

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, NOVEMBER 13, 2008
MINUTES**

Chair Peggy Ann Bierbaum called the meeting to order at 1:35 p.m. at the DoubleTree Guest Suites located in Seattle and introduced the members present:

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum**, Quilcene
 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

Staff Accomplishments:

Chair Bierbaum and Director Day presented a certificate for 25-year state service to Cathee Gottfryd, Customer Service Specialist, Licensing Operations Division, for 25 years state service. They presented a certificate and pin for 20-years state service to Ray Wakeman noting that all 20 years have been with the Gambling Commission.

Agenda Review/Director’s Report:

Director Day reviewed Thursday’s agenda and suggested moving “Other Business and General Discussion” to before the Hearings to give people the opportunity to make comments and not have to sit through the Hearings. Director Day pointed out a request for continuance that Ms. Goins filed because she is ill – staff will not oppose her request. Also, the parties for Bayside are going to propose a settlement for the Commission’s consideration. Director Day reviewed Friday’s agenda, noting that the petitioner for PokerTek has requested to hold this petition over to an undetermined date to provide time to submit their equipment to the Gambling Lab for a full analysis and testing in order to supplement the record. This would also allow both sides to review the material and provide any response that might be relevant to the Commissioners. Included in the agenda packet are a letter from the law firm Miller Malone and the lab report

from staff – both were received right at the end of the process. Staff anticipates it will take some time for the Lab to complete its analysis. The petitioner is aware of that and concurs. If it is set over, the Chair would identify it on Friday in case someone wanted to comment on the petition.

Chair Bierbaum concurred with the request to set the petition over to an unspecified date.

Director Day drew attention to the update behind the Director's Report tab on the status of the agency budget. The Commissioners approved budgets for this fiscal year and the next two fiscal years. Those budgets combined reduce FTEs through attrition by 14 positions to 160.4 in 2010 and 2011. As of August, the agency is operating below those FTE levels at 158.3. Those are the areas the Governor identified as priority areas were reduced: Personal service contracts by 8%; equipment expenditures by 5%; travel by 10%; fuel consumption over the past three years by 19%, and fuel consumption for the past year by 9%. These are difficult times, but we all need to continue focusing on doing the best job possible. Director Day appreciated the continued dedication and contribution to the Commission and the state of Washington from our staff.

Agency Customer Service Survey

Director Day pointed out a memo dating back to March 2008 from Amy Hunter that explained some options for a customer service survey. There was some discussion about the possibility of going with a more formal survey as was done through Washington State University in our public opinion survey and the cost of a survey and the decision at that time was to not move forward with a telephone survey but to expand the licensing survey Assistant Director Trujillo's staff has been using.

Assistant Director David Trujillo reviewed the revised survey and changes made to broaden the language to attempt to encompass all the activities of the Commission. AD Trujillo recalled that last month Commissioner Parker offered that his students could review the survey and provide input. Max Faulkner also offered his services to review and comment on the survey. AD Trujillo asked for comments on the current version of the survey from the Commissioners.

Commissioner Alan Parker asked when AD Trujillo would be able to send the survey, noting he had a class over the weekend. **Assistant Director Trujillo** replied he could send it on Friday.

Commissioner Ellis thought a person who has only dealt with the Commission in one of the areas listed on page three of the questions or the areas covered by item 8 would have to spend some time filling in "not applicable" for all of the items that are not applicable to them, which may be all but one. Commissioner Ellis wondered if it would be possible to just have them fill in the circle for an item that is applicable and leave the others blank, or whether that would cause problems for the machine scoring of the survey. **Assistant Director Trujillo** did not think that it would cause any problems; it would just be a matter of how the questions were structured. Staff could pull that question out and just structure it differently. **Commissioner Ellis** noted a couple of stylistic points to change: on the first page where "your opinions are confidential" is in bold, the second item the respondent sees is that we will make no attempt to identify any individual

respondents; then in the very next section under contact information, the question asks if we can identify the individual respondent, although it does say that it is entirely optional. Commissioner Ellis thought that was an odd transition that AD Trujillo may want to look at changing.

Assistant Director Trujillo appreciated the suggestion, explaining it is very similar to our current survey – either a person chooses to leave their information or they do not. If they do not leave their contact information, staff does not make any attempt to identify the person.

Commissioner Ellis suggested eliminating the “protects the public” part under #4 on page 3 or changing it to say that gambling in the state of Washington is legal and honest. It is understood that the purpose of keeping gambling legal and honest is to protect the public, the casinos, and casino patrons. **Assistant Director Trujillo** thought that was a good suggestion.

Chair Bierbaum disagreed, noting it could mean gambling may be legal and honest in spite of the efforts of the Washington State Gambling Commission, so AD Trujillo may want to indicate something about the effectiveness of the Commission. **Assistant Director Trujillo** agreed, adding he had modified Commissioner Ellis’s response to say WSGC ensures gambling is legal and honest. **Commissioner Ellis** felt that was a good compromise.

Chair Bierbaum asked what the intended means of dissemination was for this survey.

Assistant Director Trujillo replied it would be done online, a paper copy would also be available at our headquarters office for anybody who wants to fill one out, plus it would be available by mail for anybody who requested it. A link to the survey would also be included on the notices of Commission meetings that are sent each month, as well as including the survey with renewal notices.

Chair Bierbaum suggested changing question number 1 where it says this website is easy to navigate, suggesting that this is where they got the survey, to say that the Washington State Gambling Commission’s website is easy to navigate. **Assistant Director Trujillo** appreciated the Commissioners comments.

Correspondence

Director Day pointed out the documentation indicating the Department of Interior has approved and published the Snoqualmie and Spokane Tribes’ Amendments.

Monthly Update Reports

Director Day referred to the Seizure Update, noting the listed seizure action was our pending state internet case that resulted in the seizure of \$4.1 million and the computer hardware. At this point staff has received claims of ownership on those seized funds, so this begins the formal process of determining any ownership rights of those seized funds and equipment. Director Day understood an initial hearing would be held within 90 days unless the parties specify otherwise.

Director Day pointed out the Congressional Update that shows Senate Bill 316, a relatively new bill introduced in the Senate and referred to Committee, allows for internet skill games, essentially poker. In Washington State, although skill can be a factor, if the outcome depends in

a material degree upon the element of chance, it is considered gambling – poker being included in those games. Director Day announced that the Department of Treasury and the Federal Reserve Board finally released the Joint Final Rules to implement the Unlawful Internet Gambling Enforcement Act of 2006, which has been pending for some time. Compliance is required, so the banks have until December 1, 2009, to come into full compliance. It has been a significant project for the Treasury and Federal Reserve Board and clarifies the implementation of that legislation.

News Articles

Director Day pointed out an article regarding the effort in Lakewood to ban mini-casinos, noting that the proposition failed 62 percent to 37 percent. Another article of interest is titled “Lynnwood Man Arrested in Illegal Gambling Case” was a Washington State Gambling Commission book-making case. The news article notes that a Lynnwood man was charged with First Degree Professional Gambling and Transmitting and Receiving Gambling Information and a Bellevue man faces those charges as well as Leading Organized Crime. Another article is about an Edmonds man who was sentenced for stealing about \$14,000 from Silvertip’s raffle. The estimate from the Association indicated he stole closer to \$25,000.

New Licenses and Class III Certifications

Assistant Director Trujillo reported that staff recommends approval of all new licenses and Class III certifications listed on pages 1 through 28.

Senator Jerome Delvin asked if the Snoqualmie Tribe was given a temporary license, pending the investigation of that license, for the casino to open. **Assistant Director Trujillo** explained that staff completed the investigation and the Tribe was, theoretically, given a temporary license until approval by the Commission at this meeting. When the Commission approves them, then their temporary license converts to a permanent certification. **Director Day** added that the regulatory side of the Tribal Gaming Unit also did a full review of the casino operations and determined it complies.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to enter an order approving the list of new licenses, changes, and tribal certifications as listed on pages 1-28. *Vote taken; the motion passed unanimously.*

Comments from the Public Regarding Director’s Report

Chair Bierbaum called for public comment.

Mr. Max Faulkner introduced Angela Pagnossini, poker manager for Roxbury Lanes, a bowling center with a card room just outside of West Seattle above the White Center area in the Highline District.

Ms. Angela Pagnossini, Roxbury Lanes poker manager, explained she has been with Roxbury Lanes for 3½ years and reviewed a few fun and exciting things they are doing at Roxie's to help the community. When the local White Center food bank asked if they would help by donating some cans, they decided to try to think of an exciting way to do a food drive. They incorporated the food drive in with their nightly poker tournament, which is held two times every day for a \$30 buy-in. It was decided that if the customer brought two cans of food for that poker tournament, they would receive an extra 1,000 units to play against the opponents. It worked out so well that the first year, every day for a 30-day period before Thanksgiving, every person that filled up the poker tournaments, anywhere from 30 to 40 people a day, twice a day, were bringing two cans of food. White Center Food Bank put an article in the paper thanking Roxbury Lanes profusely, a million times, and people got really excited about it. People felt good about it going back into the community. So even when the customers were not playing in a tournament, they were bringing in food. Over a three-year period Roxbury Lanes has collected 7,500 cans of food for the community, which the food bank picks up three times a week. Since it worked so well for cans, Ms. Pagnossini thought the card room could try a toy drive and accumulate toys for *Toys-for-Tots*. She was not sure if it would go over very well because they were doing a \$10 valued toy, but it worked even better than the food drive. People were just really, really excited and donated brand new bicycles and sports equipment, and Big 5 heard what they were doing and gave 20 percent off coupons for any toys. If the customer said the toy was for Roxie's, Big 5 would give them a discount. Roxie's has not done it this year, but in the two years prior ended up collecting \$30,000 worth of toys for *Toys-for-Tots* for the local community and churches, which was pretty exciting. And that was just the people playing in a poker tournament, but when people in the pit asked about all those toys and were told about the promotion, people just brought in bags of toys that filled the whole casino, including the back storage room and the bowling lockers. There were so many toys they were just overflowing. Ms. Pagnossini just wanted to tell the Commission how neat and family oriented these mini-casinos are. There is a lot more good that goes with the mini-casinos than people who do not play in them realize.

Mr. Max Faulkner, Roxbury Lanes, added that he had explained to previous Commissioners what Roxbury Lanes were doing and what a benefit the casino had been in East Wenatchee. Mr. Faulkner said he has been involved in opening about 10 or 11 bowling center card rooms, and in almost every case they have really been a benefit and have kept these struggling bowling centers going, given them a little broader product mix, and really helped the food and beverage business. So really, across the board, Zeppoz in Pullman, West Side Lanes in Olympia, Roxbury Lanes in East Wenatchee have really been a benefit and responsible for about 600 jobs. So just to tag along with Ms. Pagnossini, it has really been a good benefit.

Chair Bierbaum called for a break at 2:15 p.m. and reconvened at 2:35 p.m.

Bayside Lounge, Oak Harbor, Revocation

Assistant Attorney General Bruce Marvin was present for the State, as well as **Mr. Dave Malone**, representing Bayside Lounge. **Mr. Malone** and **Mr. Marvin** provided their testimony

in the matter for review. Commission staff felt it would be a fair and appropriate resolution to this situation to reconsider changing the recommended revocation to 15 days of downtime. Mr. Malone agreed to the suspension.

A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Bierbaum** asked if there were any questions or a need to adjourn for an executive session to discuss whether to accept the stipulation and order. There were no questions and no Commissioner felt the need to adjourn.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission enter an order substantially in the form of a stipulation and proposed initial order on the petition for review submitted by the parties. *Vote taken; the motion passed unanimously.*

Petition for Review – Amy R. Goins, Suquamish, Revocation

AAG Marvin reported that Ms. Goins contacted staff today with a request that her hearing be continued because she is ill. Ms. Goins is not currently licensed as a card room employee, and assured Mr. Malone that she would not seek employment with a card room pending resolution of the petition for review in this case. Mr. Marvin recommended granting Ms. Goins' request for a continuance and asked that it be held at the February Commission meeting because Mr. Marvin will be unavailable for the January Commission meeting.

Chair Bierbaum asked if there were any questions of Mr. Marvin; there were none.

Commissioner Ellis made a motion seconded by **Commissioner Parker** that the Commission grant Ms. Goins' request for a continuance to the February Commission meeting. *Vote taken; the motion passed unanimously.*

AAG Marvin pointed out the next order of business would be the Jimenez case, which is scheduled for 3:00 p.m. and he thought the Commission may want to recess until 3:00 to honor its commitment to Ms. Jimenez to start the hearing at 3:00. **Chair Bierbaum** agreed.

AAG Marvin noted the PJ's Pizza case, which was also scheduled for 3:00 p.m., was subject to a motion to intervene that was submitted yesterday by Mr. Schroeter, who is representing the proposed intervener, Mr. Ralph. AAG Marvin explained that Mr. Schroeter had indicated he would not be able to make today's hearing until 3:30. AAG Marvin did not have a recommendation in terms of how to proceed with regard to the intervention, noting they are not a party yet.

Chair Bierbaum called for a break at 2:50 p.m. and reconvened the meeting at 3:05 p.m.

Chair Bierbaum asked if Ms. Christina Jimenez or anyone on her behalf was present; no one responded. **Commissioner Ellis** suggested checking again after the executive session.

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

At 3:10 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 3:50 p.m.

Motion to Vacate - Christina Jimenez, Card Room Employee (CRE), Revocation

Assistant Attorney General Bruce Marvin was present for the State.

Ms. Christina Jimenez was present, representing herself.

Ms. Jimenez and **Mr. Marvin** provided their testimony in the matter for review.

A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Bierbaum** asked if there were any questions and adjourned at 4:10 p.m. for an executive session to deliberate on the testimony. **Chair Bierbaum** reconvened the meeting at 4:40 p.m.

Commissioner Parker made a motion seconded by **Commissioner Ellis** that the Commission vacate the default order against Ms. Christina Jimenez. *Vote taken; the motion passed unanimously.*

Chair Bierbaum explained to Ms. Jimenez that she still needed to work with the staff at the Washington State Gambling Commission to deal with the charges that were brought against her and also to provide staff with her correct phone number and address, and to promptly respond to anything staff sends to her. **Chair Bierbaum** also directed Ms. Jimenez to call somebody if she had any questions and not to just ignore things.

Ms. Jimenez affirmed and thanked the Commission.

Petition for Review – PJ's Pizza, Centralia, Denial of Application

Assistant Attorney General Bruce Marvin was present for the State.

Mr. Paul Gragg and his attorney, **Mr. Robert Schroeter**, were present.

AAG Marvin reported that Mr. Schroeter has brought a Motion to Intervene on behalf of his client, Mr. William Ralph, who is the landlord of the PJ's Pizza location. The Motion to Intervene was received at approximately 3:00 p.m. yesterday afternoon. This was an untimely motion and Mr. Marvin explained he had not had an opportunity to provide a thorough written response and would like to reserve the right to assert that as a basis for a denial of Mr. Schroeter's Motion to Intervene. Mr. Marvin provided copies of the Administrative Procedures Act and relevant RCWs to the argument today.

Mr. Gragg, Mr. Schroeter, and Mr. Marvin provided their testimony in the matter for review and the motion for intervention.

A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Bierbaum** asked if there were any questions and adjourned at 5:35 p.m. for an executive session to deliberate on the testimony. Chair Bierbaum reconvened the meeting at 5:55 p.m.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to enter an order denying the petition and motion for intervention on the grounds that it is too late in the process to grant this motion and it undercuts the extensive proceedings that have led to this point. *Vote was taken; the motion passed unanimously.*

Commissioner Ellis pointed out there were questions about the necessity for Mr. Ralph's participation in the proceeding since his involvement as the landlord was clearly part of the previous proceedings and was identified specifically in the charges as the initial reason for the staff's denial of the license and the reason for the administrative proceeding.

Chair Bierbaum explained that in the interest of timeliness and to devote the greatest part of the discussion and argument on the merits of the matter of the denial of the application, Mr. Marvin and Mr. Gragg would be allowed to talk for three minutes each on the motions to supplement the record and to strike improper argument set forth in the petition for review.

Mr. Marvin and **Mr. Gragg** provided their testimony in the motion to strike and the motion to supplement the record. A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Bierbaum** asked if there were any questions and whether the Commissioners felt the need to adjourn to discuss the testimony. There were no questions and an adjournment was not needed.

Commissioner Ellis made a motion seconded by **Commissioner Amos** to enter an order granting the motion to strike.

Commissioner Ellis felt the information the staff referred to in the motion to strike that is contained in the petition for review goes far beyond the information that was in the record, as Mr. Gragg has implicitly conceded. Commissioner Ellis did not think it was appropriate at this point for the Commission to be expanding the record in that fashion.

Vote was taken; the motion passed pass with three aye votes; Chair Bierbaum voted nay.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to deny the motion to supplement the record.

Commissioner Ellis explained he did not believe at this point it was appropriate post-hearing to be adding the substantial documentation that has been submitted in connection with the motion to supplement. The Commissioners have read the material that has been submitted and are well aware of the information contained in it, noting it was impossible to erase his memories as to the material; for example, the correspondence from Judge Draper of the Lewis County Superior Court and Ms. Riddell, the child abuse counselor. Commissioner Ellis thought that in the initial order, the ALJ made it quite clear that he understood the situation concerning Mr. Ralph's criminal record; that on one hand he was convicted in 1984, but at the same time he had served his probation and his civil rights had been restored. There is no indication in the record that Mr. Ralph had been involved in any criminal activity whatever following the incidents for which he was convicted.

Vote was taken; the motion passed unanimously.

Chair Bierbaum called for a break at 6:10 p.m.; reconvening the meeting at 6:20 p.m.

Mr. Marvin and **Mr. Gragg** provided their testimony on the matter for review.

A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Bierbaum** asked if there were any questions and adjourned at 6:50 p.m. for an executive session to deliberate on the testimony. Chair Bierbaum reconvened the meeting at 7:55 p.m.

Commissioner Parker made a motion seconded by **Commissioner Ellis** to disagree with the administrative law judge and grant Mr. Gragg's application for license because the decision should not be based on his landlord's record. *Vote was taken; the motion passed with three aye votes; Commissioner Amos voted nay.*

Chair Bierbaum explained to Mr. Gragg the reason the Commission rejected his arguments about constitutional challenges, conspiracy theories, and mistreatment by the staff was because the Commission believed staff acted appropriately, followed the rules, and made the best decision they could. No one thinks that anything done along the way was done in retaliation for anything that happened before. The Commission does not think there are any constitutional rights involved in the licensing decision and its decision was only based on how very close a call it was and the Commission's great confidence in Mr. Gragg and that he would in fact not allow someone else who would not qualify for the issuance of a license to have an involvement in his business – that burden is on Mr. Gragg.

Chair Bierbaum adjourned the meeting at 8:00 p.m.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, NOVEMBER 14, 2008
DRAFT MINUTES**

Chair Peggy Ann Bierbaum called the meeting to order at 9:05 a.m. at the DoubleTree Guest Suites located in Seattle and introduced the members present.

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum**, Quilcene
Commissioner Alan Parker, Olympia
Commissioner John Ellis, Seattle
Commissioner Mike Amos, Yakima
Senator Margarita Prentice, Seattle
Senator Jerome Delvin, Richland
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

6. Approval of Minutes – Regular Meeting, October 9-10, 2008.

Commissioner Amos made a motion seconded by Commissioner Ellis to approve the minutes of the October 9 and 10, 2008, regular commission meeting. *Vote taken; the motion passed unanimously.*

RULES UP FOR FINAL ACTION

7. Petition for Rule Change – Recreational Gaming Assoc. – 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 Meeting

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

Ms. Hunter reported that this was up for final action at last month's meeting but the Commissioners decided to hold it over to this meeting. Ms. Hunter reviewed the Rule Summary, explaining that what is before the Commission today is Alternative #1.

Ms. Hunter drew attention to the four letters of support in the agenda packet from State Representative Dave Upthegrove, Representative Steve Kirby, Representative Brendan Williams, and a letter from Dave Wilkinson who is with Skyway Park and Bowl. Also, three letters were recently received from Senator Jim Hargrove, Senator Dan Swecker, and one from Senator Kohl-Welles and Representative Conway opposing this rule change, the rule that would increase the wagering limits, and also the PokerTek petition, which has been held over to next month. There were also two e-mails received from players opposing this proposal; although, one of those probably is not relevant any more because the proposal has been changed.

Commissioner Parker asked what reasons the members of the Legislature gave for their opposition in their letters. **Ms. Hunter** replied that the one from Senator Hargrove noted that he thought all of these proposals constituted a significant expansion of gambling, but altogether they represented a fundamental change to state gambling policy. In his letter, Senator Hargrove refers to Initiative 892 that would have allowed machines in a lot of different locations. Senator Hargrove wrote that the public spoke loud and clear the last time the private gambling industry sought an expansion of gambling and mini-casinos. Initiative 892 was rejected by a large majority of voters in every part of the State. The other letters are fairly similar to Senator Hargrove's letter.

Chair Bierbaum was concerned that some prominent legislators have expressed an opinion that is contrary to what our legal counsel has concluded with respect to the impact of these proposals, as well as the authority of the Gambling Commission to make these changes. At the same time though, she felt reluctant to move forward on these proposals now without talking to these legislators and having some kind of dialogue to understand the basis of their concerns, how they formed these concerns, and try to do the best that we can to talk to them before acting on any of the proposals. Chair Bierbaum said she was thinking about exercising a prerogative and putting these off until the January meeting to allow time to confer with these legislators and find out the basis of their concerns.

Senator Delvin explained he had contacted one of the Senators and asked him how he had become interested in this. He told Senator Delvin that he had been asked by a group to write a letter and to sign it. When Senator Delvin explained to him that the legislators who are assigned as ex-officios on the Commission discuss those things, he did not quite understand and said he was not aware of that. But when he was asked to sign the letter, he happily signed the letter, even though he did not really know much about what the letter contained. Senator Delvin imagined the Commission had received letters from both sides of the issue coming here, so there is certainly some lobbying going on for the two points of view.

Chair Bierbaum said that Senator Hargrove is her Senator and she was surprised by the letter. There is identical language in all of these letters, so it is unlikely they all independently wrote these letters and just happened to come up with exactly the same language. But, at the same time, they are our elected legislators and we should at least talk to them before just blithely ignoring their letters and go forward with the changes. Chair Bierbaum asked what the other Commissioners' reactions were.

Commissioner Ellis agreed entirely with Chair Bierbaum's proposal. On one hand, Commissioner Ellis thought there was some misinformation that was contained in the letters. For example, the letter from Senator Kohl-Welles and Representative Conway indicates that they understand that the PokerTek proposal constitutes electronic video poker, which Commissioner Ellis thought was wrong, but further work was going to be done by the Commission Lab to get into that area. But they have that view, and they are the Chairs of the two Committees in the Legislature that are most important in overseeing the Commission's work. Commissioner Ellis said he would feel much more comfortable if the Commission were to sit down and explain why they think that particular point is wrong and explain what they have heard and what they understand on the other issues before the Commission takes action. Commissioner Ellis felt that a deferral to the next meeting in January seemed to be quite reasonable and should give plenty of time before the Legislature gets going and it is hard to find people.

Chair Bierbaum asked what the effective date would have been if the Commission had approved the petition today. **Ms. Hunter** replied it would have been January 1, 2009. If the Commissioners were to hold off on this today and then choose to approve it at a subsequent meeting, they can always have it effective 31 days after filing. Ms. Hunter pointed out that the Legislature has Assembly Days coming up in a few weeks on December 4th and 5th. Staff already has a meeting set up with Senator Kohl-Welles and Director Day met with Representative Conway a few weeks ago. Ms. Hunter would be happy to at least try to contact the legislators and set up a meeting with them. If one or two Commissioners had an interest in joining those meetings, she would be happy to set it up that way. Or the Commissioners may want to contact the legislators individually.

Senator Prentice noted that she knew counsel for the Committee staff had spoken with staff from Gambling Commission, so it was not as if they did this in a vacuum. Senator Prentice thought what was being seen in terms of the lobbying was that there were a couple of letters last month approving it, and she did not remember all of the reaction last month to those two letters. Senator Prentice knew one lived in Seattle where they think they do not have gambling, and the other said he had been asked by someone in his district and did not really know the issue. Senator Prentice did not recall if the language was identical language, and did not care – the point is that, yes, it has been lobbied and they figured if they are lobbying, then we better too. Senator Prentice did know that Committee staff had

spoken to legislators, and figured all right staff are all talking, but that was as much as she knew.

Mr. Chris Kealy, Vice President of the RGA, testified that two of the RGA's petitions are being trapped in this process, while a third that is not an RGA petition, the PokerTek machine, is kind of drawing some attention. Mr. Kealy thought the last minute lobbying has a lot more to do with the third petition than it does the front two. The nine-spot issue is really a cost efficiency issue at the start of the day and the end of the day. It does tie into the mini-baccarat situation that was approved last month and the particular tables the card rooms are going to buy are determined by the number of spots they are going to be playing on those tables. Mr. Kealy said he would be making purchasing decisions next week at the G2E conference to buy a table this big or a table that big. Mr. Kealy would really like to see the Commissioners take action on at least the nine-spot issue, and said he would understand if they wanted to defer the other two issues until next month. The identical language on letters by people that do not have gaming in their area are coming out because of lobbying efforts have been applied. Mr. Kealy urged the Commissioners to take action on the nine-spot petition.

Representative Simpson said he had talked with Mr. Kealy about this issue and the nine-spot issue, and the idea is that if nine people come in and want to play, what the card room is after is efficiency so they do not have to bring in another dealer. Representative Simpson asked how many tables it would be with the current theoretical limit in a card room is seven spots. **Mr. Kealy** replied seven spots times fifteen (15) tables, which would equal 105 people. **Representative Simpson** asked how many it would be if it went to nine spots. **Mr. Kealy** replied it would be 135 people. **Representative Simpson** indicated the increase would be 30 people per card room. **Mr. Kealy** affirmed, adding his card room does not ever have more than 40 people playing in the card room. **Representative Simpson** asked what Mr. Kealy thought about changing the language of the rule to say something like there could be some nine-person tables, but the overall occupancy of the card room could never exceed 105, which would totally do away with any argument that it was an expansion of gambling. **Mr. Kealy** would agree, but indicated it should say no more than 105 gaming spots or gaming occupants at any given time or gaming occupants, not occupancy because occupancy is a greater issue. The card rooms may have events where they have 100 or 200 people. For instance Great American has nice facilities where they do a lot of banquets and many other diverse things. They are enhancements to other businesses and some of these facilities are rather large to do other things. **Representative Simpson** thought it would be easier to get the rule through if the concern expressed by various legislators that this constitutes an expansion of gambling were addressed in that manner. **Mr. Kealy** felt it would be easier to get a rule through if this non-partisan Commission would be able to just look at the issue and ask if it can regulate nine spots or not – and they can – and what is really going on, and let the public record bear it, and let the situation follow it out. When the card rooms went to 200 about six years ago, again letters were received saying gaming in Washington State was going to double for sure, but

since then it has eroded by 20 percent. The naysayers can do what they want, and at the end of the day we are just business people trying to cope with a minimum wage that is escalating 48 cents at a time, and costs across the board that are escalating in a down economy. The card rooms are really just trying to operate businesses and are hopeful that we have a Commission that looks at the businesses and says, yeah, that is what they are doing. The Commission is not elected, they are appointed and they can not be unelected, so Mr. Kealy asked the Commission to just do their job in a non-partisan way.

Commissioner Ellis asked Mr. Kealy if he understood that it may not be entirely realistic for the Commission to be really effective if it simply ignore or blow off the views that members of the Legislature are expressing. **Mr. Kealy** thought the Commission would be ill advised to do that, but also expected them to be able to look through it and say they do not think the nine-spot issue is the burning bush issue. As a representative of the RGA with more than half the industry not looking like they are going to make any money this year, and expecting next year to be worse with the minimum wage increase in a down economy, the industry is going to see the bottom of this economy probably by next summer. They are coming off a Boeing strike to walk into Boeing layoffs, and Mr. Kealy thought everyone has to be mindful of an economic meltdown out there. Mr. Kealy said these are businesses that are just trying to preserve jobs. **Commissioner Ellis** asked if he correctly understood that Mr. Kealy did not have a problem with Representative Simpson's suggestion that if the Commission adopts the nine-spot rule that it establishes a lid of 105 players at the tables. **Mr. Kealy** responded that the Commission could memorialize that if they would like, but he re-emphasized that he did not even see that as the issue. Mr. Kealy was not trying to dodge it, but was just saying it is a non-issue and he did not think it was the heart of the reason the Commission received four last-minute letters that are identical – that PokerTek was the issue. **Commissioner Ellis** did not know if any of the Commissioners really disagreed with Mr. Kealy, but asked if the RGA had any plan or if they had talked to any of these legislators about these views and some of their misconceptions. **Mr. Kealy** replied that Senator Jerome Delvin had contacted one. The RGA knew of two letters yesterday, but two more were received today. Mr. Kealy said the legislators do not want to listen to the RGA – they have other interests. Mr. Kealy added the RGA does not get in the legislators' doors very easily. Mr. Kealy indicated he would give it a go, but did not think it would have any impact – the legislators know why they are writing the letters and the RGA is not it.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, stated the RGA was frustrated because they have had this petition before the Commission for several months and then at the eleventh hour, the opposition comes in. Ms. Chiechi was pretty used to that tactic. Ms. Chiechi had talked with a lot of her board members and reported they would be amenable to the Commission's adjusting the seven to nine spots and only having it on five tables in a facility. The card rooms went through that with the betting limits when the first increase in limits from \$100 to \$200 was authorized – the RGA accepted it would be on one-third of the tables. Eventually it became \$200 on all the

tables, and the RGA accepted that. And then the RGA asked for \$500 and got \$300, and they accepted that. So if the need is incremental assistance for the industry to survive and perhaps some of them thrive, that would be appreciated. Again, as Mr. Kealy mentioned, a lot of the RGA's members will be heading to Las Vegas this weekend to go to the Global Gaming Expo where they will be looking at mini-baccarat tables that are normally played with nine spots. To delay action on this to January, with another 31 days after that to be effective, the Commission pretty much waylays their ability to make those market decisions for their businesses. Ms. Chiechi would appreciate the Commission considering taking action on that option as an alternative today. Ms. Chiechi said she had met with over 60 legislators in the past six months and had alerted them to the fact that these petitions have been proposed to the Commission and received no immediate response or opposition at that time. So the fact that it is coming now, at the eleventh hour, is indicative that perhaps the Commission was ready to act and they cannot have that, so they are going to come in and cause some doubt and some question in the Commissioners' minds. Ms. Chiechi appreciates that the Commission is an independent Commission and non-partisan. As Mr. Kealy mentioned, the Commission is not elected, but is appointed by the Governor, and the Legislature has granted the authority for these decisions to the Commission. Ms. Chiechi appreciated the Commission taking the input, but asked them to take it for what the intention was, since it was again sent in the eleventh hour.

Commissioner Parker thanked Ms. Chiechi for her comments and asked for her view in terms of weighing the importance of the two different rule changes before the Commission – the betting limit increase in comparison to the size of the table increase. **Ms. Chiechi** did not think she was the best one to answer that question because that is not her business. Ms. Chiechi knew that the RGA presented a package of rule changes that were equally important to all of its members. Ms. Chiechi said she would have to go back and ask the RGA members their opinions if they had to go back and prioritize – to say okay, if you get 1 of the 12, which would you ask for? Ms. Chiechi said she was not at liberty to make that decision.

Mr. Faulkner, President of the RGA, said that Representative Simpson was really on to something with the betting spots, but Ms. Chiechi's idea of 5 tables is much simpler and better because with poker, the tables have 10 spots and many clubs have a number of poker tables. So 10 times 15 is 150. One-third at 9 spots would be a much simpler, cleaner alternative.

Commissioner Ellis said he was missing something here – the proposal that is before the Commission would only apply to house-banked card games, right? But you are into poker tables. **Mr. Faulkner** affirmed that was correct, explaining he was thinking of some rule that limited betting spots to 105, if there were 12 poker tables that would be 120 spots because it is 15 tables no matter if they are house-banked or non-house-banked. Mr. Faulkner thought some clubs would prefer the higher betting limits because they have that

kind of clientele; and some clubs would prefer the nine spots because they would like to get started on mini-baccarat with a nine-spot table.

Mr. Michael Marquess, Casino Caribbean and Macau Casino, wanted to remind the Commissioners of the liquor license denial for Casino Caribbean, and the unanimous decision the Gambling Commission gave to its gambling license in this very building where all the hockey people were present with their hockey sticks. There were three legislators who signed a letter to get Casino Caribbean's liquor license denied. Mr. Marquess was not exactly sure who actually wrote the letters to deny his gambling license, but believed they were under pressure from a local special interest group opposed to gambling. Mr. Marquess saw this going the same way. Mr. Marquess said they won in court and were right all along. He thought anybody here would say that he was unreasonably denied his liquor license. Mr. Marquess thought this nine-spot situation, with these letters coming in at the eleventh hour, was just another tactic by opposition to the card room industry. Mr. Marquess begged the Commission not to fall prey to that tactic again. Just because a local legislator objects to it, they are under pressure from some group that is trying to influence the process. It is just fishy that this is coming in at this time.

Ms. Roxanne Hanson, Diamond Lil's Casino, cautioned the Commission on the 105-spot limit explaining she has nine poker tables and three house-banked tables. When her card room has a poker tournament, the nine poker tables are full and the three house-banked tables are also full, which would take them over that 105 spots. Ms. Hanson agreed with the one-third of the tables, or whatever was suggested as far as house-banked card games, but some card rooms have both poker and house-banked, and she did not know how this would apply.

Commissioner Parker asked where Diamond Lil's was located. **Ms. Hanson** replied it was in Renton, in Senator Prentice's area. **Senator Prentice** said it was a nice place.

Director Day pointed out that if the Commission was considering looking at an alternative, even though testimony has been provided that the industry would like to move forward with this, he would encourage the Commission to have staff come back with the alternative in January. It is obvious that the application of the alternative may be a little more difficult than just whipping it out today.

Chair Bierbaum thought that would be the same effect as just deferring it to January and asked whether the Commission could just change the language in Alternative #1 to read card game licensees must only allow up to nine players, or areas for wagering, at no more than five house-banked card tables, and up to seven players in all other house-banked card games?

AAG Ackerman thought he had heard an expression by some of the speakers that tying this to house-banked card games would not work for them because of the poker issue. If the supporters of this change are comfortable having it tied to house-banked card games, then what Chair Bierbaum proposed would work. AAG Ackerman did not think that was what he was hearing, but thought he may have just misunderstood what was being said.

Director Day asked if Chair Bierbaum would repeat her suggestion. **Chair Bierbaum** replied she was just looking at what Alternative #1 says, that card game licensees must only allow up to nine players or areas for wagering at no more than five tables in house-banked card games, and up to seven players at all other areas for wagering and house-banked card games.

Chair Bierbaum asked Ms. Chiechi if that was correct. **Ms. Chiechi** replied that Chair Bierbaum's proposal would be agreeable. The concern was that if the Commission tied it to a total number of gaming spots in the facility then the poker tables were being rolled into that. If the card room had fifteen tables and five are poker tables where 10 spots are currently allowed, then there would be five house-banked games that would be allowed to play nine spots, and the remaining five tables remaining at seven spots. Ms. Chiechi thought what Commissioner Bierbaum was proposing would be agreeable to the industry. **Director Day** indicated that he was not sure Chair Bierbaum would need the second part of her proposal – just say up to nine players or areas for wagering at no more than five tables in house-banked card games. **Ms. Chiechi** agreed.

Assistant Director Harris asked if that would leave it open to having eight at the other tables. **Chair Bierbaum** affirmed it would have to limit the number at the remaining tables. Chair Bierbaum said it sounded like there was some consensus on this and suggested Ms. Chiechi check with the RGA during the break to see if there is consensus with the language, and then the Commission will take it up again after the break. Ms. Chiechi agreed.

8. 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 non-house-banked card games

Assistant Director Mark Harris reported this item was up for final action today and reviewed the Rule Summary, adding there have been approximately eight statements supporting the proposed change, plus the three recent letters Ms. Hunter discussed that were opposing the changes.

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

Mr. Max Faulkner, President of the RGA, recalled that Gary Murrey, in the past, has tried to explain some of the nuances of the poker betting. This is mainly a player issue and

popular in the state now are some spread limit games where the blinds might be \$1 and \$2 and players can bet up to \$40, which gives them more options and makes a more interesting game for some of the poker players. The players would prefer even a \$200, \$300, \$400, \$500 limit on their spread games. It is just a customer demand thing. I don't know if I can answer any questions other than that. Thank you.

Commissioner Ellis said he would feel very uncomfortable moving this particular petition forward until the Commission had a chance to explain to at least Senator Kohl-Welles and Representative Conway the background on this petition as well as the PokerTek petition that will not be up until at least January. But having said that, maybe it would be better to address this with Mr. Kealy since he and Commissioner Ellis had a colloquy during the last meeting about whether this proposal was really designed to apply to all-in bets in Texas Hold'em and whether any increase in the betting limit could appropriately be limited to that game in that fashion, which as Commissioner Ellis understood it would meet the industries needs in a big way. At the same time, it would raise far fewer sensitivities in the general public than an across the board increase to \$500 apparently on all bets as far as non-players know. **Mr. Faulkner** agreed Mr. Kealy might have a take on that topic, clarifying that Commissioner Ellis was afraid there would be a \$200-\$400 type of limit game where there would be multiple \$200 and \$400 bets. Mr. Faulkner thanked the Commission for their time and deferred to Mr. Kealy.

Mr. Chris Kealy, Vice-President of the RGA, agreed with Commissioner Ellis. In light of the conversation today, Mr. Kealy said he would be more than willing to have this petition pushed back to January to see if a couple alternatives could be rewritten to smoke out those kinds of concerns. Mr. Kealy thought that, at least on the sensitivity chain of what is in those last minute letters, it is higher than the nine-spot situation. So in understanding that, and certainly respecting elected officials in the state of Washington, Mr. Kealy thought this petition could easily be pushed back to take a look at what is the appropriate way to handle it.

Chair Bierbaum asked if the Commission could just do that or if a motion had to be made to defer this petition to the January meeting with direction that staff works with the stakeholders to develop alternative proposals along the lines of, or consistent with, what Commissioner Ellis mentioned. **AAG Ackerman** replied the Chair could do that of her own accord or it could be done by motion. **Chair Bierbaum** asked if any of the Commissioners or Ex-Officios had any serious concerns.

Senator Delvin urged the Commission to go ahead and vote on both of those petitions – to pass them and move them forward.

Director Day asked if he understood Commissioner Ellis correctly; that he was talking about limiting an increase just to Texas Hold'em and to have staff work to try to find an option.

Commissioner Ellis affirmed his suggestion was to limit an increase to just “all-in” bets in Texas Hold’em, if that is technically appropriate. Mr. Kealy nodded his head.

Chair Bierbaum did not think the Commission meant to limit the scope of what the staff and stakeholders could explore or place limitations on the creativity that the staff and stakeholders could exercise; but just something that does not trigger increasing all bets to \$500 or triggering the Tribal Class II gaming issue.

Commissioner Ellis thought that was correct, noting his very limited knowledge should not get in the way of an appropriate resolution of this issue.

AAG Ackerman brought up a procedural issue: the six-month time limit for acting on the petition will expire before the January meeting so he assumed, based on the prior ruling, that the Commission is also directing staff to file for an extension of that time limit.

Chair Bierbaum affirmed.

9. **Petition for Rule Change – Recreational Gaming Association - Unstaffed surveillance room when operating only non-house-banked games at house-banked card rooms**

- a) Amendatory Section WAC 230-15-320 – Surveillance room requirements for house-banked card game licensees

Alternative No. 1

- b) Amendatory Section WAC 230-15-230 – Surveillance room requirements for house-banked card game licensees

Assistant Director Harris reported this petition was up for final action today and reviewed the Rules Summary.

Chair Bierbaum called for public comment.

Mr. Max Faulkner explained that while Gary Murrey was in Canada he was going to be the go-to guy for a while. Briefly, staff has been really great with working with the RGA on this issue. A lot of the card rooms are going to the digital video recorder systems that have a much clearer playback and makes it a lot easier to go back and check problems. Poker is basically a self-policing game – for years people just ran their own player-banked poker games and dealt poker games, and there were no problems. Mr. Faulkner asked the Commission to pass this for final action.

Chair Bierbaum said her opinion was the card rooms put in sufficient safeguards so they do not have to have manned surveillance, only when there is only non-house-banked card games, and the wager limits are limited to \$40. It seems that eliminates any risk involved.

Commissioner Ellis made a motion seconded by Commissioner Parker that the Commission adopt an order amending WAC 230-15-320, in the form presented in Alternative 1, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

10. 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

Chair Bierbaum stated the PokerTek petition had been withdrawn or set over indefinitely. Chair Bierbaum called for public comment on the PokerTek proposal; no one stepped forward.

11. Requesting and Scheduling an Administrative Hearing

- a) Amendatory Section WAC 230-17-010 – Requesting and scheduling a hearing

Ms. Hunter reported this rule was up for final action and reviewed the Rule Summary.

Chair Bierbaum called for public comment; there was none.

Commissioner Amos made a motion seconded by Commissioner Parker to adopt Amendatory Section WAC 230-17-010, as presented by staff. *Vote taken; the motion passed unanimously.*

12. Petition for Rule Change – Recreational Gaming Association – Minimum cash on hand

- a) Amendatory Section WAC 230-15-050 – Minimum cash on hand requirements

Alternative No. 1 – Up for discussion and possible filing at the November 2008 Commission Meeting

- b) Amendatory Section WAC 230-15-050 – Minimum cash on hand requirements

Assistant Director Harris reported that Alternative #1 was up for discussion and possible filing today because staff, after working with the RGA, modified the formula in the rule. The petitioner has requested an effective date of 31 days from filing, which staff support based on the fact that all the alternatives to the petitioner’s original petition has pushed the effective date out past January 1, 2009, which it would originally have been.

Chair Bierbaum asked Mr. Ackerman if there was anything to prevent the Commission from taking final action on this today. **AAG Ackerman** replied this matter was actually up for filing today because of the substantive change so the Commission would not be able to take final action today.

Chair Bierbaum called for public comment; there was none.

Commissioner Parker made a motion seconded by Commissioner Ellis to accept for filing and further discussion Alternative #1 amending WAC 230-15-050, as presented by staff. *Vote taken; the motion passed unanimously.*

Chair Bierbaum explained that she was going to call for a break to allow Ms. Chiechi to go over the Commission's suggested language to deferred Item #7 with the RGA board members, which would then be discussed by the Commission after the break. **Director Day** asked for clarification on whether it was the Commission's intention to allow the flexibility to go to nine-spots but not to increase the total. **Chair Bierbaum** replied she thought the compromise was to let five of the tables go to nine spots and the remaining tables stay at seven spots because that would effectively increase slightly the overall number of spots.

Representative Simpson responded that, in viewing these letters, the one that sticks out in his mind the most is the one from the two Chairpersons of the Committees that deal with gambling in the Legislature. Representative Simpson indicated he has had conversations with Representative Conway, who is the type of guy that would not hesitate to snatch whatever authority this Gambling Commission currently has away from it if he thought the Gambling Commission overstepped its bounds. Representative Simpson clarified his suggestion to Mr. Chris Kealy was that they limit it based on discussions they had where Mr. Kealy said there was sometimes a situation when a group of people come in – maybe there are nine of them and they want to all sit down at the same table and play one game. As Representative Simpson read the letters from the Chairs of Commerce and Labor, he thought their concern was that it would constitute an increase in the total number of players available. Even if the increase is at five of the tables by two seats apiece, that is still a ten-person increase, which does not seem to alleviate their concern. Representative Simpson suggested saying the card room can have up to five tables with this increase limit, but with the overall total limit; although he did not know how to write it with the poker, and house-banked, and non-house-banked. If the Commission wants to alleviate these Chairpersons concerns, he would suggest writing it in such a way that does not allow for an overall increase in the number of players.

Chair Bierbaum agreed in general, but indicated the ex-officio members are on the Commission to reflect back to the Commission the sense of the Legislature. And these letters are really eleventh-hour objections that fly in the face of the opinion from our legal counsel in terms of whether it is an expansion of gambling. Chair Bierbaum wondered if it was fair to hold up this process, which has been undertaken for a long period of time, to address eleventh-hour objections that are not necessarily consistent with the opinions from our legal counsel. And if the Commission passes it as amended, they are taking steps to ensure that any perceived expansion is minimal at best.

Senator Delvin pointed out the Legislature was clear with the authority they gave the Commission, and he would vigorously go back and defend among the Legislature that they gave the authority to the Commission to set the rules and the policies for gaming in this state. Senator Delvin could see a bunch of issues coming up – it would not be simple for the Legislature to go back now and change it. It would be perfect timing for expansion of gambling if that was what they were concerned about, if they started opening up that law and trying to readdress the authority. Senator Delvin guaranteed he would be pushing for some things with that. The purpose of the Ex-Officios is to give input as representatives of the Legislature. Senator Delvin's concern was that, when he asked Dan Swecker why he did not come and talk to him, Senator Swecker told him that he did not think anything of it, that when he was asked to sign the letter, he just signed it. Senator Delvin told him there were Ex-Officios on this Commission to help and next time Senator Swecker had a gambling issue to come talk to him, which Senator Swecker said he would do. The Commission was given the authority by the Legislature and Senator Delvin suggested using that authority. Senator Delvin felt that if the Commission talks to Representative Conway, as he was certainly going to talk to Jeanne Kohl-Welles, the same story would be that they were asked to sign a letter and that was why the letter was signed.

Senator Prentice said, first of all, there is not a law about the expansion of gambling. She thought it was very educational when looking over the work session materials how the Legislature has dealt with that issue, which she thought was a lot narrower. It even surprised Senator Prentice and she has been there for some of the rulings, but had not really looked at them in total, which go back to 1973. It was interesting that the role of the Ex-Officios is that they are on the Commission as a result of IGRA. Senator Prentice recalled that it was Senator Jeannette Hayner who was very insistent that Tribal Compacts not go before the whole Legislature. Senator Prentice was sure that if the Commission had argued over all of the Tribal Compacts and none passed, the Tribes would be out there doing their own thing and the state would have no regulation over them at all – it would have gone completely in the other direction. So there is a reason that the Ex-Officios are on the Commission. Obviously, the Ex-Officios see their roles as a liaison, but it certainly has a lot of weight for Senator Prentice, even if they are just addressing it now. Senator Prentice knew they addressed it seriously, because she had exchanged some emails with Senator Jeanne Kohl-Welles and it was her staff particularly that had delved into it. Senator Prentice said she would have to echo what her friend here says: do not ignore what the Chairs are saying – they take their roles very, very seriously. There is disagreement and what is wrong with having some discussions. Senator Prentice was sorry the card room operators were planning on going to Las Vegas now, but did not know if that should be the driving issue. And if they want to get into a tussle with the Legislature, the Legislature can amend anything it wants. That is something they do not want in this particular session – it is going to be gruesome – and it is something Senator Prentice did not care to deal with, so do not dump that one. Senator Prentice asked everyone to please calm down. It can be dealt with in January and the Commission will have plenty of time to talk to the Chairs. Senator Prentice said she did happen to know the two Senators and she

did not think it was that superficial. She knew particularly their relationship and knew Senator Swecker extremely well and did not think they took these things lightly. Senator Prentice thought they did not want to get into a discussion and argue over it, but knew that both of them are extremely sincere in what they are writing.

Senator Delvin disagreed with his colleague, explaining he was not saying they were insincere because he knew Dan Swecker was totally against any kind of gambling. **Senator Prentice** added that Senator Hargrove was also. **Senator Delvin** said he had enough common sense to know that the Commission has been discussing these issues for many months, but then all of a sudden the Chairs are made aware of them. They have had ample time to come in and be aware of this, so let me call it for what it is, which is the last minute lobbying effort. Why were those Senators not here a month ago, two months ago? **Senator Prentice** said she had to react to having a group designated as special interest group – everybody out here is special interest – as if this is some kind of a disparaging thing. Senator Prentice was asking what the panic was. She would rather wait, do it right, and not have this big fight with the Legislature, which Senator Prentice said she did not care to be in the middle of it. **Senator Delvin** replied he did not think there would be a big fight.

Commissioner Ellis asked Senator Prentice what her reaction was to Representative Simpson's suggestion that if the Commission does proceed with this change to the limit in the number of players at certain tables, to include a provision that limits the overall number of players to the current level. **Senator Prentice** thought Representative Simpson made a lot of sense. **Commissioner Ellis** asked if that could be something that representatives of the RGA and staff attempt to put into a draft – which they are going to come back to discuss after the break.

Mr. Max Faulkner, Recreational Gaming Association, spoke on Representative Simpson's idea, pointing out the card rooms are currently allowed 15 poker tables, which could total 150 spots, and a number of clubs have a lot of poker tables, so the maximum player count allowed right now is 150. So the card rooms are well within that limit, so the Commission could say 150 or could just say currently the card rooms could have 150 spots.

Mr. Chris Kealy, Vice-President of the Recreational Gaming Association, restated what he was up to and wanted to respect these letters coming in, even at the eleventh hour. The letters are from very important people in the Legislature and it is important to do things right. Mr. Kealy encouraged the Commission to also do their job right. Mr. Kealy asked the Commission to just be judicious enough to see through this nine-spot issue as one element of these letters, and say okay, this one is pretty small and is regulatory in nature. The card rooms were at nine spots at one point then went to seven under the guidance of Mr. Bishop because he felt regulatory wise he was having a hard time on those outside areas. Now with digital surveillance systems and all the other advances made in the last

ten years, a card room industry that is shrinking, economic decisions being made about minimum wage, and when operators can open their facility and when they close it, this is an issue of are the card rooms going to be open these hours or are they not – it is not about hundreds of people gaming. Mr. Kealy believed the industry has made that case fairly accurately in front of the Commission over the six/seven months that this has been on the table. Mr. Kealy absolutely respected the letters and who they came from, but thought it had to do with the other issues, which is why he asked to hold the poker betting limit over for the month. Mr. Kealy thought those were the issues that needed more attention. That would be his answer to those legislative people – that the Commission pay attention to those letters, but on those issues, and move forward on this one because of the economic situation in this country and in this state. Mr. Kealy believed this was okay to go forward with, which was why he was asking the Commission to take action on this particular subject. Mr. Kealy added that this amendment, as well thought out as it is, and he appreciated the effort to move something forward, he would take the amendment or take what the RGA put forward to begin with, but the history does tell us that the card rooms went to \$200 on five tables, and then that became a regulatory problem because nobody knew which five tables, and the card rooms were dealing with fines and people up here having hearings for hours discussing what table had the sign on it and what did not. Mr. Faulkner is correct when he pointed out the card rooms are currently allowed 150 people and they can regulate it, so Mr. Kealy asked: Can we do it; yes – is it going to mean 135 people wagering at blackjack; no.

Chair Bierbaum said, for the record, the one thing that makes her uncomfortable with the conversation about the legislative input is that it is her understanding the Commission is unique in one sense, which is once they are appointed and confirmed by the Senate, nobody can remove them. Chair Bierbaum thought the reason the Legislature did that was because they wanted the Commission to be free from potential influences from special financial interests or political influences. Now it is being said that the Commission is subject to political influences because of these letters and because there is this threat of changing its powers. She thought it was abrogating the very purpose of what this Commission is; they are not supposed to be thinking about any of that stuff – nobody is supposed to be able to influence its decisions or exert political pressure on the Commission because, theoretically, the Commission has no political influence. Through these past six months, there has been a lot of talk about different influences on gaming decisions, and Chair Bierbaum thought that having this discussion where those political influences are being brought up is not necessarily consistent with how the Commission is supposed to operate.

Commissioner Parker thought it was correct that the Commission has a responsibility to exercise its independent judgment on these matters, but at the same time it is also appropriate to be responsive to this kind of communication. Commissioner Parker did not feel constrained one way or another in terms of what the Commission might do based on receiving this input, but it seems there is a difference between the proposal to increase the

number of seats at a table and the proposal to increase the size of the betting limit. Commissioner Parker said he would be comfortable moving ahead with the outcome of the input the Commission was going to get after break. Commissioner Parker was also comfortable deferring action on the betting limit increase until there has been an opportunity to have that kind of input. **Chair Bierbaum** noted the Commission had already deferred the betting limit petition until January.

Senator Delvin clarified that what he had been trying to say all along was that by reacting to those letters, the Commission was setting precedence for the Gambling Commission that the Commission was going to be under the influence of from now on. Something has worked, so the Commission may be getting more letters at the eleventh hour from other legislators because they see something. Senator Delvin cautioned the Commission that they might be setting precedence for themselves as a Commission that may come back and hamper them in the future.

Mr. George Teeny, representing himself, thought that, similar to what Senator Delvin has said, it is a little bit of a slippery slope. There are three or four letters from state representatives and senators here that are in favor of the petition and three or four that are against it. Mr. Teeny asked what trumps what – if there are 40 from state legislators who say they are in favor of it and 30 that say they are not in favor of it, does the Commission then look at whether they legislators are in charge of a committee or if they are a freshman senator? Pretty soon it becomes a tit for tat and nothing gets done; everything stalls out. The Commission has received an eleventh-hour letter campaign. This discussion has been going on for six months and Mr. Teeny guaranteed the people that have written the letters, either pro or con, do not have the information that the Commission has been given over the past six months. The Commissioners are the educated ones, not the legislators. They may have a concern because of their moral beliefs or because of lobbying efforts, but the Commissioners are the ones that are supposed to make this decision. Because if the Commission doesn't, then give up its authority; give it back to the Legislature and let the legislature make that decision, and then let things do the government stall in the quagmire, in the slow process, and the Commission will never get anything done. Mr. Teeny said it was only his opinion, and obviously he is just one guy, but the Commission should make the decision – be it right or wrong. Mr. Teeny sympathized with the Commission's position because they are appointed by an elected body and are sympathetic to whatever the legislators want to share with them. But if the Commission waits for the legislators to start bouncing ideas off them and start getting different comments from different legislators, the Commission might as well give up what they are doing and just let the legislators make that decision and give up the position that the Commission holds.

Commissioner Ellis said that clearly this is not an issue about whether the Commission has the authority and the overall responsibility to take action, but seems to be a question of how the Commission takes action and whether it makes sense to recognize that there may be, particularly as to the betting limit issue, some potentially legitimate concerns raised by

those who do not know what the real effect of that limit is. It just seems to be a matter of courtesy to sit down with the Chairs of the two committees that play such an important role in the operation of the Commission and let them know what the Commission is doing.

Ms. Dolores Chiechi, Recreational Gaming Association, thought it was interesting to look at the history of the betting limit. In 2002 the RGA petitioned the Commission for an increase in the betting limit, and some of the legislators reacted and sent some letters saying not to allow it. And then guess what, the Commissioners approved it and the Legislature convened and did not pass a bill taking away the Commission's authority to increase betting limits or take away the Commission's authority to do anything. It is interesting to note that this is not a new reaction. Historically, the Commission has acted in its best knowledge and informed decision and took that position, and the Legislature did not revoke any of the Commission's authority. Ms. Chiechi agreed with what Senator Delvin has said, as well as George Teeny, and asked the Commission to consider that. She appreciated Chair Bierbaum's comments, as well, that if the Commission has the authority, they have the authority.

Director Day pointed out that, in the way of full disclosure, the Commission increased the bet limit at different occasions. And there was a bill introduced to change the Commission's authority, and staff spent a great deal of time explaining the Commission's position. Director Day thought that in the end it was very productive to the way the Legislature reacted. Director Day did not want to leave the Commission believing there was no reaction during those periods of time.

AAG Ackerman clarify that, in his opinion, the Commission has the authority to take the action that is being discussed, but pointed out that the opinions of the legislators addressed in the letters received, both pro and con, are certainly legitimate. It is no more improper for members of the Legislature, especially given their particular interest in these matters, to express their views to this Commission for consideration than it is for any member of the public or anyone else that may write to you. The Commission gets letters all the time from people that are interested in matters that come before the Commission. Mr. Ackerman would not suggest marginalizing the views expressed, but thought the public needed to know that the Commission members should give appropriate weight to comments they receive from whatever source. Mr. Ackerman pointed out as a matter of clarification that the ex-officio members sit on this Commission for a reason and have a specific role. They are to be the liaisons between the Commission and the Legislature and provide the input of the caucuses that appoint them to the Commission, and also statutorily to take recommendations by this Commission back to the Legislature for action. To say that the Commission is an independent body – which it is – and to say that the Commission has the authority to act on this matter, which in Mr. Ackerman's opinion it does, does not foreclose the appropriateness of this Commission considering the views expressed by the ex-officio members or by other legislators who may choose to address the Commission.

Mr. Ackerman sensed in some of the comments received that people were losing sight of the legal role and the legal relationship between the Commission and the Legislature.

Chair Bierbaum called for a break at 10:25 a.m. and reconvened the meeting at 10:50 a.m.

Chair Bierbaum explained the Commission would now decide on Item 7, Petition for Rule Change – Recreational Gaming Assoc. – Increase the number of players at house-banked card tables.

Commissioner Amos made a motion seconded by **Commissioner Ellis** to move forward on Alternative #1 Amending WAC 230-15-055 to increase the number of players from seven to nine.

Commissioner Amos commented that he has been involved with the Council of Police and Sheriffs for many years and has seen many letter-writing campaigns in regards to different law enforcement bills they had on the hill. Again, it was at the eleventh hour. Commissioner Amos has worked with Senator Prentice, Representative Simpson, and Senator Delvin on many issues and fully believed this issue had been discussed, beaten to death, and it was time to vote on it.

Commissioner Ellis asked Ms. Chiechi whether during the break the RGA drafted an alternative to the alternative that might address some of the concerns that were expressed previously. **Ms. Chiechi** replied that the RGA would support the motion that had been put forth. However, if it is no action or an alternative, which is what Chair Bierbaum had drafted up limiting it to five tables, the RGA would be amenable to that, but would obviously prefer the RGA's original Alternative 1. **Commissioner Ellis** asked Director Day if they have a five-table limitation, as discussed, what that does from a regulatory standpoint. Commissioner Ellis knew that staff has been in the position before of having to distinguish between tables that were subject to one regulatory provision, and was thinking of the betting limit provision in which certain casinos were able to have five tables with a \$200 limit when otherwise the limit was \$100. Commissioner Ellis asked, in terms of enforcement efficiency, what was Director Day's reaction, if any, to the idea of allowing five tables to have nine players and the rest of the tables to have seven players – house-banked tables. **Director Day** responded that the idea of a fixed number of tables was clearer to enforce; a limit to the number of tables would be simpler for the agents to enforce. Director Day said the enforcement concept was not a particular problem under that language. It would just be what the Commissioners are trying to get at; whether they are trying to hold it down so there was no actual increase but allow the flexibility, or whether they are willing to accept a certain amount of increase.

Assistant Director Harris agreed it would be a lot easier for staff to regulate a set number of tables versus having to do a head count in a card room to make sure there was a certain

number of people playing and then determine whether they were actually playing or just sitting at the table watching. So a fixed number of tables would be easier. AD Harris thought this would also be easier than the increased betting limit where the card rooms had signs on the tables. Under this circumstance, they are going to have tables with set betting spots so it would be pretty easy to see that there are five tables with nine betting spots on them. **Commissioner Ellis** said it sounded like Assistant Director Harris was comparing the five table limit to the possibility of a limit on the total number of players, and that it would be more difficult to try and figure out whether a particular card room was exceeding the authorized number of players. It would be simpler if the rule said, consistent with the motion, that the maximum number of players per table for a house-banked card game is nine and not seven, and the agents did not have to go around and count to see whether there were more than five tables that had nine players. **Assistant Director Harris** agreed that would be the easiest of the three to regulate.

Commissioner Ellis said his reaction at this point was that this is, even on a purely policy sensitivity basis, the focus of the concerns that were expressed by legislators. He was satisfied that given the fact, as Mr. Faulkner emphasized, that every card room that now has 15 tables is fully entitled to have 15 poker tables with 10 poker players per table for a total of 150 people, this motion would not expand beyond that number. So even if this were subject to an expansion of gambling analysis, it would not expand gambling in that sense. Commissioner Ellis thought he would vote in favor of the motion that he seconded.

Vote taken; motion passed unanimously.

13. 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 these were up for discussion and reviewed the Rules Summaries. Ms. Hunter noted that at the October meeting Mr. Malone testified that the Commissioners used to have a rule that required them to sign all settlements, similar to Nevada, but got rid of that authority during the Rule Simplification Project. Ms. Hunter had to actually call Mr. Malone to figure out exactly what rule he was referring to. The rule was a former WAC that was six forms, all of which had outdated language and had not been used in years; one form was called a Stipulated Settlement from Written Pre-Hearing Conference form that had a signature line for the Chair and said Approved by the Commission under it. Mr. Hunter explained it was staff’s understanding that at one time, for a very short period of time, the Chair of the Commission had wanted to sign all of the settlement orders, and did so only for a couple of months, but that practice was quickly abandoned and has not been used since before 1994. Ms. Hunter did not want the Commissioners or the public to

think there used to be a very clear rule in the old Rules Manual that said that the Commission approved all of them. Ms. Hunter pointed out that the rule summary states that staff recommends further discussion on this rule. When this rule is up for final action at the January meeting, staff will likely recommend the Commission deny this particular rule.

Chair Bierbaum called for public comment.

Mr. Dave Malone of the law firm of Miller Malone and Tellefson testified the intent of this proposal was to bring Washington State's administrative hearing process in line with its regulatory peers. Mr. Malone did not claim ownership of the language in here, but tried to distill what other agencies were doing in similar situations. There are agencies that require this as a "shall" – it is a mandatory consideration – in other jurisdictions it is discretionary. Mr. Malone modeled this primarily after California because it has a similar card room environment as Washington State, along with manufacturing. Mr. Malone wanted to address one of the factors that Ms. Hunter had brought up regarding cost to the agency, which was dropped as an aggravating factor because the Coalition did not believe it was something that was important in the length of a suspension that a licensee would be facing before the Commission. Willful violations are already an element that they must prove at the hearing level. Additionally, from a procedural perspective, the wording now says that it is presiding officers or Commissioners, which is because under WAC 230-17-025, the Commissioners may act as the presiding officer if they choose to do so. It has never been Mr. Malone's experience that the Commissioners have opted to do so, but he tried to word it in that fashion. In hearing Ms. Hunter's concerns yesterday and today, Mr. Malone looked at this and I thought one fix at that level could read the presiding officer or officers, should the Commission choose to do that. The intent of this was that it would apply at the hearing level, so if a licensee or an applicant were to appeal a decision of the ALJ, they would have to petition, much as Mr. Malone did yesterday with the Bayside appeal, or to specify on the record those portions of the record that was objected to and that he wanted the Commission's input or decision on. It would not be as though Mr. Malone were bringing testimony before the Commission; although, Mr. Malone thought the Commission had the discretion to hear testimony on appeal if it so chose. Mr. Malone did not see that it would increase the fact finding burden; there would not be 14 elements introduced in every hearing, but would only be if someone brought that as a motion or on request. Mr. Malone specifically did not use motion because as part of the RSP process they were told that they were supposed to be drafting rules that were pro se favorable – that they do not need attorneys to do these things, so that is why it is upon request of one of the parties.

Mr. Malone explained he was not going to go through everything in his letter or everything in the Commission's materials, but if the Commission has any questions, Mr. Malone would be happy to answer those. Mr. Malone did have a concern though about the Commission's position now that ALJs already hear these mitigating factors. If that is true,

Mr. Malone was happy whether the Commission adopts the rule or not. As an attorney who represents more than 40 percent of the contested cases according to the Commission statistics, Mr. Malone knew the ALJs would hear these matters; Mr. Malone would bring them up; there are no boundaries on the relevance, apparently, right now; there are no constraints on what Mr. Malone can now argue. But the pro se litigants, the people that are appealing on their own, they do not know where to look for this. Williams Kastner knows what the rules now say based on the Commission's statements and Mr. Valleria is here on behalf of IGT and is now aware of the rules. But the average card room employee or average mom and pop licensee may not know where to look for these sorts of factors if they are not codified. The Coalition is trying to do this to allow the average person to know what to look for and allow the Commissioners to decide as a matter of policy what they think factors are relevant for consideration at a hearing. And with that said, the Commission has also made references to the matrixes and things like that; and the Commission does use a matrix of sorts, it is just informal. The Coalition would love to see it codified at some level, but it is published on the website and it does set borders or guidelines similar to the Liquor Control Board standards of what the penalties will be enforced for certain infractions – undisclosed loans is a three-day suspension subject to vacating or deferring some of it. But there are standards the Commission has established, so that would be the rubric from which they would also operate.

Mr. Malone thought it was most disturbing and was somewhat perplexed that if the ALJs already hear and consider these factors, why did the Commission try to limit this to settlements earlier this year with the Coalition? When it was brought forward last year and in February, the Commission's position was that these factors should only be heard at settlement. But if the ALJs already hear these things, what was the intent of that rule in part of the Coalition process when the whole thing fell apart earlier this year? Mr. Malone did not have an answer for that, but as he heard the Commission's testimony today, he remained perplexed at that development. Mr. Malone offered to answer any questions the Commission may have on how the Coalition envisioned this to operate. Mr. Malone closed by noting if the Commission looked at factor number 9, it is any factor the Commissioners deem relevant upon appeal, which is to provide the ability to decide policy matters that do not fit with any other criteria.

Chair Bierbaum asked if any of the Commissioners had any questions or reaction to Mr. Malone's testimony or comments.

Commissioner Ellis indicated that one point Mr. Malone made struck him as a little inconsistent with Commissioner Ellis' view of history, which may be distorted. Commissioner Ellis was sure Mr. Malone has sat through a number of the Commission's hearings where the pro ses are usually card room employees and he was confused when Mr. Malone talked about the value of these to the average pro se person who appears before the Commission. Commissioner Ellis felt this list would probably not help many of them very much. There was one card room employee here yesterday, of course, who was

bringing a motion for the Commission to vacate a default judgment. Those people the Commission have listened to have been very effective at explaining why they made the mistake they did, assuming that they made one, that resulted in their license being suspended or revoked – and there are a wide variety of explanations. Commissioner Ellis thought very few of them would find it useful to work off of this list as opposed to just telling the Commission, like Ms. Jimenez did yesterday when she explained that she had moved and did not get the notice of the hearing, that she had solved her problems, and asked the Commission to please let her have her license back. Nothing here is really going to make that any more effective in Commissioner Ellis' view, and he thought that was true of many of the pro se presentations the Commission has heard.

Mr. Malone replied that one of the things the Coalition noticed in going through the different jurisdictions was the need to tailor to each specific industry. Rules that would apply in Nevada may not apply in Washington because of the difference in the gaming nature, so Mr. Malone tried to make this as flexible as possible. One thing that was consistent was that there was generally a catch-all category, which was why Mr. Malone drew attention to Number 9 – the Commission could think that was relevant. Mr. Malone was not present to give war stories of the multitude of cases he has dealt with, but there was one that he did not deal with but wanted to share with the Commission that would fit what is being discussed. Mr. Malone admitted the only reason he knew this was because his roommate in law school actually represented the person on appeal. It was a matter in Spokane about five years ago and the Commission may recall the gentleman drove over from Western Washington, was involved in a car accident, and was late for his appeal. His license was revoked for a variety of reasons, but one of the factors was he was in the Philippines to attend his mother's funeral. That would be something that would be brought before the ALJ first, and if the ALJ said that was fine, he understood what was said but did not think that was relevant, or the ALJ was not willing to modify the penalty, it would be something that could then be appealed to the Commission to determine whether the fact was relevant that this person, while he had other problems, was attending his mother's funeral across the world. A suspension would still be in order, a penalty would still be in order, but the Commissioners could say that they recognize there is some leniency going on here. Mr. Malone thought the frustration that the licensees have right now is that there does not appear to be a lot of leniency. While he commends Ms. Hunter's staff because they do an excellent job, the perception from the licensees – and Mr. Malone hoped some of them would speak today, although they are somewhat afraid to come forward in all due respect – is that the agency can act as judge, jury, and executioner. There is no sort of outside review and that is why they are looking for the Commission to set the bar as to what can be considered and what can be relevant. Ms. Hunter said she did not see how the hearings would not be more expeditious. If there is no sideboards on what is relevant now and the Commission's acknowledging that ALJs can hear mitigating factors, the Commission is going to be hearing a lot of appeals from Mr. Malone on what is a relevant mitigating factor now because he will be forced to bring everything he can at the hearing level. And whether it is denied or not, Mr. Malone was going to be bringing up things like

was the identification card misread, was the software signature truly in violation, was it a material element to the gaming device or to the tribal lottery machine that was involved. All sorts of things like that are now going to be brought forward for the Commission to determine what is relevant. What Mr. Malone is hoping to do is set the sideboards on what the Commission believes are relevant.

Chair Bierbaum explained that when she became Chair, she said she really wanted the Commissioners to express some kind of view, to the extent they have one, at this discussion stage so the Commission does not go to vote and the petitioners do not have any sense of where the Commission is. So in the spirit of keeping with her own desire, Chair Bierbaum said she thought, Mr. Malone, that it would be unlikely that she would ever vote for mandatory mitigating and aggravating circumstances because it would necessarily require the ALJ to make written findings of fact with respect to any aggravating or mitigating factor that was presented to him or her. It may not increase the length of the hearing, but it would certainly increase the length of the opinions, and also what the Commission would review. Chair Bierbaum could not imagine a situation where she would want to impose upon the Commissioners, even at the review level, that they shall explicitly consider these factors. Chair Bierbaum felt the reason they do it in the Liquor Control Board was they do it only when there was a deviation from the matrix, so if they deviate from the matrix, then they have to make Findings of Fact with respect to the aggravating and mitigating factors. But that is one explicit consideration of those coming in before the Liquor Board; otherwise the ALJs are not required to make written Findings of Fact.

Mr. Malone believed the matrix was there because, while it is not codified, the hearing standards are now being seen that if there is an underage gambling infraction the charges would come out with 30 days, and then if there is a settlement it may come down from that. Mr. Malone has noticed that the statement of charges are being tailored more towards it being a five-day suspension if they go to hearing, or 15 days, so there is some standard, but it is just that someone has to practice before this Commission to know what that standard is. But they are putting it forward now, so Mr. Malone agreed with what Chair Bierbaum was saying. It would not be an open-ended assessment by the ALJ or in the Commissioners perspective; it would be a deviation from the guidelines the Commission already has. **Chair Bierbaum** agreed the discussion may be different if those were, in fact, published guidelines like the Liquor Control Board. Chair Bierbaum thought she would probably vote for it if it were a “may consider these factors,” but she has not made a decision because there has not been enough discussion. The reason why Chair Bierbaum would vote for that language is that she knows in the Commission’s executive sessions when reviewing an ALJ’s penalty, sometimes she feels like she is doing something she should not do when considering testimony about the dog ate my homework and things like that because it does not tell her that she can look at those factors. Maybe the ALJ feels the same way Chair Bierbaum does, and maybe they would feel better if there was something that explicitly said, yes those could be considered.

Mr. Malone said if there were no other comments or questions he would take that message back to the Coalition and see if that was something they could live with. Mr. Malone thought it was a fair consideration for an alternative for them and believed there are other representatives that would be willing to comment as well. Mr. Malone would be willing to discuss that with Ms. Hunter as well, if that was something that was amenable, or if the Coalition came back in January with a proposed alternative that the Commissioners may be willing to consider if the other factors as a whole are something the Commissioners are willing to accept.

Chair Bierbaum stated that the other part of the language that puts her radar up, and might also put up the radar of the staff was all the other recitation of aggravating and mitigating circumstances have to do with imposing a penalty the presiding officer may consider. This one sets up a conflict between staff because it is to determine whether to modify a penalty sought by Commission staff. The wording is different. **Mr. Malone** replied that was intended because language was again trying to limit it to the hearing level. The Coalition addressed concerns that they did not want things being brought before the Commission. That is where the Commission staff or the AG actually brings forward the penalty recommendation and that is why it was worded that way. Mr. Malone said he would look at that as well, adding he was looking at this point to see if the Commissioners were willing to accept the concept of considering aggravating and mitigating factors. And as mentioned earlier, the staff's acknowledgement that the ALJs already consider these things is somewhat of a victory for the industry already because they can bring these things forward without limit now. Mr. Malone did not see any sideboards on what was relevant, noting that was going to be the issue on appeal from now on if some standards are not set.

Mr. Anthony Broadman, stated he was present with his senior colleague, Gabe Galanda, who along with Debora Juarez at Williams Kastner represent Bally, the leading provider of Tribal Lottery Systems in Washington. Mr. Broadman testified he, on behalf of Bally, supports the Coalitions rules petitions. Mr. Broadman thought both put together, although the first is apparently pretty non-controversial, are a good step forward in improving the regulatory climate in Washington. Championing the shared goals of the Commission, the tribes who regulate Bally in Washington, and industry of voluntary compliance, and ensuring that enforcement fits violations, and stakeholders are aware of what will befall them as they go through the enforcement process. Mr. Broadman said he would not spend too much time on the first proposal since it seemed non-controversial, noting he thought it would help create a proportional response to potential violations, and the shall or may discussion will continue in the coming weeks. Mr. Broadman thought that some consideration of aggravating and mitigating factors should be just as non-controversial as the first provision, recognizing the economics of the process and efficiencies of forcing people to look at these factors. It is Bally's position that this allowance or suggestion that ALJs should look at mitigating and aggravating factors will allow stakeholders like Bally or like IGT, who is also here today, to understand what will happen when they go through

the enforcement process. That in turn will encourage stakeholders to voluntarily comply with regulation wishes, and in the end, is the most efficient and economic mechanism for both the industry and the Commission.

Commissioner Ellis said he had focused during Mr. Malone's presentation on the value of this list to pro ses and looking at the list and recognizing that Mr. Broadman represents a very sophisticated, large distributor and manufacturer, and that other proponents of the petition are in the same situation where they are representing very sophisticated entities, asked if there was anything on this list of aggravating and mitigating circumstances that Mr. Broadman, as an attorney, would not think of to present if he knew that his client had a case to be made that a violation was inadvertent, or that there was no public harm done by the violation, or go over any of the other provisions on this list. Commissioner Ellis asked if Mr. Broadman, as an attorney and as a matter of course, would be making that argument.

Mr. Broadman replied he absolutely would, noting he thought he heard from Chair Bierbaum that there was some insecurity possibly among ALJs of whether it was appropriate to contemplate the "dog ate my homework" type of evidence. In terms of the pro se party in an enforcement action, this was only going to be triggered if the "shall" language remains. If the pro se party does suggest it would like for mitigating factor #4 to be considered, if they do not bring that mitigating factor up, then it is not before the ALJ. In terms of the expressed concerns about efficiencies with regard to pro se parties, Mr. Broadman was not sure that if it was not necessary for a pro se party to use one of these factors, they probably would not bring them up and would not need to be considered.

Commissioner Ellis thought, depending on how broadly some of these factors are interpreted, most of his initial reaction without having any specific examples in mind is that most of the things that pro ses bring forward to the Commission would fall within these categories even if it is nothing more than they did not realize they were doing wrong or that when the renewal application asked if they had been charged or convicted of a crime, they only thought that meant convicted – that kind of thing. There is going to be a box to fit most of their defenses, so to speak, or the things they want us to consider into, apart from the dog and the homework.

Chair Bierbaum indicated she did not agree with Mr. Malone on that portion and did not think these are useful only to pro se litigants or parties. If she were a lawyer practicing in this area, and did not do it all the time, Chair Bierbaum thought she would find these useful.

Commissioner Ellis thought the ALJs were in the same boat the Commission was, by and large. The administrative process is, of course, supposed to be a less formal process than a judicial process. There are loosened provisions relating to the admission of hearsay, etc, and Commissioner Ellis could not remember any instance in the hearing transcripts that he has reviewed where ALJs were addressing defenses that were put forward by licensees and the ALJ is telling the licensee they could not testify as to the fact that the dog ate their homework. Commissioner Ellis thought the ALJs may smile as they listen to that and

wonder if they really want to find a different career, but nevertheless, thought they pretty much listen to anything the licensees tell them – and that is particularly true if they are pros.

Mr. Dave Malone thought the issue was that the licensees can make those statements but they are not considered. The overwhelming frustration licensees express to him is that no one is hearing what they are saying; it is like it just does not make a difference. What this does is establish that as a relevant factor to mitigate the penalty down and says there is some standard, whether we are working off the matrix, the informal guidelines, or what have you. If Mr. Malone testified that the dog ate his homework, or he was overseas when his license renewal came into effect, or what have you, that is a factor that can then be considered on the record as a rule to knock the penalty down somewhat, because there is a distinction. The Commission is right that most of the cases settle. The statistics show that any licensee represented by counsel in the last year usually settled because the attorneys are successful in working these things through. But there are times that they are faced with the fact that there is no other alternative to go forward and are faced with a monetary fine to settle the suspension or risk the license being actually revoked or suspended for a period of time, which some of the licensees cannot survive if that happens. So it is a choice for the licensees: do they write a huge check when they do not think they did this or do not think they deserve this stiff of a penalty, or do they risk the uncertainty of going to a hearing where they may have their license pulled and their livelihood would go with it. If the Commission wants to hear war stories about this, Mr. Malone will share examples from his past, but he did not think that was beneficial at a certain level. If the Commission wants examples of why this is coming forward and why the Coalition members were willing to pursue this for two years with the staff and then continue after the negotiations broke down, Mr. Malone would be happy to share that with the Commission, either on or off the record; however the Commission would prefer to hear it. Mr. Malone hoped some of the licensees would share their version of what happened to them in the process and why they think these things need to be considered, not just heard but actually considered, when someone is deciding what punishment needs to be meted out. Mr. Malone thought the overwhelming issue that comes up is most of these licensees will accept responsibility for the violation that occurred, but there is an extenuating circumstance they need to explain. Mr. Malone apologized to Ms. Hunter for this one because these traffic citation analogies have been heard before and he knew that she does not like this. Mr. Malone pointed out that if someone gets a traffic ticket, and it has been awhile since Mr. Malone has had one, but the person can accept that they did the violation, they can deny the violation and appear in court, or they can appear in court to explain extenuating circumstances as to why the violation occurred. Mr. Malone deferred to Commissioner Amos about that, with his experience as a police officer. That is essentially what the licensees want; they want the ability to come forward to somebody who has a decision making authority to ask to be heard and ask for their penalty to be reduced if it is warranted, and not have to rely on the attorneys who are prosecuting them to make that decision for them. All the Coalition is trying to do is set something on the record so the

judges will consider that, which is how it should go. If the wording is not the way the Commissioners would prefer, Mr. Malone was willing to take suggestions and to go back with staff, with the Commission's direction, and get to that goal. The Coalition is trying to achieve some sort of meaningful hearing and the ability to have something reduced, if the Commissioners decide that it is warranted.

Commissioner Ellis said it would be very helpful to him if Mr. Malone would submit some examples of situations where he had a licensee who had what Mr. Malone thought was an important or significant mitigating circumstance that was not heard by or considered by an ALJ, recognizing that attorneys are very good on both sides at making their arguments as to why a particular factor should be the critical factor, and ALJs have to make a decision as to what the critical factor is. There is only so much mileage the Commission can get out of dogs eating homework, and some actual real life examples would be very useful. **Mr. Malone** replied he would happily do so. **Chair Bierbaum** agreed that would be useful because the Commission do not see all of the ALJ opinions; they only see the ones that are a petition for review, but just the ones the Commission has seen, there has been no discussion of aggravating or mitigating factors. So to the extent it was introduced at that hearing level, it certainly was not mentioned in the ALJs opinion.

Mr. Malone pointed out that Ms. Hunter had included five examples in which the information was taken and the licenses were still revoked, which Mr. Malone thought was the licensees' frustration with this. From personal experience, Mr. Malone has been successful in settling most of the cases because the licensees recognize the risk they are involved with and both sides will work down to a point where they know the risk of going to hearing, and neither side is willing to risk all of that if they can come up with a workable solution. Mr. Malone hated to say it was almost as though by attrition. His advice to his clients is if they want to argue on principle, get out the checkbook, not just for Mr. Malone but for the process it is going to engender because they will be in it for the long haul. If they want a business solution, if they want the pragmatic economic thing that will keep them in business and keep going, then they work towards settlement. If there is a matter of principal, Mr. Malone thought that was when they had to go to the hearing, and he has been successful, by and large, in resolving these things. The frustration with the licensees is that no one seems to hear their cause beyond the Commission's legal staff. Mr. Malone deferred to the actual licensees to share some of their experiences.

Chair Bierbaum indicated the examples given by Ms. Hunter were not examples of consideration of aggravating and mitigating circumstances, or if they were, Chair Bierbaum did not realize they were introducing evidence to suggest there was not the intent required. As a matter of fact, in one of them the person said they understood that this happened, but they strictly construed it on imposing the penalty. Chair Bierbaum did not think these were examples where somebody explicitly considered aggravating or mitigating circumstances to determine, after having found the violation occurred, altering the penalty. **Mr. Malone** affirmed that was correct, adding he thought what the

Commission has is an experience when the licensees are represented by counsel. In most of these instances, the Commission would have a stipulation that the violation occurred and now it is a matter of what is the appropriate penalty at that level, either for the ALJ to decide because they know that they could at least argue these factors, whether the factual incident occurred, whether there was an underage gambling incident is not probably in dispute in most instances. What happens in most instances is the card room licensee who gets the \$200 fine for misreading the ID card is let go with a \$200 warning, but the corporate licensee who has had compliance programs, who has gone through the training, who has brought in liquor agents, who has done undercover stings to the extent they can, gets stuck with the \$7,500 fine just to get rid of the case. If they want to pursue it to hearing, they face a five-day suspension with the loss of all their gaming revenue. At that point it is an economic decision whether to pay the \$7,500 fine or try and risk this when under the current law they are strictly liable for those sorts of infractions. They would like to be able to ask what more can they do, what more compliance can they do, what can they do when a card room employee physically misreads an ID card, and in some cases where they are the minor cards and are actually vertical versus the horizontal 21 and over cards, when they misread them in that manner, what are they supposed to do when a card room employee does that. The card room operator is still responsible for their employees' actions, but should they face a five-day suspension for that when they have done everything they can to prevent it.

Ms. Chiechi, Executive Director of the Recreational Gaming Association, on behalf of their members, testified the RGA was supporting the two petitions before the Commission. One of the benefits of membership in their organization is that Ms. Chiechi is the spokesperson and the members do not have to come up here and face the Commission or run the risk of retribution or retaliation based on the circumstance or story they might share. Ms. Chiechi highly doubt that the Commission was going to have licensees come up and share some of the things they have gone through with relation to the penalties and infractions in administrative cases and what not. The RGA did participate in the Coalition and they represent over half of the card rooms in the state. Chris Kealy was their representative on the Coalition and relayed the views and he would be happy to share some general stories about what licensees have been through. Mr. Chiechi appreciated the Commission's consideration and support of the petitions.

Mr. Chris Kealy, Vice President of the RGA and wearing a Coalition hat, testified he had participated in the process. Mr. Kealy thought this meeting was getting lengthy but there was a lot more to be said and done on this whole subject. The specific issues, to move off of dog ate my homework type scenarios, that Mr. Malone outlined is correct; the underage sting operations that the card rooms have been involved with over the past couple years and the nature of undisclosed loans are other hot topics out there in the average public's mind. What is wanted is for an ALJ or the Commission to feel comfortable knowing there is a place to look at. And the law, or these mitigating and aggravating circumstances, whether it is "shall" or "may," and Mr. Kealy does understand the legal difference of those

but most people do not, nor do most people understand what they can or cannot lean on. So there are lawyers having a difficult time communicating to their client, to judges, or to people that are just in for the day to understand the particular situation. The Coalition is looking for guidance through this process. Mr. Kealy was happy to participate in the Coalition because it represented all segments; the bingo operations, the manufacturers, the card rooms, and tribal concerns. Tribal concerns have fallen off in interest to this Coalition most specifically because they have gotten more authority through their Tribal Gaming Units and are handling more of their own regulation, so their frustrations with the regulation literally end up in and amongst themselves and not in this forum. Mr. Kealy was excited about any resolution, and a version of this being approved. He thought it still has some work to make sure that the Commission is comfortable with what gets approved, if anything. Mr. Kealy suggested that something needed to be approved that gives ALJs the power to make economic changes to a settlement rather than just time, which is one of the most fundamental issues hanging out here. If licensees go in front of an ALJ and start going down the rabbit hole of contesting the Commission's decision on the level of a fine or the level of a penalty, there is only time at the ALJ level and not the economics or the size of the penalty. Most often they are stipulating right at the front end that the violation occurred, but just not necessarily agreeing why it occurred, which is where they get into aggravating and mitigating type discussions. Mr. Kealy would certainly understand and know why the Commission would say "may" instead of "shall" to just give guidance to the process. Mr. Kealy indicated he had a huge packet of information he would put together on a particular case that he would send to Olympia to make available to the Commission to look over and see if they think that is the way they wanted it represented.

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

Chair Bierbaum called for public comment; there was none. With no further business, **Chair Bierbaum** adjourned the meeting at 11:45 a.m. The next meeting will be held in January at the Holiday Inn in Renton.

Minutes prepared by:

Gail Grate
Executive Assistant