not in this market at this time. If it did occur, the card room would, of course, increase its surveillance on those games. If there was a problem at some point in the future, the Commission could come back and reduce the limit back to 7 spots. Mr. Harmon agreed with Mr. Kealy about it being an efficiency thing where a card room would have additional players with one dealer instead of having to open a new table at night. There are fluctuations when the bars close at 2:00 a.m., they are down to minimal staff and people will come in to the establishment, but the operator is not going to call in another dealer. So, rather than open that second table, the operator could have those 9 spots available and allow people to squeeze in a little bit tighter. Mr. Harmon encouraged the Commission to consider that information in their deliberations.

**Mr. George Teeny** testified that, over the past two or three years, he has said he would not get up and talk in front of the Commission very much and would let his peers do it because they speak more eloquently than he does; however, Mr. Teeny did not know of too many people in this room that have been with the Gambling Commission for the number of years he has been. The history on the 7 spots was obviously created by then Director Bishop and was an arbitrary number. In conversations with Mr. Bishop in the days that we were able to sit down and have lunch and talk frankly with certain people within staff and the Commission, he shared with the industry the reason why he wanted 7 spots; because Mr. Bishop plays the game of blackjack and it was a better game for him. It was nothing more than just an arbitrary number; he had the same information that the Commission has received about the 9 spots throughout the country. And from Mr. Bishop's point of view, he just wanted to do it because it made the game more efficient for him. As for the clubs, the majority of clubs throughout the country have 5 and 6 spots on blackjack because it is a faster game; and the faster the game, the more hands dealt, which means more drop, which means hopefully more win for the casinos. Nine spots are a little laborious; however, considering the smaller clubs in this state, it helps them on a cost basis so they do not have to bring in that extra layer to "protect the games" because the current games are regulated extremely well. Mr. Teeny did not know how many complaints the agency gets about the lack of regulation within the mini-casinos in this state. As for the concern about surveillance being able to watch the game, currently there are 10-handed poker games that are within the same house-banking arena, and they are

being watched quite efficiently, with the help of staff. There are face shots, table shots, layout shots, and chip rack shots, so it is fully covered. There would be a little extra work that would have to be done to protect the hand if it is increased from a 7 to a 9 handed house-banking game, but that is already established within the state.

**Director Day** rose in defense of directors – they are not arbitrary. Director Day was confident that Mr. Bishop’s judgment was based on the industry standard at the time.

**Mr. Max Faulkner**, with the RGA, spoke about the regulatory economics involved. In practicality in the eight or nine clubs he is involved with, if the Commission passed the 9 spot rule, Mr. Faulkner would put in one mini-baccarat table with 9 player spots in one club. It would replace a pai gow game; in pai gow there are 49 cards dealt and all the players have 7 cards and the players are switching and making their 2 hands. In mini-baccarat there will be 4 to 6 cards right out in the middle in front of the dealer, and that is all. So, from a surveillance standpoint, it will be a lot easier game to watch than the pai gow that Mr. Faulkner would be replacing.

**Senator Prentice** noted that Mr. Teeny’s testimony had reminded her of the nature of the discussions that were being had at the time. At that time, if there were not enough players or somebody wanted to come in, the card room would have to draft an employee to come, sit down, and play. Then for awhile the question was does the employee need to have a badge to identify them as an employee. I only throw that out as kind of the working through discussions that we were having then. She said she was only throwing this out to show how different the world is now compared to how it was then, and to help work through the discussions that were then being had. It certainly was a very different world than everyone is dealing with now. Senator Prentice did not know if there was suddenly going to be this big influx; she just knew that there was difficulty in just allowing for the players that were coming and trying to make the rules flexible enough. It may sound irrelevant or kind of picky now, but that was the nature of it – it is not as if the answers were all that clear. Senator Prentice also had to rise to the defense of then Director Bishop. She served with him here at the meetings and he was an employee of the agency, and was certainly well grounded in the rules, and a very fine person.

**Mr. Frank Miller**, attorney out of Tacoma speaking on behalf of himself, complimented AAG Ackerman and Ms. Hunter on their analysis of the expansion of gaming issue. Mr. Miller explained he was the Director at the time the pilot program was put in place and worked with Senator Prentice over the years on the study groups. There was a time when the card room industry was basically close to extinction, and then there were a couple moves made by the Legislature – one was the expansion from 5 to 15 tables and the other was ultimately to allow for house-banked gaming. There was not any concern about the number of chairs at a table because a table is a table and you cannot keep making them bigger, it just does not work that way. It was the industry standard that would pay. Mr. Miller could not speak to Mr. Bishop’s limitation of 7 spots, but thought it was somewhat consistent with what Mr. Teeny said. The issue here is really one of efficiency; the ability to have one less dealer on the floor and to move people around. Mr. Miller said he

was not going to comment on the rule, per se, just the expansion issue. Mr. Miller concurred with the Assistant Attorney General on that issue – the Legislature sets what is legal and the Commission really does not have the authority to expand. But certainly as a policy matter, the Commission has the ability to approve. So the number of chairs at a table really was not an issue because, once again, they are limited by industry standards.

**Ms. Dawn Mangano**, Casino Caribbean in Yakima, testified that allowing more spots on a house-banked table game would really save her a lot and helps the smaller clubs as far as labor costs. Her card room does not normally get all of their tables open, even on a weekend night. Ms. Mangano was thinking more on the level of the smaller clubs because many of them are open with just a few tables. As far as serving the customers with the different kinds of games, or being able to have one more customer come in without having to open another table and have another dealer, that would be a big savings and would be helpful in the smaller venues. As far as the coverage, our surveillance has two shots on every table dedicated to each table along with cameras that rove around and can zoom in on other shots, so there really is good coverage on the tables.

**Mr. Michael Marquess**, Casino Caribbean and Macau Casinos, testified that he has three properties, one in Yakima, Kirkland and Lakewood, and he rarely opens up all the games at any of those three properties. Mr. Marquess would use this to basically accommodate customers when his card room is very slow. The idea of regulation where if he had 9 players in the place that wanted to play blackjack and if he had to open up two games for those players, that would actually increase the regulatory requirement and observation for the oversight and the dealers. Mr. Marquess thought it would actually be more efficient, both on our part and from the Commission staff to regulate this. It is easier to watch one game with 9 players than opening up two games. Mr. Marquess noted he had worked for four tribes as a manager in this state and thought three of those casinos had 9 spots on them and he never saw any problems with that from a regulatory point of view. .

**Ms. Dolores Chiechi**, Executive Director of the Recreational Gaming Association, urged the Commission to take action on this rule today without delay. There has been a lot more testimony that clarifies the need for this change in the industry, especially as we are seeing this economic downturn. It would really help the industry if the Commission would approve it without delay.

**Commissioner Parker** indicated that if his motion was acceptable to the Commissioners, it does not delay the start date of this rule. That would be his response, and Commissioner Parker hoped that the Commission could just move on. **Chair Bierbaum** clarified Commissioner Parker's motion was to table this petition change until next month, and that the reason the Commission is delaying this for a month is so that Mr. Ackerman, or some other qualified person, would provide a written opinion about whether this does or does not constitute an expansion of gambling from a legal perspective. **Commissioner Parker** affirmed that was his request.

Commissioner Parker made a motion, seconded by Commissioner Amos, to table this petition to the November meeting. *Vote taken; the motion passed unanimously.*

**9. Staff Proposed Housekeeping Rule Changes**

- a) New Section WAC 230-06-109 – Sales invoices for merchandise prizes
- b) Repealed Section WAC 230-06-115 – Using checks or credit cards to purchase gambling equipment, products, or services
- c) Amendatory Section WAC 230-09-020 – Post house rules
- d) New Section WAC 230-09-022 – Wagering limits for fund-raising events
- e) Amendatory Section WAC 230-15-205 – Card tournament licenses
- f) New Section WAC 230-06-083 – Card game licensees reporting changes in licensed employees
- g) Repealed Section WAC 230-03-290 – Card room employees working for additional employer or changing employer
- h) Repealed Section WAC 230-15-175 – Reporting card room employees no longer working

**Assistant Director Trujillo** reported that Items (a) through (h) are a series of housekeeping changes proposed by staff. Due to the nature of their being housekeeping changes, the Commission has the choice of hearing about all of them and then making a motion to include them all, or making a motion and excluding one if they have questions about it, or each could be handled individually.

**Chair Bierbaum** indicated the Commission had already been over these and asked if any Commissioner wanted any further explanation from AD Trujillo about the nature of these housekeeping changes. **Commissioner Parker** suggested doing them together. **Commissioner Ellis** agreed.

**Chair Bierbaum** called for public comment; there was none.

Commissioner Parker made a motion, seconded by Commissioner Ellis, that the Commission adopt the housekeeping amendments under Agenda Item 9 (a) through (h), with an effective date of January 1, 2009. *Vote was taken; the motion passed unanimously.*

**10. Petition for Rule Change – Recreational Gaming Association – Wager increase from \$40 to \$500 for non-house-banked card games**

- a) Amendatory Section WAC 230-15-135 – Wagering limits for nonhouse-banked card games

**Assistant Director Harris** reported the petition was filed in May 2008 and has been on hold at the petitioner's request until this time. The petitioner is requesting an increase in the maximum number of a single wager in a non-house-banked card game from \$40 to \$500 when operated at a house-banked licensee, because the surveillance requirements specified in WAC 230-15-280 for house-banked card rooms are more stringent than what is currently offered at a Class E or Class F poker rooms. The limits for the non-house-

banked fees would still be limited to \$40. There have been two petitions in the past three years to increase the wagering limit; one was by the RGA in 2005, which would increase the wager limits from \$25 to \$100, and was denied by the Commission; the second one was by a poker player in 2007 requesting the wager limits go from \$25 to \$40, which the Commission approved at the time. The current limit for poker at tribal facilities is \$500; anything above the current \$40 would be Class III gaming and anything under that is Class II gaming, which is not regulated by the State. If the Commission approves this request and increases the betting limits to \$500, that would make it all Class II in the tribal facilities and not regulated by the State. The petitioners also have a petition, which is on the off month and discussed at the study session, that would reduce the surveillance requirements at a house-banked card room when only operating nonhouse-banked card games. That petition is still on the table and will be up for final action at next month's meeting, along with this package. The Commission may wish to consider whether the proposal is consistent with the legislative intent of RCW 9.46.010. The petitioner has requested an effective date of January 1, 2009, and is present.

**Chair Bierbaum** asked for clarification about who the petition applies to and who it does not apply to. **Assistant Director Harris** replied it would allow the betting limits for nonhouse-banked card games offered at house-banked card rooms to go up from \$40 to \$500. For nonhouse-banked games offered at nonhouse-banked card rooms, the limit would still stay at \$40.

**Chair Bierbaum** asked if there were any questions or public comment.

**Mr. Gary Murrey**, Recreational Gaming Association, commented that, regarding the rule of lowering the surveillance levels, discussions yesterday indicated that it would only affect the card rooms that stayed at the \$40 or less level on the betting limit. This petition would not change any of the surveillance requirements to a manned surveillance room and have the surveillance they had with their other petition that is on the books. Mr. Murrey did not want to confuse the issues too much, explaining this rule change would not lower the surveillance standards and their future petitions would not affect that. If you look at some of the presentations here and the possible size of the pot, it may be possible mathematically but practically would not happen. Regarding the \$6,000 pot level, or per person bet, there are not that many chips on the table. Those who went downstairs for the demonstration yesterday would see that very rarely did anybody have \$6,000 in chips – and that was play money. In a real game where people have real money and are limited in the amount of chips they buy, these pots are usually \$40 or \$50. They are actually smaller than in a game which is \$20/\$40 limit where you have a spread limit of \$1 or \$2 ante and a spread limit up to \$500 at any time. The industry is trying to get to the international standard of poker that has happened over the last few years. Spread limit games, where there is a small ante of \$1-\$2 or \$2-\$5 but the player can bet the chips in front of them at any time, has become the international standard for poker. That is what the players expect and what they want; that is why they go to other places to play like Las Vegas, Nevada, Mississippi, New Jersey, Europe, Canada; that is what they get and what they expect. When they come home, they would like to play the same games

they can play there. When talking about the economy, we would rather keep our dollars in the U.S. economy and the state of Washington economy than we would have it travel to Canada or to Nevada. Becoming a standard in the industry and being on the same playing field as the rest of the world in how the game is offered is something that is important to the industry and as the operator offering the games. Mr. Murrey offered to answer any questions the Commission may have of the petition in general. He thought that if the Commission put it in the context with what they saw last night, it is the same type of thing where players bet \$1 or \$2 and they do not have a lot of people in every pot; they get down to one or two at the end.

**Chair Bierbaum** indicated that since this is just up for discussion, it does not need to be voted on.

**Commissioner Ellis** said it seemed to him that this petition may be a very good example of the distinction that AAG Ackerman was drawing between an issue that may legally raise an expansion of gambling issue versus one that only raises an expansion of gambling issue in a policy sense. Commissioner Ellis recalled that legislative rulings have made it pretty clear that an increase in betting limits does not constitute an expansion of gambling and does not raise the constitutional requirement of a 60 percent majority in the Legislature. But at the same time, from a common-sense standpoint, Commissioner Ellis thought the average citizen would think that a dramatic increase in the amount of poker wagers would raise expansion of gambling issues. **AAG Ackerman** affirmed that was correct, noting that it sort of crystallizes the point because his recollection was that in RCW 9.46.070, the Legislature has given the Commission specific authority to set wagering limits. So there is no doubt that legally the Commission can do so, but the policy issue remains for you. And I should say it is not a legal expansion of gambling issue because when the Legislature gave the Commission that authority, it did so by the constitutionally required 60 percent super majority.

**Chair Bierbaum** was not sure how exactly to do this, but she felt that sometimes when the Commission gets down to the final action phase of these rules and the proponents, the public do not really have a sense of where any of the Commission are on it. Chair Bierbaum thought that puts them at a disadvantage in terms of how they make their arguments. She pointed out that she could not force anybody, but thought that it might be helpful if some of the Commissioners would shed light on how they are thinking about this proposal. **Commissioner Ellis** thought it was a good idea and accepted that opportunity. It has occurred to him in the past that we have the situation the Chair is describing where there is not a lot said about a petition for two rounds of hearings and then it gets to the final round and suddenly previously unspoken concerns come out. Commissioner Ellis certainly had a concern about this petition from the standpoint that the Commission not long ago increased the maximum wager level up to the current \$40 standard in response to Mr. Kimmerle's petition. The amount of the increase the Commission is being requested to approve is a very large increase, and it does raise policy issues. Commissioner Ellis indicated that if he were asked to vote today, he would probably vote against it, but might vote in favor of a lower increase. Commissioner Ellis

thought one of the tests that work here is social gambling where there is the potential for \$500 bets. Have we moved from more of a social game to something that provides more opportunity for players to make a profit and leave the realm of a purely a social pastime. Commissioner Ellis said he was certainly going to be listening to what other Commissioners have to say and to further testimony at the final hearing on this topic. He anticipated there would be lots of testimony at the final hearing.

**Commissioner Parker** wondered if staff could help him remember whether the Commission considered a proposal last month in the Gig Harbor meeting about increasing betting limits. **Assistant Director Harris** affirmed that was correct – it was for house-banked card rooms and the Commission authorized an increase up to \$300. This is for nonhouse-banked betting limits. **Commissioner Parker** asked if this was basically poker as compared to what was on the table last month. **Assistant Director Harris** affirmed it was for house-banked card games, which would be like blackjack, pai gow, and variations of the poker and blackjack games that are house-banked as opposed to poker where the players are betting against each other. **Director Day** pointed out that what might be causing some additional confusion is this petition and the other one were filed at the same time. So this one has been in the wings waiting for the petitioner to make a decision on whether to move forward with it or not, which is why the Commission is seeing it now; the petitioners have requested it move forward to a final decision. But Commissioner Parker is correct, the last petition was house-banked like blackjack and this one is nonhouse-banked poker. **Commissioner Parker** asked if the petitioner was still the RGA. **Director Day** affirmed, noting that it started with a whole series of about 16 petitions. **Ms. Hunter** clarified it was 12.

**Chair Bierbaum** asked whether the betting limits on the house-banked were \$100 and they went to \$300. **Assistant Director Harris** replied they were \$200 and then went to \$300. **Chair Bierbaum** asked why the nonhouse-banked was at \$40 and these were at \$200 and wondered what the rationale has been in the past for having a different betting limit for house-banked versus nonhouse-banked. **Assistant Director Harris** explained that poker, for some reason, has always been a lower betting limit than the house-banked. When the house-banked was \$100, poker was \$25. The number of betting rounds for poker games increases the amount of money on the table rather quickly, where at a house-banked game the original bet is pretty much set unless on blackjack where a person can double down or split and then can double it. But on a poker game, \$25 with five betting rounds with two raises each round takes the number up much quicker.

**AAG Ackerman** confirmed for Commissioner Ellis that it is RCW 9.46.070 that gives the Commission specific authority to set wagering limits; so that takes care of the legal issue on expansion of gambling. **Commissioner Ellis** thanked AAG Ackerman.

**Mr. Chris Kealy** appreciated the Commission asking for comment to get some light on where this is now, which would greatly avert an hour's worth of testimony on the final action and having no surprises from the industry side coming out. Mr. Kealy said he did not want to go through all the history behind this petition or give a 20 minute speech

here, but suggested he try to concentrate and maybe get a letter out to provide some background and the RGA's justification for why they have come forward with this petition. Mr. Kealy thought last month that the Chair ended up saying the decision on the request for an increase to \$500 had just kind of come out at \$300. And being involved in that decision, sometimes the Commission just picks numbers, and the public do not really know how the Commission determined to approve \$300 – "Oh, \$300 sounds okay and you voted for it." Sometimes the RGA does not really know what to propose. The industry is trying to grow their businesses and develop business plans and at least keep them. The poker situation, as described here, is completely faulty that there is going to be ten players sitting there pushing \$40 each time the betting round goes around, because that is not the reality of the game. As much as the industry has tried to demonstrate what the game is – and some of the Commissioners took the time yesterday to play the game and look at the PokerTek game – what they are really looking at with a poker limit that is higher is a spread limit game that creates an all-in action. The point of the game is not to build up these illusionary pots of \$120,000 every three minutes, because that is not going to happen. The largest poker room in the world, Bellagio in Vegas, cannot support a game at that level, and it is not going to happen in Washington at all. What the RGA is asking for are game limits that provide the opportunity to produce the games the public wants – that is what the proposal is about and that is what we are trying to justify to the Commission in any way that we can. So however the RGA can help the Commission understand that further, they would be glad to provide that information. Mr. Kealy said they also use these human processes to see if there is any significant public opposition, which they have not seen. That absence of public opposition sometimes gets lost in its own silence. Mr. Kealy did not see it; that is what the public process is for.

**Commissioner Parker** pointed out that, going back to last month when the Commission considered the betting limit issue, Commissioner Parker indicated his thinking at the time was it seemed that, as Commissioners, it would be wise to proceed incrementally and not go from \$40 to \$500 in one step, but to try it at a lower limit and see how it works in terms of the way the marketplace or customers handle it, and then it would be reasonable to come back and consider the full extent of the betting limit increase that the RGA is requesting. Commissioner Parker said his inclination would be to think about it in terms of an incremental step when it is up for decision next month; although, Commissioner Parker was not saying that he would do that, he was just sharing his thinking. **Mr. Kealy** appreciated Commissioner Parker's comments. Part of this testimony today, and even in this presentation, has outlined that this issue has come up twice in the last five years. It is going to come up three more times in the next five years if the Commission takes that incremental approach to it. The body of evidence outlining that this was just addressed two years ago should also take into account that it has been sort of an incremental process – and Mr. Kealy could accept incremental approaches. The difference in the gap on this and why poker is where it is, is the industry held out at \$25 for a decade or more. If it goes a decade at a time for \$15, it does not even match up to the game that Mr. Kealy was talking about – a spread limit game – because that is the action and activity they are trying to provide and that they are trying to have rules that complement what is in the marketplace; that is what the request is about. **Commissioner Parker** said he would

appreciate it if Mr. Kealy offered the Commission something in writing between now and when this is taken up again. **Mr. Kealy** affirmed he would do that. **Commissioner Parker** indicated it was helpful to him to hear Mr. Kealy characterize it as a spread limit game and Commissioner Parker was trying to get his mind around that in the context of how he understands the game. **Mr. Kealy** said he had a deck of cards in his bag and would show Commissioner Parker. **Commissioner Parker** responded that he was not that interested.

**Commissioner Ellis** asked, at the risk of exposing his ignorance about various poker games, when talking about a spread limit game or when talking about the ability to allow for an all-in bet, if it was really Texas Hold 'em and an all-in bet in Texas Hold 'em that was being referred to – or are there other games that raise the same issues and involve the spread limit concept? **Mr. Kealy** replied that was currently and specifically the market demand. The particular game that would be offered most often is a \$1 to \$100 game. The customer can buy in for \$100 or \$200, which creates a limited buy-in so somebody does not run the table. It is the similar action that we are already outlining – we have \$200 or \$300 betting limits and so on. So it is a buy-in at a dollar figure that then the players are allowed to do that action because they can only bet \$40 at a time right now. So the player has pocket aces, they get the hand, they want to blow people off the hand when they see the flop and see two hearts. And they say “okay, if the other guy’s holding that, I want to go all in” and can test his will to back up those hearts, and that is the play. It is not this illusionary \$120,000 pot; it is going to be a \$200 pot. It is a decision between two players, two adversaries, at a social card game. That is what we are doing, and that is the activity. **Commissioner Ellis** asked if that was limited to Texas Hold 'em. **Mr. Kealy** affirmed, noting that if the Commission wanted to limit it to Texas Hold 'em Mr. Kealy could certainly accept that. **Commissioner Ellis** thought that might be an interesting thought and a way to make it clear that this is not a broad authorization that is going to be widely used around the state for \$500 bets. **Mr. Kealy** said he could appreciate the Commission’s studious approach to making sure they do not have Jack in the Box jump out. None of the rules the RGA has asked for in the original 15-petition package had to do with activities that are already going on in the State – they had to do with what the RGA viewed as a policy call out of X2 and that at the state level were accepting those activities. To see what is really going on with the activities the RGA is requesting, the Commission need only look at a tribal venue. They are not going to see anything different than that in cards because that is what the RGA is working across; so any other description of it is inaccurate.

**Senator Prentice** said that frequently the argument that is brought up, and Mr. Kealy just mentioned it also, is that there is not this huge public outcry. Over the years Senator Prentice has begged reporters to please cover what goes on at our Commission meetings because there is always something going on, but the reporters never do. Senator Prentice remembered one reporter saying to her “I’d have to learn something then.” But once in awhile there will be a story, like the internet gambling story that the reporters got absolutely dead wrong, and Senator Prentice still got raked over the coals, which is okay. Another was the revenue sharing story which the reporter got dead wrong – he got it

reversed – and that gets in the public mind. But the reporters do not cover the nuts and bolts and small stuff, so the public outcry is not heard at all. It is an argument that is used, but the public does not always know. The only people who are even concerned with this are the people who come and play. But the vast people there who suddenly perk up once in awhile when there is something that a reporter does not understand, now that is the good part. Reporters are currently leaving our newspapers in droves – it is really a phenomenon that we are watching. They are out there looking for other jobs, so there are going to be other greenhorns out there who know even less than these reporters. Senator Prentice was not even saying that anybody was going to be treated fairly because suddenly an issue will bob up, so the fact that there is no public outcry, does not mean the public does not care either. **Mr. Kealy** admitted that was a point well taken.

**Director Day** disagreed with Mr. Kealy on one subject, which John Ellis already identified, that what is described in this rule summary is inaccurate. Although Mr. Kealy and the rest of the industry may have a certain intention on how they would use this increase in bet limit in practicality, from the Commission's perspective and the legal perspective, the Commission would be authorizing a \$500 bet limit that could be employed. That message is what would be received by the public or those concerned.

**11. Petition for Rule Change – PokerTek: Electronic Poker Tables**

- a) Amendatory Section WAC 230-15-030 – Authorized non-house-banked card games
- b) New Section WAC 230-16-157 – Electronic poker tables

**Assistant Director Trujillo** reported the petition requests electronic poker tables be authorized for use in card rooms. The electronic poker table system randomly shuffles electronic facsimiles of cards, deals these cards, facilitates play with electronic facsimile of chips, and collects fees for the house, all without using a live person as a dealer. As demonstrated yesterday, in order for a player to play on an electronic poker table, a player must open an account with the operator. This is similar to a patron wishing to set up an account to cash checks at a gaming operation or to set up an account to participate in a player reward system. In exchange for buying in at the cage, a player receives a card that allows the player to access play at the electronic poker table after inserting the card. Players must play against another player, so if only one person is seated at the electronic poker table, there would be no play until another player sat down. Currently there is not a regulatory program for this type of table, so a program would need to be established and equipment and software specifications for testing purposes would need to be developed, in addition to staff training. One benefit to the licensees is the reduced opportunity for dealers and players to manipulate or introduce new cards or steal gambling chips. With an electronic facsimile of cards they would not be able to introduce cards to a table, and there are electronic facsimile of chips so a player would not be able to steal those from another player. The table would likely reduce labor costs without having another dealer, be able to deal more hands, increase the amount of fees taken in, and reduce costs for cards and gambling chips. Video poker is illegal in Washington State so approving the PokerPro table might impact the Tribes' ability under

Washington State law in the Friendly Lawsuit to negotiate for similar games such as video poker. The petitioner stated the proposal would improve regulatory oversight – staff somewhat agrees there may be less staff time needed to investigate complaints of player and/or dealer cheating as most theft complaints relate to the card dealer. Policy considerations the Commission may want to consider as this is discussed include whether this table is an electronic gambling device as defined in RCW 9.46.0241. The petitioner states the PokerPro table is not a gambling device. Another policy consideration is whether electronically communicating wins and losses to a player account is the same as crediting winnings to a cash card. Electronically crediting winnings to a cash card is something that the Commission denied in January of 2008 in relation to an electronic video pull-tab dispenser. The petitioner states the PokerPro table does not automatically credit and debit a player's account in the cage. The third item the Commission may want to consider is if the ability of the player access card to access the wager and account makes the player access card an instrument of value. The petitioner states that the player access card is not an instrument of value. The fourth area of consideration is that the change would remove live dealers from operating the poker game. The petitioner states that the table would be overseen by a licensed card room employee. The table would also replace physical gambling chips with an electronic facsimile of gambling chips. To date staff has not received any statements opposing the proposed rule change and recommends further discussion. Staff anticipates providing a report after our Gambling Lab reviews the standards of the electronic poker table as it relates to video poker. Frank Miller representing the petitioner, as well as James Namchek of PokerTek, are present to answer any questions the Commission may have.

**Mr. Miller**, on behalf of PokerTek, explained that Jim Namchek would be able to answer any technical questions the Commission may have. Mr. Miller wanted to briefly discuss some of the legal questions and policy issues. Mr. Miller appreciated the comments of the Chair on the previous issue and wanted to ask for some guidance as well. Mr. Miller explained they have been working on this petition for a couple of years with the Gambling Lab and with staff. They initially withdrew this petition to go back and address regulatory issues so there would be no real regulatory concerns with regard to the rules themselves when it came before the Commission. Mr. Miller came back with a simplified version of two rules that needed to be changed to allow this electronic poker table. But the real issue is not with the rules, but whether as a matter of law or as a matter of policy, the Commission wants to allow this type of electronic version of poker in the state. Mr. Miller thanked the Commission for taking the time yesterday to look at and for playing the game. There is no way to really describe this unless you see the table and see it being played because it is clear that it is nothing but a poker game, with no physical paper cards and no clay chips, and it has tremendous security and accounting. Mr. Miller was now hearing rumblings, which is why he needs some guidance on this because a response was submitted to the staff issues that Mr. Trujillo accurately described to the Commission. Mr. Miller submitted an initial response, and does not believe it is a gambling device as defined – it is not a video poker game. Mr. Miller has spent 25 years studying this area of the law, and if this is a video poker game, then he guessed he had been reading the wrong books. Is there a video screen and is there poker, yes; but did

that law intend to restrict this type of game; Mr. Miller would certainly argue, no. And if that is an issue that needs to be addressed further, Mr. Miller would like the chance to brief it further. The intent of that statute is to basically outlaw slot machines and similar type devices; a stand alone game where the person plays against the device and the device determines the outcome of the game. There is an element of chance in the device; in a video poker game, it is the player; one person against that machine. The player places a wager, gets a draw, holds the cards, pushes a draw again, and wins or loses. The machine determines the outcome; the customer plays against the house. This is a poker table, and as the Commissioners saw last night, the customer cannot play against it; it takes two people minimum to play and the table determines nothing. The table deals the cards, it handles the wagers, and it distributes the players' wagers by distributing the pot because it reads the table and says who won the hand. As a matter of fact, it will not even let the player make a mistake. The players have to confirm their action. Commissioner Parker may recall that there were a couple wagering options for him that said all in, and that got back to the point that Mr. Kealy was talking about earlier, that type of game where the all in was there. So the table can be programmed for that as well. Mr. Miller said he was hearing in the halls that the issue was whether the table was a gambling device and Mr. Miller was kind of at a loss. If you go back to 2001 when AAG Ackerman advised the Commission on the DigiDeal game, he said the Commission had the absolute authority to allow electronic facsimile of cards. That was a blackjack game where actually the cards were dealt, but it was not electronic chips, it was just the actual cards were dealt in the game. The Commission approved that game after much debate, and there were the same concerns back then Mr. Miller was hearing now. The difference is this game, from a regulatory perspective, is a tremendous advantage and a tremendous improvement. Not everybody is going to put this table in, but it certainly is very advantageous. Mr. Miller needed to know whether, on a legal side, this is a real issue and if there is concern this is a gaming device, because if it is a concern, Mr. Miller needed to be able to prepare for that for next month. If it is not a real concern that it is not a gambling device under that statute – it is not video poker – then Mr. Miller wanted to just get to the policy issues. Is the Commission comfortable with electronic facsimiles of chips and are they comfortable with a table where there is actually not a dealer at each table but a dealer overseeing the play in the room. Hopefully, with the regulatory improvements, the answer would be yes. It is being approved around the country, it is on about 30 different cruise ships and numerous tribes utilize this game throughout the country. PokerTek would like to bring the table into Washington as well, so any guidance the Commission can give Mr. Miller, it would be greatly appreciated.

**Representative Geoff Simpson** admitted he was a skeptic when it comes to computer programs and did not trust them. Representative Simpson thought that, currently, there is a dealer that could deal off the bottom of the deck or do any number of sleight of hand to affect the outcome of the game, but when there is a computer programmed to deal cards, is it not theoretically possible that somebody could suggest a player use seat number 2 on that machine because that is the one that is going to win more often than others because the computer has been programmed for it to do that? Representative Simpson asked what sort of controls are in place. **Mr. Miller** responded that was a wonderful question and

was going to defer part of that. Based a little bit on his experience, Mr. Miller explained there was an independent lab, Gaming Labs International, that is the biggest lab in the world. They have written three or four technical standards on electronic gaming tables and have a new one specifically for this type of table. Before this would go out in the state, this product would be shipped to the lab and, under this rule, would have to be tested by a lab and approved by this lab. That technology and that software and hardware would have to basically be sealed and could not be changed in any way, shape, or form, unless this Commission approved a type of change. Before that product would ever get out, it would be tested, it would meet the national standards for this product, and it would be secured in a way that it could not be changed without violating the law. It cannot be changed without going to the lab first. It has just been approved in Nevada and is going through a field test right now at the Excalibur and it has been approved by New Jersey and Mississippi, the three largest non-tribal gaming arenas in the country. They have extensive labs and they have tested these products, and they are obviously quite comfortable that it is secure enough. It does require ongoing monitoring; but someone cannot come in and change this. It is like the tribal systems today – those are approved, they cannot change them without the approval of the Tribal Gaming Commission or the State Lab, so they are very secure and protected. The advantages are just the inability to manipulate or mark the cards and do away with the cheating and collusion between a dealer and a player. The advantages far outweigh the risks associated with the computer technology in this particular product.

**Director Day** clarified that electronic gambling changes our regulatory program from the actual focus on the players to focus on the computer operation and the software chips. Director Day agreed with Mr. Miller to the extent that we have the ability to verify and test the programs to make sure they are the approved programs. If there is any variance in those programs when we test them both in the field and the lab, then they would be pulled. Of course, there is always a possibility that somebody could get something in, but once they have been tested and approved through the process, placed, and sealed, it is very difficult.

**Commissioner Rojecki** noted that Mr. Miller talked about Nevada approving the table temporarily and asked what the reasons were for the temporary approval. **Mr. Miller** replied Nevada is doing a field test, which is not uncommon for new technology. Mr. Miller understood they have 12 tables currently in play at the Excalibur – they basically replaced their card room – and it is just to see if there are any issues associated with the table. Nevada will do that occasionally with a new game; and since this is a new product, they want to make sure there are no regulatory issues. That is why they do a field test and come back if they need any additional regulations in play. But they tested it thoroughly and went through it in quite a process before they approved it.

**Commissioner Rojecki** asked if there would generally be just one person overseeing one, two, or three tables, and how that would work as far as efficiency. **Mr. Miller** thought that under the proposed rule, there would be one person, a card room employee, that would be there overseeing it because the actual physical dealing and movement of chips has been done away with. The dealer today actually divides the pot and does

everything, but this is all done by the machine as demonstrated yesterday. There would have to be someone there in case there is an issue, a complaint, or a problem, and obviously there is someone there to cash out. When the players take the cards, give their names, and say to put the money back into their accounts, someone has to be there to give those chips back. At least that is how we would envision it; that is the way it is working around the country. There is no doubt that it saves employment costs, whether that is a good thing or bad in today's time, let's be realistic, it does do that. But it also, hopefully, generates more revenue and results in greater taxes as well for the local jurisdictions. So there are some issues there, but Mr. Miller did not foresee every card room changing to this because people like the live game as well, and that is the majority of play. This is a niche game, and it has just such a tremendous benefit from a regulatory perspective. Barring some legal prohibition, Mr. Miller would hope that the regulatory benefits would clearly lead the Commission in supporting the policy considerations associated here. **Commissioner Rojecki** asked if the person running the computer would be considered a dealer and if they would have to be licensed; there would be no change in that. **Mr. Miller** affirmed it would be a card room employee, and the definition of card room employee includes the person that cashes in the wagers as well, so it would definitely be a licensed employee.

**Commissioner Ellis** indicated that, in response to Mr. Miller's offer, it would be helpful to get a position paper telling the Commission why this device is not a gambling device under the state statute. **Mr. Miller** agreed. **Commissioner Ellis** did not know whether that was something that could also be addressed by the Attorney General's office, but it would be good to get that as well. Or perhaps it would be useful for AAG Ackerman to comment on what the Commission receives from Mr. Miller's office. **Mr. Miller** responded that he had submitted their initial position and broke it down to four issues, but he was waiting for some kind of response so he could proceed accordingly. Mr. Miller was told they could be at the November meeting, but that puts them up against the deadline, and Mr. Miller thought this was such an important issue, and a good issue to debate, that there should be a full and thorough discussion before that time.

**Chair Bierbaum** thought November was sort of an artificial deadline. **AAG Ackerman** affirmed that was absolutely correct. **Chair Bierbaum** pointed out that the more information the Commission had and the more this is discussed, the better chances are it may make a difference for the Commissioners who are inclined to say yes or no. **Mr. Miller** replied they would expand upon what they have submitted and get more information to the Commission. Mr. Miller was pretty confident that, given the prior rulings that DigiDeal was viewed not to be a gambling device and the same statute was in play back then, this would not be deemed to be a gambling device. They were kind of relying on that, but would be more than happy to brief it further as well, if that would be helpful to the Commission. **Chair Bierbaum** affirmed, noting that even though that was the way that finally went down, Mr. Miller could see there was an enormous amount of opposition to it from all kinds of different places. The longer the Commission discusses it and the more fully it is discussed, the better off its chances for success would be.

**Commissioner Ellis** added that if Mr. Miller felt that he really did not have anything more to offer on the issue of whether it is a gambling device than what was expressed in his July 29 letter, feel free to just let the Commission know that. **Mr. Miller** appreciated that and thanked the Commission. **Commissioner Ellis** pointed out there was a fairly extensive analysis; almost a full page or more on whether it is a gambling device. **Mr. Miller** replied he had tried to go right to the point on it – it was the similar electronic facsimile of cards; the table game was approved some years ago, although this is poker. The Statute has not changed and we were hopeful the opinion would not change. **Commissioner Ellis** said that on the legal and policy side, as Mr. Miller may remember from the last time he was here, Commissioner Ellis asked Mr. Namchek how the speed of play of this machine compared to a game that was being dealt by a human dealer. Commissioner Ellis recalled the numbers were in the neighborhood of an average of 24 games an hour that a poker dealer would normally be dealing. **Mr. Miller** thought that could potentially be doubled. **Commissioner Ellis** noted that would make this machine able to deal slightly over 50 games an hour. **Mr. Miller** affirmed it has that potential, if everybody is very efficient, to be faster because it is done by computer. There is no manipulation and the cards do not have to be shuffled, so it does have the ability to speed up the game. But what really controls the game, is the play of the players. And just like they are socializing, playing, and laughing, that is going to control the game as much. So is it going to increase it? Potentially. Is it going to double it? Mr. Miller did not think so, in all honesty, but the potential is there. **Commissioner Ellis** noted in reading the materials that Senator Prentice, back when the proposal for the DigiDeal machine was before the Commission at the meeting in July of 2001, pointed out that the operational definition of an expansion of gambling used at the Legislature includes more occurrences of gambling, which happens with a faster game. So that would seem to raise the issue here as to whether or not the machine would, in fact, constitute an expansion of gambling. Commissioner Ellis thought it might be useful if the opinion that was discussed earlier could also address that issue in the context of: if a machine like this does raise the likelihood of a considerable increase in the speed of play, does that constitute an expansion of gambling either in the legislative sense or from a policy standpoint. Commissioner Ellis recalled that the Attorney General's office addressed this issue in passing in Mr. Pharris' opinion concerning video pull-tab machines where he pointed out that, among other things, a video pull-tab machine could very well raise social issues regarding speed of play, although he did not elaborate and indicate exactly where that would lead.

**Mr. Miller** stated that Mr. Namchek just pointed out that an inexperienced or a new dealer may do 10 to 15 hands, whereas an experienced dealer can do 40 hands. So is it significant – Mr. Miller thought the answer was probably no, given the play of the players. Mr. Miller pointed out there have been technologies that have been approved over the years that have increased efficiency in the games, like automatic card shufflers that speeded up the play because the decks were already shuffled so more hands were dealt because the dealers were not doing it.

**AAG Ackerman** said that seeing the demonstration yesterday was very helpful to him, as well as the letter that Mr. Miller's firm provided outlining their positions with regard to the device. AAG Ackerman hoped to have, in the next month or so, further discussions with the technical and regulatory staff at the Commission to get a better handle on how staff thinks this device works from a technical standpoint and to try to make some assessments based on the definition of gambling device and the other statutes in RCW 9.46. AAG Ackerman was not totally persuaded by the letter he received, but indicated he has a very open mind on it simply because he does not fully understand the technology at this point and wanted to be able to accurately match up the technology to the requirements of the statute. It was hard to find, given his limited understanding of the technology, a legal distinction between this device and a video poker device, except for the requirement that there be two players. Obviously the game practically operates in a very different way. But AAG Ackerman wanted to know what the mechanisms and the sub-assemblies were, whether it has a random number generator, and all those types of things that drive the legal decision. AAG Ackerman was not comfortable that, if the Commission approves this device, it will not be opening up a number of issues. First the legal issue of is it a gambling device, and secondly, even if it can somehow pass that muster, what does it mean with regard to tribal gaming and the Indian Gaming Regulatory Act, especially when we reflect on how we got the tribal lottery system machines today. There was no non-tribal lottery system device comparable to what the tribes had – it was bits and pieces of various lottery games and activities that were cobbled together to create that device. AAG Ackerman said he was not suggesting an outcome here, but was troubled by that and wanted to be able to advise the Commission, even if there was not a legal impediment to going forward with this device, and give his own advice as to whether or not he thought there may be a potential unforeseen consequence in the tribal gaming arena of approving a device like this. So anything more that Mr. Miller has to offer would certainly be helpful. AAG Ackerman was also contemplating at this point – thinking out loud – that it had been helpful to get a formal AGO that Jim Pharris wrote on the pull-tab issue and that something like that may be helpful in this arena, especially if tribal gaming is impacted and if some of the Commission's current positions with regard to non-tribal gaming, for instance the electronic video pull tab dispenser issue that has resulted in much litigation. If approving this device undercuts policy positions that have been taken in that arena, then the Commission needs to at least consider it.

**Mr. Miller** responded they will look at that as well and even maybe have a demonstration – he was sure our gaming lab would have a video poker machine that could be brought before the Commission to be able to see the differences. Mr. Miller was not going to say it cannot be called a video poker game, because it can; it has a video screen, and it has cards and representations – just like DigiDeal could be called a video blackjack game. No doubt the Commission's authority is there, but Mr. Miller was hopeful that once this is briefed thoroughly the legal and policy issues can be addressed. Mr. Miller was not fully cognizant of the tribal concerns; although he is certainly involved in that arena here and around the country because tribes currently use this game as Class II for the most part throughout the country. There are a couple states, like

Arizona, that would allow it; although it is not there, but it would have been a Class III because poker is part of the Compact. But Mr. Miller was not familiar with any other tribe that has called it Class III, except possibly the Chickasaws because they went into Compact negotiations in Oklahoma. But with the Seminoles, it was a Class II game for years and NIGC knowingly allowed it to operate for years and never issued a negative opinion on it. Mr. Miller was hopeful that is not an issue and one that does not preclude us from going forward, because some of the tribes can use this. Mr. Miller knew his clients have been talking to the tribes in this state as well to, hopefully, get it in that market.

**Commissioner Parker** asked if it was being tested in this state. **AAG Ackerman** replied not that he was aware of. **Senator Prentice** asked if it was being utilized now in other places. **Mr. Miller** replied not in Washington, but throughout the country many tribes have it. **Senator Prentice** asked if it then reduced the number of employees. **Mr. Miller** replied it certainly can; it reduces a physical dealer with the cards. There is no dealer, but there are still card room employees supervising the room, so it removes the element of a dealer actually dealing the cards.

**Senator Prentice** asked Mr. Miller if he could perhaps provide some statistics as to what actually happened. One of the arguments the card rooms have used over and over, which is a very valid one, is how many jobs they created for people who are on welfare. Senator Prentice has also heard that argument and it is the last thing she want to do. Although Senator Prentice does not have a vote on this, her concern would be how many people would be thrown back on unemployment lines at a time when we are going to be stretched. Senator Prentice knew she sounded as if she was worried about the budget, which she is, but if unemployment is a result of this, she would like to know what the big impact is going to be on the people that we currently have employed. There would not be the worry about minimum wage or tip credit; these are big concerns and Senator Prentice wondered what the big picture was really going to be on the employees at large. **Mr. Miller** thanked Senator Prentice for her comments.

**AAG Ackerman** suggested that if Mr. Miller chooses to provide an analysis, he would need to go beyond the analogy to DigiDeal. DigiDeal was a relatively simple thing for the Commission to do in a legal sense, certainly not a policy sense; all they had to do was redefine playing cards to take them from paper to digital. There was still a dealer and the other things stayed in place, which is not true of the PokerPro table. There are significant changes there, so it would be very helpful if Mr. Miller would think in that level of depth. **Mr. Miller** agreed and thanked the Commission.

**Mr. Walter Scott**, Western Region Compliance Manager of International Game Technology (IGT), testified that IGT supports PokerTek and changing the regulations.

**Ms. Chiechi**, Recreational Gaming Association (RGA), testified that the RGA supports the PokerTek rule petition. As the demonstration showed yesterday, it is essentially error free. The regulatory aspect is phenomenal in the way that the accounting, oversight, and

tracking can be managed and the capability of going back and looking at the winning hands. The social aspect was there during the demonstration and everybody had a great time and enjoyed the camaraderie around the table. The labor costs would be decreased for our members if they were allowed to operate this game. The RGA asks the Commission to be supportive of this petition.

**12. Petition for Rule Change – Coalition for Responsible Gaming and Regulation: Administrative Hearings**

- a) Amendatory Section WAC –230-17-025 – Appointment of administrative law judge or “presiding officer”
- b) New Section WAC 230-17-137 – Adjudicative proceedings – Consideration of aggravating and mitigating circumstances

**Ms. Hunter** reported this petition is for two rule changes by the Coalition for Responsible Gaming and Regulation. Commissioner Amos may not know this, but any member of the public can petition the Commission to change, repeal, or add a rule. The number of petitions that the Commission deals with has grown a lot over the past several years – over 20 this year. Five or six years ago, it might have been common to deal with two or three petitions in a year. Some minor changes in the language are on the blue paper. With the petitioner’s agreement, the term “Commission” has been changed to “the Commission staff” because it is the Commission staff that makes recommendations for administrative penalties – not the five-person Commission. It was felt that if the Commission was inclined to file this, it would be important to clarify that change.

Ms. Hunter explained that the Coalition is a group of licensees and their attorneys, including Dave Malone and Frank Miller. The group includes manufacturers, distributors, charitable/ nonprofit organizations, and commercial operators. Beginning in the fall of 2006, staff had several meetings with the Coalition and during those meetings the parties discussed the Coalition’s concerns about some aspects of the administrative process. During those discussions, a rule was considered that was very close to the language in Item 12 a). Staff have not necessarily felt that either Administrative Law Judges or Commissioners have been reluctant to do something different than what staff has recommended. There have been instances, certainly, where the Commission after reviewing all of the information has made a decision that was not what staff had initially recommended. Ms. Hunter did not think there was any harm in making it crystal clear for any presiding officer that they do not have to impose whatever penalty staff is requesting. Staff has no concerns with the proposal under 12 a) and would recommend filing for further discussion on that particular rule.

**Ms. Hunter** reported that staff’s recommendation is different on Item 13 b). This rule would require that upon the request of any party, the presiding officer would consider a list of 14 aggravating and mitigating factors when determining whether to modify a penalty sought by Commission staff. Ms. Hunter noted that Mr. Malone was kind enough during a break to let Director Day and Ms. Hunter know that he had not received the correct version of the rule summary when the rule summary was mailed to him. He did apparently pull the correct version off the agency’s website last night, which is the

version that is in the Commissioners' packet and the version that has been posted on the website. Ms. Hunter apologized for that error, and explained the difference between the two rule summaries is mainly that in the version that is in the agenda packet under the last part of staff recommendation, reasons were listed for the recommendation for denial. In the packet Mr. Malone received, the recommendation just stated that staff would be asking for denial. Ms. Hunter did not think that many of the reasons were too big of a surprise to Mr. Malone, though, because several of staff's concerns with this particular rule were explained over six months ago when staff realized, along with the Coalition, that we were not going to have agreement on a rules package.

When staff was in discussions with the Coalition, the draft was shared with AAG Ackerman. When AAG Ackerman reviewed a proposal similar to the one in the agenda packet, he pretty strongly advised staff against a rule that would impact the Administrative Law Judge's and the Commission's decision making process. AAG Ackerman felt this could end up extending the hearings because it would create a sentencing kind of penalty phase to the hearings, which the Commission currently has in a very limited part. Staff will recommend a penalty and, certainly, the licensee can bring up some factors now, which they do as a matter of equity if they want. AAG Ackerman was also concerned that it could turn the hearings around and take the focus away from whether there was truly a violation because Administrative Law Judges might get a little derailed as they were looking at all of the different factors. As a result of AAG Ackerman's and staff concerns, the rule was modified and limited to just cases that settle.

The current petition proposed by the Coalition does not include several aggravating factors that Commission staff had proposed during the discussions. One was whether there were policy implications of the particular violation, for example underage gambling; and another one was the cost to the agency for investigation and enforcement of the action. Ms. Hunter noted that was also a factor other states and jurisdictions look at. Staff researched several other regulatory agencies, both within and outside of Washington, to see whether they use guidelines for creating their penalties. The results are summarized in the Rule Summary in the agenda packet. Nevada Gaming Commission has a codified list of factors they use in determining penalties, although they look at every case on a case-by-case basis. Ms. Hunter thought an important distinction with this is that unlike the Coalition's proposal, which is mandatory and says "shall," Nevada Gaming Commission's language is discretionary and says "may." Also, the Nevada language does not limit the Board's authority to "impose the level and type of discipline it may deem appropriate." Staff also checked with New Jersey Casino Control Commission and Louisiana Gaming Control Board and they do not have penalty guidelines.

Staff also looked at several other administrative agencies within Washington. The Washington State Liquor Control Board has a codified list of three aggravating and three mitigating factors to use. The Coalition's proposal is not discretionary; whereas, the Liquor Control Board's is discretionary. Ms. Hunter felt it was important to note – and Chair Bierbaum has much more experience than others with the Liquor Control Board –

the Liquor Control Board has a matrix and in order to deviate from that matrix, Ms. Hunter understands that staff has to prove aggravating factors and, conversely, the licensee has to prove mitigating factors. That is the only way to get off that matrix.

The Washington Horse Racing Commission has a codified list of five aggravating and mitigating factors to use and their list is discretionary. The list of factors is much shorter and they have penalties that are put out for each different type of violation. The State Office of the Insurance Examiner has internal factors that it uses to support penalty recommendations. The State Department of Financial Institutions uses an uncodified internal document with a point system for calculating penalties.

**Ms. Hunter** explained that our settlement process has what is referred to as “Settlement Guidelines.” There was a concern by the Coalition that this could only be accessed through discovery or a public records request. Those have now been posted on our website, so it is very easy to get to. A person has to have some knowledge on how to get into the website, but they do not have to make a request if they want to see them, which staff felt was a very positive outcome of the meetings with the Coalition.

Staff has several concerns about the second proposal and its impacts on hearings and appeals; it may increase the time and the cost of administrative procedures, and it will increase the amount of time that is spent before the Administrative Law Judge and before the Commission. Currently there are about 20 to 24 hearings a year. That number has also changed a lot over the past 10 years. There was a time when going to hearing was somewhat unusual, but that is not the case now. If the hearings last longer, there will be additional fees from the Attorney General’s office, the Office of Administrative Hearings who hear the cases, and from court reporters. This may also increase the complexity and number of discovery requests because, if these factors are there, an attorney doing his or her due diligence would certainly be asking about factors used in other cases and trying to make those comparisons. It is also going to increase the amount of time that it takes an agent to do a case report that they refer for administrative charges, which is over 100 a year, because we will be relying on the agents to be providing facts on these 14 different circumstances. Staff is recommending denying Item 12 b) for the reasons listed in the Rule Summary. Included in the agenda packet is a letter of support from three attorneys of William Kastner and Gibbs Law Firm, signed by Anthony Broadman, who is present today. They represent Bally’s, a commercial licensee, who participated in at least one, if not two, of the meetings with the Coalition. And Mr. Malone is also here today as the petitioner.

**Chair Bierbaum** asked if both of the proposed rule changes were just up for filing today. **Ms. Hunter** affirmed. **Chair Bierbaum** said there seems to be, at least judging by Ms. Hunter’s presentation, adamancy about denying them. Maybe that is what happens, but it has been our procedure lately, or at least as long as Chair Bierbaum has been on the Commission, to not deny a petition for filing, because it is always worthwhile to discuss things. Chair Bierbaum was asking rhetorically what the harm was in discussing it. It is a topic that, frankly, all the Commissioners probably need to know more about. It would

seem that everything in the petition cannot be without merit. Chair Bierbaum did not understand staff's adamant opposition to filing, which would fly in the face of what we have been doing for years now. **Ms. Hunter** recalled that the Commission had chosen to not file some of the Recreational Gaming Association petitions that were heard a few months ago – it is always up to the Commissioners to decide whether they want to file the petition. Mr. Miller had a similar question yesterday, and Ms. Hunter thought staff had gotten to the point where if we really do not think it is a great idea, rather than spending the time and the resources for putting them on the agenda and talking about them, staff feel we should let the Commission know up front that we really do not agree with a petition. And this is one staff really do not agree with. Obviously if you want to file it for further discussion and it might be, particularly today with the interest of time, that might be a better route to take. Of course you can do that. Obviously, if the Commission wants to file it for further discussion given the short amount of time the Commission had today. Filing might be a better route because of that.

**Commissioner Parker** felt an option could be that the party filing, the Coalition in this case, could reach agreement with staff to modify their filing so that what is in front of the Commission is one that once it is filed is something that will not require details on elements of the filing that does not have a chance. **Ms. Hunter** replied that would be more of a question for the petitioners. Conversations really stopped because the proposal that we had was to not do what this very petition does. So Ms. Hunter would be a little bit surprised to end up with a different proposal. Ms. Hunter thought we have already crossed that bridge; although obviously, people's minds change as they go along and that could happen here as well. **Commissioner Parker** said he was just speaking as one Commissioner and was not interested in spending Commission time hearing from people who come before the Commission presenting something that staff has pretty convincing reasons identified to advise the Commission to not proceed with it. Commissioner Parker wondered why they should even start to go down that road if it can be headed off. **Ms. Hunter** agreed.

**Chair Bierbaum** said she could not disagree more strongly; that to cut off discussion to save time would be amazing to her. It may not be this proposal in this form – it is just before the Commission now, and the Commission may not have had time to think about whether it is a good or bad proposal and there may be things that need to be changed about it. Mandatory consideration of aggravating versus mitigating factors possibly should be discretionary. Maybe these are not the ones that should be in there, but it certainly gives the opportunity to change it or to reject some of the factors. To not even discuss the issue would be pretty unprecedented, just to save time – it is the Commission's job to do this. The Commission could save themselves time by canceling the next ten meetings, but that does not make much sense. **Ms. Hunter** replied the petition is up for discussion and possible filing, noting that Mr. Broadman and Mr. Malone were present if the Commission would like to hear from the petitioners. **Chair Bierbaum** affirmed she would like to hear from Mr. Malone. **Commissioner Parker** wondered why the petitioners seemed so adamant on pursuing these things.

**Mr. Dave Malone**, Miller Malone and Tellefson, testified that from the outset he believed they have agreement on the initial rule proposal to allow presiding officers to have the discretion to modify penalties. This has come up in practice where certain ALJs have felt constrained by the rules; that they do not allow for the penalty to be modified. Given that Ms. Hunter has noted there is no objection from the Gambling Commission, he would not pursue any further discussion on that. With that said, there was very little about what Ms. Hunter said that Mr. Malone agreed with, other than at the end. Mr. Malone told Commissioner Parker that they have crossed the bridge. They negotiated for two years to try and get to a point where they could come to some sort of proposal. Earlier this year, they were given a set of rules and two months later they were told they were given the wrong set of rules. Last night Mr. Malone discovered that the information provided to him to prepare for this meeting was the draft. *[Mr. Malone passed out the information that was mailed to him]*. What was provided to the Commission was not the same as what was mailed to Mr. Malone to prepare for this. Mr. Malone said he was not given the seven reasons for denial and was not aware of the fact that certain other attachments were provided to the Commission. Mr. Malone said the Commission could can look for themselves and see the difference in what he was given to prepare for this meeting and what the Commission has to question him. Mr. Malone said his “reaction from a seventh grader, I got the point well if they’re looking at a different cheat sheet than you, shouldn’t they be saying like why isn’t Mr. Malone addressing these seven factors?” Mr. Malone said he went on a crash course last night until 11:30 or midnight, thereabouts, trying to address some of those factors. He thought that out of an abundance of fairness – and will defer to AAG Ackerman about APA concerns – the fact that the petitioners have not been given an opportunity to even prepare for this would warrant filing this rule petition and then it can be discussed in greater detail at the November meeting. But with that said, Mr. Malone would not go into the great details of what he had prepared for this, but did want to highlight a few of the factors.

Mr. Malone said he has read the study to which Ms. Hunter refers and there are some great discrepancies in the characterization of the facts that they have. Nevada has 19 factors; it is discretionary whether their commissioners consider those factors. However when they interviewed the Nevada officials, they interviewed the Chief Deputy of the Office of the Attorney General who commented that all settlement agreements in Nevada are reviewed by the Commissioners and approved by the Commissioners. Mr. Malone said that the Commissioners had that same authority until last year, until it was repealed as part of the Rule Simplification Process. Mr. Malone did not recall, despite his objections and trying to get settlements to the Commission, staff ever agreeing to do that. This process has come about because of conflicts with the staff attorneys who told them basically to go take a hike. Mr. Malone said he received a call from a practitioner who has practiced with or against Commissioner Ellis who said he ran into the same thing. It is an abundantly clear activity that is going on for those that practice before the agency’s bar. Mr. Malone pointed out that to say New Jersey does not consider these guidelines was patently wrong. Article 9 of the Casino Control Act specifically says the Commissioners shall consider distinct factors in deciding what penalties are imposed. Mr. Malone said he did not draft this rule proposal from scratch, but took the best

possible models he could find and put them together. Mr. Malone was prepared to answer any questions the Commission has or to go into greater detail; although, he understood a lot of people were looking to catch flights, including himself, so would defer to the Commission. Mr. Malone felt that out of an abundance of fairness – one of the things commented on was that there has been no demonstrated need – there has been no stakeholder discussion about this, which Mr. Malone found patently absurd. This has been under discussion for two years and the Coalition came together for this very reason. Had they known that was going to be one of the seven criteria for which the Commission should deny this rule petition, Mr. Malone would have mobilized a few more people to attempt to make it to Spokane, but given the fact that he only found out about this last night, that was difficult to do. If at the meeting in November, and the Commission has filed this rule for discussion and no one complains about it, Mr. Malone said he would stand corrected. Maybe the industry does not care as much as they have told him. Mr. Malone explained he took the existing rules from other jurisdictions and he took state agency rules, which there are a lot of other statements in here. If the Commission gets the full report that was prepared by the Commission staff attorneys last year, it will show that other agencies shall consider these factors; they shall put these things into play. The Coalition is just asking for some fairness; the chance to explain some circumstances when a violation occurs. From Mr. Malone's particular practice, he would say that 80 percent of the licensees would admit there was a violation but would want the opportunity to explain; they want the opportunity to ask why is it that they are being fined 50 to 75 percent of their net revenue when in jurisdictions such as New Jersey the highest fine leveled has been \$100,000 against the Borgata last year. The Borgata grosses over one million dollars a day, which is a 10 percent correlation. In Washington they are looking at 50 to 75 percent. The licensees simply want the chance to say they did it, but here is why and here are the mitigating circumstances. It is a fundamental principle of fairness – if someone gets a speeding ticket they get to say "I admit that I did it, I deny that I did it, or I did it with some extenuating circumstances" and they can present it to the judge for review. Mr. Malone has chosen the ability to go before the ALJs and the Commissioners rather than settlements because he thought if it were limited to settlements only, by rule that would preclude him from presenting the very same evidence in hearing situations, even though he thought it was relevant information. Mr. Malone asked if there were any questions of him or the attorneys from Williams Kastner who are also present. Mr. Malone urged the Commission to file the rule, indicating he would be more than happy to present a written summary of everything that they were prepared to say, given the short notice.

**Commissioner Parker** asked if Ms. Hunter could comment on this presentation, particularly the comment about the fact that Mr. Malone did not have the material that he is referring to until basically the last minute. **AAG Ackerman** responded that given the time considerations, this may or may not be helpful. The two normal things the Commission does with a petition when it is up for filing is to either deny it, which it has done on occasion in the past, or to go ahead and file. A third possibility since we are at the front end of the six-month time period, and that would be with Mr. Malone's agreement, would be to simply set this over until next month. That would, hopefully,

ameliorate the prejudice that Mr. Malone feels by not having these documents before him so that he could tailor his arguments. It also would provide him an opportunity of more time to refine those arguments and/or to provide other materials that he feels demonstrate that the staff's Rule Summary is inaccurate, or incomplete, or otherwise insufficient. AAG Ackerman offered that up as a third possibility to help move this along.

**Mr. Malone** replied, with all due respect to AAG Ackerman's position, that had we not been provided the wrong set of rules and then two months later been told, oops, we made a mistake earlier this year when we were first trying to do this, to now have this happen again, Mr. Malone was finding it a disturbing pattern when it comes to petitions. He did not know how many other petitioners have appeared before the Commissioner and gotten this same sort of treatment. No one would know. Mr. Malone has spoken to his peers, and no one would have thought to pour through the 30 some pages of attachments that are in front of the Commission to look for the very thing that he found. Mr. Malone said the PokerTek petition has the same deficiency; there are statements in the materials that the Commission has that are different from the ones that were provided to us. That is two out of two that Mr. Malone has been dealing with today, and he did not know what else was going on. **AAG Ackerman** took it that Mr. Malone was not interested in clarifying that matter further. **Mr. Malone** accepted the offer; although, he did not think it was appropriate given where this group has been.

**Commissioner Rojecki** made a motion seconded by **Commissioner Amos** to approve for discussion and possible filing amendatory WAC 230-17-025 and new WAC 230-17-137, as presented by staff. *Vote taken; the motion passed unanimously.*

### **Other Business/General Discussion/Comments from the Public/Adjournment**

**Chair Bierbaum** opened the meeting for public comment.

**Mr. Gary Murrey** realized the time constraints. After about 12 years of attending over 100 meetings of the Commission, this would be his last meeting on a regular basis. Mr. Murrey said he spent over 2½ years working on the Rule Simplification Process hand-in-hand with the Commission and has seen more people at the head table come and go over the years. Mr. Murrey thanked everybody for the time they have given him, his time at the table, and the relationships built over the years. It has been a great pleasure, but wished it had ended on a better note than last month, which he was not able to attend because he was called away. What was brought out today is a disturbing trend to Mr. Murrey – we had four months on the agenda to discuss the issues and concerns, but when these rules were up for discussion, nowhere did the discussion end up with the question of whether \$500 was too much or \$200 not enough. Mr. Murrey got nods when he made presentations that indicated the Commissioners understood and that it sounded reasonable, that they were in favor of this, or some of the comments. To arbitrarily say out of the blue, without discussion, without asking anybody if this petition gets to where they are headed or the comments that Commissioner Parker made that this is a reasonable approach, it was out of the blue. Mr. Murrey felt he had gotten blindsided by this ruling, that never did they have a chance to defend their position or talk to a mutual understanding of where they should go. Mr. Murrey hoped that in the future when he is not here, that the Commission

will take that understanding and look at it from their side. The industry does its best to present a case, and if there is no counter-case, there is no room for discussion. Discussion is a two-way street, and Mr. Murrey hoped that in the future the Commission understood that and give that courtesy to the public in the future. Thank you very much for 12 years of interesting dialogue; it has been a pleasure.

**Chair Bierbaum** thanked Mr. Murrey for his comments – the Commission does appreciate them. Chair Bierbaum felt that part of that lack of discussion was in part her inexperience at being Chair, adding that she has been trying to provoke more discussion before the final vote. Chair Bierbaum thought about what Commissioner Parker said today about his reasons, and had she provoked that discussion from him earlier, he might have changed her mind on it, because she voted against it. The Commission is going to try to let the public know sooner, rather than later, about where the Commissioners are thinking. **Mr. Murrey** thanked Chair Bierbaum very much. **Commissioner Ellis** thanked Mr. Murrey for all his contributions over the 12 years. **Mr. Murrey** said it had been a pleasure.

With no further business, **Chair Bierbaum** adjourned the meeting at 12:10 p.m. The next meeting will be held in November at the DoubleTree Guest Suites in Tukwila.

Minutes prepared by:

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