

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
June 11, 1986 - 10:30 a.m.
3131 Princeton Pike
Lawrenceville, New Jersey

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New Jersey
Casino Control Commission
JUN 13 1986

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: In Regard to the Matter of: :
: :
: Application of Trump's Castle :
: Associates for renewal of its :
: casino license. :
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TRANSCRIPT OF
PROCEEDINGS

VOLUME VII

Pages 1,232 thru 1,277

BEFORE:

- WALTER N. READ - Chairman
- VALERIE H. ARMSTRONG - Vice-Chair
- JOEL R. JACOBSON - Commissioner
- CARL ZEITZ - Commissioner
- E. KENNETH BURDGE - Commissioner

ALSO PRESENT:

- KAREN BIACHE - Senior Procedures Analyst
- BARBARA GALLO - Procedures Analyst
- THOMAS FLYNN - Public Information Officer

On Behalf of the Commission Staff:

- JOHN ZIMMERMAN - Legal
- JOYOTI FLEMING - Legal

On Behalf of the Division of Gaming Enforcement:

- JOHN E. ADAMS, JR. - Deputy Attorney General



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P R O C E E D I N G S

(Commencing at 4:25 p.m.)

(All five Commissioners are present.)

MS. BIACHE: Item No. 30:

"Decision of the application of Trump's Castle Associates for renewal of its plenary casino license."

CHAIRMAN READ: We now return to renew our sessions with respect to Trump's Castle Associates' 1986 casino license renewal hearing, and before we proceed any further, I wish to express my appreciation to all counsel for the time and effort they have devoted for this matter. I especially wish to note that in my view the Public Advocate has played a constructive and indeed an essential role in these proceedings.

I wish to thank Mr. Sciarra for his efforts and for his careful attention to my comments at the outset of the hearing concerning the scope of the issues before us. Mr. Sciarra's presentation of his case was, I think, entirely appropriate to the

1 issues at hand and has been most helpful to
2 our resolution of these issues.

3 There are several matters which we
4 must consider prior to reaching the ultimate
5 issue of licensure. The first such matter,
6 I think, is the petition of Trump's Castle
7 Associates for a reconsideration of
8 condition 59 of its operation certificate.
9 This condition was imposed at last year's
10 license hearing and requires that the
11 licensee designate by December 13th, 1985,
12 three members of its audit committee, two of
13 whom shall shall be independent of
14 management.

15 The petition seeks modification of
16 the condition so as to require only one
17 independent audit committee member or waiver
18 of compliance with a condition.

19 The requirement of an audit
20 committee with majority outside
21 representation is imposed by this Commission
22 on all casino enterprises. The Commission's
23 authority to impose this requirement has
24 been upheld by the Appellate Division, and
25 it is, in my view, an essential regulatory

1 safeguard.

2 While I realize that this
3 particular casino enterprise has a somewhat
4 different structure from most others, I do
5 not see why it should not be able to meet
6 the requirement that two independent member
7 be appointed to its audit committee.

8 I, therefore, believe that the
9 relief requested in the petition should be
10 denied.

11 I also note that it is now a year
12 since the condition was imposed and six
13 months since the time expired that was
14 originally set for compliance and agreed to
15 by the licensee. The only movement toward
16 compliance was the submission of the name of
17 one proposed independent audit committee
18 member who clearly failed to meet this
19 Commission's criteria for independence.

20 I would, therefore, move at this
21 time that the petition be denied, and that
22 Trump Castle Associates be required to full
23 comply with the existing condition within 9
24 days.

25 Is there a second for that motion?

1 COMMISSIONER ZEITZ: Second, Mr.
2 Chairman.

3 CHAIRMAN READ: Any discussion? If
4 not, on the motion made and seconded, those
5 in favor?

6 (All Commissioners present voted in
7 favor of the motion.)

8 CHAIRMAN READ: It's unanimously
9 carried.

10 We also have a number of unresolved
11 matters concerning the holders of bonds
12 issued by Trump's Castle Funding,
13 Incorporated. The first such matter
14 involves a request for waiver of
15 qualification.

16 Mr. Adams, at the opening sessions
17 of this hearing, I believe you indicated
18 that subject to the receipt of certain
19 additional information, the Director was
20 prepared to consent to the requested
21 waivers.

22 Would you bring us up to date with
23 the request of the Director's position?

24 MR. ADAMS: Yes, Mr. Chairman.

25 I've received additional

1 documentation from Mr. Pickus about certain
2 of the bondholders, which would indicate
3 that those that had a large amount on
4 certain lists, in fact, were holding it in
5 some capacity for others. So that there
6 isn't a large percentage being held by any
7 one particular entity, subject, of course,
8 to the previous discussions we've had
9 concerning, I think, Westinghouse Pension
10 Corporation.

11 In addition, additional information
12 was presented which indicated some
13 additional funds were being held by a
14 custodian bank.

15 Again, when that was considered in
16 the context of the seven percent discounted
17 bonds, that face amount again was reduced to
18 a lower percentage.

19 At this time, I'm prepared to
20 represent that the Director would concur in
21 the waiver of those bondholders, subject to
22 the previous comments that I made in my
23 letter report about the bondholders as
24 financial sources.

25 CHAIRMAN READ: Thank you.

1 Based on what's just been placed on
2 the record, I would move that qualification
3 of the holders of the Series A-1 and Series
4 A-2 bonds issued by Trump's Castle Funding
5 Incorporated be waived, pursuant to Section
6 85(d)(1) of the Act.

7 Is there a second for that motion?

8 COMMISSIONER ZEITZ: Second that
9 motion, Mr. Chairman.

10 CHAIRMAN READ: Any discussion?

11 COMMISSIONER JACOBSON: Mr.
12 Chairman, I don't believe it would be a
13 surprise to anyone that I am not going to
14 support this motion. As I have stated on
15 many occasions in the past, and in
16 particular at the initial licensing hearing
17 of Trump Castle Associates last year,
18 Section 85 of the Act clearly states that
19 any person who or entity which lends money
20 to a casino licensee or hold bonds or other
21 securities of a casino licensee must be
22 qualified. As I stated at last year's
23 hearing, it is obvious that the only asset
24 which stands behind the Trump Castle Funding
25 bonds, and which makes these bonds saleable,

1 is the casino-hotel. These are securities
2 of the casino licensee, and I am once again
3 unimpressed by the complex array of
4 non-functioning corporations which have been
5 created to disguise this basic fact.

6 Accordingly, I will, as I have in
7 the past, vote against the motion.

8 CHAIRMAN READ: Further discussion
9 on this motion?

10 COMMISSIONER ZEITZ: I would just
11 point out that waivers are always revocable.

12 CHAIRMAN READ: Any further
13 discussion or comment?

14 If not, on the motion made and
15 second, those in favor?

16 (Chairman Read, Commissioners
17 Armstrong, Zeitz and Burdge voted in favor
18 of the motion.)

19 (Commissioner Jacobson voted in
20 opposition to the motion.)

21 CHAIRMAN READ: Motion carries four
22 to one.

23 We also have the question of the
24 status of the bondholders as financial
25 sources, and specifically the status of

1 Westinghouse Pension Investment Corporation
2 as a financial source.

3 Based on the information previously
4 placed on the record, including the fact
5 that the largest bondholder, Westinghouse
6 Pension Investment Corporation, holds only
7 12.3 percent of the freely-traded and
8 widely-distributed public offering, it's
9 arguable that the bondholders are not
10 financial sources under Section 84(b) of the
11 Act.

12 However, I wish to make clear that
13 the Commission has never established, and in
14 my view, should not now establish a ruling
15 that a holder of less than 15 percent of the
16 debt security offering is necessarily
17 outside the purview of Section 84(b).

18 I must also note in our original
19 ruling in this matter, we indicated that the
20 initial holders of the bonds would not
21 necessarily be financial sources and
22 anticipated those holders would resell to
23 the public.

24 Westinghouse has not resold to the
25 public, but the majority of other holders

1 have, and thus the bonds can be described as
2 widely distributed and freely traded.

3 While I do not think that any of
4 the holders should be considered financial
5 sources, I would condition this ruling in
6 the case of Westinghouse on the obligation
7 of that entity to resell its holdings to the
8 public over the course of the next license
9 year.

10 In this way, the intent of our
11 initial ruling will be carried out and the
12 bonds which Westinghouse now holds may, like
13 the vast majority of the other outstanding
14 bonds, be considered tradings in the public
15 market.

16 In the event the condition I
17 suggested is unfulfilled at the time of
18 licensing next year, Trump's Castle
19 Associates is advised that it will be
20 required without further notice from us to
21 redeem the bonds held by Westinghouse.

22 I would, therefore, move that the
23 Commission rule that the holders of the
24 bonds are not financial sources subject to
25 the condition I have specified with respect

1 to the Westinghouse Pension Investment
2 Corporation.

3 Is there a second for that motion?

4 COMMISSIONER BURDGE: Second the
5 motion.

6 CHAIRMAN READ: Any discussion?

7 COMMISSIONER JACOBSON: Mr.
8 Chairman, for the reasons I have already
9 stated, I oppose the motion to waive the
10 qualification of the bondholders we've been
11 discussing. But even more fundamentally, I
12 cannot support the motion to find that the
13 bondholders are not financial sources.

14 With respect to Section 84(b), we
15 are faced with this statute which expressly
16 requires a qualification of all bondholders,
17 assuming the bonds bear a relation to a
18 casino proposal.

19 I am aware that the Commission has
20 previously ruled that where bonds are widely
21 distributed and freely traded, holdings of
22 any particular bondholders do not bear a
23 relation under the statute.

24 Although these bonds were
25 originally placed with a pre-selected group

1 of institutions through a private placement,
2 the Commission at last year's meeting,
3 extended the widely distributed and freely
4 traded rationale on the representation that
5 the private placement was being made with
6 the anticipation that a true public offering
7 would follow.

8 While there is evidence that most
9 of the bonds made their way into the public
10 market, I am not convinced that Section
11 84(b) allows for any excdeption. In my
12 estimation, this is particularly the case
13 with respect to the bonds held by
14 Westinghouse Pension Investments
15 Corporation.

16 Even under last year's rationale,
17 any original purchaser which failed over the
18 course of this past license year, to utilize
19 the mechanism for distributing its bonds in
20 the public market, was subject to
21 classification as a financial source.

22 I cannot agree that we should delay
23 any longer in making that determination.
24 While I am not unsympathetic to the impact
25 such a ruling will have on the licensee,

1 there are appropriate provisions already in
2 the bonds which, if employed, would remove
3 these bondholders from financial source
4 status in the event the Division is unable
5 to report on Westinghouse prior to the
6 expiration of the current license. While
7 activation of the redemption provision at
8 this time may not be to the licensee's
9 liking, I do believe that the Commission at
10 last year's meeting fully contemplated its
11 exercise under such circumstances.

12 In my view, Mr. Chairman, all of
13 the bondholders are financial sources, and
14 obviously I can't support the motion.

15 CHAIRMAN READ: Any further comment
16 or discussion?

17 COMMISSIONER ZEITZ: Just briefly,
18 Mr. Chairman. I support the motion as made.
19 I think it does not explicitly address it,
20 but I think implicitly it may imply that at
21 some point, if Westinghouse moves to reduce
22 its position in these bonds, that it may
23 reach a point at some point where it shares
24 all of the attributes of the bonds as held
25 widely by the public, and that might

1 alleviate some portion of that problem.

2 CHAIRMAN READ: Any other comment
3 or discussion?

4 If not, on the motion as made and
5 seconded, all those in favor?

6 (Chairman Read, Commissioners
7 Armstrong, Zeitz and Burdge voted in favor
8 of the motion.)

9 (Commissioner Jacobson voted in
10 opposition to the motion.)

11 CHAIRMAN READ: That motion carries
12 four to one.

13 I believe we can now turn to the
14 primary focus of this hearing, the Marina
15 District Roadway Improvements.

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2 As I made clear in my comments at the
3 outset of this hearing, it is not our purpose
4 to make a factual determination as to the types
5 of road improvements needed in the Marina area,
6 or to make a legal determination as the
7 enforceability of the roadway improvements
8 contract. Rather, we are concerned with
9 Section 84(e) of the Casino Control Act, which
10 requires that the licensee satisfy us that it
11 is in compliance with the Coastal Area Facility
12 Review Act; with the specific condition of
13 Trump Castle Associates' casino license that it
14 adhere to all conditions of its CAFRA permit;
15 and, finally, with the licensee's representa-
16 tions made at last year's hearing that it would
17 honor the roadway improvements contract and the
18 joint venture agreement.

19 The essential facts bearing on these
20 issues are undisputed, and I will attempt to
21 briefly summarize them. However, I must first
22 note that, especially during the latter stages
23 of this hearing, factual disputes have develop-
24 ed over matters which are at best tangential to
25 the issues before us. I suspect that these

1 Chairman Read

2 disagreements are to some degree attributable
3 to differences in recollection concerning
4 matters which happened over a year ago, and
5 which took place in an atmosphere of great
6 pressure and when all of the participants
7 were very weary and probably a little groggy.
8 At any rate, I do not believe that resolution
9 of these specific factual discrepancies is
10 necessary, in view of their limited relevance
11 to the issues before us. My review of the
12 record shows that while there were differences
13 as to details, there is really little disagree-
14 ment as to what the Trump Organization knew
15 about the roadway improvement plans and the
16 magnitude of the projected costs, prior to
17 last year's license proceeding. So too, the
18 organization was clearly dissatisfied with the
19 proposed road design before the issuance of the
20 casino license. In any event, to the extent
21 that any of these conflicts may reflect
22 negatively on the qualifications of any of the
23 individuals involved, they will be fully
24 investigated by the Division. Should the
25 Division report to us during the license year

1
2 on these matters, the applicant will bear the
3 continuing burden of demonstrating its fitness
4 for licensure by clear and convincing evidence.
5 However, I do not think that any of the con-
6 flicting testimony now before us should affect
7 our handling of the roadway improvements issue
8 or should otherwise detain us from completing
9 this hearing today.

10 Having said that, I will now attempt
11 to set forth the essential chronology, as I
12 understand it from the record. I will begin
13 by noting that CAFRA issued a permit to Hilton
14 Hotels Corporation in mid-1983. That permit
15 requires the permittee to take all measures
16 required by the Department of Environmental
17 Protection to mitigate the impact of the
18 proposed facility on area traffic, and make
19 financial contributions in accordance with
20 state, regional and local transportation plans.

21 The specific obligation of Hilton under
22 its CAFRA permit, and of Harrah's and Golden
23 Nugget under similar permits issued for their
24 proposed facilities in the Marina area, was
25 defined through a series of discussions which

1 Chairman Read

2 took place in 1983 and early 1984. In those
3 discussions, the three casino developers were
4 aided by their traffic consultant, Wilbur Smith
5 and Associates, and DEP availed itself of the
6 traffic planning and engineering expertise of
7 the Department of Transportation.

8 The result of these discussions was
9 the Marina District Roadway Improvements
10 Concept Plan IV-A, which was prepared by
11 Wilbur Smith and Associates. In view of the
12 fact that the plan required construction
13 activities on existing state roadways, the
14 three developers signed a joint venture agree-
15 ment in order to "enter into an agreement with
16 DOT for the...completion of construction of
17 the roadway improvements...and...to enter into
18 construction contracts for the construction of
19 such improvements."

20 On the same date that the developers
21 entered into a joint venture agreement,
22 March 27, 1984, they also entered into a
23 contract with DOT. That contract required
24
25

1 construction in two phases. Phase one
2 entailed construction by September 15, 1985,
3 of at-grade improvements at the intersection
4 of Route 87 and Huron venue, and further
5 required construction, by March 31, 1987, of
6 an overpass at that intersection. Phase two
7 required construction, by March 31, 1987, of
8 at-grade improvements to Route 30 and an
9 overpass at the intersection of Route 30 and
10 Huron Avenue.
11

12 In the contract the developers express-
13 ly acknowledged that all of the phase one and
14 phase two improvements were "reasonable and
15 necessary from the standpoint of good transpor-
16 tation planning." In addition, the contract
17 provided that the contractual obligation of
18 the developers to immediately proceed to
19 design both phases and construct phase one
20 was "unconditional." The contract did provide
21 that the contractual obligation of the
22 developers to build phase two was contingent
23 upon the receipt of reinvestment tax credit,
24 but the developers also acknowledged that
25 construction of both phases was required to

1 Chairman Read

2 satisfy their obligations under their CAFRA
3 permits.

4 In addition, by a letter of understand-
5 ing dated March 26, 1984, the Division of
6 Coastal Resources advised the three developers
7 that, in order to fulfill the condition of
8 their CAFRA permits regarding transportation,
9 they were required to complete all improvements
10 in the Marina District Roadway Improvements
11 Concept Plan IV-A.

12 It is thus clear that Hilton, along
13 with the other two developers, was required
14 as a condition of its CAFRA permit to construct
15 the phase one and phase two improvements
16 described in Concept Plan IV-A and in the
17 contract with DOT.

18 On April 27, 1985, Trump's Castle
19 Associates' predecessor in interest entered
20 into a contract to purchase the casino hotel
21 constructed by Hilton. In that contract the
22 purchaser agreed to assume all of the seller's
23 obligations under the "roadway improvements
24 contract." The contract to purchase the
25 hotel defined the term roadway improvements

1 contract as including all obligations under a
2 series of documents. The documents specified
3 included not only the contract with DOT itself,
4 but also, among other things, the joint venture
5 agreement and the letter of understanding from
6 the Division of Coastal Resources.
7

8 At Trump's Castle Associates' casino
9 license hearing on June 14, 1985, the applicant
10 stipulated that it "intends to honor, in all
11 respects, the terms of the agreement dated
12 March 27, 1984, that Trump's predecessor in
13 interest, Hilton, through a joint venture with
14 Harrah's Marina and GNAC, entered into with the
15 State of New Jersey." In addition, the
16 licensee represented, through its counsel,
17 that it had a legal commitment under the
18 contract and joint venture agreement, and would
19 fulfill that commitment.

20 The closing on the contract to purchase
21 the hotel took place on June 17, 1985. As part
22 of that closing, Hilton assigned to Trump's
23 Castle Associates, and Trump's Castle Asso-
24 ciates assumed, all Hilton's obligations under
25 the roadway improvements contract, as that term

1 Chairman Read

2 is defined in the contract to purchase the hotel.

3 The casino hotel opened to the public
4 on June 19, 1985. On June 20, representatives
5 of Trump's Castle Associates, Harrah's and
6 GNAC met with DOT. At that meeting, Robert
7 Trump indicated that, in view of the recent,
8 fast moving events surrounding the purchase of
9 the hotel, he was not in a position to comment
10 on Trump's Castle Associates' obligation to
11 participate in the roadway improvements
12 contract.

13 On July 15, 1985, CAFRA sent a letter
14 to Trump's Castle Associates confirming that
15 the CAFRA permit for the casino hotel facility
16 contained a transportation condition, and that
17 compliance with that condition required imple-
18 mentation of the DOT contract by Trump's Castle
19 Associates. At about this same time, on
20 July 12, 1985, DOT Commissioner Bodman wrote
21 to Robert Trump, requesting confirmation that
22 Trump's Castle Associates intended to assume
23 Hilton's obligations under the roadway
24 improvements contract. Harvey Freeman respond-
25 ed with a letter of July 22, questioning the

1 Chairman Read
2 need for the improvements detailed in the
3 contract and requesting a meeting.

4 A meeting was held on July 25, at which
5 Donald Trump expressed to Commissioner Bodman
6 his objections to the improvements called for
7 in the contract. At the direction of Commis-
8 sioner Bodman, Jack Friedenrich and other DOT
9 staff members undertook a review of the
10 improvements. The engineering and planning
11 staffs of DOT concluded that the improvements
12 called for in the contract should go forward.

13 Wilbur Smith and Associates subsequent-
14 ly developed, on behalf of Trump's Castle
15 Associates, an alternative and much less
16 ambitious roadway improvement plan, which was
17 submitted to DOT in December 1985. Following
18 DOT staff review, representatives of DOT and
19 Trump's Castle Associates again met in
20 February 1986. The DOT staff did not accept
21 the methodology and conclusions of the new
22 plan, and by letter of March 7, 1986, Commis-
23 sioner Bodman requested Donald Trump to
24 unequivocally affirm Trump's Castle Associates
25 intention to perform in accordance with the

1 Chairman Read

2 roadway improvements contract.

3 On March 26, 1986, Trump's Castle
4 Associates and GNAC instituted suit against
5 DOT, seeking to rescind the roadway improve-
6 ments contract.

7 Finally, on May 20, 1986, the Division
8 of Coastal Resources notified this Commission
9 that, in view of Trump's refusal to continue
10 the process of implemting the transportation
11 requirements of the CAFRA permit originally
12 issued to Hilton, Trump's Castle Associates is
13 in violation of CAFRA.

14 On the basis of even this brief
15 historical summary, it is clear that Trump's
16 Castle Associates has a transportation obliga-
17 tion under its CAFRA permit; that satisfaction
18 of that obligation requires the construction of
19 the phase one and phase two improvements; that
20 neither CAFRA's imposition of the transporta-
21 tion condition nor its determination that the
22 condition requires implementation of phase one
23 and phase two has been appealed; and that the
24 transportation condition will remain regardless
25 of the outcome of the litigation over the

1 Chairman Read

2 contract with DOT. One other thing is also
3 abundantly clear: that no progress is being
4 made, or has been made for some time, toward
5 the fulfillment of the CAFRA permit transporta-
6 tion obligation.

7 While the need for the phase one and
8 phase two improvements has not been an issue
9 at this hearing, it has become obvious from
10 the testimony of various witnesses that this
11 is an area of considerable disagreement. We
12 cannot settle that disagreement here and now,
13 but we can take action to help insure that it
14 does not needlessly further delay the start
15 of the appropriate road improvement construc-
16 tion.

17 In this regard, among the most illumi-
18 nating testimony we heard at this hearing was
19 that of Mr. Weingart. Mr. Weingart noted that
20 the CAFRA permit for what is now Trump's Castle
21 has never been suspended or revoked, and remains
22 valid. However, he also explained that, in
23 keeping with CAFRA's letter to this Commission
24 stating that Trump's Castle Associates is in
25 violation of CAFRA, suspension or revocation

1 Chairman Read

2 proceedings may be instituted. Most signifi-
3 cantly, Mr. Weingart also explained that, if
4 the licensee challenges the assumptions and
5 conclusions of Concept Plan IV-A, and seeks to
6 demonstrate that changed circumstances render
7 that plan no longer valid, there are procedures
8 available whereby the licensee can seek a
9 modification of the transportation requirement
10 of its CAFRA permit. Indeed, Mr. Weingart
11 described the CAFRA modification process as
12 "very open," and opined that an application
13 from Trump's Castle Associates might result in
14 settlement discussions as well as modification
15 proceedings.

16 Mr. Weingart also noted that Trump's
17 Castle Associates has not sought to avail
18 itself of the administrative modification
19 process, and I for one find it disheartening
20 that our licensee has thus far eschewed this
21 process, and chosen instead to pursue litiga-
22 tion over the contract with DOT.

23 I also note that Mr. Friedenrich
24 testified that, if confronted with assumptions
25 concerning future developments in the Marina

1
2 District which are different from those
3 underlying Concept Plan IV-A, DOT's design and
4 engineering staffs would consider whether the
5 requirements for roadway improvements should be
6 revised. I assume that DOT would play a major
7 role in any CAFRA permit modification proceed-
8 ings, and, contrary to certain assertions made
9 at this hearing, I have no reason to think that
10 DOT would approach such proceedings with any
11 motivation other than serving the reasonable
12 and necessary transportation needs of the
13 public.

14 As I have by this time made clear, in
15 my view Trump's Castle Associates should be
16 required, at a minimum, immediately to seek
17 modification of the transportation requirements
18 of its CAFRA permit, and to pursue all available
19 procedures for such modifications in good faith
20 and with all reasonable speed. Of course,
21 participation by the other two developers
22 seems advisable, and I assume they would seek
23 to join, or Trump's Castle Associates would
24 seek to cause them to join, in the CAFRA
25 proceedings. If those proceedings result in a

Chairman Read

1 transportation plan acceptable to the developers
2 and DEP, the public interest will be served
3 and Section 84(e) of the Act and the applicable
4 condition of Trump Castle Associates' casino
5 license will be satisfied. If, on the other
6 hand, the developers refuse to accept CAFRA's
7 determination and Trump Castle Associates'
8 CAFRA permit is ultimately revoked, the suit-
9 ability of that entity to continue to hold a
10 casino license will have to be reconsidered.
11

12 I also feel that Trump's Castle Asso-
13 ciates should be required to make reports to
14 this Commission on its activities with respect
15 to the roadway improvements, not less frequent-
16 ly than every other month, beginning on August
17 1, 1986. Furthermore, if those reports do not
18 reveal substantial progress within the license
19 year, this Commission should, in my view,
20 consider taking more direct action. Of course,
21 we have not sought at this hearing to determine
22 what road improvements are required in the
23 Marina District, and have left that determina-
24 tion to other agencies with greater expertise
25 and experience in this area. However, this is

1
2 not to say that we lack the statutory authority
3 to take a more direct and substantive role, if
4 it becomes clear that this is necessary in order
5 to achieve expeditious resolution of this
6 matter.

7 With respect to the representations
8 made at last year's license proceedings, in
9 view of the contempt which the licensee's
10 witnesses expressed for Concept Plan IV-A at
11 this hearing, it is less than clear to me why
12 the licensee so readily assumed Hilton's
13 obligations under the DOT contract and joint
14 venture agreement, and so unreservedly assured
15 this Commission that it would honor those
16 obligations. It is evident from the totality
17 of the testimony that, prior to purchasing
18 the facility and assuming Hilton's obligations
19 with respect to the improvements, the licensee
20 was in possession of the contract, which clearly
21 described phase one and phase two and clearly
22 stated that each phase involved an elevated
23 roadway; and was also in possession of the
24 plans for the entire project and of Hilton's
25 voluminous files on the matter. The licensee

1 Chairman Read

2 likewise had at least some information about
3 the cost of the improvements, and in fact,
4 disclosed to potential bondholders that the
5 cost of phase one alone had been estimated by
6 GNAC at \$36,000,000.

7 I therefore must conclude that the
8 licensee had, or at the very least should have
9 had, an understanding of what it was obligating
10 itself to do when it assumed Hilton's position
11 under the contract with DOT.

12 I also find it most difficult, in light
13 of the provisions of the DOT contract which I
14 previously described, to accept the notion that
15 what has been described here as paragraph "O"
16 can be viewed as permitting avoidance of the
17 contractual obligations if they were later
18 deemed to be unreasonable. I also note that
19 the complaint seeking to void the contract
20 makes no mention of paragraph O, nor is it
21 pleaded as a basis for relief.

22 I certainly understand that the hectic
23 activity prior to the purchase of the casino
24 hotel strained the resources of the licensee
25 and made great demands on the time and attention

1
2 of its key personnel. However, I still find
3 its handling of the roadway improvements matter
4 perplexing and unsatisfactory, and I anticipate
5 that, from this day forward, the licensee will
6 give the matter all necessary attention and will
7 devote all available resources to obtaining a
8 prompt determination from CAFRA as to its obli-
9 gations and to constructing the road improve-
10 ments which CAFRA determines as necessary to
11 serve the public interest. I will accept the
12 licensee's pledge, given in testimony before
13 us, that cost is not the primary concern and
14 that the licensee will seek to construct
15 whatever road improvements are mandated in the
16 Marina District. I will await with great
17 interest a demonstration that this is the case.

18 Having expressed my reservations about
19 the licensee's handling of this matter, I
20 nonetheless believe that we can find that, in
21 view of the existence of a valid CAFRA permit
22 for its facility, Trump's Castle Associates
23 is in compliance with Section 84(e) of the
24 Casino Control Act. In addition, in view of
25 the efforts the licensee has made to present a

1 revised improvement plant to DOT, and the
2 issues it has raised concerning the validity
3 of the existing roadway improvements contract,
4 I believe that we can find that the licensee
5 has fulfilled its representation that it
6 would assume the contractual obligations and
7 rights under the contract and would deal
8 with DOT, CAFRA and the other casinos as a
9 signatory to the agreement rather than as an
10 interested, but uncommitted, Marina area
11 developer. I am, however, disheartened
12 that the licensee never submitted the final
13 revised version of its road improvement
14 plan to DOT. As I have previously indicated,
15 I anticipate that the licensee's future efforts
16 will demonstrate, with far more clarity
17 than its past performance, its expressed
18 desire to construct, regardless of cost,
19 appropriate roadway improvements.

20 In summary, I move that the Commission
21 rule that Trump's Castle Associates has
22 satisfied the requirements of Section 84(e)
23 of the Casino Control Act, and has made
24 minimally adequate efforts to fulfill the
25 condition of its casino license requiring

1 compliance with all conditions of its
2 CAFRA permit and the representations made to
3 the Commission. I further move that the
4 licensee be required, at a minimum, to move
5 immediately before CAFRA to seek modification
6 of the transportation requirement of its CAFRA
7 permit, and to implement whatever road
8 improvements are finally determined by CAFRA
9 to be necessary. In addition, I move that
10 the licensee submit bi-monthly reports,
11 beginning August 1, 1986, to this Commission
12 on its efforts to obtain modification of
13 its CAFRA permit, and, more generally, on
14 all of its activities with respect to the
15 roadway improvements issue.

16 Finally, based on the entire record
17 of this proceeding, I move that the Commission
18 renew the casino license of Trump's Castle
19 Associates and approve all of the terms,
20 recommendations and conditions set forth
21 in the Commission staff reports, other than
22 matters which have been addressed in previous
23 votes at this hearing, and that the Commission
24 renew the casino hotel alcoholic beverage
25 license of Trump's Castle Associates.

1 Is there a second for that motion?

2 COMMISSIONER BURDGE: Mr. Chairman,
3 members of the Commission, I believe that it
4 is important for me to state for the public
5 record that although I was not present the
6 entire relicensing hearing, I have reviewed
7 all of the transcripts of the proceedings,
8 all of the reports, and all of the evidence
9 submitted.

10 Mr. Chairman, I concur with your
11 remarks, and I second your motion.

12 CHAIRMAN READ: Thank you. Further
13 comment or discussion?

14 COMMISSIONER ARMSTRONG: Yes. Mr.
15 Chairman, I have some comments I would like
16 to make about the motion. Before I get into
17 that, I would just like to indicate that I
18 support your comments concerning the role of
19 the Public Advocate in this case. I have to
20 say that Mr. Sciarra did a fine job and
21 fulfilled his responsibility on behalf of
22 the Public Advocate in this particular case.

23 With regard to your comments Mr.
24 Chairman, I cannot support the motion to
25 grant the casino license at this time.

1 Before specifying the reasons for
2 my inability to support the motion, I must
3 note that I do fully concur in your comments
4 that if a casino license is issued, it must
5 be conditioned on this licensee immediately
6 seeking a modification of its CAFRA permit
7 and ultimately fulfilling its obligations as
8 defined by CAFRA with respect to the roadway
9 improvements. However, I must note that I
10 find the licensee's failure to exhaust its
11 administrative remedies prior to filing a
12 lawsuit inexcusable.

13 I also find it difficult to accept
14 the licensee's representations that it truly
15 does desire to perform roadway improvements
16 when the lawsuit it has filed is for
17 rescission of the contract rather than for
18 modification.

19 I cannot join in this motion
20 because I believe that the license cannot be
21 issued until what I will politely refer to
22 as the discrepancies in the testimony have
23 been resolved. While not every
24 inconsistency among witnesses should cause
25 this Commission to withhold approval of the

1 casino license application, in this matter
2 there were numerous direct and sharp
3 conflicts involving the testimony of the key
4 officials of the licensee, on the other
5 hand, and three practicing attorneys on the
6 other.

7 Without attempting to decide at
8 this point which of the conflicting versions
9 is truthful, I must observe that the
10 conflict is significant and the testimony on
11 either side cannot be lightly dismissed.

12 In my opinion, this conflict does
13 not concern an inconsequential matter.

14 With regard to the relevance of
15 this testimony to the issues outlined at the
16 outset of this proceeding, it should first
17 be noted that it was the Trump group who
18 vigorously asserted that certain materials
19 were withheld by Hilton, and that it had
20 neither the opportunity nor the information
21 to form any opinion regarding the
22 reasonableness of and the necessity for the
23 proposed roadway improvements, until some
24 point subsequent to the opening of the
25 casino.

1 The Public Advocate has correctly
2 observed that the truth of these assertions
3 bears directly on the purpose and intent of
4 the Trump group with respect to the roadway
5 improvements at the time of the initial
6 license hearing in 1985 and through the
7 ensuing year. As one Commissioner, I cannot
8 reach a conclusion on the critical issue of
9 whether the licensee set about in good faith
10 to fulfill its obligations and
11 representations, or whether it carried out a
12 plan of subverting the DOT agreement and the
13 CAFRA condition in which it undertook in
14 order to obtain approval to open and operate
15 its casino.

16 Of a more fundamental and
17 disturbing nature is the issue which these
18 discrepancies raise as to the candor and
19 honesty with which this licensee approached
20 this proceeding. Although the argument has
21 been made that we should not consider this
22 fundamental question at this time, I must
23 note that Mr. Ribis himself recognized in
24 his summation that character and fitness are
25 always under review at the time of the

1 casino license renewal. Indeed, if my
2 recollection serves me correctly, Mr. Ribis
3 expressly referred to Section 84(c) of the
4 Act which sets forth the standard of good
5 character, honesty and integrity for casino
6 licensees. I must agree with Mr. Ribis in
7 this regard. However, I cannot, as he
8 would, conclude that the key personnel in
9 the Trump organization have met that
10 exacting standard in this case without
11 resolving the open questions raised by the
12 severe and striking contrast in the
13 testimony presented to us.

14 Every week this Commission has
15 before it on its public agenda, cases in
16 which individual employees are confronted
17 with the allegation that they have withheld
18 information on their disclosure forms or
19 interviews with the Division of Gaming
20 Enforcement investigators. Every week this
21 Commission denies licenses to people who
22 seek to work at every level in the casino
23 industry because they refused to treat the
24 Commission with honesty and openness, even
25 in cases where the matter withheld itself

1 might not have constituted cause for denial.
2 Without judging what the ultimate outcome of
3 further proceedings in the present matter
4 would be, I cannot reconcile our handling of
5 individual employee licenses with our
6 granting of a casino license on the state of
7 the present record.

8 While in my judgment there's a
9 cloud over this license which must be
10 dispelled before we may renew it, I
11 recognize that considerations of fairness
12 dictate that the licensee have a full
13 opportunity to argue against such a grievous
14 result and to present any further evidence
15 which it can marshal in favor of
16 relicensure.

17 In view of the expiration of the
18 present license on June 19th, it would seem
19 that this proceeding could not be properly
20 concluded before the expiration date.

21 Since the character issue arose in
22 the course of this hearing, and since the
23 parties could not in good faith have
24 delineated this issue at an earlier point
25 and be prepared to meet it, I would suggest

1 that this is an appropriate matter for
2 treatment under the Administrative Procedure
3 Act provision, which allows continuation of
4 a license through its expiration date when
5 necessary to complete administrative
6 proceedings.

7 I would also suggest that the
8 Division of Gaming Enforcement undertake a
9 complete investigation into the matters
10 which have given rise to these testimonial
11 disputes and that a conference be held among
12 the attorneys for the various parties so as
13 to prepare for the next phase of this
14 proceeding. In this way, Mr. Chairman, I
15 believe this Commission can fulfill its
16 obligation and can assure itself as to the
17 continued fitness of this licensee while
18 affording fair and equitable procedures.

19 I would also note, Mr. Chairman,
20 that this matter is distinguishable from a
21 situation which confronted us at the
22 Harrah's Marina license renewal several
23 weeks ago. In that case, this Commission
24 was confronted just prior to the hearing
25 with serious negative allegations about the

1 licensee. However, those allegations
2 appeared in newspaper articles which were
3 not part of the record in that proceeding,
4 and the Division of Gaming Enforcement was
5 asked to investigate those allegations and
6 report back to us.

7 In the current proceeding, we are
8 confronted with substantial inconsistencies
9 in the record before us which raise
10 questions as to whether this Commission was
11 misled at the time of licensure last year
12 and which also raised serious question as to
13 whether one or more witnesses has given
14 false testimony before us during this
15 current proceeding.

16 For all of these reasons, Mr.
17 Chairman, I will oppose the motion to grant
18 the license at this time.

19 CHAIRMAN READ: Thank you. I would
20 like to note parenthetically on the subject
21 of conflicting testimony Commissioner
22 Armstrong has referred to, that I found the
23 testimony of the two New York attorneys who
24 appeared before us to be not particularly
25 helpful, to say the least. I frankly cannot

1 believe that the draft contract that was
2 typed on the Dreyer & Traub word processor
3 under the apparent control of Mr.
4 Intriligator, was not seen by the Trump
5 organization attorneys. This is especially
6 so, I think, in view of the letter in
7 evidence transmitting on April 20th, the
8 draft from Mr. Intriligator to Mr. Cowell
9 and the failure of Trump's Castle Associates
10 to produce Mr. Intriligator at this hearing,
11 who obviously would have had the greatest
12 information and knowledge available on that
13 subject.

14 Also, I cannot accept the testimony
15 that Hilton's New Jersey counsel had totally
16 lost face with its client, as testified to
17 by those two attorneys, in view of the
18 testimony elicited by Mr. Ribis in the
19 course of the further hearing, that the firm
20 continues to represent Hilton on a wide
21 variety of matters. The inconsistency of
22 those statements, I just found too difficult
23 to accept.

24 On the motion as made and seconded,
25 is there further comment?

1 obviously take the necessary regulatory
2 action.

3 But no such action has been taken
4 by the D.E.P., and this Commission has no
5 justification to revoke a license if the
6 D.E.P. feels its CAFRA permit has been
7 violated but does nothing about it.

8 Due process may be tedious, but all
9 of us in this hearing are Exhibit A evidence
10 of its requisite value.

11 The solution recommended by the
12 Chairman's motion is the proper approach
13 under these circumstances. It requires a
14 series of actions which frankly should have
15 been taken by the parties on their own
16 initiative long before these hearings began.

17 Mr. Chairman, I support your
18 motion.

19 CHAIRMAN READ: Further discussion
20 or comment? Hearing none, on the motion
21 made and seconded, those in favor?

22 (Chairman Read, Commissioners
23 Burdge, Jacobson and Zeitz voted in favor of
24 the motion.)

25 (Commissioner Armstrong voted in

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oppositon to the motion.)

CHAIRMAN READ: Motion carries four
to one.

I think that concludes the hearings
at this time. As I indicated, I do
appreciate the work of counsel throughout
the matter.

We stand adjourned.

(Meeting adjourned at 5:10 p.m.)