

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

*Master  
File*

New Jersey  
Casino Control Commission  
JUN 13 1986

**RECEIVED**

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

17  
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.)