

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
THURSDAY, SEPTEMBER 11, 2008  
MINUTES**

**Chair Peggy Ann Bierbaum** called the meeting to order at 1:35pm at the Inn at Gig Harbor. The meeting began with a moment of silence in honor of those killed and of the service of policemen and other first responders of 9/11. Those present were introduced.

**MEMBERS PRESENT:** **Commission Chair Peggy Ann Bierbaum**, Quilcene  
**Commissioner Keven Rojecki**, Tacoma (Exec. Session Only)  
**Commissioner Alan Parker**, Olympia  
**Commissioner John Ellis**, Seattle  
**Senator Margarita Prentice**, Seattle  
**Senator Jerome Delvin**, Richland

**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  
**Hollee Arrona**, Secretary Senior

**Staff Accomplishments**

**Director Rick Day** introduced Michelle Pardee from the agencies Communications and Legal Division and presented her with a certificate for recognition of 10 years of state service.

**Agenda Review/Director’s Report**

**Director Rick Day** reviewed the agenda for Thursday and Friday.

**Tribal Gaming Background (PowerPoint Presentation)**

**Chair Bierbaum** suggested moving the presentation to a later time or possibly tomorrow to allow Commissioner Rojecki the opportunity to be present for the presentation. It was agreed.

**Correspondence**

> **Agency Request Legislation**

**Director Day** pointed out a summary from Ms. Amy Hunter to let the Commissioner’s know that we’ve conveyed the two pieces of legislation that the Commission approved. One would be the underage gambler penalty bill and we have conveyed that as required to the Governor’s office and the Office of Financial Management. the other is a housekeeping change to the amusement games.

> **2009-2011 Biennium Budget Memorandum to Victor Moore**

**Director Day** explained the next item is a memo to Victor Moore to document to the Commission that we have conveyed the Commission’s biennium budget to the Office of Financial Management, as required. I want to take a brief moment to pick a couple points out of this memo, because I think they’re important as we convey the budget over. The budget continues our focus on protecting the

public to ensure gambling is legal and honest. It points out there is little change in annual revenue from the current biennium. The budget is designed around a modest increase in tribal regulatory revenue, which is offset by declines in the other areas of Commission revenue. We are projecting in this budget a flat revenue over the next biennium. It does not include any fee increases. The Commission can consider the necessity for fee increases in the years of the budget. The second paragraph emphasizes that the Commission is facing sharp increases in salaries, benefits and other expenses. The Commission has made reductions to ensure better alignment of future revenues and expenditures, primarily accomplished through a reduction of six full-time FTE, which is in addition to eight FTE cut in the revised 2009 budget that you took before consideration and approval of the final biennium budget. End result is a reduction of nearly 15 FTE in the '09-'11 budget period from the original '07-'09 period. That budget has been conveyed. You have a budget book in your possession. If you want more information, ask me or give Terry a call or e-mail, and I'm sure he will respond.

> Washington State Auditor's Office – Exit Conference

**Director Day** added that next is the report from the Washington State Auditor's office. We report no audit recommendations for fiscal 2008 audit. The Auditor goes through Commission records in order to provide the report. We welcome them every year. We think it's a very important step. Congratulations to our financial staff, Terry and his entire unit.

Monthly Update Reports

> Budget

**Director Day** explained staff are trying to make sure we follow-up. Our proposal is entitled "Governor's Request for Spending Adjustments". The first category gives the number of positions that we had and the number of positions that are vacant. Mr. Westhoff used June 30 and August 31 for the two dates. We received a memo through the State Department of Personnel that established the 177 for the Commission. Positions are different functions as opposed to FTE. Some positions are part-time, so the numbers don't always match. For financial purposes, the FTE number often times has a greater impact. Staff thought fuel usage was another area that was pointed out. What is reflected are the gallons used for last fiscal year and this fiscal year. The first month so far this year and projected it forward. Another area that the Governor had identified was travel. It is kind of the same theory all the way through this document. Travel, equipment, and personal services contracts, just identifying those large amounts. Staff would recommend to the Commission that we provide this quarterly because there will not be much change monthly due to the reporting systems. If the Commission would like something else added to it, we can do that as well.

**Chair Bierbaum** asked if that seemed reasonable. **Commissioner Ellis** replied I think so. **Director Day** said that staff will start that process.

> Administrative Cases

**Director Day** noted the Administrative Case Status is similar to what the Commission has seen.

> Federal

**Director Day** pointed out a new bill introduced regarding internet gambling and the Federal Update includes a brief summary. The bill was intended to restrict the application of the 2006 federal law, Unlawful Internet Gambling Enforcement Act of 2006. It would restrict it federally to just sports betting activities. It was referred to House Committee July 30<sup>th</sup>, and there's been no further action at this point.

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

**Assistant Director David Trujillo** addressed the Commissioners and ex-Officios. Next is the Commission approval list of new licenses and Class III certifications for September 2008. Applicants are listed on pages 1 through 23. Following is an informational report for Rocket Gaming Systems. It is a pre-licensing report and is for information only. Based upon licensing investigations, staff recommends approving all licenses and Class III certifications on pages 1 through 23. We have a representative here from Rocket Gaming Systems. He is general counsel and his name is A.C. Ansani. **Mr. A.C. Ansani** general counsel of Rocket Gaming Systems, LLC began by stating that he had a few remarks to make. I'm very proud to be here today in front of the Commission as a representative of Rocket Gaming during full Commission approval of our license. Obtaining this license and entering the Washington State Class III Compact market is a huge milestone in the history of Rocket, certainly one of the top achievements of the company since its inception in Oklahoma 12 years ago. This license will mark Rocket's first foray into a true Class III market, and we're very pleased that we've done so in Washington, which we believe is widely regarded across the country as one of the most strictly regulated gaming markets. We fully appreciate that the Commission is considering, or will graciously award us the privilege to do business in the State as a licensed gaming manufacturer. And we'll be using our best efforts to continually meet our burden as a licensee. While I'm not sure the word "fun" describes any gaming license application process, we found the process in Washington to be extremely educational, informational, professional, and courteous. We're very grateful to Executive Director Trujillo and his staff who took time out of their schedules last December to meet with the executive team at Rocket and its ownership group. The staff members were very helpful with us in listening to information about Rocket that was needed. And more importantly, giving us some feedback that was essential in educating and informing us about the Commission and about our duties as a licensee in this State. We're also very appreciative of Special Agent Ira Harte who has turned into our main point of contact with the Commission. We feel fortunate to have someone with the caliber of Special Agent Harte being able to address our concerns and taking questions and any sort of other needs that we have. The on-site investigation which was held in April of this year and conducted by Special Agent Ira Harte, Donna Khanhasa, and Jay Summers, was extremely professional and efficient. Mr. Ansani acknowledged their efforts and efficiency with both their time and ours in doing the investigation. Rocket's also benefited from some professional resources in the State. Namely we've had attorney Bob Tull representing us as gaming counsel, and we've also engaged Monty Harmon as a consultant to help with gaming matters within our business processes and procedures. So not wanting to continue the stereotype of a lawyer that likes to hear himself talk, I would like to just conclude and again thank the Commission in reviewing and granting our license. And we look forward to our entry in the market.

**Chair Bierbaum** asked if there were any questions of the Commissioners and ex-Officios. There were none. She asked what Rocket Gaming manufactures.

**Assistant Director Trujillo** replied Rocket Gaming manufactures a tribal lottery system.

**Chair Bierbaum** asked if they have them anywhere else in the country?

**Assistant Director Trujillo** thought it best to ask Mr. Ansani, but I believe the answer is yes.

**Chair Bierbaum** noted it was not some new company that is doing TLS.

**Commissioner Ellis made a motion to approve the licenses and Class III certifications listed on pages 1 through 23 of the list provided by staff. It was seconded by Commissioner Parker. Vote taken; approved unanimously.**

**3. Request to Exceed Raffle Prize Limit** – National Asian Pacific American Bar Association Law Foundation

**Assistant Director Trujillo** explained that staff gets about one request to exceed raffle prize limit annually. In this case our rules require that when a licensee wishes to exceed a \$40,000 prize limit threshold, they do so after receiving approval from you as the Commissioners. In this case, the National Asian Pacific American Bar Association Law Foundation is requesting your approval to exceed the \$40,000 threshold. The fundraiser is to be part of their 20<sup>th</sup> annual convention, which will be held in Seattle in November of this year. Staff believes that requestor has shown good cause to exceed the threshold and recommends you approve the request. I do not believe that any members of the Foundation are here.

**Chair Bierbaum** asked if any of the Commissioners or ex-Officios have questions. Does anyone want to make a motion with respect to this request?

**Commissioner Parker** stated he had a question. I was just looking through here. What is the actual limit of the raffle that they will propose to conduct now?

**Assistant Director Trujillo** verified that question was for actual dollar limit?

**Commissioner Parker** responded, yes.

**Assistant Director Trujillo** replied he would have to look in the rules manual, but they're applying for a Class F license. I could have that answer for you shortly, or as Amy's pulling out her Rules Manual, we should have that momentarily.

**Commissioner Ellis** stated their letter indicates over \$75,000, although they don't specify how much over.

**Assistant Director Trujillo** replied that is correct. That is what they're hoping to earn.

**Commissioner Ellis** verified the one prize for the raffle was a new Mercedes Benz.

**Assistant Director Trujillo** confirmed that.

**Chair Bierbaum** asked if the thing we regulate is not how much they make, it's the value of the prize?

**Assistant Director Trujillo** replied, yes. Often times when a prize is a huge prize, we want the requestor to show that they have all the procedures in place and how they intend to earn the raffle prize. In the past when places have offered a large raffle prize, they have not been able to sell the raffle tickets that actually pay for the prize. That has become very problematic. In this case what we're looking at is not whether or not they exceed the prize so much as that's where your approval lies, but the overall operation of that raffle in its entirety. Amy, did you find that by chance?

**Ms. Hunter** stated that Mr. Harris had already provided the correct answer. The answer is more than \$75,000.

**Commissioner Ellis** stated that under the WAC, a licensee is limited to no prize exceeding \$40,000 or \$80,000 in total raffle prizes in a year. Obviously they will exceed the \$40,000 limitation, but may not exceed the \$80,000 annual limitation.

**Assistant Director Trujillo** confirmed that to be correct. They're estimating \$75,000.

**Commissioner Ellis** replied that based on what you have said, David, and my reading of the WAC, it is in fact the prize that is limited, and not the gross proceeds of the sale of raffle tickets that's at issue.

**Assistant Director Trujillo** agreed.

**Chair Bierbaum** asked what this Mercedes is worth.

**Assistant Director Trujillo** stated the estimated value of the Mercedes I believe is about \$52,000.

**Commissioner Ellis** replied that to follow-up on the point that I touched on a minute ago; the distinction between the value of the prize and the gross proceeds of the sale of tickets. What's the rationale for focusing on the value of the prize as opposed to the gross proceeds? Is it because you

assume that if the buyers of the tickets are perceptive, they're not going to as a group, spend more than roughly the value of the prize?

**Assistant Director Trujillo** to clarify that I understand you correctly I will say yes. I'll expand on that just a little bit. For example, if a non-profit organization were to want to raffle a house and somebody sells them or somebody donates a house as a raffle prize, then in order for that to be a meaningful raffle, there has to be a lot of people willing to purchase raffle tickets so that six months from now when they go to hold the raffle, it's not two or three people that have purchased raffle tickets and therefore the proceeds are \$2 or \$3, or only a few hundred dollars. So that at that point, the raffle advertised has to be held. And in this case, they will be having plenty of people at the convention. It is their estimate that they will be able to make the \$75,000 to be able to offer a prize of this value.

In the previous example with the house, if the house were to be offered as a prize and the raffle could not be held, raffle tickets would have to be refunded or what have you. But that is generally speaking, where we require Commission approval for the prize rather than the activity itself because generally our license fees are based upon volume of activity. In this case, as the Assistant Director has talked about, it is greater than \$75,000.

**Commissioner Ellis** asked is that their hope of what the proceeds from the raffle ticket sales will be?

**Assistant Director Trujillo** replied yes.

**Commissioner Ellis** asked what are we approving.

**Assistant Director Trujillo** responded that you would be approving them to offer a prize greater than \$40,000. They would be bound by WAC threshold limits. If they were going to make more than \$80,000, they would not be able to.

**Commissioner Ellis** clarified they would cut the tickets off at \$79,999.

**Chair Bierbaum** asked if there are WACs that say that they can't make more than \$80,000 in a raffle?

**Commissioner Ellis** replied in a year.

**Chair Bierbaum** asked for a motion.

**Commissioner Ellis** made a motion to authorize the NAPABA Law Foundation to conduct a raffle in which the raffle prize exceeds \$40,000. It was seconded by **Commissioner Parker**. *Vote taken; the motion passed unanimously.*

#### 4. Defaults

**Ms. Hunter** advised that staff is requesting four defaults today. I'm very happy that Michelle Pardee, the paralegal, is here today because you see her name every single month doing all of the work on this. It's nice to have her here to thank her for all of her great work. We are requesting four defaults, three of them are for individuals who hold card room employee licenses, and then one is for a Class III certification. We are requesting that the licenses be revoked in three cases. In the second case, we're recommending a 30 day suspension, and I will explain that more when I get to that.

a) Nhat H. Dinh, Card Room Employee, Revocation

**Ms. Hunter** began by stating he first one is for Nhat Dinh. He failed to disclose on his card room employee license application that in September of 2007 he was charged with conspiracy to commit money laundering in the U.S. District Court. And on June 2<sup>nd</sup> he entered into a plea agreement to this felony charge. So the Director issued an order of summary suspension. And it was served at the residence, and it was actually served to his brother. When we made our courtesy call to the licensee, the telephone number had been disconnected. That is a call to remind them of the deadline to request

a hearing. He's not responded. By failing to respond he has waived his right to a hearing and the Commission may enter a default order. Staff would recommend that the Commission revoke Nhat Dinh's license. I'm happy to answer any questions.

**Chair Bierbaum** asked if there were any questions. No response. Asked if Mr. Nhat Dinh, or anyone on his behalf is present? No response. Asked for a motion.

**Commissioner Parker** made a motion to revoke the license of Nhat Dinh. It was seconded by **Commissioner Ellis**. *Vote taken; the motion passed unanimously.*

b) Atithia Dou – Card Room Employee, Revocation

**Ms. Hunter** stated next is for Atithia Dou. He was working as a security guard and failed to follow his employer's system of internal controls. This was an undercover emphasis patrol that we were doing on underage gambling. What Mr. Dou did was give a 17 year old a bracelet, which would indicate that the person is actually 18 to 21. The next people allowed the person to gamble. He was issued a Notice of Violation and Settlement, that would have a \$200 fine attached to it. If someone doesn't pay the NOVAS, which Mr. Dou did not pay it, then we issue charges. That's kind of the way the process works. So the Director issued the charges by certified mail and regular mail. The certified mail one was returned to us as unclaimed, but the regular mail was not. When the legal secretary made her courtesy call to the licensee, she left a message for him reminding him of the deadline to request a hearing. He has not responded to the charges, so this is before you for a default order. Staff though is recommending a 30 day suspension rather than revoking the license since he would have received a lesser penalty had he either paid the fine or requested a hearing. I'd be happy to answer any questions. I would add that right now he is not working.

**Chair Bierbaum** asked if anyone had any questions of Ms. Hunter? There were none.

**Chair Bierbaum** asked if Atithia Dou or anyone on his behalf was present? Hearing no response, do I have a motion?

**Commissioner Ellis** made a motion to enter an order suspending the license of Atithia Dou for 30 days. It was seconded by **Commissioner Parker**. *Vote taken; the motion passed unanimously.*

c) Christina R. Jimenez, Card Room Employee, Revocation

**Ms. Hunter** addressed the Chair. Third is Christina Jimenez. She has three outstanding warrants, and also failed to disclose her criminal history. The Commission agent requested that she produce documentation that her warrants had been quashed. She did not do so. Ms. Jimenez is still working at Diamond Lil's and all of her warrants are still active. Actually the Assistant Director issued charges in this instance. The certified mail receipt was signed by the licensee. We made a courtesy call and left a message reminding her of the deadline to request a hearing. By not responding to the charges she has waived her right to a hearing and staff is requesting that the Commission revoke Christina Jimenez's card room employee license.

**Chair Bierbaum** asked if Christina Jimenez or anyone on her behalf was present? Hearing no response, do any of the Commissioners or ex-officios have questions of Ms. Hunter? Would either one of the other Commissioners like to make a motion with respect to this matter?

**Commissioner Ellis** made a motion to enter an order revoking the license to conduct gambling activities of Christina Jimenez. It was seconded by **Commissioner Parker**. *Vote taken; the motion passed unanimously.*

d) William A. Nelson, Class III Gaming Employee, Revocation

**Ms. Hunter** stated the last one is for William Nelson. Staff is requesting that Mr. Nelson's Class III certification be revoked. The Muckleshoot Tribal Gaming Agency revoked his license based on their investigation and conclusion that Mr. Nelson, who was a supervisor, took \$100 out of the employee tip box. Mr. Nelson later admitted to doing this. The King County Prosecuting Attorney's office declined to file theft charges because it felt that Mr. Nelson would be punished sufficiently by having his gambling license and State certification revoked. The Director issued charges by certified mail and regular mail. The certified mail receipt was signed by Mr. Nelson. We made a courtesy call to him reminding him of the deadline to request a hearing. He did not respond, so this is before you for a default. Staff would recommend that the Commission revoke William Nelson's Class III employee certification. I'm happy to answer any questions.

**Chair Bierbaum** questioned if William Nelson or anyone on his behalf was present. Hearing no response, do any of the Commissioners or ex-Officios have any questions of Ms. Hunter? Do either one of the other Commissioners want to make a motion?

**Commissioner Ellis** made a motion to enter an order revoking the Class III employee certification of William Nelson. It was seconded by **Commissioner Parker**. *Vote taken; the motion passed unanimously.*

**5. Petitions for Review**

a) David V. Garrison, Card Room Employee, Revocation

b) PJ's Pizza, Applicant, Denial of Application

**Chair Bierbaum** stated the next item on the agenda is a Petition for Review scheduled for 3:00. Mr. Marvin, is the petitioner here?

**Assistant Attorney General H. Bruce Marvin** replied not that I'm aware of. I spoke with Mr. Garrison earlier today. He indicated to me that he would be here. PJ's Pizza, which is scheduled for 3:30 is subject to a stipulated continuance until November.

**Chair Bierbaum** asked if we could go ahead and discuss that since they're not here anyway?

**AAG Marvin** answered yes. Mr. Garrison, like I said, will probably be here. I have a stipulated continuance and an order for the Commission to sign. I've just presented the Commission with a Stipulation and Agreed Order for their consideration regarding the Petition for Review of PJ's Pies. Mr. Gragg has contacted us recently and indicated that he would like a continuance in this matter until November, which is the next meeting in Seattle. Commission staff felt that there would be no prejudice to the Commission and its regulatory matters since this is an issue of a denial of a license and therefore there is no ongoing harm that you would encounter with a revocation or a suspension. I'd be happy to answer any questions for the Commission.

**Chair Bierbaum** asked Mr. Marvin, did you reach an agreement with respect to; one of the issues that we were going to address today is his request to supplement the record and your motion to strike some of the stuff that you thought was extraneous. So are we just deferring all that until –

**AAG Marvin** responded that he believes that would be the appropriate approach, since he will not be here to defend himself.

**Chair Bierbaum** asked if we need a motion?

**Assistant Attorney General Jerry Ackerman** addressed the Chair saying absent objection in the form of a motion by one of the other Commissioners, I think it's within your purview to grant the continuance if you choose to do so.

**Chair Bierbaum** discussed the continuance with Commissioners Ellis and Commissioner Parker and it was agreed unanimously to grant PJ's Pizza a continuance until the November Commission.

**AAG Marvin** responded he will keep an eye out for Mr. Garrison. As soon as I see him, if it's any time prior to 3:00 I'll let you know.

**Director Day** addressed the Chair by stating he believes we were contemplating the possibility of beginning next month, starting Friday's meeting at 9:00?

**Chair Bierbaum** explained to the public what we're thinking about doing is starting the Friday portions of our meetings at 9:00 instead of 9:30. Does anyone have any comment about that? There were none.

**Chair Bierbaum** stated it would start next month. We are going to open up for public comment.

**Ms. Lynn Fister** addressed the Commissioners. Thank you. My name is Lynn Fister. I'm the Project Manager at Tacoma Community College. And we are providing college credit for a Tribal Enterprising Gaming Management Certificate. Currently we are running that program at Red Wind Casino in Olympia. I'm here today to actually let people know that I have a need for instructors for those courses. I have documentation about the program, as well as the needs that I have in hiring adjunct faculty for this program. With your permission I'd like to offer that to anyone here, as well as the attendees. If there's interest or availability I can explain more privately, not take up the time. Thank you. Do you have any questions?

**Commissioner Parker** stated he had a chance to meet with Lynn earlier this month and looked over what they're proposing to do. I think it's great that they've got an enthusiastic group of student out at Red Wind. I think it's a benefit to see them receive this kind of education, and some college credit in the process. So I've offered to volunteer to assist them a bit because I just think it's a good thing to see that kind of education out there among the working force.

**Ms. Fister** replied yes, the program has been very well received by the employees that are taking the course work, and it's got a very positive response. We're going into our third co-hort in January of teaching employees and hope to expand it. It's been very positively received. I can leave information about the certificate program as well as information if I'm hoping several people would be interested in being involved in being instructors. I can leave that in the back, and I'm here to answer questions. So thank you very much.

**Chair Bierbaum** asked for additional comments from the public.

**Ms. Dolores Chiechi** addressed the Chair and members of the Commission. Dolores Chiechi, Executive Director of the Recreational Gaming Association. I wanted to bring to your attention – I wasn't sure if it was in your news article packets. But in Washington CEO, a local Washington State magazine, there was an article. I'm seeing nods that it was provided. I wanted to give you a little background on that. It outlines one of the issues that our organization and industry have been asking the legislature for a fix regarding local option for allowing card rooms, or not allowing card rooms. And we're coming forward again this year in the '09 session with another piece of legislation. Hopefully we'll have something for you either next month or November asking for your support or input working with staff on some of that language, as well as the Association of Washington Cities who is – that organization is also interested in having some other option besides an all or nothing. So I was going to provide you copies, but it looks like you already have it. It gives you a background of what our industry is facing with regard to local option, and hope that you take the time to read it. Happy to answer any questions if you have them. Thank you.

**Chair Bierbaum** asked for additional public comments. There were none. Recess was called at 2:30.

**Chair Bierbaum** called the meeting back to order at 3:00. Mr. Marvin.

**AAG Marvin** addressed the Chair. Bruce Marvin, Assistant Attorney General appearing on behalf of Commission staff. The case before us that's set for 3:00 is David V. Garrison. The ALJ issued an initial order revoking Mr. Garrison's license. Mr. Garrison filed a Petition for Review, and that's what has brought us here today.

Mr. Garrison contacted me this morning, and I also believe he was in touch with Commission staff asking for a continuance of his case so that he could retain counsel. Staff's position at that time was that it was an untimely request for a continuance, and we indicated to him that we would be opposing any such continuance and that we could talk about it further at today's hearing. He indicated that he would be attending, however, he is not here.

**Chair Bierbaum** asked if Mr. David Garrison or his representative is in the room. No one came forward.

**AAG Marvin** stated what I'd ask under these circumstances, normally we could move for a default. That invites Mr. Garrison reopen the case at a later date. What I'd like to do is, since Mr. Garrison received adequate notice and was aware that he had the hearing today, is ask the Commission to review his case on the merits and issue a final order upholding the initial order of the ALJ.

**Chair Bierbaum** asked Commissioner Ellis, Commissioner Parker, I know I reviewed this entire binder, and I'll bet the other Commissioners did too, didn't you?

**Commissioner Ellis** responded he agreed that given the nature of the petitioner's petition, his position, and what he said during the hearing before the ALJ, it would seem that Mr. Garrison was not contesting any of the allegations upon which his license was revoked. The ALJ decided that that was appropriate. That narrows the issue to essentially one of whether the Commission should exercise some discretion as opposed to any kind of a complex factual issue that would require more argument.

**AAG Marvin** offered to give a brief recitation of the case. Perhaps provide some procedural background in terms of how we've arrived at today's. Mr. Garrison came to the Commission's attention after reporting on his application that he had been convicted, or had been charged with Fourth Degree Assault. This was a domestic violence case, and involved the assault of a girlfriend and/or wife, I'm unclear in terms of what exactly the relationship was. At that time an investigation was conducted and it came to light that Mr. Garrison was serving a sentence of probation. And then it also turned up that he had another charge pending for domestic violence, Assault 4, involving I believe a different victim. The case was continued several times. Ultimately that second domestic violence case was resolved, also I believe with a guilty plea and the imposition of a one year sentence of probation.

Under Washington's gambling laws and regulations, parties who have been convicted of either a felony or a misdemeanor involving a crime of physical violence are not qualified to hold a gambling license. Accordingly these two violations are adequate evidence to establish that his license should be revoked. In addition to that he has also been convicted of a felony for violating a no contact order that was imposed as a condition of one of his criminal sentences. That also was a violation of State gambling laws and regulations in that persons who are licensed and willfully violate a court order are not qualified to hold a gambling license.

A review of Mr. Garrison's application history and reporting history also revealed that he had a criminal history dating back to, I believe it was 2000. That while the incidents that the investigation revealed were not disqualifying incidents, they are incidents that should have been reported to the Commission and the Commission should have had a record in their files regarding – I believe they were driving while license suspended convictions. There was also much confusion regarding his reporting of the status of his case with regard to the domestic violence cases and the violation of the no contact order. And comparing the dates of those criminal proceedings to the applications that he

submitted to the Commission, it became evident that he was not fully disclosing the status of those cases to the Commission in his applications. There's also a second disclosure requirement that when a criminal charge is filed, the licensee is to notify the Commission I believe at the time these violations occurred – it is 15 days within the filing of those charges. And the licensee is also under an obligation to notify the Commission once that criminal case has been resolved within 30 days. And there's no evidence or information on file with the Commission establishing that Mr. Garrison's complied with any of those requirements as well.

Given this rather extensive history, the Gambling Commission recommended at the administrative hearing that Mr. Garrison's license be revoked. The ALJ determined that was an appropriate penalty under these circumstances and did in fact issue Findings of Fact and Conclusions of Law reaching that conclusion. Within a timely framework Mr. Garrison filed a Petition for Review, and that is what brings us here today to consider his case. I'd be happy to answer any questions for you, or direct you to locations in the record if necessary.

**Chair Bierbaum** asked Mr. Ackerman, do we need to adjourn to discuss it privately?

**AAG Ackerman** stated that it is totally in your discretion. If any of the Commissioners wish to offer a motion and it passes, there's no requirement for an Executive Session.

**Commissioner Ellis** made a motion to enter an order affirming the Findings of Fact, Conclusions of Law and Initial Order of the ALJ in revoking Mr. Garrison's license to conduct gambling activities. It was seconded by **Commissioner Parker**.

**Commissioner Ellis** clarified he meant the motion to be on the merits as opposed to a default motion.

**Chair Bierbaum** stated that it has been moved and seconded. Any discussion? I'm going to, for the record, say that I'm going to vote in favor of the motion too. The basis for my voting in favor of the motion is the fact that he had two arrests and convictions for Assault 4 domestic violence. During the time that he was on conditions of release and after he was on probation, he violated the no contact order twice. So I agree with Mr. Marvin's suggestion that this person has displayed an unwillingness to follow court orders and is unsuitable to carry a gambling license.

**Commissioner Ellis** agreed that Mr. Garrison does not seem suited to have a gambling license, given his record at this point. He didn't contest any of the evidence against him, or any of the findings against him. The only thing in the record that was helpful was the fact that Mr. Garrison had anticipated finishing barber school in August. Hopefully he does in fact have another vocation that he can fall back on.

*Vote taken; the motion passed unanimously.*

At 3:15 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 5:00 p.m. and immediately adjourned.

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FRIDAY, SEPTEMBER 12, 2008  
MINUTES**

**Chair Bierbaum** called the meeting to order at 9:35 a.m. at the Inn at Gig Harbor in Gig Harbor and introduced the members present.

**MEMBERS PRESENT:** **Commission Chair Peggy Ann Bierbaum**, Quilcene  
**Commissioner Keven Rojecki**, Tacoma  
**Commissioner Alan Parker**, Olympia  
**Commissioner John Ellis**, Seattle  
**Senator Margarita Prentice**, Seattle  
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**Jerry Ackerman**, Senior Counsel – Attorney General’s Office  
**Gail Grate**, Executive Assistant  
**Hollee Arrona**, Secretary Senior

**Approval of Minutes – Regular Meeting, August 14 and 15, 2008**

**Commissioner Ellis** made a motion seconded by **Commissioner Rojecki** to approve the minutes of the August 14 and 15, 2008, regular commission meeting. *Vote taken; the motion passed unanimously.*

**Chair Bierbaum** stated the next item on the agenda item are a series of petition changes.

**Petition for Rule Change – Recreational Gaming Association – Wager increase from \$200 to \$500 for house-banked card games and remove \$1 limit on bonus wagers for progressive jackpots**

a) Amendatory Section WAC 230-15-140 – Wagering limits for house-banked card games  
**Assistant Director Mark Harris** addressed the Chair, Commissioners and ex-Officios. Item number 7 is a petition for rule change by the Recreational Gaming Association. It is up for final action today. The petitioner is requesting to increase the maximum amount of a single wager or bonus wager for an odds based payout game from \$200 to \$500 and a bonus wager from a progressive jackpot from \$1 to \$500. Tribal casinos offer \$500 wagering limits on single and bonus wagers, but progressive wager limits are not regulated by Tribal State Compact and are usually \$1 or what is limited by the manufacture in their internal controls.

Higher wagering limits may make the games more attractive to professional cheaters. We don’t anticipate all licensees will offer the higher limits, and most players will not wager at the higher limits.

The proposed rule change is a policy decision. The Commission may wish to consider whether or not the proposal is consistent with the legislative intent of 9.46.010. The petitioner has requested an effective date of January 1, 2009, and they are present today. Do you have any questions of myself?

**Chair Bierbaum** asked if there are any questions.

**Commissioner Ellis** assumed that when the staff indicates there may be an issue under RCW 9.46.010, the question is whether or not wagering at the higher limits would be within or outside the concept of a social pastime?

**Assistant Director Harris** replied I believe that is part of it, and part of it is the expansion issue that comes up.

**Commissioner Ellis** asked if this was an expansion of gambling.

**Director Day** pointed out that there are some items on your table in front of you. There is a letter from Representative Brendan Williams, and from Hawks Prairie Casino, Robert Dayton. Both are in support. You should also have a letter from Representative Steve Kirby, and one from Skyway Park Bowl and an e-mail from a Christopher Handy. Those items should have been separately included for you. All are in support.

**Commissioner Ellis** readdressed his last question and asked Mark or Rick or Jerry, is there anything more than can be said? Mark has referred to both the social pastime issue and the expansion of gambling issue. We all have a sense of how elusive the definition of expansion of gambling may be. We haven't heard as much about the legislature's expressed intent in the legislative declaration to restrict gambling to social gambling. Is there any authority or positions that the Commission has taken in the past that are not reflected in the minutes of past meetings that we've been given that bear on whether or not a poker game with a maximum bet of \$500 would be inside or outside the concept of a social pastime? I can certainly see an argument, and we see this reflected in comments by some groups that opposed increases in betting limits in the past that that kind of a dollar amount takes the game from a social game into more of a profit making game. Is there anything more there that we could rely on as Commissioners?

**AAG Ackerman** addressed Commissioner Ellis' question. I'm not aware of anything other than the plain language of 9.46.010 to the extent that it discusses the legislative preference for social pastimes and the opposition to for-profit gambling. To the extent this has been discussed previously, I think it is contained – I hope I'm remembering correctly the various minutes that have been provided to the Commission as part of the packet behind this tab. Over the years there have been a succession of requests for the Commission to increase the wagering limits. The Commission, has normally provided some kind of increase. The magnitude historically has appeared to be less than what is being requested this time, but maybe that's just because it logically will stair step up as the petitioners are successful in gaining incremental increases. But as far as I know, this is the information that's available to the Commission as a historical reference to aid in your determination.

**Commissioner Ellis** commented to my mind both concepts, social pastime and expansion of gambling, are right in there with the concept of pornography, as Justice Potter Stewart once referred to it as being something that he couldn't define, but he knew it when he saw it. It seems to be the best that we can do with these two concepts, outside the context of specific legislative rulings, for example, on what constitutes an expansion of gambling.

**Director Day** replied, I think in kind of our research when we were looking at the policy statement in 9.46, we found a most recent edition in 1994 was an addition of keeping the criminal element out of gambling. The sentence promotes social welfare by limiting the nature and scope of gambling activities and by strict regulation and control. That is the most recent change to the policy statement itself.

**Chair Bierbaum** asked if the Commissioners had more comments.

**Commissioner Parker** asked if we agree to this proposed rule change at this meeting, it's an up or down issue at this meeting, is that correct.

**Assistant Director Harris** replied it's up for final action today.

**Commissioner Parker** asked if there is anything projected where we would revisit this down the road to assess the impacts.

**AAG Ackerman** offered to address that. If the question was do you have to accept these dollar amounts or reject it in total, I don't believe you are so limited. You could chose to enact a rule and set the dollar limit at whatever number you chose. You're not limited to the number that's been proposed. That would take the form of a motion to authorize the increase, but to authorize the increase at the number that the Commission chose. You're not obligated to accept the number that's before you.

**Director Day** clarified there are two petitions on the bet limit that is still under consideration. This one is with house-banked games. The poker bet limit increase is still active and will likely be on the Commission's agenda in October.

**Senator Margarita Prentice** commented she was having to reach back to the '94 statement. That was the year after we had the 1993 task force where there had been a group that went all over the State; we went into Canada and went down to Oregon. At that time, it was all five table card rooms. The decision when we came back was that they would go up to 15 tables. The whole notion when we were talking about criminal element, we said big time crime is not going to be coming in when you've got these kinds of limits. They can't be big casinos, so we felt safe in doing that.

We also were just seeing the first of the tribal casinos. I think the Lummi's were grandfathered in, and the Tulalip's were already starting when we went around, Nooksack had been open like six months. It was all new to us and we were in very unchartered territories. So that was how the world looked then. The idea was if this is their world, we wanted to give them some relief beyond the five tables because that was extremely limiting. That was what that statement reflected.

**Chair Bierbaum** asked if either the proponent of the petition or any other members of the public want to make any comment.

**Ms. Dawn Mangano** addressed the Commissioners, Chairman, staff, ex-Officios. I'm Dawn Mangano. I'm representing Yakima Casino Caribbean. I live there and operate that casino. I came before you last month and talked about asking for you to consider a limit increase so that I might have an opportunity to go after a different demographic of customers that would allow me to increase and stimulate my food and beverage business by revamping my bar, by changing up my menu, adding more steaks, better steaks, seafood. It's something we opened with. We weren't able to sustain some of that, and some things we haven't had a chance to try like a pomegranate martini, a \$9 drink. And I guess I'm asking for your approval today on those limits to give me an opportunity to try that at our casino. And this would give me an opportunity. There are certain individuals that enjoy that level of gaming, have an opportunity to go other places for it, and have the disposable income to support that kind of play. And I just want to be able to have an atmosphere and give them the things that they want so that they'll want to come to my establishment. So I'm asking for your approval today. Thank you for your consideration. Do you have any questions for me?

**Commissioner Parker** responded, asking what would you think about increasing the wage limit to \$300 instead of \$500?

**Ms. Mangano** replied stating I am asking for the \$500 today because that's the level that the specific customers I'm thinking of are able to play not very far away. To be able to be in direct competition with that, and that's the level they play at. The change to just \$300 I don't think would really make the impact that I'd be able to make those changes.

**Ms. Mangano** stated I'm not a great larger group public speaker, but this is something I feel very motivated about, and that's why I've come before you today. Yes, there's the bed and breakfast gentleman that likes three card. He's a chef and the owner. And the Ray's Meat – I probably shouldn't say any names specifically – but the owner of our local distributor, and then there's a lady who owns several shops, and she enjoys that as her form of entertainment. So these are just people that are out, have the extra money, and this is what they enjoy doing.

**Chair Bierbaum** asked for additional comments or feedback.

**Mr. Chris Kealy** addressed the Chair. My name's Chris Kealy with Iron Horse Casino in Auburn and Everett. I'm not sure if I can't help myself, or I'm going to wreck something, or help something, or whatever, but I'll give it a go. The \$500 request, we're going around this expansion of gambling issue and we're right on the edge of it again. And yet when I look at the situation in the State, I think that we have confidence that the socially acceptable gaming limit in the State is at \$500. And we feel like in our product mix that makes sense for us to offer that with what we have.

I definitely have the same antidotal stories that Dawn has. Just since we've gone to 24 hour gaming we have a fellow that was over at the racetrack. He spends his weekends at the racetrack. He parks his '09 Bentley under the (unintelligible) at my place. He has definitely enough money to do what he wants to do. And he wants to gamble at that level. He wants a range, really. He doesn't really want to play \$500 every hand, he wants a chance to start out at \$50 or \$100 a hand and as he's playing along for a few hours, if he gets stuck it's pretty typical for a gambler that just wants to win out, and they do. You'll see the win percentage on a higher limit gaming goes down because players tend to play out. And it just happens to be the way he likes to participate in the gaming activities.

**Commissioner Parker** questioned "play out".

**Mr. Kealy** explained by saying he cashed in \$2000 to start with and just gets going and is playing along and pretty soon he's down to \$500. It's not uncommon at all to see him pull out another \$3000 and then just spread across the table and take his chances on coming back. And he does. And some nights we're like, oh.... It's gaming, it goes both ways. And there are winners. And when they're winning, we're losing. But it's just a product mix and a demographic that we're really interested in trying to tap because I have fine dining restaurants in Auburn, I have all the tools to be able to do that, but it's not utilized as often. And it just adds energy to the room.

When people see that kind of action, they just kind of like to watch it. It's fun. In Las Vegas when I walk by a table and I see it at \$2500 to \$3000, when I see a guy playing \$3000 a hand, I stop and watch for awhile because it's interesting to me. It's just a demographic of what we have going on in the State.

**Commissioner Ellis** addressed Chris stating I don't have an answer to this question, it occurred to me as you're describing this situation and having listened to Dawn. From our point of view and looking at the policies reflected in RCW 9.46.010, should we be considering whether we should be gearing the maximum betting limit that is proposed here to a gambler like the one you're describing with his Bentley and his wealth, or if we gear the limit to that kind of a bettor, what are we doing to bettors that don't have that kind of money? Even if they may not be psychopathic gamblers, or sociopathic gamblers, nevertheless is there a category of gamblers that can't afford those kinds of stakes but would unfortunately fall into playing games at that level and do themselves and their families real damage?

**Mr. Kealy** replied, the classic statement related to addictive behavior, and addiction being different than habit. Habit is something that you're doing just because you chose to do it and it doesn't impact your mortgage or your kids school tuition or otherwise. The addictive behavior component, you're never going to get away from that in the classic saying that one bet's too many and a million is not enough. But at \$5, \$10 a hand, any level at all, the addictive personality is going to get themselves

into trouble. And the \$500 limit is not even remotely going to appeal to that person because they want more activity anyway. And they recognize that if they put \$500 down three times in a row, two out of three times they're likely to lose it. So they're just not going to do it.

But what they will do is they'll blow their money at \$10 at a time. You can't stop that. And 5% of the population is stuck in that mode, where with alcohol it's more like 30%. So it's a pretty detailed situation to watch a person who is doing that. And you'll see the signs through check bouncing and credit card machines allegedly not working, over beating on it, and whatever. Then it's time to talk to those people. We deal with that now. And everybody that's responsible in gaming does deal with that now. And we work our best to make sure those people are not impacting their families. We have self-barring statements, we have the tools in place to help these people stay away from gaming.

**Commissioner Parker** stated it seems like the discussion has really gone from the nature of the proposal, that is to raise a betting limit from the point of view of its impact on social behavior of the public or patrons of the establishment, and we kind of skirted around the question of competitive edge. You refer to the fact that you have customers come in that perhaps you would get more of those customers on a more regular basis if you're offering the same betting scheme as the competition over at the tribal casino. How do you assess the policy question?

I mean when we discuss that issue of competitive edge when we deliberate over Tribal Compact amendments that impact the type of gaming that they're offering, or the type of enterprises that they're doing, our discussions have revolved around a question of most favored nation principle. But the term itself refers to the fact that we're talking about people who are governmental entities engaged in this enterprise. And when they're debating issues of competition, that's in the context then of the issue of the rules in relation to how it should apply to these governmental entities. And now I'm kind of uncertain as to how to treat that question when we talk about it in relation to the card room enterprises in competition with the tribal card room enterprises. Would you share a view on that?

**Mr. Kealy** replied, sure. The policy considerations involved in your position to determine whether or not we should compete, at what level we should compete with the most favored nation status of tribal Americans. My most favorite nation is the United States of America, and that's what I'm part of. And I like being a citizen in the State of Washington, I like paying my taxes, I like doing my job, and being a business person. I like to be able to compete in a socially acceptable level that we've defined. Dawn's presentation is accurate in that we are not going to be able to appeal to a higher clientele if we don't have the tools to do so with the product mix that we have.

So am I going to be able to make any dent in the Muckleshoot's bottom line with \$500 limit on my blackjack? No. They have 2000, 2500 machines in one building and another thousand or so in another, and hundreds of tables and all kinds of things going on. It's just a small Cheers like mentality for what we are in our social card room setting that we can have a demographic that is broader.

And another example of that is I had some business people in town last week from Florida that I'm doing a mini-storage business with. And we go down to my mini-casino, or card room. They want to see it, they want to – you know, how's this thing, they're interested in it. And none of them want to gamble at the level that we had to offer. They wanted to go to the Muckleshoot and play there, and we did. So it's interesting that I can't even appeal to my own business partners and friends from Florida. Anyway, I thank you guys for your time and consideration on this matter. You guys look at \$500 like it's the top end of the world. Honestly when you go to Vegas and otherwise, it's not. \$500 is still a very conservative limit, and I hope that you guys can understand it that way.

**Commissioner Ellis** stated to Chris, knowing your usual practice of doing an excellent job of maintaining facts and figures regarding the implications on the bottom line of your business at various proposals, \$500 in the context of looking at it as kind of a price increase for a member of the industry,

do you have any data on what the implications of that kind of a price increase would be? What would that do to your bottom line? How do you see that in dollars and cents?

**Mr. Kealy** responded, well, I guess I will lean on a little bit of my previous success in this area. When we went from \$100 to \$200, some people were trying to do the math that we were going to go from \$4 hundred million a year in gaming through the card rooms to \$8 hundred million. And that just wasn't going to happen. And what I was testifying to then was we would see a smaller erosion of our market share. And we have seen erosion, even going from \$100 to \$200. We've gone backwards to I think \$385 million in gross receipts for the card rooms. And we're still drifting south by most conversations I've had. So this isn't really going to do anything to boost it. It's going to keep the erosion factor at a slower pace. But that's all we're going to continue to experience in the card room industry is an eroding fact. And that's okay, because we're businesses that are selling food and beverage and we're doing other things. And we're creative business people and we're trying to do what we can do. This won't have an increase at all. It will still be less of an erosion.

**Commissioner Ellis** commented I understand your idea of the erosion on an industry wide basis, but let's go to the micro analysis on a card room-by-card room basis. As I recall the average card room that is still in business in this State is doing very well. I assume that if we looked at the data over time, particularly if we extended our analysis back into the late '90's before the 15 table rule went into effect etcetera, we did see a huge increase in the per card room net and gross revenue. So on a card room-by-card room basis, what do you think this proposal would do?

**Mr. Kealy** stated, well again, on a card room-by-card room basis, over half the card rooms today do not make money, do not show a black bottom line. The ones that do, and mine do, on a case-by-case basis, this stands the best chance of keeping that erosion factor at bay. As we all know, inflation is running. And with the minimum wage tied to inflation, the index is going to jump on us January 1<sup>st</sup>, my estimate is between 50 and 75 cents an hour. It's going to be the biggest jump we've seen. That times the 7000 hours it effects, becomes the payroll demand increase. And then you multiply that times the tax overburden, which is about a 1.19 factor, blah, blah, blah. I'm looking at something in the neighborhood of \$10,000 to \$15,000 every two weeks as an increase to the wages alone. So on a card room-by-card room basis, this is still not going to do an amazing amount, it will just give us a different demographic to concentrate on and maybe have some successes in those areas.

**Mr. Monty Harmon** addressed the Commission and staff of the Commission. Monty Harmon, Harmon Consulting, Incorporated. I just wanted to add a little of the insights that I see as I go out amongst the industry. I am working with a couple of failing card rooms trying to help them with their tax burdens. They're not all well, and I think Chris Kealy mentioned that.

But after I work during the day, maybe I'll go out and have a beer and relax amongst the crowds. I have seen and heard customers say I'm going some place else where I can bet at higher limits. That I have personally experienced. And therein lies a situation where a customer would stay, would enjoy food and drink, and stimulate that business. I have also been in locations in this State that do not want to go to higher limits. Even though they have a \$200 ceiling, they stay at the \$100 limit because they feel that's where they are safe and where their customer base is best held.

Increasing this limit does not mean that statewide everyone is going to use the higher limits. And I just wanted to bring that to your attention. Thank you for your time. If you have any questions –

**AAG Ackerman** addressed the Chair. I guess I'd just like to offer a note to the Commissioners, having heard the discussion today. This is far more discussion and consideration than I recall being given at the earlier meetings. I think that may be due to people's schedules and inability for all of you to be at various meetings. But with that I'm sensing some continued thought being given by the Commissioners to this topic. I would just point out that you do have the ability to set this over for a

month, if you wish to obtain additional information, or just to give it further thought. My reading of the record would indicate that you're within the time limit to consider this next month, if you would rather do it then, or even to delay it as much as to November. So that's an option for you if you feel that you're not prepared to vote at this time.

**Commissioner Ellis** commented I think that's a good proposal. The definition of Class II gaming includes card games that are played in conformity with the laws of the State regarding hours or periods of operation and limitations on wagers or pot sizes. Do we necessarily, or potentially, if we were to approve the petition to increase the limit to \$500, bring current tribal card games into the realm of Class II gaming rather than Class III gaming? Is that an issue that we should be concerned about?

**AAG Ackerman** responded no. I don't think that is an issue. The Class II gaming essentially for tribal purposes is poker. Generally Class II for tribal purposes is poker, and the other types of card games that we offer in house-banked card rooms are Class III.

**Commissioner Ellis** explained that he is looking at a page of the Manual on Indian Gaming Law that I was given, and it doesn't distinguish between poker and other card games. That doesn't mean for a second that there isn't a definition somewhere else other than on this page that I have. But it simply indicates that the term Class II gaming means, and then (2) is card games which are played in conformity with State laws as I read a minute ago. So I don't see that distinction here. Is there a distinction elsewhere in the rules that indicates that within the definition of Class II the only card game that is covered is poker?

**AAG Ackerman** replied I'm not sure what you're referencing. My understanding under IGRA is that Class II covers poker. In fact all of our current Compacts with tribes address the other types of card games, and specifically list them out as Class III gaming in the Compacts. So I'll take a look at this, but I'm not quite sure what it's referring.

**Director Day** suggested for clarification maybe I can help out. I believe house-banked card games are specifically defined and identified. So it's kind of the reverse situation as a Class III game so that poker would end up Class II, and is a Class II game. So this particular petition wouldn't have any impact on that differentiation directly. But the one with poker limits, most likely would.

**Commissioner Parker** addressed the Chair. I think we've heard a suggestion that we defer action on this until the next meeting. But I'd like to see what people think about an amendment to the proposal to propose that the limit be amended from \$500 to \$300. Because it seems to me that speaks to the question about what card games are trying to offer, but it doesn't jump to the \$500 limit, which I think is causing me at least a little hesitation to jump into it.

**Commissioner Rojecki** remarked he would also agree with Commissioner Parker and would second that.

**Chair Bierbaum** agrees with the notion that it might be a good idea to defer final action on this. Reserving the right to change my mind, I'll just share my thinking on it right now since maybe we're not going to vote today. The arguments that we've heard from the proponents have to do with two arguments. One has to do with the health of the industry, and the other has to do with tribal parity. Neither one of those arguments in my mind are compelling. It's not our job to ensure the health of the industry, and isn't something that I would ordinarily consider in deciding whether or not to enact a rule change. Similarly I agree with Commissioner Parker that the notion of tribal parity is not on the table. However, I think the Commission has an obligation to ensure that its rule making has a rational basis, and it can't be arbitrary and capricious. The goal of the Commission is to ensure that gambling is legal and honest. Our staff has told us that the regulatory concerns are minimal, that the resource impacts are minimal. I listened to Commissioner Parker talk about does this take this out of the social pastime. Clearly it doesn't, and I'd cite the tribes, not because there's any notion of tribal parity but

the tribes have had \$500 limits for a very long time now. Experience has shown that that has not changed the game from a social pastime to something else. So I think that to just pick a number out of the hat, whether it's \$200, or \$300, or \$400, or whatever, in my mind that's arbitrary and capricious. There has to be some rational basis for our decision. The tribes have had \$500 tables. This argument is not about tribal parity. It has to do with is the Commission able to perform its function, which is to ensure that gambling is legal and honest at the \$500 limit. The answer is clearly yes. So to not approve the petition would have to have some rational basis, and I haven't heard one yet. Reserving the right to change my mind.

**Commissioner Ellis** stated since I haven't expressed an opinion yet, that I tend to agree with Commissioner Parker and Commissioner Rojecki. I do think that I have some reservations about the \$500 limit, and I don't agree that the situation is really clear cut that moving from a \$200 limit to a \$500 limit would not potentially take the game out of the clear context of being a social game and something more of a profit making game for those people that would care to bet that much. I am concerned about the health of the industry. Certainly our primary responsibility is to regulate the industry to ensure that gambling is fair and honest. Once we have done that, many of the things that we can do can affect the industry, and the industry involves investment by Washington citizens, and it involves the employment of many Washington citizens. I don't think that we can ignore the implications of what we do with regard to the health of the industry. I do think that moving from a \$200 to a \$300 level would be a nice "price increase" for members of the industry. It seems to me that that is a reasonable step to take. And if there were a motion to that effect, I would vote in favor of it.

**Chair Bierbaum** asked if there was any discussion?

**Director Day** responded that there are two limits, so Commissioner Parker, would your motion apply to both?

**Commissioner Parker** replied yes.

**Commissioner Ellis** verified that the structure of the petition in the number that we're changing is in one portion of the section, and then the progressive jackpot limit cross references that same section. So if we change the number from \$200 to \$300 for the purposes of the general limit, then the progressive jackpot limit is automatically thereby changed.

**Director Day** stated we have legal nodding heads to that effect, so you are correct, sir.

**Chair Bierbaum** wished to state for the record I'll say I'll vote in favor of it only because it's better than no increase at all. But again, I think that we completely open ourselves up to the argument that that's completely arbitrary and capricious. It sounds like, Commissioner Ellis, you just picked a number out of a hat that you say "represents a nice price increase". I'm not sure that that's a rational basis upon which to enact a rule change.

**AAG Ackerman** pointed out, given the issue of the progressive jackpots, that there is a problem with the way the amendment is currently listed if you pass the motion that you currently have before you. And the problem is if you take a look at the amendatory section that's in your packet, it's WAC 230-15-140 -- (3) says bonus wagers for progressive jackpots must not exceed manufacturer's rules or limits in number (1) above. I interpret what the motion would do would be to change (1) from its current language of "must not exceed \$200" to "must not exceed \$300". I think the problem with (3) is it appears to say that a manufacturer could set a limit higher than \$300, and that that would be permissible. Currently it says manufacturer's rules or limits listed in (1) above.

**Commissioner Ellis** asked if you could do it by saying "whichever is less".

**AAG Ackerman** replied I think that would be the way to address it.

**Commissioner Parker** corrected his motion to include "whichever is less".

Commissioner Parker moved to amend the proposed rule to provide for an increase from \$200 to \$300 and remove \$1 limit on bonus wagers for progressive jackpots. Also to amend WAC 230-15-140 (3) to read manufacturer's rules or limits listed in (1) above, whichever is less. Seconded by Commissioner Rojecki. *Vote take; Approved unanimously.*

**8. Incorporating Activity Report Definitions, Resident Agent, and Reporting Period for Amusement Game Licensees**

- a) New Section WAC 230-06-150 – Defining “gross gambling receipts”
- b) New Section WAC 230-06-155 – Defining “gross sales”
- c) New Section WAC 230-06-160 – Defining “net gambling receipts”
- d) New Section WAC 230-06-165 – Defining “net gambling income”
- e) New Section WAC 230-06-170 – Defining “net win”
- f) New Section WAC 230-06-175 – Defining “cost”
- g) New Section WAC 230-03-052 – Resident agent to be appointed by out-of-state applicants and licensees
- h) Amendatory Section WAC 230-13-169 – Annual activity reports for commercial amusement game licensees

**Ms. Hunter** advised the commission that there are eight rules up for final action today. The first six incorporate definitions that we use on our activity reports, and those are the reports that licensees complete and submit usually twice a year. The seventh rule requires out-of-state applicants and licensees to have their resident agent's information on file with us. And that's mainly in case we need to send or serve documents to the licensee. We obviously don't want to have to travel out-of-state to do that. And then the last rule corrects a typographical error that was made for commercial amusement game operators dealing with their activity reports. And the current rule says they have to submit the activity reports two times a year, but actually they just submit them annually. So staff would recommend final action with an effective date of January 1. And I am happy to answer any questions.

**Chair Bierbaum** asked if there were any questions or discussion.

**Commissioner Ellis** wished to clarify. I take it that since the materials have been submitted there have been no statements either supporting or opposing the rule changes by members of the industry?

**Ms. Hunter** stated that is correct. There has also been no discussion at the study session about them.

**Chair Bierbaum** asked for comments from the public. No response. Do I have a motion?

**Commissioner Ellis** addressed the Chair. Are we safe to vote on these rules as a package?

**AAG Ackerman** confirmed that as long as you already have offered the other Commissioners an opportunity to request that any of them be taken individually.

**Chair Bierbaum** asked if any of the Commissioners wish to take any of these rules individually?

**Commissioner Rojecki** replied no

Commissioner Ellis moved to approve the rules as submitted to include, all in WAC 230-06, the specific subsections being 150, 155, 160, 165, 170 and 175 and new section 230-03-052 and amendatory section 230-13-169, all to be effective January 1, 2009. Seconded by Commissioner Parker. *Vote take; approved unanimously*

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

***Original Proposal filed at the May 2008 Commission meeting***

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

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

- b) Amendatory Section WAC 230-15-145 – Making wagers with chips or coins

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

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

**Chair Bierbaum** commented that we're at agenda item number 9, Mr. Harris. And this rule is up for discussion, correct?

**Mr. Harris** replied that Item number 9 is a Petition for Rule Change for the Recreational Gaming Association. The item is up for discussion. The petitioner is requesting to be allowed to use community cards for mini-baccarat to be played in the commercial card rooms. Currently players must have their own hand and cannot bet on another players hand or the house's hand. This would also allow nickels and dimes to be used on games that charge a commission. This type of game is currently allowed in the tribal casinos under Tribal Compact. Staff would need some additional training on this new type of game. At the last Commission meeting staff and the RGA proposed an alternative package 2, which is in your packet, to clarify the request. And basically it makes three changes. It changes the order of two of the WAC rules that have to do with card game approvals. It changes the word "approved" to "authorized" in WAC 230-15-045 so all three of the rules use the same verbiage. And it would require mini-baccarat to be played in a manner described in Hoyle for baccarat, but would put a limit on the number of players, which is limited in our WAC Rule Manual. The petitioner is present. Do you have any questions?

**Chair Bierbaum** asked if the Commissioners have any questions for Mr. Harris? Are there any comments from the members of the public or the proponent of this petition? Do we have any discussion among the Commission members about this proposal? When is this up for final action, Mr. Harris?

**Assistant Director Harris** responded that it would be up for final action at the next Commission meeting.

**Commissioner Ellis** asked of Mr. Harris. The version of the staff's materials on the proposed rule change indicate that the staff recommendation was further discussion. Does the staff at this point have a recommendation on whether the Commission should approve or disapprove the petition?

**Assistant Director Harris** replied that as far as the use of nickels and dimes, there is no concern with that. As far as addition of a new game, the only concern would be we'd have to train staff on the game. As far as regulatory concerns, we would just regulate it just similar as we would regulate all other approved games.

**Commissioner Ellis** asked, does all of that lead to a recommendation by the staff to approve the petition, recognizing that there would be some regulatory impact by the staff having to become familiar with the game?

**Assistant Director Harris** replied that staff would recommend that it would be a policy decision for the Commissioners. Based on the definition of a social card game under RCW 9.46.0282, which the

previous Director of the Gambling Commission had determined that they had to have their own hand to be a social card game. That would be the deciding factor in your hands at this point.

**Commissioner Ellis** commented he remembered that position being described. Can you explain – I don't know if you were aware of specifically at the time of that concern that the then Director had. Do you understand why he thought it made a difference for the player to be playing someone else's hand as opposed to their own hand?

**Assistant Director Harris** responded by saying I would have to defer that to either Director or Amy because at that time I was just a Special Agent up in Bellingham. I did not have direct access to that information.

**Director Day** replied to Commissioner Ellis, as far as I can tell from the discussion, it was more a matter of social card game concept; that it was one player kind of playing against the other. It wasn't betting on the dealer's hand as such. That was the concept that was involved. I probably won't give you the exact answer you're looking for, but in staff's analysis and work with the Recreational Gaming Association and coming up with the appropriate alternative, we can find no reason not to adopt this rule at this point. We have worked it through very well and we don't see anything that would be a problem.

**Commissioner Ellis** thanked Mark for the responses to the questions.

**Chair Bierbaum** asked if there were any further questions for Mr. Harris. Is there any other input or feedback from members of the public? There being none, we're going to move on to the next petition.

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

*Original Proposal filed at the May 2008 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** advised the next item is item number 10, and is up for discussion. At the last Commission meeting you filed alternative 1, and that was a more narrow proposal than the original. Alternative 1 deals with the number of spots or players at house-banked card tables now. It would increase the number from 7 to 9. There are no changes in alternative 1 to the number of spots or players allowed at non-house-banked card games like poker. Last month, I explained what they allow in Nevada and New Jersey and at the tribal casinos. That's under regulatory concerns.

I would like to add that as far as statements in support, we have the additional letter from Representatives Kirby and Williams who both reference this particular change. We have a couple of statements against the rule change, and those were not in your packet last month. The first one is from someone who commented that he didn't think the increase was good for house-banked or non-house-banked games. The other one was from Andy Kimmerle and he was just opposing increasing the number of players at non-house-banked games. So again, alternative 1 doesn't deal with that, so it's more limited. At this point staff would just recommend further discussion. I'm happy to answer any questions, and it would be up for final action next month in October.

**Commissioner Ellis** stated the materials describing alternative 1 indicate that the RGA stated the proposed increase would allow players to wager on multiple hands. For example, three players wagering on three hands of cards. Somehow the math of that doesn't clearly demonstrate to me that we have players wagering on multiple hands, other than potentially their own hands. How does that

work? What kind of a game would three players be playing wagering on three hands of cards, other than their own hands of cards?

**Ms. Hunter** replied it would be just wagering on their own hands. So if the three middle Commissioners were playing, then Commissioner Parker would get three hands, you would get three hands and Commissioner Bierbaum would get three hands.

**Commissioner Ellis** verified each of the players has three hands.

**Chair Bierbaum** stated she has a question. Can you describe, the difference between the petition and alternative 1 in simple language?

**Ms. Hunter** replied, the main difference is both of the petitions, would increase the number of players or spots at house-banked card games. That's going to be blackjack and all of the different blackjack derivative games. The original proposal would have also increased the number of players that would be allowed at poker from 10 to 12. Alternative 1 doesn't include any type of a change with poker. It's just limited to the house-banked card games.

**Chair Bierbaum** responded that now poker tables get 10 players and they want to have 12?

**Ms. Hunter** clarified that under alternative 1 they would stay at 10. Under the original it would have been up to 12.

**Chair Bierbaum** asked if alternative 1 is the staff's recommendation.

**Ms. Hunter** replied that it was an alternative submitted by the Recreational Gaming Association. I don't think you have formally taken the first one off the table. Dolores Chiechi is here and can explain that. They recommend alternative 1. She's nodding her head.

**Chair Bierbaum** asked what is the staff recommendation?

**Ms. Hunter** replied that staff is fine with the alternative 1 increase. As we looked around at what is allowed in other jurisdictions that seemed more consistent. I imagine unless there is some new information, which I'm not expecting to happen, between now and next month, staff would probably recommend final action. I think some of the comments that other people made, that Assistant Director Harris made, everything that comes before you for the most part is a policy call. So obviously if you don't want to do that, you don't have to. We don't see any big regulatory concerns with it. We feel if there is increased cheating or any of those concerns, we'll just be back here with a rule proposal that says this didn't work and we think it needs to go back to 7.

**Commissioner Ellis** asked to clarify. Going back to my previous question about these three players with the three hands of cards, I had originally understood this rule to be a rule limiting the number of players at each table. As I read the amendatory section for alternative 1, it talks about the limit on the number of players at each table. It's not expressed in that proposed rule as to how the number of hands being played is affected by the rule change. Am I missing something? I mean alternative 1 rule change says card game licensees must allow only (1) up to 9 players or areas for wagering at any table in a house-banked card game. And then up to 10 players at any table on a non-house-banked card game. How does the rule relate to the number of hands being played by whatever number of players are at the table?

**Ms. Hunter** explained those are two different concepts. I think the number of hands and all of the betting around stuff tends to apply more with poker games, not with house-banked games. Mark's nodding his head in agreement, and Mark is definitely the expert on that part. I think what we were trying to do was to give kind of a real live example as to what the industry was wanting with that and what they were envisioning. My understanding from things that they said in different meetings was there are some players who think that there is a different strategy when there are three players at the table. They would each like to have three hands; that they like to play that type of a game. So I don't

know what makes that more fun or more interesting, but I'm sure real players must find a difference with it.

**Director Day** wanted it known, we did enter into discussions with the Recreational Gaming Association about this rule, so I don't want to leave them out there all by themselves because we were trying to look at the reasonableness of the position and what standard there might be. That's why we reflected under regulatory concerns, the other jurisdictions. We were trying to see if we were consistent in what there might be. Part of the answer to the question, there isn't an extreme amount of consistency about this area of limitation. It ranges from no limitation by the State to 7 players. But it looked like to us that the most common maximum was 9, so that's why we concurred that this appears to be a reasonable proposal to us as well.

**Chair Bierbaum** asked if there were other comments from the public or the Commissioners? This is just up for discussion. We do have comment.

**Ms. Chiechi** addressed the Chair, members of the Commission and staff, ex-officios. Dolores Chiechi with the Recreational Gaming Association. We presented this and are thankful to have been working with staff over the last several months on many of these proposals, which is why several of them have alternatives. It seems we've come together and determined what was reasonable, as Director Day had indicated. So we would ask that you take consideration on alternative 1.

Again another argument for our smaller operators is that if they have five tables open and they have a player come in and wants to bet two hands, they may have to open an additional table because there's only one spot left at a table. Then they have to bring on more supervisory positions, another dealer, and added expenses. So it could bode well for those smaller operators that are having high overheads, and taxes, and minimum wage issues. So thank you very much for your consideration.

**Chair Bierbaum** asked if anybody else would like to offer a comment. There was no response.

**11. 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

**The following was recreated from notes due to mechanical issues:**

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**Assistant Director Harris** addressed the Chair. Item number 11 is a Petition for Rule Change for the Recreational Gaming Association. The item is up for discussion. The petitioner is requesting that house-banked card game licensees not be required to have a staffed surveillance room when they operate only non-house-banked card games. At the May 2008 meeting, the Commission denied a petition from the RGA for a less defined and broader request because of regulatory concerns. At the meeting, Director Day said staff would work with the RGA to clarify their request and work towards an alternative that would satisfy the industry and meet our regulatory requirements. Staff has been working with the industry on this rule change. Possible regulatory concerns are if there is a player complaint the video recordings could not be immediately reviewed when the surveillance room is not staffed. Also, if a crime occurs there would be no one in the surveillance room to immediately review the recordings and take appropriate action. Additional staff time may be required to ensure the proper requirements are being followed when the different types of games are being conducted and it would also make unannounced inspections by agents more difficult. Staff would recommend filing this for further discussion. Petitioner is present. Any questions?

**Chair Bierbaum** asked if the Commissioners have any questions.

**Commissioner Ellis** responded. I guess I do. Mark thinking about the cheating cases or the cases involving dealers that rake into the token instead of the rake box, wouldn't this eliminate the surveillance for this type of activity?

**Assistant Director Harris** explained the cameras would still be taping in the surveillance room. It just wouldn't be supervised. Meaning there wouldn't be a person in the room with them.

**Commissioner Ellis** asked if staff has any problems with this.

**Assistant Director Harris** replied there were none.

**Chair Bierbaum** asked if there were additional questions. Do we have any comments from the public?

**Max Faulkner** addressed the Chair. My name is Max Faulkner and I am the president of the Recreational Gaming Association. We have been working with staff on this rule change and I recommend the commission approve this petition.

**Chair Bierbaum** asked if there any were additional comments from the public. There were none. Are there any comments from the Commissioners? Do I have a motion?

**Commissioner Parker** moved to file the provision regarding the surveillance room requirements for discussion. Seconded by **Commissioner Rojecki**. *Vote take; approved 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

**Assistant Director Harris** explained the next item is up for discussion & possible filing today. The petitioner is requesting that licensees must meet minimum cash requirement within three hours of opening instead of when they open and that cash on premises in the safe and vault, in addition to the cage, be counted towards the requirement. The Commission adopted a rule effective January 1, 2008, that required house-banked card room licensees to maintain a minimum amount of cash in their cage

before opening for the business day. Minimum cash requirements help ensure adequate funds are available to pay out prizes. At the May 2008 meeting, the Commission denied a petition from the RGA for a similar request because it would have allowed funds in the ATM to count toward the minimum cash on hand requirements. At the meeting, Director Day said staff would work with the RGA to clarify their request and work towards an alternative that would satisfy the industry and meet our regulatory requirements. Staff has been working with the industry on this rule change. Staff will need to change two compliance modules to accommodate this change and agents will need to review licensees' internal controls to verify they have established a time to meet the requirement. Staff recommends filing the petition for further discussion. Petitioner is present. Any questions?

**Chair Bierbaum** asked if there were any questions from the Commissioners.

**Commissioner Ellis** verifies staff has no problem with this.

**Assistant Director Harris** confirmed.

**Chair Bierbaum** asked if there were any other questions from the table? Are there any comments from the public?

**Max Faulkner** addressed the Chair. Staff has been very cooperative with this proposal. Working with us to come up with something that works for the industry and the agency. We ask that the Commission approve this. Thank you.

**Chair Bierbaum** thanked Mr. Faulkner and asked for additional comments from the public. There were none.

**Commissioner Ellis** moved that the Commission move forward the minimum cash on hand requirements for discussion. Seconded by **Commissioner Rojecki**. *Vote take; approved unanimously.*

### **13. Requesting and Scheduling an Administrative Hearing**

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

**Ms. Hunter** explained staff proposes removing subsections 4 a and b from this rule to make it consistent with the Administrative Procedure Act. This rule outlines the notice of hearing timeline and the requirements for any extensions. In some circumstances the current version of the rule provides a shorter timeline than what the APA requires. The practical effect of that is that during the last year there were 17 cases that required special action. Staff would recommend filing for discussion.

**Chair Bierbaum** asked if the Commissioners had any questions.

**Commissioner Parker** verified this would be for administrative purposes.

**Chair Bierbaum** asked for comments. There were none.

**Commissioner Rojecki** moved to amend Subsections 4a and 4b WAC 230-17-010 be filed for discussion. Seconded by **Commissioner Ellis**. *Vote take; approved unanimously*

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

**Director Day** advised the Chair the Tribal Gaming Background presentation would be approximately 15 minutes. We could ask for public comment and proceed with the presentation afterwards.

**Chair Bierbaum** asked for comments from the public? Lets proceed with the presentation.

#### **Tribal Gaming Background Presentation – Director Day:**

**1-Introduction:** Although we have been negotiating Tribal-State gaming compacts for about 17 years, it's worth a few minutes to review some background on how Federal & State law interact to form the foundation

for Tribal-State negotiation and compacts.

Disclaimer- not intended to be a legal argument but more of a practical summary.

**2-Washington State Constitution:** The State's constitution was clear through 1972 by prohibiting the legislature from authorizing any "Lottery" (gambling). However, in 2008 many of us may wonder how we got from a clear -NO to the mix of gambling activities that are conducted in Washington today.

**3-Existing Compacts:** This question may be even more perplexing when we consider the number of compacts and the extent of tribal gambling today (*review information*).

**Chair Bierbaum** asked how long we have had the lottery.

**Director Day** replied since 1982.

**Chair Bierbaum** asked if we had not had a lottery, would the tribes have been allowed a tls system at all.

**Director Day** answered, yes, based on the states Reno night.

**4-Map:** depicts each casino location

**5-Net Receipts:** 68% of state wide gambling net receipts. If we try to understand solely by looking through the lenses of our experience with state law and the Washington Administrative Code we will be no closer to actually understanding how state and federal law work through a tribal-state compact.

**6-State Gambling Laws:** We actually began down the road to modern day tribal gambling with the 1972 constitutional amendment providing for the legislature or public to create exceptions to the original prohibition.

**7-The Legislature Authorizes:** This led to a series of changes to state law that provided for various form of gambling to be conducted in WA. This is not an all inclusive list- rather those most significant to tribal gambling.

**8-Legislative Declaration:** Along the way the legislature also added well know language more limiting in nature for state gambling activities.

**9-U. S. Supreme Court California v. Cabazon (1987):** Mean while the United States Supreme Court issued the landmark California v. Cabazon Band of Mission Indians decision.

**10-Cabazon Quote:** This Supreme Court decision regarding tribal bingo in California essentially told states like WA that: *A tribe may not lawfully conduct gambling activities within a state that prohibits such gaming. Think back to the opening slide and the constitutional prohibition. If, however, a state permits gambling activities, subject to certain conditions or limitations, then a tribe may also conduct such gambling. And, because tribes are not subject to state regulatory enactments, the tribes are not obligated to comply with state imposed conditions or limitations also keep this mind on the gambling activities in question.*

The phrase Prohibitory versus Regulatory summarizes the court's ruling that essentially led to the Indian Gaming Regulatory Act (IGRA). We should keep in mind that most of our gambling laws are regulatory in nature. In other words we allow most gambling activities we just place conditions and limitations.

**11-Indian Gaming Regulatory Act (1988) IGRA:** In response to state concerns about the Cabazon decision which would have allowed for Indian gaming without state control or limitation Congress passed IGRA which established a federal framework for Tribal gambling. IGRA requires tribes to have compacts with states to conduct casino style gambling provided that the tribe is located:“.. in a state that permits such gaming for any purpose by any person, organization or entity...”

**12-IGRA:** These points (*review*) are important provisions of IGRA to keep in mind as we consider compacts and work with Tribes to negotiate compacts and regulate Indian Gaming. These provisions provide a much different foundation than the policy described in Washington law.

**13-Types of Gaming:** The Classes are important as only Class III gambling is subject to state jurisdiction  
*Class I Gaming*

*Class II*

*Class III*

Casino games or anything that isn't I or II pursuant to a Tribal-State Compact

**14-Mashantucket Pequot (1990):** IGRA was followed by this court decision based on a Connecticut case which is significant in defining how the new law would be applied in states where an activity is permitted but limited.

Once again the court clarified the prohibitory v. regulatory concept that became part of IGRA.

In this case Connecticut took the position that state law prohibited gambling. However, it actually prohibited commercial gambling but allowed nonprofit Las Vegas nights. However, the court found that the state permitted gambling and it was the proper subject for compact negotiation. It does not have to be the same game or include the same regulatory limitations. Result – Foxwoods and Mohegan Sun Casinos. In comparison WA is really in similar situation where limited gambling was allowed including Fund raising-Reno nights. Result- First compact 1991 and now with 28 out of 29 tribes. Of course, the first compacts did not include electronic or mechanical devices as the state and the tribes disagreed

**15-In Conformance with a Tribal-State Compact:** If a state permits itself or anyone to engage in any form of gambling it is the proper subject of negotiation.

Compacts provide the state the opportunity to negotiate limits and a regulatory role. Remember tribes generally start from the position, backed by federal law, that they can conduct permitted activities without the restrictions & limitations of state law.

**16-Tribal compacts incorporate:** State regulatory gambling law does not automatically apply to tribal gambling. Tribes and the state actually negotiate applicable state law (RCW) into compacts.

**17-State of WA v. Chehalis:** That leaves us with machine/electronic gambling?

Recall that the state's position was that it was prohibited and the tribes that it was permitted- Both sides agreed to submit the question to a federal judge.

Judge Van Sickle issued an order in 1997

A paragraph from that order describes some of the judge's reasoning and helps to illustrate the analysis set forth in the earlier Mashantucket Pequot case.

*As indicated, the activities of the Lottery Commission are not subject to the Gambling Act. Also as indicated, the Commission has formulated an impressive array of games over the years. The information provided in this case does not reflect in any detail the mechanics of these games, but the question is not what is in actual use, but what is permitted. Thus, the precise nature of the games is not important. The issue is what restrictions are placed on the type of games permitted. The state statutory ban is that "The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited."*

**18-Appendix X:** Result of the negotiation was Appendix X which created the specifications of the Tribal Lottery System (TLS).

**19-Scratch Ticket:** A primary point within the judge's order was to exclude devices that allow individual play against the device.

Led to development of an electronic representation of a lottery scratch ticket game with a set number of winners. Players compete against each other to draw a winning ticket.

**20-Electronic Lottery:** A manufacture ring computer creates the game set and sends a subset to a central computer. When the player selects the next ticket is dispensed in the order received- a marriage of scratch and electronic online games.

**21-Typical Slot:** In comparison the TLS clearly differs from the operation of a slot which continually generates random numbers that a player hopes to match.

**22-State laws & Commission Rules:** As a result, the Commission walks a line by enforcing state law and WAC outside Indian Country and negotiating and concurrently regulating Indian gaming based on federal law and Tribal-State compacts.

**Chair Bierbaum:** That was good.  
**Commissioner Ellis:** That was helpful.  
**Chair Bierbaum:** Anything else?  
Meeting was adjourned at 11:20 am

Minutes prepared by:

Hollee Arrona  
Secretary Senior