

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, OCTOBER 8, 2009
APPROVED MINUTES**

Chair Keven Rojecki called the meeting to order at 1:35 p.m. at the Lacey Community Center and introduced the members present:

MEMBERS PRESENT: **Commission Chair Keven Rojecki**, Tacoma
 Commission Vice-Chair John Ellis, Seattle
 Commissioner Peggy Ann Bierbaum, Quilcene
 Commissioner Michael Reichert, Maple Valley
 Representative Gary Alexander, Olympia
 Representative Geoff Simpson, Covington

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

1. Agenda Review / Director’s Report:

Director Rick Day briefly reviewed Thursday and Friday agendas, pointing out that Friday would be a new venture; an organizational meeting for the poker limits stakeholders’ discussions. The Commission has not attempted this kind of a process before and it is not anticipated that the protocol will be the same as a normal Commission meeting because the idea is for discussion with stakeholders. The sole topic at tomorrow’s session is intended to be Texas Hold’em Poker Wager Limits Stakeholder Process to start a process about how Texas Hold’em, or wager limits as pertains to poker, may be changed and other steps that could be taken to improve the game in the state of Washington. The meeting is designed to discuss what hasn’t worked, what has worked, go into what kind of thought process the stakeholders would recommend or prefer for the Commission to move forward with, what key points might be discussed during the process, and the next steps. Staff hopes to gather enough information to bring a report back to the next Commission meeting for consideration by the full Commission body. There will not be any votes taken as there will probably not be a quorum of Commissioners present. The session will be recorded for record keeping purposes and there will be a sign-up sheet so those interested in continuing to play a role in such a stakeholder’s session can let us know where to contact them of future meetings or if they just want information from the stakeholder discussions.

Director Day drew attention to a letter from the United States Department of Interior confirming they have reviewed and approved the Eighth Amendment to the Tulalip Tribal-State Compact, which becomes effective when it is published in the Federal Register.

Public Service Announcement (PSA) on Underage Gambling and “NotaZander” Audio Clip

Director Day pointed out a memorandum and other information from Michelle Pardee regarding the proposed “Communication, Education & Awareness Program” directed at underage and problem gambling that began on October 6, 2009, in cooperation with the Evergreen Council on Problem Gambling. This program is one piece of the Commission’s broader program to increase awareness and knowledge of gambling crimes. It was approved by the Commission and funded through federal forfeiture funds. Another part of the program includes a concentrated outreach and education effort relative to law enforcement and prosecutors. This PSA program was sponsored through the Evergreen Council on Problem Gambling and developed through contract with an expert in the advertising area. Director Day explained the PSA is an educational program designed around a fictional character by the name of Zander who has a gambling problem and incorporates the new civil penalty that was enacted as a result of Substitute Senate Bill 5040. Director Day played the short PSA audio clip designed for the teenage and young adult audience.

Commissioners’ Work Session Draft Agenda

Director Day explained the work session was designed to provide an opportunity for the Commissioners and Ex-Officios to ask questions and listen to each other about some of the more complex and strategic issues facing the Commission. After the Work Session in January 2009, consensus was that it would be helpful to hold the sessions every year. Because time is available during the regular November Commission meeting to hold the work session, it was scheduled for 1:30 p.m. on Thursday, November 19, at the Lacey Community Center. The agenda was based on past agendas and is being presented for consideration, changes, and approval. To help strengthen the government-to-government relationship, during the last session the Commission invited Chairman Ron Allen of the Jamestown Tribe to share his thoughts. The Commission found that discussion helpful and Chair Rojecki sent a letter to Chair Allen extending an invitation again this year to address the Commission or designate another tribal leader if he is unable to attend. In addition, Chair Rojecki invited the Governor’s office and the chairs of the respective legislative committees, given that often there is a recurring debate about respective roles between the Governor, the Legislature, and the Commission. Director Day reviewed the draft agenda and asked if the Commission had any changes or wanted to make a motion to adopt this as the final agenda for the work session.

Chair Rojecki asked if there were any questions or comments; there were none, **Director Day** said staff would proceed with the draft as the final agenda.

House-Banked Card Room Activity and Financial Statements Summary

Director Day reported house-banked card rooms are required to submit financial statements each year, which our Financial Investigation Unit analyzes. In his cover memo, Supervisor Keith Schuster of the Financial Investigation Unit noted a few things:

- Licensees reporting a positive net income decreased from 53 in 2007 to 38 in 2008.
- As of the reporting date, two licensees failed to submit financial statements for 2008 compared to zero licensees that failed to submit for 2007.
- The number of house-banked card rooms has declined from 84 at the end of 2007 to 74 at the end of 2008.
- Last year there were 20 violations written by the Financial Investigation Unit and this year there are only 7 (as of the date of this report). So there has been a significant amount of progress made; although, approximately 7 of those that were in a violation situation last year have since gone out of business.
- The activity report comparison from the last meeting was cleaned up to remove some of the odd references that were in the values column and added totals, per Commissioner Reichert's request, to provide a second quarter 2008 comparison. The gross receipts reported by the licensees for each quarter dropped to \$58 million in second quarter 2009 from roughly \$67 million in second quarter 2008 (about a \$9 million drop).
- A short table was included that described the commercial stimulant food and drink sales from each house-banked card room that put in Baccarat, which shows an increase from about \$3.1 million to \$3.2 million. The Riverside in Tukwila is one location that had a dramatic increase in food due to the addition of Baccarat. Part of the justification for adding Baccarat for house-banked card rooms was the testimony that it would aid in increasing food sales in some areas, which staff are finding to be somewhat true.

Commissioner Ellis noted that when looking at the first page of the memo showing the numbers of licensees in 2008 versus 2007 with a positive or negative income, many businesses in these economic times are showing significant decreases. Commissioner Ellis asked if Director Day knew how the Lottery was doing when comparing 2007 to 2008 or how they are doing in the recessionary period. **Director Day** was not sure, but thought they had an increase in 2008 and then actually experienced a decline in 2009. He offered to find out and report back at the next meeting. Director Day noted that, from the numbers staff is seeing, it appears the house-banked card room numbers are going to be worse in 2009.

Performance Management Confirmation Update (PowerPoint Presentation)

Director Day reported the presentation is about employee accountability and performance. Lisa Benavidez, Human Resources Division Administrator, will update the Commission regarding the Commission's performance management confirmation and ask for approval to move forward with the process. Director Day introduced Ms. Benavidez who replaced Phyllis Halliday, the prior Human Resources Administrator, about a year ago. This is her first opportunity to present something to the Commission. Ms. Benavidez has over 20 years

of experience with the state through a variety of departments: the Auditor's office, Labor and Industries, Veteran's Affairs, and the Gambling Commission. Just about all of her experience is with Human Resources in some form. Ms. Benavidez does an excellent job and Director Day appreciated her joining the Gambling Commission. She was born and raised in the San Francisco Bay area and has one brother, but is close to her 18 aunts and 39 first cousins. Ms. Benavidez is married and is getting used to the empty nest experience.

Ms. Lisa Benavidez presented a PowerPoint with information about performance management confirmation, explaining it is a way to recognize the good work that our employees do. It is not to recognize them for doing their regular jobs, but is for going above and beyond and exceeding the expectations of their positions. It is also a way to recognize our employees, not only for their performance but for their innovation and leadership. Performance management confirmation has been one of the agency's strategic plan projects since 2005, which is when the performance management confirmation was allowed by civil service reform in the new rules. Prior to these new rules, agencies could only pay employees according to the compensation plan, which typically meant they could only be paid for time in grade or years of service. Now we are allowed by rule to provide them with acknowledgement and recognition via pay and leave for performing their jobs above and beyond. It is one more tool for supervisors to use in recognizing the excellent work their employees do. Performance recognition management can be a powerful tool to strengthen and support an agency's overall performance management strategy. In addition to leave and money, agencies can use performance management confirmation for ways to manage staff. Washington Management Service employees and Washington General Service employees are currently allowed by rule. The rules do not currently cover exempt staff, but plans are to recognize their performance as well. The list includes every type of employee and classification for our agency. While all employees are eligible, only those who exceed the expectations set forth in their performance and development plans will be recognized. Ineligible employees are those employees that have been under corrective or disciplinary action during the performance review period. There are four types of recognition awards for employees: lump sum recognition pay, lump sum recognition leave, accelerating the periodic increment date for employees, and using performance as a consideration in layoff. The Gambling Commission will only consider awarding lump sum recognition leave. The monetary abilities are not allowed by the Department of Personnel at this point due to the current state of the budget.

Commissioner Reichert asked what was not allowed. **Ms. Benavidez** replied anything that would have monetary impact, like lump sum recognition pay and accelerated periodic increment dates.

Chair Rojecki asked if increased vacation was considered pay. **Ms. Benavidez** replied it was not considered pay, so lump sum recognition leave would be allowed. This is not intended to be seen by employees as a year after year entitlement program, but is to be based only on performance for one specific year based on performance development plans and for

exceeding those goals and expectations. It is a one-time award that will be recommended and awarded on an annual basis; it will not become part of normal salaries and is not a way to increase base salaries, which is prohibited by law.

Commissioner Reichert asked if the accelerated incremental pay increase was just for one year and then reverts back to the old date of increase. **Ms. Benavidez** believed it remains on the same date; that it would only accelerate for one year. **Commissioner Reichert** said it would stay there, so there would be some overall benefit.

Ms. Benavidez explained there are five categories for awards: service, productivity, achievement, innovation, and leadership. The categories have two award levels within each of them: Tier one and Tier two. Tier one would expect employees to exceed the key results expected and key competencies identified in their performance and development plans, plus demonstrate outstanding performance results and/or achievements. Tier two would require employees to meet all the criteria in Tier one, demonstrate extraordinary performance or leadership, pro-actively identify and resolve issues with significant impact, or make recommendations to accomplish what others did not think of or thought could not be done. Criteria and definitions for each of those will be identified, defined, and available to all staff to ensure that no one is surprised when someone does or does not receive an award. Current performance and development plans have been looked at and supervisors have been asked for samples of what they think would qualify a person for an award. Samples have been gathered from supervisors for a baseline to develop communication and training plans. Supervisors will be trained on what would qualify as an award. Because of the state of the budget, the Department of Personnel is only allowing agencies to award leave. Employees will initially only be awarded recognition leave of three days for Tier one and five days of leave for Tier two – this is a flat three days or five days of leave. Future plans, once allowed, are to provide monetary awards.

Commissioner Reichert asked if Ms. Benavidez anticipated the agency would have combinations of time and money. **Ms. Benavidez** replied the way the criteria was established and presented to the Department of Personnel with our preliminary application was one or the other. Some managers may recommend an award of leave, while other managers may recommend an award of money. The maximum allowed for leave through the Merit System or Civil Service Rules is five days.

Ms. Benavidez explained that in the future we would like to consider using accelerated periodic increment dates as an award and considering performance instead of just seniority for layoffs. Once allowed, we would like to use monetary awards: Tier one would be \$500 and Tier two would be \$1,000. Maximum allowed by Civil Service Rules is 15 percent of annual base salary. When developing and assembling our preliminary application, 2009 expectations will be used as a trial run. Training was provided to our supervisors in July to help them understand how to write performance and development plans, how they can be used in performance, and tying expectations for staff to the mission, vision, and goals of the

agency. The criteria have been developed and test driven against the performance and development plans and feedback from supervisors. That information will be used to develop and deliver training to supervisors as they get ready to build their 2010 performance development expectation plans for the upcoming year, which is what the first year of awards will be based on. Staff will first be eligible for awards in January 2011. Plans during this first year are to continue to learn from other agencies that have received performance management confirmation from the Department of Personnel, both from their good experiences and their bad. Those agencies are the Lottery, Financial Institutions, Veteran's Affairs, Community and Trade and Economic Development, Investment Board, Housing Finance Commission, and the Attorney General's office. The Attorney General's office was the first agency to receive confirmation and is in its fourth cycle. Department of Personnel has approved our preliminary application and is supportive of our intent to move forward. Our agency has taken a very slow and deliberate approach to implementing this recognition program and award system to ensure it is meaningful and successful. The Performance Management Confirmation Team and the Agency Leadership Team recommend moving forward and ask for the Commission's support and approval.

Commissioner Ellis asked if staff had learned in the course of this process if there were any particular examples of good or bad experiences that other agencies had encountered. **Ms. Benavidez** responded that one lesson that stands out is a bad lesson. The Attorney General's office had a high rate of employees that received awards in the first year (about 87% of their staff), which lent itself to an entitlement mentality with the staff. The next year when fewer staff were recognized to receive awards, those staff who were not recognized did not understand what they had done differently. Director Day is being open and transparent in his communications with staff.

Representative Simpson saw this as kind of a double edge sword; the people who get recognition obviously feel good about that and the people who do not get recognition may feel like they deserved it but did not get recognized. Representative Simpson wondered if Ms. Benavidez could give some examples of the objective criteria that will be used to evaluate performance. He thought the more objective it was, the better. If it is subjective, it lends itself to nepotism and that sort of thing. He asked Ms. Benavidez to describe what sort of mechanism would be in place to look at the effect of this program on employee morale and wellness. **Ms. Benavidez** replied a review program would be built in similar to what other agencies have for their employees. Department of Personnel also has criteria in place to monitor the impact on employees and if improvements in productivity or achievements of staff are being seen based on implementation of this program. Ms. Benavidez reviewed some of the criteria our agency has established. Supervisors will evaluate their employees and make recommendations for the awards to the Performance Management Confirmation Team. The Team will take those recommendations, measure them against the criteria set for each level, and determine whether the person should receive an award.

Representative Alexander pointed out a lot of agencies are currently going through furloughs where they are having to give up leave as part of the budget reduction solution. He wondered how that was going to play out with some of the other agencies or in terms of the overall budget process when additional leave time is granted for the Gambling Commission while other commissions and agencies are taking away leave, which actually translates into a reduction in compensation. **Ms. Benavidez** felt it was important for the Gambling Commission to be able to recognize its employees to show them how important the work they do is to our agency. The Commission has the budget to do it; although it has not specifically identified the amount of money that will be set aside in 2011 to do it. This recognition is for employees who go above and beyond and are innovative in what they do, with significant impacts and potential cost savings to the agency and to the state.

Chair Rojecki asked if these awards were planned for July 1, 2011, which is in the next budget cycle. **Ms. Benavidez** replied plans are for employees to be eligible for awards January 1, 2011.

Commissioner Reichert seconded Representative Alexander's question about the appearance of egalitarianism and asked Director Day if any negotiated bargaining unit was impacted. **Ms. Benavidez** replied Gambling Commission employees are not covered by any bargaining units. **Commissioner Reichert** asked if Ms. Benavidez was satisfied with the opposite side of this scheme; that incentives are put in place to award good performance or excellent performance and whether she was satisfied with the capacity to call into question not good performance. **Ms. Benavidez** replied staff is currently working with the supervisors to develop their skill set to be able to work with employees that need some correction, whether it is attendance or performance. Internal training is being developed to also focus on the problematic issues so the supervisors can deal with the other end of the spectrum as well. **Commissioner Reichert** asked if Ms. Benavidez felt she had the policy authority to do that; if it was just a matter of training. **Ms. Benavidez** affirmed.

Chair Rojecki asked what the next step would be; if the Commission had to decide whether to approve this today or if there was another opportunity for the Commission to make a decision based on this. **Director Day** replied there was always an opportunity for the Commission to make another decision if they chose to do that. If the agency was actually to move forward with cash awards, staff would bring that back to the Commission. **Chair Rojecki** asked if any WACS needed to be modified or if it was simply within state code under Civil Service Rules. **Director Day** affirmed it was under state code and no WACs would need to be modified. If the Commission preferred, Director Day would be happy to bring back a status report and a request to move forward with cash awards when that time came. **Chair Rojecki** thought that would be appropriate and it would help the Commission recognize and identify the positives and address any negatives. He echoed Representative Simpson's comments about their experiences at the collective bargaining table, although Chair Rojecki's was from a union perspective, but all too often it seems the Commission gets into subjective versus objective problems. Chair Rojecki hoped this was felt by the

staff of the agency to be a very objective assessment of their work and their skills and attempts to promote a positive and better environment, as employees for the agency and as a whole for the team of the Washington State Gambling Commission. **Director Day** noted it was very important to make sure there was no favoritism and employees see it as fair. He has had the pleasure of leading both union and non-union or exempt organizations and in either case favoritism can become an issue. Director Day felt this would be another tool to the entire workforce. The immediate supervisor makes a recommendation, but the leveling or justification process has to go to an independent team to be evaluated, which makes a lot of difference. Our Salary Team has reviewed the agents' pay plan, which is based around competency achievements, since it was implemented and it has been very successful. Nothing has come back to Director Day about the salary team after they have made a decision when an agent has asked a question, which demonstrates a great deal of success with staff. The concept of being able to award leave is still on the table with the other approved agencies and Director Day had not heard that they had decided not to do it this year.

AAG Ackerman did not know for sure, but thought it was still on the table with the other agencies. The Attorney General's office was the first to do this and is in its fourth year and his agency strongly supports this process. Director Day and his staff are very thoughtful and competent managers. One thing that AAG Ackerman has been able to take away from his agency's experience is that this process can become a huge time sink. He did not know that it had to be, but if an agency was not mindful of that possibility it many times does become a very significant resource drain. As a manager, AAG Ackerman was sensitive to it because they were about to begin the whole evaluation cycle this month. September 30 is the cutoff date his agency uses for their evaluation year. He will spend an inordinate amount of time in the next two months doing evaluations and other work to make sure this process is as fair and objective as it can be for all of the employees and to deal exactly with the issues that Representative Simpson, Representative Alexander, and Chair Rojecki have raised. It sometimes leads to a lot of process in order to try and build the most transparent and fairest process. One of the things the Attorney General's office does as an agency – and this starts a good eight months before the planning year kicks off – is to develop a strategic plan that is fairly comprehensive and has goals and objectives and specific things that have to be accomplished during the year. Each division of the agency has to create its own strategic plan that ties into the administration's plan. Then the managers sit down with every employee in the office and develop a performance development plan for them for the upcoming year that says what they will do, when they will do it, and how we will know they have achieved it. During the course of the year for which that plan is developed, there is an interim review to see if it is or is not happening, and if it is not happening then why not and what can be done about it. At the end of the year, there is a full-blown evaluation that entails calling around to the folks the employee has worked with during the year, both within the agency and outside the agency, to try and assess their performance and see whether they have met all of the key results and key competencies. From that is built the recommendation on whether someone qualifies for one of the performance awards. The

Attorney General's office has two levels of awards: the excellence award is very hard to get and a very small percentage of the agency gets them; and the performance award, which has become increasingly hard to get. The moral of this story is that it can become a huge resource drain. AAG Ackerman was not individually completely comfortable with where they are and would caution as staff move forward to be aware of that and see if the amount of process that being developed merits the goal that you are trying to achieve because there is absolutely a trade off there. There is a good two-month period in his year where a lot of time is devoted to a personnel issue, although an important issue, and certainly personnel are our most important resource. It is a resource that allows staff to get the job done in the best interests of the state and most efficiently and produce a quality work product. But there is always a balance. AAG Ackerman thought one of the things to ask was whether the same return could be achieved in a different way; a way that does not entail as much time, as many layers of review, or as many people being involved. The Attorney General's office has been able to do it every year, but AAG Ackerman thought the jury was still out on whether the level of resources devoted to it was the correct level and/or is necessary.

Commissioner Ellis noted that, from his days in the Attorney General's office, he was thoroughly and acutely aware of the amount of time that went into the annual evaluation process, but the office had not adopted this process while he was in the Attorney General's office. Commissioner Ellis was curious about how much additional time this process takes, in addition to developing a performance expectation plan for each employee for the following year. **AAG Ackerman** replied it takes quite a bit more time because of the number of reviews that take place and the number of folks that managers are expected to contact to determine whether an employee is meeting the minimum job qualifications and/or whether they qualify for one of the levels of performance award. Going to one of the earlier comments, the performance development process for the Attorney General's office is not just a matter of determining whether someone is going to qualify for one of these awards, but also has the other side of the coin attached to it, which is going through this process if an employee is not doing well or it is found when their work is examined that they are not meeting their established job qualifications, then part of the process is to do something about that. Typically, that manifests itself in the performance development plan that is established for the next year. AAG Ackerman has had to write more than a few plans where he says to someone that this portion of their work is deficient and needs to be improved over the coming year, here is how he proposes to go about helping them do that, and asks them what they propose to do about it. Then they have a meeting of the minds and come up with a plan that hopefully remedies whatever the deficiency is. The Attorney General's office has done this long enough now that they can go back and track the performance plans over time and see whether things are being corrected and/or further problems are coming out.

Commissioner Ellis thought that was a standard part of the evaluation process, though, and quite separate from this process. **AAG Ackerman** replied it is a standard part but is not really separate – it comes out in what is called the PDP, which is a standard form they use. The managers develop it, set out the plan for the next year, and do annual reviews. Then at the end of the year, Part 5 is done that says here is how that person did. Part 5 then gets

meshed into the recommendation as to whether someone qualifies for one of the performance awards. In order to get to the recommendation for the performance award, the process just described has to be gone through. If people may not qualify for the performance award, what they may hear is some deficiency needs to be fixed before going forward. AAG Ackerman has a team leader that reports to him. He reviews all of the team leader's performance award documents and recommendations, and then makes his own recommendation that goes up to his supervisor. AAG Ackerman's supervisor reviews the whole thing and performs a role in all of this, which then goes up to another layer. It is at that layer that they try to norm the recommendations for the entire agency. The top administrators sit down and review each other's recommendations and the basis for those recommendations and try to make sure everyone in the office is being evaluated against the same criteria and that they are comparing apples to apples. That takes a whole lot of time and work, but the office is committed to doing it and AAG Ackerman thought it was a good thing. He just cautioned that as you build in the process there needs to be a searching examination of whether each of those pieces of the process actually adds value to the end product.

Commissioner Ellis asked whether the agency surveys seen in the past were annual surveys or less frequent ones. **Ms. Benavidez** replied they were every two years. **Commissioner Ellis** assumed that questions would probably be added to that survey for all agency staff to comment on what they think about this process. **Ms. Benavidez** affirmed. Staff currently participates in the statewide employee survey, plus the agency also does an individual agency survey where those questions could be built in. **Commissioner Ellis** asked if the Commission would get feedback on this process in the context of the results of the agency surveys. **Ms. Benavidez** affirmed. **Director Day** added that in this year's agency survey, employees were asked if the rule simplification project actually made the rules simpler; it will be interesting to see what they say – sometimes the question has to be asked even if you are not sure you want to hear the answer.

Chair Rojecki asked if a formal motion was needed; if that was what staff was looking for. **Director Day** affirmed that was what he hoped to get so staff could move forward with this process. He would then report back to the Commission before proceeding with the cash award part.

Chair Rojecki called for public comment on this topic.

Mr. Chris Kealy, Recreational Gaming Association (RGA), was confused on one part of this discussion; when talking about process, AAG Ackerman had a lengthy answer but Mr. Kealy did not think he heard the answer to Commissioner Ellis' question on what the Gambling Commission policies were. **Commissioner Ellis** replied his question was limited to the Attorney General's office and their experience with this kind of a process. **Mr. Kealy** said he had not heard the question well enough and did not quite get that. Everyone is very aware of the troubling economic times and in every number on this proposal there is

shrinking. It shows the card room industry and the pull-tab industry shrinking, so the sector that is being regulated is shrinking and thus the pool of regulators is shrinking. Mr. Kealy has watched this budget for five years go from a \$3 million reserve to under a million and only be restored due to a seizure of \$4 million. When Mr. Kealy looks at the whole sum total of the Gambling Commission economics, he wondered if it was prudent at this moment to be approving what looks like a bonus or merit structure. Mr. Kealy was following that, but felt it seemed like bad timing in the life of everybody that has seen erosion and market shift, even to the extent of restoring the morale and making everybody feel good for extra efforts. He has met many Gambling Commission agents that make it hard to keep this percentage under 50 percent because they are very good people and they do a great job; every one of them puts themselves out there when they have a particular task. Mr. Kealy was just watching the whole process and, knowing his experience of ten years, he thought maybe the timing was just not in the right spot.

Director Day indicated that when he introduced the program there was the accountability and recognition portion that required the agency to do performance appraisals in the cycle, which have always been done. It requires the agency to go back to the performance appraisal process and those standards and discussions with employees and improve them. There definitely has to be more time taken in the meetings and discussions with employees because now other judgments are being made besides just performance standards. Judgments are being made on whether the employees have exceptional performance and whether that is consistent with everybody else. Part of the process the agency has to go through is to actually focus on improving its performance evaluation process, not just so it can give awards but as a function for more efficiency.

Chair Rojecki asked if this was a change in state law – he did not recall this during the legislative session; although, he remembered changes directed to the Civil Service laws. He asked if this was at the time more specific to address government employees leaving than to try to provide some sort of incentive or to mirror them towards represented employees who were able to get certain things like this standard, but non-represented could not. What was the impetus behind the Statute in the first place? He recognized what Mr. Kealy was talking about, but thought there was another side of the story as to why this was even created in the first place. **Ms. Benavidez** replied that represented employees are not eligible for these awards. She believed it was part of the total revamp of the civil service rules that began in 2002 and went into place July 1, 2005. Agencies had been indicating it was becoming increasingly difficult to recognize their employees; there were no tools in place to be able to give employees incentives to exceed expectations. The rules had been in place for 30 years and nothing had been in place for agencies to allow for recognition of a job well done and for going above and beyond. Agencies had only the recognition allowed by OFM, which was up to \$200 for a one-time award. This change was to allow agencies some ability to recognize and award for performance.

Commissioner Ellis added that, as a specific example of what Ms. Benavidez was talking about, when he left the Attorney General's office in 2001, his experience in the office was as a manager of many attorneys and many non-attorneys. The non-attorneys were all classified staff within the civil service system and subject to a very rigid salary setting structure, whereas salaries for the attorneys could be set by the Attorney General at virtually any level. So there was considerable authority to be able to reward outstanding performance of attorneys, but there was virtually no authority to be able to recognize outstanding work by classified staff by non-attorneys.

Representative Simpson said Mr. Kealy's comments prompted more questions in his mind about at what point this becomes a budget driver. Leave is not free, at least not where he works, and it produces some pressures on the budget, one way or the other. You either have to have more revenue to pay for this or you have to cut back somewhere else. Those licensees that are regulated by the Gambling Commission are likely the payers of this. Representative Simpson asked what kind of consideration had gone into the range of the impact on the budget and how that would be managed. **Ms. Benavidez** replied that consideration had been given regarding the budget. Staff looked at what was currently available revenue-wise and determined they would not have to seek additional revenue sources in order to fund this. It is not anticipated that it is going to be a majority of the employees. She recognized that most, if not all, of our employees strive to do the best job they can; however, it is anticipated that only about 15 percent of our employees would rise to the level of receiving an award based on the criteria that has been established and the samples seen from supervisors. It will not be a majority of staff, nor huge dollar amounts for staff that receive an award; it is a very manageable amount of money for the agency.

Director Day clarified the awards being recommended are well below the maximums allowed. Although many agencies combine both days off plus a cash award, our agency is choosing to go with one or the other. It is a pretty conservative proposal because of the bad economic times. Many administrators in public agencies have known that the ability to provide extra incentive to public employees is very limited by the structure. This allows some additional tools for that recognition that are more along the lines of private industry, if private industry was doing well, and are not unheard of types of bonuses or awards that would be provided somewhere else.

Commissioner Ellis asked if Ms. Benavidez had made any attempt to determine what the practical and monetary effect might be of granting additional leave time when she alluded to a projection of what has been done on the potential costs of the monetary awards. **Ms. Benavidez** replied she had not.

Chair Rojecki commented that, on the budget, it was alluded to that cash was not necessarily where it once was, which was in fact true. The Gambling Commission actually had a significant amount of money extracted during a budget process in the Legislature that removed some reserve funds, plus the Commission has also reduced total FTEs. The Commission and staff have tried to make a conscientious effort to reduce the overhead

impact and, granted some if not most of those positions were vacant, the fact of the matter is that the Commission is not hiring and is trying to recognize the impacts. There might be other ways to do that in the future.

Chair Rojecki asked if there were any other questions or public comments; there were none.

Commissioner Ellis made a motion that the Commission approve the program as presented with the caveat that the success of the program be a question that is included in the employee survey and that before proceeding with cash awards in 2011, staff reports back to the Commission. This program has been well thought out and is consistent with state policy. It has been discussed with the Department of Personnel. It is a modest program in the monetary awards of \$500 or \$1,000 for outstanding performance on a one-time basis and does not raise a major red flag for Commissioner Ellis. The agency will have to deal with the effect of leave awards that are granted, but he thought the agency should proceed with the program at this point. It will have ample opportunity to address the success of it down the road in the not too distant future. **Chair Rojecki** asked if there was a second to the motion; there was none, so *the motion failed for lack of a second.*

Since the Commission did not approve this, **Chair Rojecki** asked what the next step would be for staff to identify some of the concerns that were raised. **Director Day** was not sure at this point, but if the Commission was inclined that more information regarding the questions that were asked would be useful, he would bring that back for discussion at the November Commission meeting. **Chair Rojecki** asked Director Day to do some follow-up on today's discussion and bring back that information to the November Commission meeting.

Commissioner Bierbaum shared why she did not second the motion, which was not because she was affirmatively opposed to it, but was two things. She did not feel she had enough time to think about it and 2011 is a long time away, so she did not really feel like it needed to be decided today. It was not necessarily the case that just because she did not second the motion meant that after having thought about it some more and talking to other people about it that she would necessarily vote no in the future. There were enough things to think about that she did not feel comfortable seconding the motion, but that does not mean at some future time she would not second it. 2011 seems like a long time away.

Chair Rojecki suggested keeping in mind, though, that the evaluation period begins January 1, 2010, which is very soon – 2011 is when the awards take place. **Director Day** said it was very helpful for staff to know some of the thinking behind the concerns when they prepare the information to bring back to the Commission. If the process would not be benefited by further exchange of information, Director Day did not want to put everybody on the spot again over the same consideration. **Chair Rojecki** thought maybe identifying the budget impacts would be helpful, but he did not think staff should get into a position of identifying the awards like his city does for tuition reimbursement where they have \$10,000 and the first

people that turn in for \$10,000 get it. Maybe some sort of idea as to what can be expected might actually help on the budget side of it so the Commission can be a bit more transparent and it will make a stronger case for it. Chair Rojecki believed there was already a strong case for it but, obviously, there are still questions. **Director Day** said staff would prepare more information and he would bring it back in November. He thought the program had a lot of benefits. It is a tool that can add to the ability to provide recognition and it reinforces accountability for staff; it is not the end all; it takes some responsibility to manage it. Director Day did not ask for any additional funding in the budget and felt staff could incorporate within the lines basically what it will cost for the program. There is no intention to ask the Commission for any additional budget. It is also true that the Commission has in the past five years actually only raised license fees once and have managed within the current revenue structure in that period of time. Director Day anticipated continuing to do that even if this program were in place. He thought it would provide benefits for employees who really do make achievements on behalf of the Commission.

Chair Rojecki thanked Ms. Benavidez and told her it was a great presentation.

Commissioner Reichert thanked Chair Rojecki for his advocacy on behalf of the employees. Commissioner Reichert said his position was pretty clear; whether the Commission has revenue set aside or not we are going into a legislative session in a time of catastrophic cuts across the board. Mr. Kealy's comments were right on the mark; it is the timing issue. Commissioner Reichert was very open and supportive of the kinds of things being thought about, but believed that as a public entity the Commission had to think about the world they are in. He would welcome further conversations about this and is not opposed in any way except for the timing of it. Commissioner Reichert thought the legislators sitting here listening to this must also feel the weight of the reduced revenue forecast. Commissioner Reichert said the Commission was a group of people who are part of state government and they needed to act that way.

Correspondence

- > Historical Information on Wager Limits
- > "Reasonableness" When Identifying Minors

Director Day explained that Melinda Froud, lead staff attorney, researched information to answer the Commissioners' question about when the poker wager limits went to \$10. The limit was \$2 in 1974, \$5 in 1975, and \$10 in 1986. They also asked when the tribal maximum limit was set at \$500, which occurred in 1994. Commissioner Reichert had asked for some additional information about the question of reasonableness. Assistant Director Harris found there was not much documented information available relative to reasonableness around minors and identifications. It really comes down to identifying minors, and reasonable is defined as the amount of time it takes for the minor to provide a name, address, date of birth, and identification. In most cases, it depends on the minor's cooperation and ability to provide information onsite.

Monthly Update Reports and News Articles

Director Day suggested the Commissioners take a quick look at the seizure report. Although it is clearly illegal to have slot machine style games in play in Washington, staff seized 12 slot machine/video poker style machines that were in play at three different business locations. Director Day pointed out an article about a cockfighting ring being busted in Pierce County, which commission agents participated in. Commission agents also had a role in “Shooting Suspect’s Relatives Land in Jail” and “Canadian Faces \$350 Million Fraud Charges.”

Chair Rojecki asked what the City of Seattle was doing tagging what appeared to be legal gaming devices. **Director Day** replied that, generally speaking, it was an amusement game decal; a sort of licensing decal that they sell and are required to put on the amusement game. **Chair Rojecki** noted that the city has recognized this as some sort of device for amusement. **Assistant Director Harris** responded that the operators of the devices will order the stickers from the city and then stick them on the machines. It is not necessarily the City of Seattle saying it is an amusement device that needs a sticker on it; they are getting the stickers and putting them on. Staff has provided some training to the City of Seattle so they know when they are out looking at devices whether it is a legal device or not. **Chair Rojecki** asked if that was something the police department actually does, or if it was some other agency. **Assistant Director Harris** replied they have a taxing or a licensing subsection that does it. **Chair Rojecki** wondered how much money the city had made on that sticker. **Director Day** replied that part of the reason for the follow-up training was because of the potential of looking at the decals in a licensing operation and looking at an application that said First Fruit machine and assuming it was amusement. **Chair Rojecki** said that in looking at the numbers, they have probably sold at least 4,000 of the tags.

Comments From the Public Regarding Director’s Report

Chair Rojecki called for public comment on the Director’s Report.

Ms. Dolores Chiechi thanked staff for providing the handouts on the back table this month in response to her request to be able to take a look at what the Commissioners are looking at in their packets. With that said, Ms. Chiechi had a couple comments on the history of the card room wager limits document that was provided. She appreciated that staff found out that the \$25 to \$100 did not actually realistically take place, but was to the \$40. Also the question on why the Texas All-in \$500 was not listed as passed and then repealed, as well as written in Melinda Froud’s memo where she had noted the tribal wager limits, yet they are not on the chart. It seems reasonable that the chart should include all of it if we were going to be looking at it together. Those tribal limits should also be included on that chart. Ms. Chiechi asked if that perhaps could be something that could be expanded and brought back with those limits included.

Chair Rojecki thanked Ms. Chiechi and asked if there were any other public comments; there were none.

2. Approval of Minutes – September 10-11, 2009, Regular Meeting

Commissioner Ellis made a motion seconded by **Commissioners Bierbaum** to approve the minutes from the September 10-11, 2009, regular Commission meeting. *Vote taken; the motion passed unanimously.*

3. New Licenses and Class III Certifications

Deputy Director Trujillo referred the Commissioners to the October 2009 List of New Licenses and Class III Certifications for their consideration, which included the House Banked Card Room (HBCR) report. DD Trujillo pointed out that between the run date of the first HBCR report and the Commission meeting date, two house-banked card rooms were removed from the list. One was a house-banked card room that had received a temporary license but had not yet come to the Commission for approval, and which has since withdrawn their application. The other one was a recent closure. Staff recommends licensing all Class III certifications and new licenses listed on pages 1 through 14.

Commissioner Bierbaum made a motion seconded by **Commissioner Reichert** to approve the list of New Licenses and Class III Certifications as listed on pages 1-14. *Vote taken; the motion passed unanimously.*

4. Defaults

Ms. Amy Hunter reported that both Defaults are for Class III employees who are licensed by the Tulalip Tribe and certified by the State. In both cases, the Tribe has revoked the employee's licenses, and under the Compact when a Tribe revokes a license it is grounds for the Commission to take action against the certification.

Mariya Johanson, Class III Employee, Revocation

Ms. Hunter reported Mariya Johanson admitted to stealing money on four separate occasions and forging casino documents to cover up thefts while she was working at the Tulalip Tribe. Specifically she robbed a bank by pointing what appeared to be a handgun at bank employees. She pled guilty to Robbery in the First Degree, which is a felony, and was sentenced in August to 31 months in prison with credit for time served. After she is released, Ms. Johanson will have 18 months of community supervision. Deputy Director Trujillo issued the administrative charges. They were sent by certified mail and regular mail. The certified mail came back as unclaimed but the regular mail was not returned. The legal secretary made a courtesy call to Ms. Johanson and left a message for her to call back, which she did not. By failing to respond to the charges Ms. Johanson has waived her right to a hearing. Staff is requesting an order of default be entered revoking Ms. Johanson's certification. Ms. Hunter pointed out a typo in the order of a "he" that should have been a

“she” and provided the Commissioners with a corrected Default Order for approval and signature.

Chair Rojecki asked if Mariya Johanson was present or a representative; no one stepped forward.

Commissioner Bierbaum made a motion seconded by **Commissioner Ellis** that the Commission enter the findings, conclusions, decision, and final order in default, with the revision presented by staff, revoking Mariya Johanson’s certification to conduct gambling activities. *Vote taken; the motion passed unanimously.*

Dominique King, Class III Employee, Revocation

Ms. Hunter reported the Tulalip Tribal Gaming Agency revoked Dominique King’s license after observing that he failed to place his tokens into the token box, which then would have been shared with his co-workers. Instead he commingled the tokens with his bank or put them in his pants pocket. When the tribal gaming agents interviewed him, Mr. King admitted he did take tokens that should have gone into the shared token box. Director Day issued the administrative charges. The signed certified mail receipt was returned to us. The legal secretary spoke with Mr. King who said he was living in Arizona and did not know about the charges. He also said he did not know the person who signed the certified receipt. Mr. King said he would call back that day and give us a new address, but he did not call. Our legal secretary made a second call to him and Mr. King said that he did not know the person who signed for the charges but they would be forwarded to him. Mr. King was informed of the date that he needed to request a hearing. By failing to respond to the charges, Mr. King has waived his right to a hearing and staff is requesting the Commission revoke his certification. Mr. Hunter pointed out there was a revised Default Order for the Commission’s signature because the Order in the agenda packets had an extra violation in it.

Chair Rojecki asked if Dominique King or a representative was present; no one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Reichert** that the Commission enter a Default Order, as presented by staff, revoking the certification of Dominique King to conduct gambling activities. *Vote taken; motion passed unanimously.*

5. Other Business / General Discussion / Comments From the Public

Chair Rojecki called for public comment; there was none.

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

Chair Rojecki called for a break at 3:15 p.m. and an Executive Session at 3:30 p.m. to address pending investigations, tribal negotiations, and litigations. **Chair Rojecki** called the meeting back to order at 4:30 p.m. and immediately adjourned.

[All 4 Commissioners & 2 Ex-Officio Members were present during Executive Session]

Minutes prepared by:

Gail Grate
Executive Assistant

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
POKER WAGER LIMITS – STAKEHOLDER DISCUSSION
FRIDAY, OCTOBER 9, 2009
MINUTES**

Chair Keven Rojecki called the meeting to order at 9:10 a.m. at the Lacey Community Center and introduced the members present:

MEMBERS PRESENT: Commission Chair Keven Rojecki, Tacoma
Commission Vice-Chair John Ellis, Seattle
Representative Gary Alexander, Olympia

STAFF: Rick Day, Director
David Trujillo, Deputy Director
Mark Harris, Assistant Director – Field Operations
Jerry Ackerman, Senior Counsel, Attorney General’s Office
Gail Grate, Executive Assistant

PUBLIC: Max Faulkner, RGA / Faulkner Enterprises
Gary Saul, Galaxy Gaming
Bruce Meyer, COO, Michael’s Development
Lance Dodd, Poker Manager, Palace Casino, Lakewood
Michael Marquess, Macau Casino / Casino Caribbean
Jo England, CEO, Last Frontier / New Phoenix Casino
George Teeny, 2nd VP for RGA / Last Frontier / New Phoenix
Dolores Chiechi, Executive Director RGA
Chris Kealy, President of RGA / Owner of Iron Horse, Auburn
Monty Harmon, Harmon Consulting
Joan Elgee, House Commerce and Labor
Linda Graves, WA State Behavioral Health & Recovery, Problem
Gambling Program
Randy Warick, Washington Lottery
Jill Nanpuya, Washington Indian Gaming Association
Ed Fleisher, Attorney with Cowlitz Tribe
Ernie Stebbins, Washington Indian Gaming Association
Aubrey Seffernick, Attorney at Miller Nash
Kathleen Buchli, Senate Labor and Commerce Committee
Joan Mell, Lawyer
Eric Durban, Muckleshoot Tribe
Darryl Blackburn, Muckleshoot Tribe
Deryl Brown-Archie, Muckleshoot Tribe

Chair Rojecki pointed out there was not a quorum present, so there would be no voting. The absence of three of the Commissioners is not a reflection of their lack of interest in this topic, but simply the fact that the purpose of this session is primarily to hear from the stakeholders. Since the session is being recorded and will have the normal, very inclusive, minutes, the other Commissioners, who are somewhat remote from this area, felt their time would be better served reading the minutes and hearing your input at that point rather than attending this session. Because this session is being recorded to provide a transcript of the meeting, speakers need to state their name each time prior to talking. **Chair Rojecki** explained that at the September Study Session he stated he would like to get together an inclusive group of whatever stakeholders that may be. He did not want to limit the stakeholders; if somebody wants to participate, they can participate in this process. It needs to be transparent and honest. His vision has been to bring a group of diverse interests together to try to create a common resolve to address an issue that, personally, he feels has been an issue before the Commission for many, many years. Some of our resolve as a Commission has complicated some of the legislative efforts by either ex-officio members of the Gambling Commission or members in leadership of the committees that are tasked with the issue of gaming in the state of Washington. **Chair Rojecki** thought that if we could air the issues of what has worked, what hasn't worked, and identify some benchmarks that we want to create, we can get somewhere and can address some of the issues specific to poker wager limits and get there together. That will help bridge a gap, help build relationships, and provide a bit more trust in the process. **Chair Rojecki** hoped we could have an honest discussion today as to what we really feel without worrying about offending somebody else. Because we all probably want the same goal in the end, which is to have a safe and responsible gaming experience in the state of Washington, free of corruption and free of crime. **Chair Rojecki** asked if Commissioner Ellis had any additional comments. **Commissioner Ellis** did not.

Chair Rojecki asked if there was something not on the agenda that anyone wanted to talk about.

Ms. Dolores Chiechi suggested identifying the stakeholders, and that may fall under one of these categories. **Chair Rojecki** identified some of the groups present to see if it was an inclusive list: the RGA, the card room licensees, WIGA, Tribes, Legislature, Governor's office, tavern owners association, city officials, state problem gambling program. **Commissioner Ellis** was not sure the list included individual poker players, but that was always a possibility, based on past experience.

Mr. Chris Kealy, President of the RGA, thought the list seemed to be pretty inclusive, but was just not completely aware of whether the invitation to be here had been extended to the parties that are not, such as the cities. **Chair Rojecki** did not know. **Director Day** thought that at this point this was just preliminary and organizational to try to get some ideas on how to move forward. **Mr. Kealy** asked if mechanically that was something out of this meeting that we were going to script, or structure a plan to invite them. **Chair Rojecki** affirmed that was perfect. **Mr. Kealy** asked if that was okay, because he saw people that are not normally here, and he appreciated that they are here, but was just curious how they got notified. For instance, the Governor's office isn't usually at these meetings or the legislative staff. **Chair Rojecki** thought legislative staff was sent copies each month of the Commission meeting agendas. Kathy Buchli

and Joan Elgee are both committee staff to Labor and Commerce in their respective chambers, so they would see the agendas every month.

Director Day explained that after the discussion topic, and it doesn't necessarily have to be in that order, there is a next step topic on the agenda. Once some points are outlined in the discussion, there is the opportunity to ask what everyone wants to do next and by when. Former Commissioner Niemi wasn't a particular fan of the word stakeholder and that term may imply to others something that is not necessarily intended. Director Day recommend as a way of being more inclusive or general with the term changing the word to say interested parties. **Chair Rojecki** agreed, and then welcomed Representative Gary Alexander who had just arrived. Chair Rojecki noted that when we talk about some of these things, he did not want to send volleys over the bows of everybody, but suggested everyone try to talk in a civil manner, and open up and have a frank discussion about the topic of what hasn't worked and what has worked; it can be this Commission, it can be five Commissions ago where we may have only had two Commissioners. He asked how long Commissioner Ellis had been on the Commission. **Commissioner Ellis** replied since 2005. **Chair Rojecki** continued that it could be before 2005; what has worked and what hasn't worked during the rule process that creates positive and negative. Chair Rojecki said one of the criticisms he has heard from an interested party is the fact that the Commission goes through this rule making process, and it might be three or six months long, and the petitioner doesn't really understand and feel what the Commissioners are thinking until that very, very last month. That might be a good criticism of the Commission during the rule making process. Chair Rojecki thought we could resolve the poker wager limit issue and could also resolve some of the other issues he thought people were feeling.

Mr. Max Faulkner said he had been coming to the meetings off and on for probably about 10 or 11 years. This speaks to maybe half a dozen or dozen times during the rule process when we will get to the end of a discussion period and the staff will present the rule again, there may be some questions, and then we will have our testimony, but it is like there is no further testimony. Then the Commissioners will go into a discussion and often times during that discussion points come up that he, from the audience, wished he could maybe come up again and answer a question or even ask a question. But sometimes during that discussion phase, things can get skewed a little bit, which he has seen a number of times. Maybe more in the earlier days when he used to come and maybe didn't understand everything that was going on then. Mr. Faulkner did not know, procedurally, if it was possible to ask for more questions or clarification from the stakeholders or interested parties before that final vote, or during that stage. **Chair Rojecki** replied that some of that might be Roberts Rules. **AAG Jerry Ackerman** affirmed the Commission operates under Rules of Order and it structures the debate if there is any structure; the receiving of input and the taking of action by the Commission. At some point in any process the Commission has to call a halt to the discussion; there cannot be an endless back and forth. In the 10 years or so that AAG Ackerman has been coming to these meetings, the Commission has been very liberal in receiving input. Their bias is to want to hear from folks so many times they are not all that strict about it. But there also has to come a point at which it is enough and they have to act. AAG Ackerman did not know if a rule could be crafted that allows unending comments on every comment the Commissioners make and still maintain some kind of orderly

process at a meeting. This month was a pretty light agenda, but there have certainly been many meetings where the Commission was rushing to get through the agenda topics. The short answer is that it is all done through our Rules of Order process, which AAG Ackerman believed was incorporated in the WACs the Commission operates under. **Mr. Faulkner** said, as a follow-up, out of the three months there is a filing and then there is a comment period, so maybe what was talked about could be incorporated earlier where the Commissioners voiced some of their concerns. **Commissioner Ellis** agreed. **Mr. Faulkner** suggested the Commission ask something like what if we went this way or how about if we changed the rule like this. That would give the stakeholders plenty of time then to comment on it. **Chair Rojecki** responded that a lot of times he did not know until the very last minute himself. Some of that is just the volunteer nature of this Commission and trying to read through the material just for that month. He was not saying that was a valid excuse, but just that it had been his own experience in just reading through that much material a week before the meeting. He thought he could probably do a better job of engaging debate prior to that meeting. **Mr. Faulkner** said from his viewpoint as a stakeholder, sometimes he tries to visualize the way the conversation might go, but it is almost impossible sometimes to anticipate how things might go. **Chair Rojecki** replied that was a fair statement, especially when getting back to the fact that this is a volunteer Commission; Commissioners and ex-officio members. Yet you are in the trenches every single day; this is your business, this is your livelihood, and you expect a high standard from the Commission.

Mr. Chris Kealy thought he understood what Mr. Faulkner was saying, and in understanding Roberts Rules and watching a very effective implementation of the Commission being liberal and taking public comment. He thought what Mr. Faulkner was really getting at was we don't know what the Commission doesn't know until the discussion closes and the Commissioners start to discuss it. Mr. Kealy thought that during Commissioner Bierbaum's term as Chair, she elicited more discussion in the front of subjects, which was a positive step that Mr. Kealy has seen the Commission implementing as well. The historic 10-year experience does provide numerous opportunities to point out where a subject got closed for public comment, then the Commissioners discussed it, and we sat there thinking they didn't understand it, but we didn't know what the Commissioners didn't understand, and there was no additional space there for comments. So when looking at an open dialogue on what hasn't worked, that is just one of those odd issues, which Mr. Kealy thought was a pull-tab issue when we were going from multiple tabs. It was a pull-tab vendor and it was clear the Commission didn't understand what the guy was going for, but there was no additional space for him to get up and say something. The audience could all tell it was failing for lack of understanding, not for the ability to control it regulatory. That is a simple, but fair, explanation.

Chair Rojecki welcomed three new arrivals from the Muckleshoot Casino: Eric Durban, Darryl Blackburn, and Deryl Brown-Archie and informed them the meeting was being recorded.

Mr. Gary Saul said he would get to the nuts and bolts of it from a player's perspective. Being an ex-professional poker player, table games player, and a consultant, he thought a lot of confusion from the player's perspective was why the Commission would care about what the limits were or how much the players could bet. In Nevada, when they had \$500 limits, there

were people betting 4 and 800 stud. If there were eight or nine poker players together, whatever they wanted to play, they played. The casino didn't make any restrictions on that, it was up to the poker players. Whatever games they wanted to play, that's what they would play. So there is a lot of confusion from poker players that Mr. Saul had spoken to. He said why does the Commission get involved in that? What's the difference if there are eight players that want to play \$5,000 limit? Everything is one squared; it is a poker game. Why is that controlled by the Commission? Mr. Saul did not understand why the Commission had an interest in how much the players wanted to play. So there is confusion from that perspective from poker players to try to understand. They can bet \$500 in tribal casinos and \$300 in commercial card rooms in Washington casinos; they can play \$40 on the poker tables. That causes a lot of confusion, and Mr. Saul was trying to understand why the poker players just can't sit down, make a game, and everybody agrees they are going to play \$50 and \$100 stud; they are going to play this whole in; they are going to do whatever it is. There is confusion trying to understand why that is being restricted from the poker player's perspective.

Chair Rojecki asked if anybody else agreed.

Mr. Monty Harmon, Harmon Consulting, thought one of the goals back in the Gambling Act of 1973 was to bring gambling into a regulated environment. He echoed Mr. Saul's comments. The desire would be to have whatever gaming is going to occur in the state to be in that regulated environment. It makes sense as far as poker players and what they are willing to play for. If they cannot play that game in a licensed card room, they will play that game elsewhere. And in this environment with the internet, they are trying to bring people from an unregulated environment into the card rooms, into the regulated environment.

Chair Rojecki said that hits at the heart of one of the issues the Gambling Commission is tasked with in tribal and non-tribal gaming. There is a significant difference in the authority and the legislative intent from his perspective, and there is that separation for that reason. We go about it in a totally different way. Some of it, even from his personal perspective, is it is looking at the history of the Commission. So we don't have a Commission doing this. Chair Rojecki tried to pick a perspective from where staff is today, versus where staff was ten years ago, versus some of the other things that he understands. The issue is how to resolve that in a meaningful fashion so there is some sort of understanding of this. This is probably not the same and is not a fair characterization, but at some gas stations he goes to he can buy a lottery ticket, but at some gas stations he goes to he cannot buy a lottery ticket. Chair Rojecki recognized that was not a fair characterization, but there is little difference to some degree. Chair Rojecki asked if anyone had any comments on that.

Director Day explained that staff is interested in disclosing things that might be problematic and trying to work through them honestly. One thing he has seen the Commissioners struggle with year after year is the policy in the law that clearly talks about limited scope and limited gambling in the state of Washington. So when Mr. Saul raises the question why does the Commission care, that's why; that is the law of the land, at least on the non-tribal side. So the Commission has to decide how to reconcile those two when they look at and listen to proposals that people

bring forward on wager limits and different games. The Commission is at the ground level trying to deal with real life proposals and comply with the law at the same time. So as we move forward with this discussion, we cannot pretend that it is not there; we have to somehow address it, be conscience of it, and figure out how whatever comes out of this group reconciles with those laws.

Commissioner Ellis said, to take that one step further, the law is clear that the Commission has the responsibility to establish betting limits in all authorized games. As we know from past history, that is a topic that can become a very important one, policy-wise and political-wise, depending on the point of view. Commissioner Ellis said one of his primary concerns and interests in this process was the fact that the process in determining betting limits, for example, had not always been as efficient and as meaningful as it could be. It has occasionally been a little dysfunctional in the sense there may be an issue before the Commission, which is usually initiated by an RGA petition to increase betting limits, and this has been occurring as long as he has been on the Commission. Normally the Commission will start the rule making process and will usually accept the petition for filing. There seems to be a general policy in allowing citizens to submit petitions and to have administrative agencies like the Commission consider the petitions and make a decision. So the Commission will get into the rule making process and may reach a decision on a petition, or be mid-stream in the process, and then may discover there are other interested parties who are not part of the process who, for example, may be criticizing the Commission. Commissioner Ellis recalled one highly publicized instance where interested parties were criticizing the Commission for “considering” increasing betting limits, not having increased them, and there was no indication at the time of this that the Commission was actually going to increase betting limits. But at any rate, the newspapers were full of articles about the fact that the Commission was out of control and considering increasing betting limits. So there was that situation, and then there were other situations where the Commission actually took action and then discovered the parties were complaining to the Legislature or the Governor’s office – although they had not submitted their views to the Commission – because they were offended by the action the Commission took. The Commission had not heard their views. So the one thing Commissioner Ellis would like to see come out of this process would be addressing betting limits and doing so with as many of the interested parties submitting their views to the Commission as possible, so the Commission could look at everybody’s interests and make a rational decision.

Chair Rojecki said one other thing when looking at the differences between tribal and non-tribal is we have our own *[inaudible]* from the Commission, even from the tribal perspective on TGA. Some tribes feel that what the Gambling Commission does is a duplication of what they do, that they are regulating themselves, in a fashion, by the Compacts; whether you agree with it or disagree with it. That is a big separation between non-tribal and tribal interests; right or wrong, it doesn’t matter – there is a big difference in some of those things. The other thing is there is merit and there is reason to change poker limits or the spread limits; it is more the inclusive nature. Chair Rojecki went back to Andrew Kimmerle, recalling that Andrew Kimmerle was a poker player and there was frustration from the RGA at the time because the RGA was trying to raise poker limits. But Andrew Kimmerle came before the Commission at the Red Lion Hotel in

Olympia where he talked about the spread limits where in the house-banked card rooms it was completely different. Chair Rojecki thought his petition was for \$100 and, at that time, he was one of the Commissioners that said no, that \$100 was too much based on whatever criteria at the time his thinking was. But the Commission raised it to \$40. Chair Rojecki said he could not speak for the other Commissioners, but those were things that have more merit than a business model or that they are failing. The Commission is not in a professional environment to promote gambling, but they can change some of the WACs to *[inaudible]*. Does that make sense and is that a fair characterization? **Commissioner Ellis** agreed.

Mr. Max Faulkner asked if the Commissioners foresaw a rule change from staff coming out of this process. **Chair Rojecki** hoped that, collectively, staff could probably do something; but he was not sure of the dynamics of it. **Mr. Faulkner** commented that he still had to go through the same process as outlined by the Commission rules. **Chair Rojecki** affirmed. **AAG Ackerman** clarified there was an existing rule, so Mr. Faulkner would have to change that if he wanted it to be something different, but, yes he has to go through the process.

Chair Rojecki said for the record that one thing he did not want this group to do was shoot for the stars and say \$250, \$500. To him, it has always been \$41; right now the limit is \$40 so if it is \$41, then so be it. Chair Rojecki did not mean that in a facetious manner, it is just anything more than what it is today. We are not all going to agree on the issue, but Chair Rojecki thought we could all agree to the process.

Mr. George Teeny said he usually liked to listen, not to talk, but sometimes he cannot stand it and has to talk. He apologized if he offends anybody. There was some discussion by Commissioner Ellis about the firestorm that came out because there was even a thought of raising the limit; that was during the days of Norm Maleng. Norm is no longer with us, but since that infusion, we went from \$100 to \$200 on several tables, to \$200 on all tables, to \$300 on all tables. And to be honest, Mr. Teeny reads quite a bit and did not remember anything that came from negativity of raising those limits – it was pretty blasé. So on one hand he can appreciate what it once was, but what it appears to be today there does not seem to be that big of a deal if the limits are raised, at least in the public's perspective. Mr. Teeny said he could certainly be wrong, there could be isolated cases, but from what he has read, he has seen very little. As for the comparisons between tribal and non-tribal, and tribal having the TGAs and what have you, if something happens on tribal land unless it is truly egregious their licenses are in tact. If anything minor happens on our properties, theoretically we can lose our license; we certainly can be suspended, or a large fine being paid. Mr. Teeny was not trying to take anything away from the tribal folks, but when comparisons are made about them possibly being more regulated than the card rooms, or the tribes should be able to have a little bit more than the card rooms do, he does not begrudge them but hopes they get everything they want – he truly does. But on the other hand, when it comes to the card rooms, if they do anything wrong, they get spanked – they are under a different set of rules when it comes to that. On the regulation end, Mr. Teeny absolutely appreciates what Commission agents have done. In talking to other licensees in other states, they look at the Commission and they see how highly regulated the card rooms are. That doesn't mean they do not regulate well in New Jersey or Las Vegas or elsewhere, but Commission

agents are in Mr. Teeny's rooms at least once a week looking over everything from auditing his books, to auditing his cage, to auditing his games, on and on and on and on. And Mr. Teeny's agent is not bashful in giving him a ticket if he is out of line. So again when it comes to regulation, unless you are saying that Commission agents cannot do the job, and they do a better job referring to the non-tribal's, – and I know Chair Rojecki is not saying that – Mr. Teeny highly respects what the Commission does and truly admires the regulation put forth. In his experience, at times Mr. Teeny thinks it is too much, but then again, he lives underneath the Commission's umbrella. So when it comes to raising the limits of the game, in his opinion, it is not regulation and it is not protecting the games from the citizens. And you certainly can interpret anything that is in the preamble of the gambling law about protecting the citizens and so forth and so on, but Mr. Teeny defies there are many times in the non-tribal locations that the Commission finds organized crime, outrageous cheating, or an owner that is illegal. Mr. Teeny was not saying they are not there because Commission agents have certainly busted some, but the agents do such a good job, it is hard for him to imagine that what we are discussing, the \$40 limits to \$100 limits, has anything to do with the agents' capabilities, or the limits being too hard for the operators to deal with – it is just hard. So Mr. Teeny has to believe it is probably a political reason why the industry is not getting a higher limit. The reason why the industry keeps coming and asking for higher limits is because they think the limits are right for them. They are in the industry, it is their businesses, and they know what they need. They are not asking for \$1,000 or \$500 when it comes to poker; no way, they don't need it. But when they come and ask for a particular limit, it is because they feel they need it for their industry. And then when it gets either ratcheted down or not at all, it is like the Commission is telling them they know better than the operators do on what they need inside of their businesses. The operators know what they can do and what their limits are. Mr. Teeny does not want to have \$10,000 limits in his room because he does not have the protection for it. But on the other hand, he would not have a problem regulating a \$100 poker game or a \$200 poker game. He has the best people in the state, in his opinion, for doing that. Now backing up, if it is a political issue, then it may be for naught. Mr. Teeny appreciated all that the Commission is trying to do today and what the group will be trying to do in the days to come, but it may be for naught. Personally, from his perspective, he did not want to sit and waste everyone's time or his time talking about something that we could do, but in reality it is kind of smoke and mirrors because there is somebody over here that says they cannot have it. Mr. Teeny did not want to waste the Commission's time and knew they did not want to insult him, but if it is something that really can be done and they can go forward with it, if the Legislature truly is problematic with the limits for the card rooms, then Mr. Teeny asked Representative Alexander, or Senator Delvin, or Senator Prentice to poll their people and have them come back with lists because he knew he could get 25 or 30 legislators that say they do not have a problem with this limit – and that is not even working it; that is just casual conversations. So again, Mr. Teeny wants to go through the process and has, in fact, listed a bunch of stuff that he thinks would help the process. Mr. Teeny said he was going to divert now a little bit. Some of the problems they have had in the past is the eleventh hour where they have worked hard on a subject for 60 days, 90 days, 120 days, it is coming forward and all of a sudden, bam, there is a letter. Mr. Teeny was not saying the letter wasn't from somebody important, but they had 90 days, or 120 days to come forward and offer a thought, but just before the vote they say no. Mr. Teeny didn't get it; why waste the Commission's time and the industry's time? The Commission

has so many more things to do than go through a process that is kicked to the curb because of one letter from somebody that should, if they were truly interested, would have been part of that process 60 days or 30 days prior to the final decision, not on the eleventh hour. That is one of the problems he has with the process and he could keep going down the list but wanted to give everybody a chance to have a conversation.

Mr. Michael Marquess reflected back to when the card rooms got their \$200 limits and there was a lot of talk about political blow back and what would happen. The session was going on at the time and Vito Chiechi came up and gave a speech outlining – and we could probably refer to Vito for his more exact thoughts on this – that the Commission was put in place independent because of the politics and that nobody could remove any of the Commissioners, not even the Governor, and that the Commission was formed so the Commission could make these decisions, even in light of all the politics that are going on. That’s the reason why the Commission was formed the way it is. There is going to be controversy over a lot of the decisions the Commission makes, which is the reason why it was structured the way it was, so the Commission can make decisions without being worried about the Legislature or anything coming back at them. And to follow through with that vote, after allowing the \$200 limits nothing was said in the Legislature after that. Mr. Marquess thought it was just a lot of hype that this bad stuff was going to happen if the Commission voted for this – but it never happened. **Chair Rojecki** asked if that was on the house-banked side. **Mr. Marquess** affirmed.

Chair Rojecki said in response to Mr. Teeny’s comments about it just being politics, unfortunately with his career Chair Rojecki is experienced in politics. He thought Mr. Saul was probably at hand on a couple of the issues at the last minute, but unfortunately, that is usually the easiest and simplest way to kill something when someone does not like it. It is not right nor is it wrong, and Chair Rojecki recognized that we not have to do that here at the Gambling Commission. But in the legislative process, that happens all too often and is one of the things that push people away from politics. Ms. Chiechi could probably say the same thing. Chair Rojecki and the Commission could commit to being more open. Mr. Kealy had talked about it to some degree also about forwarding the Commissioners thoughts sooner rather than later so the petitioner can at least understand what the Commissioners do not know and what they do know, or to try to persuade the petitioner to a certain direction in what they feel is in their best interests.

Representative Gary Alexander commented that since he has been on the Commission, he has tried to do a lot of listening. In terms of historical perspective, he was around when the whole gambling issue was first brought under discussion. Unfortunately it had a very bad overtone as it took place during some times when there was some under handed operations, which led to some people actually going to prison. But when he sits there and listens about gambling and legalized gambling in the state of Washington, the issue always comes back to its impact on other things that could happen; what gambling would bring in terms of different types of personnel, attitudes, social consequences, and so forth. And so from the standpoint of gambling per se, Representative Alexander did not think it was political. There might be people that have questions about the limits, the number of games, or the relationship between tribal and non-tribal, but basically the issues he is aware of from the standpoint of politics, is with legalized

gambling. The legislators want it regulated so those other consequences do not come in to play. Their biggest concern is they want to ensure it is a regulated business and one that is going to be operated legally and not get some of the other factors of play into it. This might be difficult, but Representative Alexander really believed that the overall industry benefited by the tribal interests helping to promote the non-tribal and vice-a-versa. He believed both groups win when they look out as to what is the benefit of the industry as a whole. Representative Alexander knew there was competition and that it is an issue, but there are lots of industries with competition and it seemed to him that if we can put together an effective program that provides opportunities for success and profitability in both the tribal and non-tribal gambling operations, everybody wins. Representative Alexander did not know how to do that, but that is hopefully one of his objectives. The other thing is when it comes to poker limits it seems that the Commission, and hopefully they do this, just needs to gather information from all sources to determine what the proper limit is to establish, and that it also assures regulation is taking place and we are not moving out away from that area. One area where Representative Alexander could say he felt some empathy for was when the request came forward for the limits to be raised in Texas Hold'em. He realized that it is a different poker game than traditional seven-card stud or draw poker. There is a magnet to that game that rests with the ability to call all-in, which is a different factor and probably if there was a limit that does not provide any kind of impact on one of the player's decisions to match that, or not match it, then the game probably does not have the same amount of attraction or ability for the players. Representative Alexander wanted to add from a political standpoint his role here and that he was hopeful that we can come to decisions that reflect the input from all of you, which is critical. He also thought it was really important for the Commission to listen to the industry that is being regulated; the industry should have some decision inputs on how that regulation takes place and what those decisions are. The Commission has to put their regulatory hats on first and foremost, but they also have to look at what is in the best interests of the industry as a whole. They have tough decisions and tough votes to make, but basically things like this are really critical to helping to get to that decision. Representative Alexander was hopeful that we can come to some conclusion that is in the best interest of both the Commission's needs to regulate and the best interest of, cooperatively, the tribal and non-tribal industry being able to have limits that attract players and provides opportunities for the proper point of regulated income for both your operations.

Mr. Chris Kealy appreciated this discussion, but it seemed like some of this was hovering around content and then some of it was pointing back to directions for what we are trying to do here. Mr. Kealy asked if the Commission wanted to move into what we are going to do here. **Chair Rojecki** said that was fine and asked if anybody else had any thoughts.

Ms. Joan Mell, an attorney practicing in Fircrest, said she came to the meeting to talk about process. From an attorney practicing in this area, she would make a really strong recommendation that is process oriented. Ms. Mell has a lot of experience working with state agencies and with the Legislature on rule making and thought what was absent from the Gambling Commission process, which she has experienced with other agencies, is more of a framework of what the criteria are with regard to rule making and an ability to present the factors weighted engaged to those criteria in a way that the Gambling Commission gets that information

in deliberating whether or not it will adopt a rule. And then that the Gambling Commission also gets both a staff position on those criteria as well as a position that is being taken by the public or the stakeholders as to each of those criteria in the rule that may be implemented. Ms. Mell said she could put together a basic outline of what she thought would help with the rule making process. It starts from a policy shift, recognizing that the Legislature gave the Gambling Commission the authority to embrace innovation. And if there is a policy shift with the Gambling Commission that says it is not in the business of stopping innovation but rather in the business of embracing innovation and applying the regulatory controls to best ensure that gambling is not corrupt within those innovative changes, then the Commission starts with a much better premise that allows stakeholders to feel like their creative thinking and their creative ideas in the industry will be well received, as opposed to being in this dynamic that we seem to be in right now where any innovation is feared or is reduced to an argument about whether or not the greater public out there is going to be alarmed that somehow the Gambling Commission has expanded gambling or let things run amok. So if there are some basic criteria put in place to determine what innovation improves regulatory control, the Commission has the protections needed to respond to public outcry or concern about what rules or innovations they may embrace or accept within the regulatory framework that has been set forth by the Legislature for the Commission. Ms. Mell would start with the premise that innovation is embraced; it is something that the Commission may do at every meeting; they may be embracing some sort of new innovation. And then Ms. Mell would say the first and foremost criteria to any adoption of a rule or approval of any innovation would be whether it does or does not improve regulatory control. Can the Commission do their job better or worse in terms of corruption with respect to what is proposed? She thought the Commission had to have an absolute position from the staff on that issue, and thought they had to have an opportunity to hear from the stakeholders absolutely as to what the regulatory enhancement benefits were of any innovations. There needs to be a process set forth in the rule making where if there is a genuine issue of fact on that, refer it to an ALJ for a hearing; get yourself a record created so that the Commission can establish clearly to the public when they make their ultimate decision what the input was on regulatory control; whether it enhances the Commission's opportunity to achieve regulatory control. The second criteria that Ms. Mell recommended was that her perception in government was that the Commission was in a position of making sure that the public was protected. If it enhances regulatory control or if there was some public harm that would arise if this innovation was embraced. The analysis that the Commission continues to get, that scrutinizes what they do on the Compact side of the universe, is derived from the understanding that there cannot be a public risk of harm if they are approving something on the Compact side of the universe. So if the Commission is going to go down the road of approving something in the Compact, they necessarily have to acknowledge that as a government entity, they cannot then turn around and say in the non-tribal universe that there is some sort of public harm by something that was agreed to by Compact. There has to be an acknowledgement that there is this mirror relationship between what the Commission is doing in one universe versus the other universe. Does that mean it needs to be the same? No, not if there are some criteria or factors that can be illuminated, spelled out, a record created that suggests there is a difference between those universes, and there is public harm that needs to be addressed. In the rule making process, the ultimate outcome of that process if there is a denial of any innovation, those criteria need to be identified. How is it that denial of this innovation is

needed to protect the public? If that can be identified, then obviously the Commission is well justified. If there is no harm to the public, then let this industry thrive. Why should there be any regulatory control at all? Ms. Mell thought this Gambling Commission needs to spell out in its rule making policy that once those criteria are reached, the Legislature is the responsible entity to tell the Commission they are wrong. And if the Legislature perceives there would be a difference in what the Commission's facts have found and what their regulatory controls have been, it is the Legislature's duty and responsibility to take action at that level. Finally, Ms. Mell thought there was also just a basic fairness issue there that creates this animosity. Why is it that in the rule making process there are these last minute decisions about whether or not the staff is going to approve to the Commission adoption of a rule. That comes from a lack of knowing what the criteria should be and wanting to ensure that the Commission has an opportunity to make policy decisions that would be consistent with what the legislative perspective would be on the role of the Commission. Ms. Mell asserted that it is essential for the Commission at this stage in considering poker wager limits or anything else to remember that the Gambling Commission is not a policy maker; the Legislature is the policy maker. The Gambling Commission implements the policies that the Legislature has identified and prioritized. So rather than allowing the rule making process to include staff recommendations such as "it is a policy choice," Ms. Mell would urge the Commission to reject that thinking and ask staff to come up with a specific list of criteria in conjunction with stakeholders as to what should be the weighing factors and what should the testimony address so that the Commissioners can make a meaningful decision, but not a policy decision. There is not necessarily a direct link to what statute or rules are affected when a proposal is brought forward in the rule making process. There is sort of this whole universe of "we could pick this, or we could pick this, or we could pick that." The process should be very specific; if there is a rule that is at issue with any innovation or any proposed rule change, then that one should be identified and articulated and the universe should be more confined than just a general policy concern.

Chair Rojecki asked if Ms. Mell had any examples of state agencies or commissions that do the same thing that have some sort of criteria that she was talking about. **Ms. Mell** replied her experience is with the Department of Social and Health Services and the Department of Health, primarily with rule making. She has sat through rule making and staff meetings and been asked as a policy attorney to participate in the process to try to get more specifically at where the rule needs to go. Ms. Mell said she could tell the Commission that is a much more deliberative process. Staff within the agencies does set criteria as to how the rule making process is supposed to work, but then they have meetings much less formal than this where everybody is sitting in the room actually wading through the rules themselves that exist on the books, the statutes themselves, and drafting language. It is just much more of an informal participatory process and you get more to those individual criteria of what is at stake. And then, yes, she has seen the referral back to the formal body be much more inclusive of what happened during that deliberative process; bringing forward both sides and she thought the legislative process worked that way as well. As a staff person in the Legislature, she had to say what both sides were saying.

Chair Rojecki felt the Commission's rule making process was different than his own experiences with Labor and Industries and Department of Retirement Systems; which is done much differently than this. Is there a whole list of ways that rule making can be done? What is the Commission following to develop the criteria? Ms. Mell has brought up the whole informal stakeholder thing, which Chair Rojecki is actually a part of right now at Labor & Industries. But at Labor & Industries there is a decision that staff actually makes, rather than the Commission, that, no, we are not going to do this rule or, yes, we are going to do this rule. The Director at Labor & Industries has that prerogative to be more inclusive or to shut it down.

AAG Ackerman thought the short answer to Chair Rojecki's question was, yes, there are a variety of permutations with regards to rule making. Generally the Commission has to comply with the APA, which set certain standards for rule making. There are some applicable rules set through the Code Reviser that the Commission follows, but that is formalistic that gets the rule in compliance for filing purposes. But obviously agencies are different; some are under the direction of a statewide elected official, some are under the direction of an executive that is appointed by the Governor, others are under the direction of a Commission or Board. The Commissions and Boards have different enabling legislation, different authorities, and different structures. All of those things factor into the rule making for any particular agency. Does the Commission have latitude through the promulgation of its own procedural rules to structure how to go about rule making? In large measure, yes. The Commissioners do not have unfettered power to structure the rule making, but they have a great deal of latitude in deciding how to go about doing rule making. One of the things that makes this Commission different from Labor and Industries, Department of Social and Health Services, or other agencies that have a single head is that, obviously, the Commissioners have to do what they do by a majority vote of the quorum and, in some cases, by an absolute majority of the total membership of the Commission, as opposed to what can happen where an agency is, in effect, presided over by a single person. The Open Public Meetings Act comes into play as do other laws because the Commission is a multi-member board or commission. That causes agencies to approach the rule making process in different ways. If the Commissioners are unhappy with the way they are doing things now, they have a fair amount of latitude to go to a better structure if they can design one, or if somebody can suggest one to them that the Commissioners like. The bottom line is that all agencies are not the same.

Chair Rojecki thought that, from his perspective, the process has been pretty inclusive, just maybe not as open in the discussion. He thought that would be a fair characterization from the Commissioners' standpoint.

Mr. Monty Harmon said that in the rule writing process, the Commission has been good to set up a rules team where staff meets on a regular basis and, on occasion, have invited petitioners to come to the table and discuss the rules that they want to bring forward. The drafting of the rule by the petitioner may not be the best wording, but that is what ends up going forward. As a petitioner, it would be nice to be able to sit down with staff with the draft. The petitioner has to prepare something for people to look at, and then have staff ask if this is what the petitioner is intending, suggest this might be a better way to say it, and indicate a couple of other rules that

would need to be changed in that process before it comes before the Commission. Then it would be a cleaner package to come forward. And we are talking about process here; it is just a thought. If the proposed rule is something the Director would not be in favor of or that staff does not think is the best approach to a situation, possibly in the alternative staff could draft an alternative. And the petitioner and staff could then either submit both or come to an understanding and agree to which rule should go forward on the issue. Mr. Harmon did not see that as a part of the process right now. It seems that the petitioner puts forward the rule and it kind of goes forward as it is. In the most recent proposal with the manufacturer's representative, Mr. Harmon thought there was a better example where the petitioner put forward their idea of what they would like to present, staff helped to modify it, and a better solution came forward. So Mr. Harmon thought the Commission was getting closer and it would be great to see that process grow and improve a little bit in that direction.

Chair Rojecki thought that was fair.

Ms. Linda Graves, Problem Gambling Program Manager, said she would be remiss if she didn't speak on behalf of those people who are addicted to gambling. She was new to these Commission meetings and thanked them for having an opportunity for the public to speak. Ms. Graves did not have an opinion about table limits and was not really present to speak about that, but she did want to speak about the social impact and harm caused to some gamblers. In 1999 there was a prevalent study done in the state of Washington by the Washington State Council on Problem Gambling and the Lottery and other partners. At that time, it was found that 2.3 percent of adults were classified as pathological gamblers, which is a basically a diagnostic label. It was also found that 17 percent of people were considered at risk gamblers, which means they had one or more symptoms or criteria of the pathological gambling criteria, but did not meet the threshold diagnosis. Also that same year, President Clinton established the National Gambling Impact Study Commission, which was a widespread study commission, with all the way from very conservative to very liberal folks on it. And one of the findings of that National Gambling Commission was the fact that accessibility played a big role in people becoming addicted to gambling. They found that if a person lived within 50 miles of a casino, they were much more apt to become addicted to gambling. In addition to that, the accessibility to how fast a person could lose their money, so to speak, entered into that picture also. So in your consideration in regard to table limits, Ms. Graves would like the Commission to consider that some people – not a large percent compared to 100 percent – do have impact from the rapidity with which they can lose their money at table games. Ms. Graves asked the Commission to take that into consideration as they deliberate.

Chair Rojecki thanked Ms. Graves and asked her if that was a percentage of gamblers or a percentage of population in that study. **Ms. Graves** replied it was a percentage of population, then took that back and said she thought the non-gamblers were; although she could not tell him the percentage of non-gamblers in the State of Washington. Right now the latest numbers that she has heard nationwide are about 85 percent of people gamble at least once within a year. But she could not tell him a state number for that.

Commissioner Ellis informed Ms. Graves that about three or four years ago the Commission contracted a group at Washington State University to conduct a survey of gambling in the state. That survey included very specific numbers on what she was talking about; the number of people who gamble, where they gamble, how often they gamble, and what part of the state they live in, so there is a lot of data in that report that Ms. Graves might find useful. **Ms. Graves** asked if that was with the Gambling Commission. **Commissioner Ellis** affirmed it was a group from WSU that conducted the study on a contract with the Gambling Commission. **Director Day** thought the survey was finished in 2005 and published in 2006. One of the interesting things talked about was that everybody has a different perception of what gambling is, and that drives some of the discussion. For instance, some people actually do not think lottery would be gambling. But that basic question about gambling, as he recalled without having the survey in front of him, was those that have at least gambled in whatever form it might be was a very high number of people, somewhere around 94-96 percent in the state of Washington. Of course that was a wide range that may have been a personal wager over a sports game to buying a lottery ticket. But it was still fairly significant. **Commissioner Ellis** recalled it was people who had gambled at least once in their life, plus there were numbers for the people who had gambled during the previous year, how frequently, and where they had gambled. There is a lot of data in the report.

Chair Rojecki indicated the group had hit a few other subjects and suggested moving on to the process. Joan Mell had talked about one and Chair Rojecki also talked about just being open. He asked if staff and interested parties had any other comments.

Mr. Max Faulkner threw one idea out on the process; when whoever gets together, whether it is stakeholders, whether city people come, or state people come, maybe have people submit a bunch of alternative rules and talk about pluses and minuses of those. **Chair Rojecki** thought that might take the Commission much longer to do. He was not criticizing Mr. Faulkner's approach, and thought it might expand the horizon, which is good, but if we all bring in our little pieces, we can do that in communications rather than in written form. Chair Rojecki said he didn't know; that he was just thinking out loud. Whereas we find the vision; we find a goal, we try to bring it together rather than opening it up further. He asked if he was misunderstanding Mr. Faulkner's point. **Mr. Faulkner** replied no, it is just that it seems like one of the annoying desires is to come up with a final solution that hopefully will not have to be revisited in the next few years. Mr. Faulkner wanted to be maybe a little more inclusive to reach that goal. **Chair Rojecki** understood and asked what kind of process was envisioned – did they disagree or agree with what he said.

Mr. Chris Kealy, RGA, thought this process seemed to be hovering along at about the same pace as we have seen most others. He would certainly like to hear from the interested tribal parties soon. Mr. Kealy thought we were seeing the same thing that is seen a lot at Commission meetings; silent, silent, silence, and then we don't know where they are going. So he was asking. **Chair Rojecki** replied this issue did not necessarily directly impact the tribes; it does and it doesn't. **Mr. Kealy** said it seemed like letters from them have created opposition to his outcome, so he felt compelled to ask the question.

Chair Rojecki asked if Mr. Kealy was asking as far as what their position is on this.

Commissioner Ellis asked if it was their participation in the program. **Mr. Kealy** replied participation. **Chair Rojecki** did not know whether that was a fair question. Do the tribes want to participate as a stakeholder or interested party? He thought maybe their attendance today made that obvious.

Mr. Eric Durban responded they were present today to listen and find out what was up with the rule making process.

Ms. Deryl Brown-Archie said it was just simply a different process, so to ask whether tribes have a position on what process they prefer is like asking Mr. Kealy to weigh in on something that he is not involved in. So Ms. Brown-Archie did not have a comment on that.

Mr. Chris Kealy explained his comment, and the reason he was making it, was it seemed they are going into a new area here because somewhere it was identified that interested parties did not seem to know what was happening, and then letters came out at the eleventh hour with no testimony, participation, or opportunity to understand further what those letters meant. That was why Mr. Kealy was asking if this was a process that the tribes intend on participating in, or what process they would participate in, so that Mr. Kealy could get a greater understanding in the gaming community what regulatory concerns or what market share benefit of products they have; not products they do not have. Because this process got undermined at the last minute by a few letters that pointed out there was Class III gaming allocations being utilized for tables for the various betting limits, and that all of a sudden with the \$500 betting limit, the industry was going to loosen or change up a tax rate delivery system. So those letters had impacts to their outcome, and Mr. Kealy was trying to discover what process would bring participation by the parties and maybe an understanding of what the marketplace was and what risk and benefit there was to them having different poker limits than they currently have.

Chair Rojecki asked what letters Mr. Kealy was referring to. **Mr. Kealy** replied he was referring to, the Nooksack (Ron Allen) letters that came down after the \$500 limit. It seemed there was a lot of momentum to repeal that rule for a diverse set of reasons, and it got done. So we were going to go above 41 bucks, 40, 50, whatever. Mr. Kealy wanted to know who was going to be involved and whether they wanted to participate in this type of a structure, that type of a structure, this type of forum, that type of forum.

Chair Rojecki said that, obviously, he wanted to bring everybody in who wanted to discuss and listen. If somebody just wanted to sit here and listen, he did not have a problem with that. Hopefully we gain something out of everybody's participation, but there is a difference in tribal and non-tribal; there is a difference in philosophy or how it is regulated; there is a difference in goal. Chair Rojecki thought the attendance by the tribal representatives was an indication they care about this subject and at some point there might be some participation. If not, then that is just the way it is. Chair Rojecki's goal was to be inclusive; to open it up to everybody and it is anybody's right to sit here and bring up whatever issue they want.

Mr. Chris Kealy indicated he certainly would not want his comments to be misconstrued; the Tribe's participation here, this is a legal public process and he agreed 100 percent that everybody has a right to participate; no, don't confuse that whatsoever. What he was specifically asking was what process would get them engaged, because when interested parties are identified, Ms. Grave's comments are important, the cities' comments are important, tribal comments are important, card room owner comments are important, Catholic ministry or nonprofit input are all important. It is market share; it is community impact and community involvement; it is a community. Mr. Kealy was just asking what structure or part of the process that was available in the past that did not get any comments until the eleventh hour. He was not accusing anybody in particular, but was just asking what does work.

Director Day thought that, from the process point of view, the group would end up not getting anywhere in the discussion if the process was where the participants were asking each other questions. Director Day thought what was going to end up happening was that participation would be discouraged in the long run, and people would not feel safe or comfortable to attend. Director Day thought everybody should recognize and respect where everybody comes from and allow the discussion to move forward. Each party needs to speak for themselves and say this is what they want to see. As the discussion continues, if somebody weighs in with a comment and asks one of the other participants a question, people will tend to shut down and we will not have an environment that people feel welcome in. That was important to Director Day and he agreed with Chair Rojecki. There are various representatives around the table that have come at least to listen to the initial discussions. We are trying to blunder through and find some way to create something new. Director Day did not know how long that was going to take, or how successful the group would be, but just the fact that we are all here is at least a start and, hopefully, we will keep plugging along. He thought Mr. Kealy was trying to get us to look at a small group and if there were volunteers that would like to sit down and have a discussion about the topic around the table, whether we wanted to keep attaching it to the Commission meeting, and if we need another session like this as we move forward. Director Day assumed that maybe by the attendance we would be safe to assume those around the table might be interested in coming again to some kind of discussion as we move forward. Those are the kind of things that would be helpful for the staff to know as we move forward; where, who, and how to be involved.

Chair Rojecki agreed. We have talked about different processes, but does it help if we limit it to be inclusive to all the interest groups, but limit the number of people from those interest groups to two or three so it is a manageable number for meeting space?

Ms. Joan Mell recommended, with regard to addressing Mr. Kealy's issue, that in the start of this process it might be wise to sit down and revisit the petition application for rule change and identify some of those criteria that need to be used to formulate what the rule will be so that the group starts out with a common set of factors. She thought one of those factors could be whether a proposed rule has any impact on the Tribal Gaming Compacts, which should be a precursor into any rule determination, so that at the time the petition is filed, staff is going to have at least invited that communication from the start of the filing of the petition, as opposed to allowing that input, or hearing from that input on the date that the rule is to be adopted. So then those

participants interested could weigh in at that time, or they could weigh in at a later time, and then the Commission has the ability to weigh the credibility of that and the timeliness of that when they receive the input. Ms. Mell recommended starting this process by revisiting what the petition requires and what criteria are going to be used. She would not limit the number of people, but would certainly make the staff meetings on rule making public. She did not see why the public could not participate in those meetings and, in particular, with regard to the point made on drafting, that is the key. The Commission gets something clean from the get go, and you know this from legislation: the more work that is done from the get go to refine the issues and get it narrowed down to those criteria that have been identified as the decision points for the Commission, the much smoother the process going into it.

Mr. Michael Marquess thought the question was how to stop those eleventh hour objections. It seems to be a strategy that some parties wait until the eleventh hour and then drop the bomb. That is a good reason for having a process open to everybody; speak now or forever hold your peace should be the process, and don't drop bombs at the last minute.

Chair Rojecki agreed, but like he said, even with his understanding of the legislative process, that is a tactic that works for every state. **Mr. Marquess** agreed it works, but wondered why it would stop unless the Commission stopped it. **Chair Rojecki** replied they couldn't, technically. He did not know how it would be stopped because if we disagree on an issue and someone is advocating one side and doesn't show his hand and waits until the very last minute knowing that is going to tip somebody else over the edge to the opposite way or towards his side, he would probably wait until that last minute. That is a lobbying technique, unfortunately. **Mr. Marquess** asked if there was a way to build something into the process that would prohibit that from happening. He presumed that one of the purposes of this meeting was to open the doors for discussion early on so that later on it could feasibly be said that they had their opportunity to speak, and ask why they were dropping this at the last minute.

Commissioner Ellis thought one of the primary goals, at least to his point of view following up on what Mr. Marquess was saying, would be to put the Legislature and the Governor's office in the position of agreeing with that so if someone came to them in the eleventh hour, they would say sorry, that issue has been discussed and you had full opportunity to be involved in the development of the policy and, as it stands right now, the Commission is going forward with the policy that was developed. **Chair Rojecki** pointed out this had to be in a public meeting format, but creating our interest groups and then limiting them to that – let them participate at the table but then have an open public meeting with people sitting behind that – does that seem like a fair and approachable issue on how to resolve this so we are not lopsided? **Commissioner Ellis** said not to forget that the forum being talked about may be the development of a rule and then there may be a rule making process that is also public and provides opportunity for public comment on the rule that came out of that process. **Chair Rojecki** agreed. **Commissioner Ellis** added that, unfortunately, there may be lots of process involved, but no more than the Commission is quite familiar with.

Mr. Chris Kealy said he was trying to agree with Commissioner Ellis. There are a lot of ways to go about this, but he tended to agree with Chair Rojecki. If we get a couple meetings where we can narrow down the groups to one or two people; we are not really trying to fix an entire process that has been working pretty well for 20 plus years, of which Mr. Kealy has only been around for eleven. But most of the time, things work. This just happens to be an anomaly that enlisted a lot of interest at the eleventh hour. It can be said all day long, but since it dragged out for two years, which eleventh hour was it. Mr. Kealy did not think it was fair to point fingers or predetermine any portion of this. He suggested just giving it a go and see what happens. He said Commissioner Ellis was correct, but in the end if all this does is just recommend a particular petition to be filed and follow its normal course, there will be one more chance to then evolve from the public process – unless we are going to reinvent the entire Gambling Commission, and Mr. Kealy did not see that on the agenda. So let's just jump in and swim.

Chair Rojecki said they could agree or disagree with him, but the perception he has, or at least his understanding, was the majority of the problems, or the confrontational side of it, revolves around poker limits. Chair Rojecki would personally like to take it head on and deal with it, adding he has told most everybody that he did not want to talk about dollars. That is not the issue; the issue is how to resolve the issue of the limits under whatever criteria utilized and to go forward with that. That is where Chair Rojecki was trying to get the group to go. **Director Day** responded to the question about what the focus of this issue was about and wanted to make sure he was in line with the Commission's thinking and Chair Rojecki's thinking. Director Day had said this was not a change in the Commission's overall process, other rule petitions, or anything. It was to try to address the specific issue around Texas Hold'em poker and what improvements or changes can be made to the game in the state of Washington that can be moved forward to the Gambling Commission in the rule making process. There is no intention by this to change the Commission's rule making process, as such, in any broad format. Staff anticipates the rest of the issues will continue to come forward as they have preceding this meeting. **Chair Rojecki** said the Commission did not have a quorum to even change that right now. The rule making process has been talked about, but the issue today is specifically on the poker wager limits. **Director Day** agreed the group could get too broad and then would not deal with the issue of poker.

Ms. Dolores Chiechi commented that she thought part of what Ms. Mell and Mr. Harmon have been saying about the process of drafting rules and discussing rules happens at the informal study session most times, and those stakeholders that choose to attend can give staff input. Staff jots down the input and takes it back to their rules team where they have another discussion, and then bring back revisions, or no revisions, or reasons why they are not going to incorporate the ideas that were mentioned. As Mr. Harmon stated, there have been occasions, which have been very much appreciated, where the industry has been invited to attend the rules team meetings to shed some light and illuminate the position or the expertise that Mr. Faulkner mentioned the industry has. Ms. Chiechi admitted she was not one of those with expertise. But the players are, and they not only own and operate, but they are also players and know how the players think, and they know how those rules might be tweaked to fix a problem that the players have, or the dealers have, or whatever. And so to miss that opportunity in those rules team discussions on rules beyond poker – but she understood that has been somewhat of a directive of the Director to

say we are not your partner, nor are we going to collaborate on these things; bring staff a rule and they will provide staff input, a report, and present that to the Commission. It seems if that effort could be broadened to have even the rules team meetings open to the public where they could sit around the back side to help them understand the discussion that takes place and have some ammunition or some understanding of what the staff is discussing so that when they come to the podium, they know how that process, that conversation, took place for the information that was jotted down and then presented to the Commissioners. Ms. Chiechi knew that went beyond what Director Day just stated that we are not here to fix the process because in some opinions it is not broken, but perhaps that is a future stakeholder discussion, or a future work session discussion, that could take place. Ms. Chiechi thought the Commission would come out with better rules where the industry as the experts have some input to what the staff and the agents are going to hand down as the regulatory aspect. She thought it might be worthwhile; although, this may not be the forum to do it but maybe in the work session. It was stated earlier that the law of the land on the non-tribal side is “x” and Ms. Chiechi thought there was still some confusion about what is the law of the land on each of those universes. Perhaps the AG could present a write-up or something at the work session so the industry on both sides understands why the policies of limiting the nature and scope don’t apply to the other side of the universe, because she was still trying to get her arms around that, and thought the public was as well. So perhaps that could be part of the work session. Ms. Chiechi had a question about the quorum; there are five Commissioners, three of those attending a meeting are a quorum. If there are only three attending the meeting, does two constitute a quorum in the hallway or at an event outside of the public meeting, if there are five? AAG Ackerman is probably the only one that can answer that. Ms. Chiechi asked if there are five Commissioners and three are at the meeting, and then in the hallway someone is talking to two Commissioners, are they essentially talking to a quorum? Is it at the meeting or is it as a Commission? Ms. Chiechi was still confused about that. Is it a public meeting when talking to two Commissioners in the hallway if there are three at the meeting – or is it three Commissioners in the hallway? **Chair Rojecki** replied it depended on what was being talked about; if they are talking about baseball ... **Ms. Chiechi** said not really actually. **Commissioner Ellis** added that ultimately AAG Ackerman has to answer that question, but he could say the issue did arise not too long ago and it did not get resolved at that time. The Commissioners recognized it was an issue and avoided those two-person conversations in the hallway at a meeting where there were only three Commissioners present – as a matter of policy. **Ms. Chiechi** indicated, however, it was not avoided later that evening when two Commissioners attended an event outside of the public meeting. That was where it became problematic in her mind to say well, wait, does it only apply when you are in the hallway at the venue of the meeting, or does it apply outside of that also? She did not know if he could come back and answer that, but she wanted to make a public request for that clarification because obviously informal requests sometimes do not get responded to. **Chair Rojecki** asked if AAG Ackerman had any comment. **AAG Ackerman** responded he was, quite frankly, not going to try to answer it in the hypothetical. **Chair Rojecki**’s answer was partly in jest, but was also partly correct. It depends on what is being talked about and not just with regard to whether they are talking about baseball or talking about Commission business. Even with Commission business, it depends, so there is not one answer that is going to satisfy Ms. Chiechi. AAG Ackerman would not attempt a

hypothetical because he did not think it served the Commission or the public because whatever he said would probably be misleading.

Mr. George Teeny asked for clarification. For instance, if Commissioners Ellis, Rojecki, and Bierbaum came to his club and they sat around and had a beer; that was not a problem even though it was a licensee that invited them? And if they should saunter in talking about business, it was probably okay? Mr. Teeny knew it was hypothetical and did not want to put them to it, but what he heard was that, theoretically, they could have a quorum anywhere. **Chair Rojecki** replied that he assumed if there were three Commissioners and they were discussing this issue right here and were not doing it in an open public meeting, he assumed that was a quorum. But, if they were at Mr. Teeny's place having a beer and a bratwurst, watching baseball, and talking about anything, that would not be a quorum. He agreed with AAG Ackerman, although he was not an attorney, there was a common sense element to it where they have to understand the issues and talk about the issues, but do not necessarily have to talk about the things that are necessarily ... **Mr. Teeny** agreed it was tricky. **Ms. Chiechi** clarified her broader question was if a quorum was five Commissioners, or two, or three at any given meeting.

Director Day interrupted to get back on the topic of poker wager limits, indicating this was what would happen if we do not stay on topic. If there is a separate question about how the Commission quorum meets, then there is a process to submit that question and get an answer. Director Day suggested doing that and to try to move forward.

Chair Rojecki agreed they should move on. A couple of key points have been identified, and he asked if there were any other key points that the group wanted to talk about as far as the direction they wanted to go. He asked if everybody was open to the possibility that the Commission have the staff go back to the interested parties and ask them for two representatives within their groups. Chair Rojecki was not quite sure how to do the card room licensees; the Legislature seemed very obvious, go to the two committee chairs; the Governor's office was fine, but he was not sure about the tavern owners. **Ms. Chiechi** said they do not have an organization; they belong to the Restaurant Association (WRA). **Chair Rojecki** asked if, in that case, the Restaurant Association would be a stakeholder. **Ms. Chiechi** assumed so, adding they would probably defer to the RGA, but staff could ask.

Mr. Chris Kealy added it made sense to have the Commission staff write a letter to a variety of interested parties suggesting they are looking for a couple participants and see who responds. Staff could send a letter to the WRA and they could in turn send nobody. The cities may send one; Problem Gambling might just be one. **Chair Rojecki** said that was fine. What he was proposing was to offer two positions for each interested party, and if they send one, then they send one. If they send two, then they send two. It is not like we are trying to play a game of tackle football and gang up on each other; there is just more of a deliberative open process. **Mr. Kealy** said he was just going to keep saying it, and he was doing some other people's jobs, although he was not accusing anybody, but he was sure Director Day appreciated that we keep reminding everyone that whatever comes of this will still go through the normal public process,

so it is absolutely an attempt to just build an accord and an understanding of what is going on. **Director Day** affirmed that was his understanding.

Chair Rojecki asked what everyone felt the next steps were; if it was to have staff identify and send invitations to the interested parties. He has heard from several people that they do not want this thing to pan out for a year or two, but want to find some kind of resolve in a reasonable amount of time, which he thought everyone would agree with. Chair Rojecki asked if there was time next month to get this group together to start talking about criteria and parameters.

Director Day affirmed. **Chair Rojecki** asked if there was a study session scheduled prior to the 1:30 public meeting. **Director Day** replied there would be a study session on Thursday before the Commissioner's work session. **Ms. Dolores Chiechi** reminded the Commission that many of the RGA members would be at G2E in Las Vegas.

Mr. Michael Marquess thought the process was fine the way it is; it just needs to be respected more. People need to weigh in when it is the time to weigh in. If we are going to change the process, we should discourage the late objections and just dismiss them. That would be simple and would not entail anything complicated; just dissuade those eleventh hour objections and encourage people to participate earlier because they need to respect the process, which is not being respected at this point. **Chair Rojecki** asked if Mr. Marquess was saying something different – don't even create this poker wager discussion group? Some of the things Chair Rojecki was looking at are measured topics. How to measure and balance some of the things where he I thought some within the industry did not necessarily understand where the Commissioners are coming from, or a whole host of things. **Mr. Marquess** thought he could probably clarify that a little bit better, yes.

Director Day went back to Ms. Chiechi's comment that a lot of the RGA members were going to be at G2E in Las Vegas on Thursday of the November Commission meeting. He thought if it were known from the other Commissioner's perspective, if we had an outline or transcription of some of the comments from this one, we may be able to actually propose a structure for the rest of the Commission to talk briefly about on Friday, before we going forward with the rest of the meeting, if that would work. **Chair Rojecki** asked if G2E was both Thursday and Friday. **Ms. Chiechi** replied it was from Tuesday through Thursday.

Chair Rojecki asked if there was a process or a way that the Commission could have meetings in the Commission office – if that conference room was big enough. **Director Day** responded he could attempt to identify some interested parties that would want to participate in the discussion, and use the months of November and December to try to hold some informal meetings. Then come back to the Commission with a report at the January meeting. **Chair Rojecki** suggested having a couple of meetings, and then asked if the meetings had to be recorded, or if notes could just be taken. **Director Day** did not believe an informal discussion group meeting had to be recorded. **Chair Rojecki** asked if it would still be a public meeting though. **Director Day** affirmed it would be open to the public. If the Commission did not like the membership, or the structure, or the recommendations of the group it could always be changed.

Chair Rojecki thought the next steps would be to identify and ask the stakeholders or the interested parties to identify a couple of people within their interest groups, and then set the first meeting for around the first or second week of December. He wondered if we needed to identify it in a letter, which is better than just having a discussion there. He asked if we wanted them to bring ideas or limit those ideas.

Commissioner Ellis responded that maybe he was over-simplifying, but to the extent the topic is very specific on poker limits, with all the discussions that we have had about poker limits over the years, it seems fairly easy for a group of knowledgeable people to sit down and talk about poker limits. But if it would be helpful, Mr. Faulkner had suggested that people put their ideas down in writing, to the extent they want to do that, which would also be fine.

Director Day recalled there was some discussion at the study session about the importance of the group that comes together to work on and discuss this topic to have a pretty good understanding of poker, and maybe to make sure everybody comes up to the same speed, and have a better understanding as well. Director Day thought it had been mentioned about the relationship of tribal gambling and tribes as governments, and how that works so there is a better understanding. We want to try to at least build an understanding of both the structures and the limits as the group moves forward. **Chair Rojecki** thought some of that was going to happen on November 19 at the Commission meeting. It could create some of its own problems if some of the Commission members are not present. **Director Day** replied there could be some foundational factual discussions or experiences with the group that might help people get at least a line around the same set of knowledge. **Chair Rojecki** asked if staff could do that. **Director Day** replied staff could help facilitate it.

Mr. Chris Kealy added that it might be useful to send an e-mail circle of some sort to try to identify dates that work for people, and having one of the meetings at the Gambling Commission office would be great. He suggested another meeting might be good at the Muckleshoot facility, itself, and/or a card room. Mr. Kealy thought the group might as well look at the venue and even have a game set up or whatever to actually play the game for a minute or two so everybody has an understanding of what is going on. He thought it would be great to visit each other's place of business, or even in the same evening, or on the agenda to just look at it from that perspective because we are talking about poker betting limits. Mr. Kealy asked if that was something the tribal partners would think useful.

Chair Rojecki agreed, but he did not want to take the group away from the focus of actually trying to discuss this rather than playing. He was concerned it was going to distract the group and he thought they could do the same thing in the education process of it. If he was not as educated as Mr. Kealy in how the spread limit works, or how the game of Texas Hold'em works, that is what staff or an expert within the industry need to address. Chair Rojecki did not think the place mattered.

Director Day asked for clarification to make sure he was on the same page of what the expectations are. He anticipated that staff would attempt to the best of their ability to explore

with the interested parties, or these groups at least, whether they would like to participate in an ongoing discussion about poker room wager limits in Texas Hold'em. Staff would attempt to get the group together in a continued informal discussion, by the first week of December. Director Day assumed there would be no objection of the Commission if there was a possible way between now and January to get in a couple meetings. And then provide the Commission with a progress report at the January meeting to make sure they are aware and stay in touch with the process. **Chair Rojecki** replied that sounded perfect. **Director Day** asked the Commissioners who were present if they wished to attend those informal discussion meetings or if he should wait and call them later to make sure they were an interested party. **Chair Rojecki** expected that the Commission members who are present would participate. The Commissioners need to understand the issues as well, if not more than, the interested parties.

Commissioner Ellis asked if anybody else had reaction to that. He had assumed the Commissioners would attend as well, but then after thinking about it thought that maybe it was an issue that other people might have different ideas and would rather not have the ultimate decision makers present during those discussions.

Ms. Joan Mell thought it would be really important for the Commissioners to participate. And even if they are not present at the meetings, the big unknown from her side of the aisle was what the criteria were that was being used to make the rule. She did not even know what was on the table as to how the Commission would gauge whether or not they would increase poker wager limits. That is why she came and suggested it. She thought the first thing that needed to be at that meeting was a list of the statutes of the rules that come into play to know what was going to be implicated, including whether or not that included some implication on tribal gaming. And then they need to know what the criteria are for whether or not wage limits should be increased. She thought one of the criteria that needed to be analyzed was what the public harm was; what the regulatory benefit was. Beyond those two, she was not sure she knew what the other ones were. But she thought the Commission had to give that direction to the group to get some concrete language out. She did not think it would be inappropriate to ask everybody to come to the table with their ideal language; that might help identify what rules are implicated. That was the recommendation she would make.

Chair Rojecki thought language; and even what kind of topics Ms. Mell was talking about; if Chair Rojecki was representing the cities, he might be looking at the taxation issues as being the most important issue, which is going to be different from another interest group like criminal offenses or whatever the case may be, but it is a good idea to bring something to the table with them.

AAG Ackerman said he has tried not to talk much because he really wanted to hear what people had to say in a big picture sense about all of this, but thought one of the things that needs to be decided is what the goal or goals of this is. He heard Mr. Marquess say that one of the reasons people were present today was because they wanted to somehow dissuade people – he thought was the word Mr. Marquess used – from coming in at the eleventh hour on a petition and then raising objections to it and the Commission being uncertain what to do at that point. If that was a

major issue that folks want addressed by this process that it sounds like the group is going to embark upon, then they need to get not just the industry and local governments and those obviously interested parties to the table, but also need to at least publicly invite the public, the Legislature, problem gambling folks, and anyone else that has an interest in this arena. Because the reality is, the Commission cannot legally cut off anybody from coming in at the eleventh hour, but they can perhaps diminish the amount of weight that might be given to those objections or concerns if those parties had been invited to be part of the process and had refused to participate. AAG Ackerman thought people needed to understand that the Commission cannot just say they are not going to accept someone's letter or public comment at an open public meeting; it cannot be done. What the Commission can do is ask the people who are interested in this to please come to a meeting and participate, to express their views and be part of the process, and then see what the process produces. AAG Ackerman thought the merit to what was being talked about was that there can be one discreet issue that everybody can come together on and see if they can solve through this sort of collaborative process that was being discussed. If the topic is rigidly limited to setting a wagering limit for poker, and the group stays focused and gets everybody in talking about that, they will see whether this will work or not. At this point, AAG Ackerman was trying to figure out whether it would or it wouldn't work and had not made up his mind. He thought it seemed to be worth a try, but they needed to be clear of their goal and at least invite as many people to the table as they could.

Chair Rojecki agreed. His goal might be a little bit different from someone else's, and he thought the smaller focus group might need to hammer that down more. One need is to resolve some aspect of an issue that continues to come before the Gambling Commission that needs to be dealt with in different ways or in a moralizing way for some groups. That has been Chair Rojecki's goal; to bring the group forward to be more collaborative and to discuss these issues and bring them out on the table. He suggested doing that at the next meeting and identifying a common goal. We are all activists for our individual groups. Chair Rojecki did not want the group to get into a position where they started to demoralize each other's opinions on the issue but should focus more on how the issue could be resolved, even if there is a difference of opinion. He suggested keeping that in mind for the future. Chair Rojecki asked if there was anything he was missing or that had not been said that should be said.

Mr. Monty Harmon said, at the risk of repeating what others have said, part of what he heard in this discussion was there were concerns the Commissioners had that the interested parties may not be clear on or could use further input or understanding. He was not sure how to gather that information other than to explain the position that the industry has with regard to the desire to meet the needs of the market. Maybe that was something that had not been brought up. We had talked about putting things in writing so that it could be sent to the Governor's office and to the other interested parties so they understand what exactly is being asked for and why possibly the different Texas Hold'em games or whatever spread limits the industry was looking for – to put that in writing so that it was clearly understood what was being requested and how it would work within the marketplace. Mr. Harmon did not know if that was something that would be helpful before the next meeting so that those communications could be given to the Governor's office so they were aware this issue was being addressed and discussed. They would also be invited to the

meeting and would have a better idea of what exactly the agenda would be. On the other side with Ms. Mell's comments of the criteria in the rule making process, if known criteria existed that a particular rule could have an impact on Compacts, then in the rule process the Governor's office and the other interested parties – the Tribes – would be notified in writing so that better communication was documented. That might help dispel some of the Commission's concerns regarding if they have tried to get the right people involved. And with respect to Director Day, Mr. Harmon understood the group was not here to talk too much about changing things, but were discussing a process and where to go forward, and he just wanted to bring those to the Commission's attention and seek their comments. **Chair Rojecki** said okay. **Commissioner Ellis** said he did not have anything else.

Mr. Gary Saul said, in the interest of simplicity, he once read that somebody said the definition of progress is man's ability to complicate simplicity. He was again going back to Joe Q. Poker who comes over to him and says "I just went over to the table game over there at one of these commercial card rooms; I just bet \$300; I went back to the poker table and I'm wondering if I could bet \$40 over here." So going back to what was said earlier about understanding where the Commissioners are coming from, Mr. Saul thought that was one of the main things they probably would want to know if they stood up here and said there is a standard out there of \$300 for the commercial card rooms, so explain how poker is different from table games and why that would not be up to the \$300 level. Try and understand it from a poker player's perspective: what is the criteria, how is the decision made on whether \$300 is too high, too low, what is the right amount, what is the criteria used to determine what is the right amount. That is what the big confusion is. So again, just a poker player trying to understand what the criteria is that the Commission is going to use to determine how they are going to put a number on that. The poker players think the Commission did put a number on it; \$300 was the number put on table games. Mr. Saul asked the Commission to explain to him, as a poker player, how poker is different than the table games so he could understand why \$300 might not be the correct number for poker and what criteria the Commission is going to use. That is what most of the poker players Mr. Saul has spoken to have said to him – how does the Commission make the decision on what number is right? And Mr. Saul replies that is a great question that everybody is trying to figure out; what is the criteria used on that? That is a big thing because Mr. Saul thought \$300 was the standard they presented or they did that for table games, so how is poker different? That is the main question they would probably ask, and like Chair Rojecki said, from understanding where they are coming from as Commissioners, that is what the poker players want to know – tell them where the Commission is coming from so they can understand what the criteria is to make a decision on what number the Commission has thrown out there.

Chair Rojecki replied he thought Mr. Saul was right that some may look at it as an arbitrary number, and some may look at it as a number based on history or based on 20 different criteria, but that criteria may be right here and not on a piece of paper. There is going to be that variation from Commissioners or Commissions over the years, but it is something that definitely needs to be talked about and something the group was going to be talking about next month or at the next meeting when there is a smaller group that will focus on exactly what Mr. Saul was talking about. The Commission members may be coming from a different angle than the Governor's

office versus the Chair of the Commerce and Labor Committee versus an ex-officio. An ex-officio may disagree with the Chair of the Labor and Commerce Committee or they may agree. What are the reasons? He thought you agreed with them all the time.

Ms. Joan Mell commented she did not think what Mr. Saul was talking about was inappropriate criteria. If the Gambling Commission could embrace the concept that there was a difference between promoting the industry versus protecting the industry, she thought they could introduce some criteria into an analysis of what the right number was on the poker limits if they could take testimony and take input on what the market would bear and what the standard of the industry was with regard to allowing those games to be commercially viable. Ms. Mell would hate to see it get grouped under the heading that the Gambling Commission was not in the business of promoting gambling, which they certainly are not, but there is a difference between promoting gambling and protecting the industry, and limiting the Commission's regulatory controls to those that prevent corruption and harm to the public.

Chair Rojecki asked if there were any other comments; there were none. He hoped the others agreed with him today, but if not he hoped trust could be built into this process with some more transparency as was talked about, with some confidence that we can move down a direction to address this issue; we can address it today or we can address it for the future. Chair Rojecki said let's try to work together more on an approach that seems to have plagued the Commission for many years. He thanked everyone for attending and said staff would send out notices. With no further business, **Chair Rojecki** adjourned the meeting at 11:15 a.m. The next meeting will be held at the Lacey Community Center on November 19 & 20.

Minutes prepared by

Gail Grate,
Executive Assistant