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ELEVATOR & AMUSEMENT DEVICE SAFETY BOARD MEETING

December 2, 2014

9:00 a.m.

220 French Landing Drive

Nashville, TN 37243

TOSHA HEARING ROOM

_________________________________________________
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Representative, Fixed Parks

RON SIDLER
Chief Elevator Inspector, State of Tennessee

CHRIS FARMER
Assistant Chief Elevator Inspector, State of Tennessee

LARRY MOORE
Owner and Lessee Representative

LEWIS MOORER
Representative at Large, Middle Tennessee

PERRY BURCH
Manufacturer's Representative, Elevator Companies

DAVID HALE
Representative, Tennessee Association of Fairs

KELLY O'CONNOR
Representative, Public at Large

KIM JEFFERSON
Administrator, Workplace Regulations and Compliance Division

SYDNÉ EWELL
Legal Counsel

NEWTON DOMINEY
Owner, The Crag, Franklin, Tennessee

JEFF HESS
Owner, The Ascent, Murfreesboro, Tennessee

LANCE BROCK
Owner, Climb Nashville, Nashville, Tennessee

JOHN O'BRIEN
Owner, High Point Climbing, Chattanooga, Tennessee

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APPEARANCES (Continued):

JOHN WIYGUL  
Owner, High Point Climbing, Chattanooga, Tennessee

MARK FINKS  
Assistant Administrator, Workplace Regulations and Compliance Division

JOHN TUMEY  
Acting Amusement Device Manager, State of Tennessee

BILL ZIMMERMANN  
CEO, Climbing Wall Association

MARK BAUGH  
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JEREMY NAGOSHINER  
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DANIEL CULBREATH  
Office of House Majority Leader, Gerald McCormick

BOB GRAHAM  
Elevator Inspector, State of Tennessee

J.T. HOLTSCHLAG  
Owner, BounceU

ANITA RHODES  
Supervisor, Office of Elevator and Amusement Devices

CAROLYN SHERROD  
Administrative Assistant, Workplace Regulations and Compliance Division

JOSÉ MARTINEZ  
Elevator Inspector, State of Tennessee

JERRY JENKINS  
Elevator Inspector, State of Tennessee

THOMAS JACKSON  
State Elevator Inspector
APPEARANCES (Continued):

DAN BAILEY
Attorney, Tennessee Department of Labor

JASON BEARD
Legislative Liaison, Tennessee Department of Labor and Workforce Development

KEVIN PAYNE
Inspector, State of Tennessee
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Discussion Items - Proposed 2015 Elevator & Amusement Device Safety Board Meetings

Announcement of Next Meeting
CHAIRMAN FOX: Good morning, folks.

Thank y'all for being here.

We're going to call the meeting of

the Elevator & Amusement Device Safety Board,

December 2nd, meeting to order.

If you would, Mr. Moore, if you

would, lead us in the pledge, please.

(Pledge of Allegiance was recited.)

CHAIRMAN FOX: Thank you.

Mr. Sidler, if I could ask you to

start the introductions, and we'll go around the

room.

MR. SIDLER: Okay. I'm Ron Sidler.

I'm chief elevator inspector for the State of

Tennessee.

MR. FARMER: I'm Chris Farmer. I'm

the assistant chief elevator inspector for the

State of Tennessee.

MR. MOORE: Larry Moore, owner and

lessee representative.

MR. MOORER: I'm Lewis Moorer,

representative at large, Middle Tennessee.

CHAIRMAN FOX: Robbie Fox,

representative of Fixed Parks.
MR. BURCH: Perry Burch, manufacturer's representative of elevator companies.

MR. HALE: David Hale, representative of the Tennessee Association of Fairs.

MS. O'CONNOR: Kelly O'Connor, representative, public at large.

MS. JEFFERSON: Kim Jefferson, administrator for Workplace Regulations and Compliance Division.

MS. EWELL: Sydnã© Ewell, legal counsel.

CHAIRMAN FOX: And start with you, sir, in the corner right there.

MR. DOMINEY: I'm Newton Dominey. I'm the owner of The Crag in Franklin, Tennessee.

MR. HESS: Jeff Hess, owner of The Ascent in Murfreesboro.

MR. BROCK: Lance Brock. I'm one of the owners of Climb Nashville.

MR. O'BRIEN: John O'Brien, one of the owners of High Point Climbing in Chattanooga, Tennessee.

MR. WIYGUL: John Wiygul, the other
owner of High Point Climbing in Chattanooga.

MR. FINKS: I'm Mark Finks, assistant administrator for the Workplace Regulations and Compliance Division.

MR. TUMEY: John Tumey, acting amusement device manager for the State of Tennessee.

MR. ZIMMERMANN: Bill Zimmermann, CEO of the Climbing Wall Association.

MR. BAUGH: Mark Baugh, attorney with Baker Donelson here in Nashville.

MR. NAGOSHINER: Jeremy Nagoshiner with Baker Donelson.

MR. CULBREATH: I'm Daniel Culbreat, House Majority Leader Gerald McCormick's office.


MR. HOLTSCHLAG: J.T. Holtschlag, owner of BounceU.

MS. RHODES: Anita Rhodes, Elevator and Amusement Device office supervisor.

MS. SHERROD: Carolyn Sherrod, administrative assistant with the Workplace Regulations and Compliance Division.
MR. MARTINEZ: José Martínez, elevator inspector for the State of Tennessee.

MR. JENKINS: Jerry Jenkins, State of Tennessee elevator inspector.

MR. JACKSON: Thomas Jackson, state elevator inspector.

MR. BAILEY: Dan Bailey. I'm an attorney with the Tennessee Department of Labor.

MR. BEARD: Jason Beard, legislative liaison, Tennessee Department of Labor and Workforce Development.

CHAIRMAN FOX: The one gentleman that just walked in, it's your turn to introduce yourself, sir.

MR. PAYNE: Kevin Payne, inspector for the State of Tennessee.

CHAIRMAN FOX: Thank you.

Folks, again, thank you for being here.

I understand there is an announcement about the evacuation process. Who does that?

MS. JEFFERSON: Mr. Sidler?

MR. SIDLER: Okay. Well, I haven't done that before, but in case of an emergency --
Sydnée, would you do that?

MS. EWELL: We now have an alarm system, and we evacuate on the Rosa L. Parks side of the building. If there's a calamity or incident somewhere, we'll be redirected.

CHAIRMAN FOX: Thank you.

We have the approval of the December 3rd, 2013 quarterly meeting minutes, discussion and/or motion on adopting the court reporter transcript as meeting minutes.

I would entertain a motion to approve.

MR. HALE: So moved.

MR. MOORE: I second.

CHAIRMAN FOX: Have a motion to second. Any discussion? Any changes to the minutes?

Hearing none, all in favor of the motion, let me know by saying "Aye."

IN UNISON: Aye.

CHAIRMAN FOX: All apposed, like sign.

There is an annual conflict of interest policy, acknowledgement and disclosure.

I'm asking that everyone -- has everyone signed
MR. SIDLER: I told Ms. O'Connor I would get it before she left -- she was the only one -- that I would get it before the end of the day.

CHAIRMAN FOX: We just need to make sure that we do.

Next item on the agenda is the chief inspector's report. Mr. Sidler?

MR. SIDLER: Good morning. We've had a very normal year as far as elevators go. We've had about 421 new permits issued this year. We've still got approximately 30 days left in the year, which typically, we have about 25 more in December. We're one inspector position short, and we hope to fill that at the first of the year. One inspector is out on sick leave, Clarence Webb. He's been out for quite some time. His health is not good at all.

We're really proud to announce that in October, first week in October, that six of our new inspectors took and passed their QEI certification test, which is the benchmark for inspectors for elevators nationwide. And that leaves us with just one person not certified at
this time, and he's pursuing his as we speak.

Our QEI continuing education, which is required for that, is set for April 16th, 2015, and the location is tentatively Gatlinburg where we had it last year because of the tram location and the devices that we can look at while we're there.

Proud to announce Board Member David Hale was given the 2014 Passion Award for his work at the Wilson County Fair, and even the -- I guess we can say we kind of gave him that award here, too, even though we didn't have nothing to do with it, so -- his passion of sitting on this board. But we're proud to have him on our board.

Unfortunately, we lost both of our amusement inspectors in late spring. They went on to seek greener pastures in other states or other parts of the state. And on the good side, we have hired an inspector for the Middle Tennessee area, Kevin Payne.

And we've hired -- at this time, we have a temporary or part-time amusement device manager, and we hope to have him full time very soon, have that position filled very soon.
I think that's -- there was something else I didn't write down here, but I don't know what it was.

CHAIRMAN FOX: Okay.

MR. SIDLER: The agenda, I would like to ask the board to possibly add another item to the agenda for consideration. As you know, on the agenda now, we have two items, Metropolitan Nashville Airport Authority, and then BounceU coming before. We'd like to add 14-03, which would be the Climbing Wall Association, for consideration of -- similar consideration that the BounceU facility's asking. So if we could add that, or at y'all's discretion.

CHAIRMAN FOX: Is there a motion to approve the addition to the agenda?

MR. BURCH: I make a motion we add this one to the agenda. The people are sitting out there.

MR. MOORE: I second.

CHAIRMAN FOX: Motion is seconded.

Any discussion?

Being none, all in favor of the motion, let me know by saying "Aye."

IN UNISON: Aye.
CHAIRMAN FOX: Motion passes. It's added to the agenda, 14-03.

MR. SIDLER: I'd also like to introduce John Tumey as our amusement device manager, even though he's in the part-time position. I think maybe John has some things that he would like to address the board on.

CHAIRMAN FOX: Be glad to hear from you.

MR. TUMEY: Good morning. I just want to introduce myself here. I've been the acting amusement device manager since July of 2014. Previously, I worked for Walt Disney World in helping create their safety and audit department and maintaining that.

Since I've been with the State of Tennessee, what we have started doing is maintaining our statistics and records and tracking what we're inspecting, where we're inspecting it at. And just to kind of give you a little statistics, 2013, the total revenue for the amusement device unit was $58,525. They performed 104 inspections and issued 54 permits.

2014, which we're only four months into the 2014 physical year, we are -- the total
revenue as of today is $35,575. We've performed 135 inspections and issued 46 permits. I'd like to thank y'all's time, and I really do appreciate laying a solid foundation for the amusement device unit to continue forward in the future.

CHAIRMAN FOX: Thank you, on behalf of the board. We're glad to have you as part of our team. Thank you.

MR. TUMEY: Thank you.

MR. SIDLER: Can I ask that -- the sign-up sheet, where is it in the room? Is it all the way around?

UNIDENTIFIED SPEAKER: Yeah, pretty close.

MR. SIDLER: We've had two additions that I wanted to be sure to get on there. Have y'all signed it? Thank you.

MS. JEFFERSON: Mr. Chair, if I may, I just wanted to state that we have a court reporter here. You-all probably noticed something a little different. Previously, we had Carlene Bennett, who actually physically -- well, actually, we had a recording device, and she would actually go back and transcribe the minutes. We just thought it would be more efficient to have a
court reporter here. So I wanted to actually just
let you-all know that we're doing that so that the
minutes will be accurate and complete.

All you have to do is go to the
website now, and we'll have a transcript verbatim
on the website.

CHAIRMAN FOX: Thank you very much.

Ms. O'Connor, I wanted to give you
just a couple of minutes to kind of get acclimated
to where we were, and I didn't want to just hit
you hard or anything, but I would like to offer
you the opportunity to introduce yourself. I
mean, tell us a little bit about you. We don't
know anything about you. This is your first
meeting. We want to welcome you for sure. Okay?

MS. O'CONNOR: Thank you. I'm
delighted to be here. I apologize for being late.
I-65 is a little more backed up this morning than
what I anticipated.

I've been in the nonprofit world
for -- in Nashville for approximately 20 years.
I'm Director of Development and Progress. So I've
done many nonprofit boards on both sides of it,
and I'm really delighted to be here.

CHAIRMAN FOX: We're delighted to
have you, ma'am.

MS. O'CONNOR: Thank you.

CHAIRMAN FOX: Okay. Anything under Old Business?

Okay. Let's go to New Business.

Item 14-01, Metropolitan Nashville Airport Authority requests permission to install a guide and an escalator entrance under the handrail to guide passengers and baggage away from and around the handrail return, which violates A17.1 - 2010 - 6.1.3.6.4. I hope I got that right.

MR. HOWARD: Can I hand these out? This will make it easier to see.

MS. WARREN: I'm Tami Warren, the safety manager, and this is David Howard. He's the assistant manager for maintenance.

And just a little bit about our traffic at the airport. We had about 10.6 million visitors in our 2014 fiscal year. We have about a 9.5 percent average monthly gross over the past four months, so this could mean about 11.6 million visitors in fiscal year 2015.

Today, one particular escalator we want to talk about. This escalator is used by approximately 3,480 visitors every day at the
airport or 1,270,500 per year. So we're thinking
with the increase in traffic, that that could be
3,800 people per day, and 1,387,000 per year.
So far in January 2014, we've had
16 escalator falls -- excuse me --
CHAIRMAN FOX: I'm sorry, ma'am.
Could you repeat that, please?

MS. WARREN: Since January 2014,
we've had 16 escalator falls. And 10 of those
have been on this particular escalator that we're
talking about, ground transportation. So with the
increase in traffic, we would expect a similar
increase; and then next year, see 11 instead of 10
falls in the same time period.

So what we've done is we've looked
at each of these, we've investigated them, and we
found that the main cause of the falls is baggage
catching on the handrail inlet structure. What
happens, people are pulled kind of backwards when
it gets stuck, and then that leads to their fall
as they get on the escalator.

MR. HOWARD: If you look at the
bottom right square, it shows a picture of the
escalator that we're talking about. And if you
notice to the right -- it's a little small here
and I apologize -- but you see our sign that says, "No baggage on the escalator," but it's not going to happen. And so people are going to take -- you can see the young lady -- if you look real close, you can see the young lady with luggage on there already. And then the red arrow points to the catch point where people are hanging their luggage, and it pulls them back.

We're having a new sign designed by our graphic artist, and it has to be approved by our design engineering, but it will be a much larger sign with an arrow that points to the -- to the emergency stop button. So we're trying to do some things to direct people into the center of the escalator.

I'm not sure how many of y'all can see this or if we need to bring it up and show it two or three times, a real short video. Because all of our escalators are on camera all the time because of the falls. And if you look at -- we can bring it up closer to y'all if you would like. But it just shows the couple getting on the escalator, a guy carrying two pieces of luggage. And he hangs up on the handrail inlet catch, and it pulls him back, and he falls.
But we found out that that's what's causing most of the falls, and we've got several on video. We also have had a lot of the handrail inlet safety switches on that escalator stop the escalator also. And we have to call Kone who is our escalator contractor, and they have to come out to reset it. So we've had several calls to them over the past year.

So what we -- what we figure from that is that people are catching more often on those than are falling. And most of the falls are elderly people that can't pull around the end of the handrail inlet, so -- and we've put some -- if -- well, if you can look at that picture, the top left picture on the back side, you see some stanchions. We've put stanchions there to try to focus people into the center of the escalator, and that's helped quite a bit, but this fall here, the guy hung up on the stanchions. We planned on pulling the stanchions back out and maybe redesigning those, but he still hung up.

So the picture on the right, top of the page, this picture over here is a picture of a guy that we would like to use, and that's -- that's the variance that we're asking for is these
guides where people's luggage will guide more into
the center of the escalator and maybe get away
from that catch point, which, as we know, we've
had several falls because of that already this
year.

And the last picture just is a
downward view of where this -- where this guide
would go.

But that's the variance we're
asking for. We're just asking for a small guide
to where when they walk up, if they do have their
luggage in a position to hit the catch point, it
will just guide it more into the center and
hopefully stop that tug backward and making them
fall.

MR. BURCH: It's hard to tell by
looking at the picture, but does this guide you've
got here, does it start someplace else and deflect
the luggage, or is it just out there in the -- is
it a beveled deflection, or is it just -- it's
hard to tell from the picture. Is it actually in
the way or obstructing part of the traffic?

MR. HOWARD: No. No, it doesn't
stick out into the track, into the walk path.
It's going to be directly up under the handrail.
MS. WARREN: Directly in front of the inlet to keep people from getting hung on that. It will force them to go around it.

MR. HOWARD: This will be probably 1 inch in height. We will have to have something designed, just to see the variance first.

CHAIRMAN FOX: 1 inch in height?

MR. HOWARD: We figured it would be about 1 inch in height. Just something to catch the wheels of the luggage and guide the wheels in rather than them catching on a flat piece and jerking them back. It should push it just out into the walk path.

MR. HALE: Is this a guide that is a design of -- that y'all made, or is this something you've seen elsewhere in use?

MR. HOWARD: Yeah. This -- this is a picture we took off a Powerwalk. This is actually on a Powerwalk. We're still working on this. Like we say, we've got the stanchions to try to focus people in. If we can get these to focus, to just slide the baggage over and get it up where it's not a tug on the people, maybe just a little gentle push to the side. That's what we're looking for. So this would just be to catch
the wheel or catch the base of the baggage.

CHAIRMAN FOX: Just a simple question. I'm a simple man. Does this not create a trip hazard?

MR. HOWARD: It's not in the foot path area.

CHAIRMAN FOX: Not in any way, shape, form, or fashion?

MS. WARREN: It will stand right behind the inlet, and so where the inlet comes up now, it would be just behind it. So instead of coming forward and catching on that, it would just guide them past it, the bag.

CHAIRMAN FOX: Okay.

MS. O'CONNOR: This might be a really silly question, but this is not the only airport in the country with an escalator. What -- what -- is anybody else having this problem?

MR. HOWARD: You know, we have our -- Tami has the -- we have an insurance risk manager that's coming in Thursday, and she's written a paper up on escalator problems in airports. So they're very familiar with it, and it's ACE -- what's the name?

MS. WARREN: ACE ESIS.
MR. HOWARD: -- ACE ESIS.

And she put out a paper and
detailed a lot of the problems. Everybody is
having the same problems. And most of the time,
it's elderly people that's falling. This is a new
one for her, and that's one reason she's coming to
visit, to see what we might be doing to try to
stop this.

They've done everything from
putting bollards in front of escalators to stop
people with strollers and bag carts, other warning
signs. And it's a problem across the country.
It's not local to Nashville.

MS. O'CONNOR: So is this remedy
being used anywhere else, or is this the first
time?

MR. HOWARD: Well, where we got the
idea was from this Powerwalk. I understand in
other places -- I haven't seen it; I've just
talked to some of the escalator guys -- there's a
round puck that they put in between an escalator
and a wall that's on a metal piece, and it's to
keep people from sliding down it or walking up it
or whatever. And they put those round pucks in
the same location to track it.
And I'm a little concerned about
the round puck, is the reason we didn't suggest
it. It just sounds like another catch point to
me.

This will just be a -- and Kone
would be the one to design it, make sure that it
stayed safe. But I don't think it will be in the
walk path. I think it would be more up underneath
the handrail than in the walk path.

MR. HALE: If it's sloping, is it
not just going to funnel whatever piece of luggage
that gets on it up, and so now it's just hung in a
different position?

MS. WARREN: So if this was the --
the inlet, this would be the puck or the guide
that we'd like to use. And what it would do is
force the baggage to come beside it rather than
coming -- so like right now, there's nothing
there, and they're coming along with their bags
and they're getting hung right here. So if we put
this guide here, then what it would do is force
their bag to come beside it and not get hung.

MR. BURCH: But that guide is an
inch tall, is what you're saying?

MR. HOWARD: I would think it would
be an inch and go up underneath the handrail so that you couldn't catch on the end of it, because it would be directly up underneath the handrail.

You would just come and butt into it and then slide into the center.

MR. HALE: In this picture, I visualize this as being sort of like a doorstop, but it -- but you're saying that it's designed so that it deflects the luggage?

MS. WARREN: (Nodding.) Force it to go beside it.

MR. BURCH: But being an inch high, what would keep the roller from going on the other side?

MR. HOWARD: Well, just the width of it, the width and the shape and the angle of it.

MS. WARREN: And the handrail will be there.

MR. BURCH: So it's not only an inch high, but it's got width so that the wheel can't get around it.

MR. HOWARD: Yes. The way it -- the way I picture it, it would -- to do that, the bag would have to get up underneath the handrail.
The handrail is this high (indicating). I don't see it doing that.

MR. MOORE: Has anyone considered bringing the lower part of that out to where the curve is, and the luggage could never get up under the curve starting there? Have you seen anything like that?

MS. WARREN: You mean bring the inlet out as far as the handrail?

MR. MOORE: Yeah. And then your luggage is -- you're not going to want to lean over and grab the handrail. You're already in there when you're lined up. Has anybody seen anything like that?

MR. HOWARD: I don't think so.

MS. WARREN: This seems to be the standard design.

MR. BURCH: Has Kone offered any suggestions as to what kind of device that they think would be good or -- since they are the manufacturer -- are they the service company? Have they offered anything?

MR. HOWARD: You know, some of the technicians have, but Kone, their main office, when they studied it, sent it to their engineering
department and come back, and that's when they
said it violates this code. I took it to Ron, and
Ron gave me the same answer: It violates the code
and we'll need to come here and ask for a
variance. So no, they have not given any
suggestions on how to get around it. And it is a
Kone piece of equipment.

MR. BURCH: So I'm sure it's
somebody who is trying to protect themselves from
a lawsuit or something, they don't want to be
involved in a violation.

MR. HOWARD: Correct. And I
understand that. I do.

MR. BURCH: But what could the
airport do -- I mean, what would their insurance
allow them to do as far as moving the baggage,
moving, you know, the people a little bit, and
take it out of the elevator code? What could the
airport do?

MR. HOWARD: See, this is our first
step. We've got to come get the variance. We
need to get y'all's permission first. Y'all are
the ones that can get us started. And then with
Ginger, this lady coming in Thursday, then we
would talk to them and show them what we're
considering, too, and get their blessing on it also. And she's very familiar. Like I said, she's written up some paper that is handed out for escalator safety across the country.

MR. BURCH: But, I mean, it just seems to me that the airport could do something to direct the baggage and the traffic that wouldn't impede the going on of the escalator and changing anything. I mean -- you know, I mean, the escalator is there, and it was built to this specification, but what would prevent the airport from redirecting the people so that they go in the escalator?

MR. HOWARD: Well, that's what we are attempting with the stanchions. The stanchions, we put the -- they're portable stanchions because we wanted to see how they worked. We just put those in place -- because people don't like to bump up against the wall, we put them in place and up close, and we talked to our insurance risk management before we put those in place to kind of direct people to the center. Well, it's worked. We've had fewer falls, but we're still having falls.

MR. BURCH: Well, I mean, I'm with
you. I mean, you don't want people falling on
escalators because they'll eat you. You just
don't want that to happen if you can prevent it.
And -- but still, the manufacturers and people who
service them can't go against the code. I mean,
there's been a lot of hours and days spent on
writing code; and as far as specific safety
reasons, I mean, that's why the codes are written,
and -- but you're not bound by the elevator safety
code, is what I'm saying. The airport is not.
That's my opinion. I mean, that's my opinion.

MS. WARREN: So we don't need a
variance to do this?
MR. BURCH: Well, you could have
had that done, and we'd not even have known about
it. I mean, how would we have known about it if
you had decided to take that action?
MR. SIDLER: If I might speak --
CHAIRMAN FOX: Let's hear from
Mr. Sidler.

MR. SIDLER: Well, number one, our
inspectors are there every six months, and I
wouldn't have an inspector that didn't notice we
had a tripping hazard in front of an escalator.
He's checking it every six months, so that's going
to be one of the things he would have noticed
right away, a change. Familiarity with the
product.

I've got some handouts here that I
could show y'all: the code, actual code; and
safety zone and a diagram, if you'd like to see
them.

MR. BURCH: But what I'm getting
at, Ron, is tripping hazard, absolutely no
 tripping hazards in front. But I'm talking about
redirecting traffic, you know.

MR. SIDLER: But when you look at
this, let me -- let me hand you this, because my
situation is that you're creating a worse animal,
because the foot traffic is then going to start
 tripping over that because it's out in that safety
zone. And it's very well spelled out and drawn in
these diagrams and explanation.

Number one, you're not supposed to
even be putting baggage on there. We all do that.
I do it myself. I understand that. The best you
can do is try and protect the public from
themselves.

The other thing is: If you put
those in there and you stop some suitcase
problems, how many old people are going to trip
over that because their foot goes underneath and
fall into it? It's there for a specific reason.
They created that safety zone.

Here's y'all one of them, too.

MR. BURCH: So what you're saying:
Any guide they put up there is going to be making
the safety zone smaller?

MR. SIDLER: The last page has a
drawing for the actual safety zone area that it
spells out in the -- in the first one there. If
you'll look, the last page gives you the safety
zone, and it's the width plus 8 inches. And when
you read the verbiage in that 61364, it spells
that out and shows what they consider tripping
hazards going in. It's got to be -- that's the
area you've got to require to be clear.

And that's definitely impeding
that. And to me, the code was written to protect
the foot traffic, not from when you carried
luggage on there. And I know y'all have got a
real problem. The world as a whole has a problem
with people not paying attention to what they're
supposed to do.

And I know y'all provide elevators
for them to ride up on, stairs, everything in the
world for them, nice escalators, but people still
do stupid things.

MR. HOWARD: Right.

MR. SIDLER: But that's our stance
on that is, if you read that section on the first
page -- and then, of course, y'all have got the
signs and you're going to make bigger signs that
tells you not to pull the luggage on there. But I
think the little diagram on the back page shows
you the area that they're infringing on. And if
you put that -- in my opinion, if you put that
wedge underneath that handrail, your foot is going
to hang on that handrail as many times as the
baggage is when people cut that corner. That's
why it's there.

As you know, when you try to go on
that escalator to get to that -- get to where our
sweetheart is meeting us or get to that plane so
we can go somewhere, we're cutting corners around
corners of buildings, around corners of
escalators, around corners going into an elevator.
And the human nature of the beast is to cut that
corner and hang their foot on the -- that's what I
think would happen, and we'd have more accidents.
But that's my opinion as an inspector, and that's why I told him he'd have to come up here and for y'all to make that decision, you know.

MR. HOWARD: Well, and I don't see this extending past the handrail return. I mean, I think they would have to get their foot up underneath the handrail to trip on it. Plus, you know, we have those stanchions in place right now to keep people from cutting that corner to get to it.

But the problem is, like you say -- I mean, I don't know if y'all have ever tried to stop somebody from putting a piece of luggage on an escalator at the airport. They'll shove you out of the way. "I'll do it -- I'm going to do it anyway."

And so, you know, it's just we've got ten falls that we don't know what to do with a year. And these are, like I say, elderly people falling on very hard, ragged escalator steps. And we're just trying to stop injury. And this is -- this was the only idea that we came up with that we think would actually work. So, I mean, if there's other suggestions that -- you know, we'd
be really glad to listen to them.

MR. HALE: Let me ask this: It may not be a number that you easily know, but what is the average number of falls on an escalator where luggage isn't involved? In other words, outside of an airport. Is this an excessive number compared to other --

(Overlapping speech.)

MS. JEFFERSON: Is this a sidebar?

MR. FARMER: As a local inspector that works all these accidents, I think there was 17 accidents, and in only one of them, luggage wasn't involved.

MR. SIDLER: No, I'm sorry. That's wrong. There were 17 incidents.

MR. FARMER: Incidents.

MR. SIDLER: Only three accidents.

By definition, in the State of Tennessee, an accident is where you're transported, so on and so forth. Incidents, which we go and inspect incidents to protect everyone, so it gets written up as an accident, and we have to differentiate between that. An accident is serious.

MR. HALE: I guess where I'm trying to go with this is: Is the number of accidents
occurring on this escalator greater than an
escalator that's in some department store where
people aren't carrying luggage?

MR. SIDLER: Exactly, it is.

MR. HALE: And it is?

MR. SIDLER: And then when you get
in the department stores -- and most of them we
urge, just like y'all, to have videos to protect
yourself. And we see the mother take the child in
the stroller on the escalator. We see the mother
leave their child to play on the escalator. All
of those things happen. And they're videoed. And
the biggest problem is taking a cart or baby
strollers or a walker -- believe it or not, we've
got videos of me taking my elderly mother -- and
she's in a walker -- on the escalator. You know,
why would you do that? But that's what you have
to deal with. And it is a problem. It's a very
serious problem.

MR. HALE: Saw a similar -- people
put an elderly lady in a wheelchair on an
escalator.

MR. SIDLER: Right. I mean, it's
just -- you know, there's other means there. But,
yeah, it is a -- I mean, it's hard for me to --
MR. HALE: The number of falls is more excessive than an elevator -- an escalator where a -- where it's not normally caused by luggage. That's where I was trying to go with that.

MR. HOWARD: So -- and a commercial location, you say, has the same number of falls that we're having?

MR. SIDLER: No, no. But their falls are related to strollers, people carrying two-wheelers, things like that. Similar. Of course, they don't have bags, but a lot of people have the little -- what looks like a bag that carries their computer case and all of that. All of those things play into the fact. The typical person that's walking doesn't have any trouble on an escalator. It's the elderly person in the walker, shuffling their feet, have bad -- you know, all those things play into it. But the big thing is the strollers and all. It is -- but it's not near the number y'all have, because everybody at the airport has a bag. So you've got a completely different animal than Sears does or Cain-Sloans or any of those department stores, no matter the number, you know.
MR. HOWARD: And that's the reason we're asking for the variance, because ours is a different situation than most escalators.

MR. HALE: I fail to see how -- if it's going to be far enough under the return that nobody can trip on it, I don't see how it's going to deflect the baggage effectively like you're trying to do.

MS. WARREN: It's kind of -- I just drew a little extension here. It starts up under it, so it won't be -- the beginning of it won't be where feet would be, and then it would come out to where the inlet is and just kind of close that corner so they'll be guided from that space over. So they're not going to catch on that inlet.

CHAIRMAN FOX: Any other discussion? What is the pleasure of the board?

MS. EWELL: Mr. Chair, ask if there's a conflict of interest.

MR. BURCH: There is a conflict of interest.

CHAIRMAN FOX: Sir, I think your request dies for lack of --

MR. HALE: Yeah.

CHAIRMAN FOX: I think your request
dies for lack of a motion, sir.

MR. HOWARD: All right.

MS. WARREN: Thank you for your time.

CHAIRMAN FOX: Thank you.

MR. SIDLER: Can I say this to you? I appreciate y'all coming, and if there is anything I can help you with your situation, we'll be glad to work with you; a different idea, a different -- you know, come out and visit with you. If I can do anything to help prevent an accident, we'll do that.

MS. WARREN: Thank you.

CHAIRMAN FOX: There's got to be a fix for this. I'm just not sure that was the best one.

MR. HALE: Maybe your risk management people that are coming to meet will have some input, too.

MR. HOWARD: Okay.

CHAIRMAN FOX: Thank you again.

MR. SIDLER: If y'all want, like I said, to meet with your risk management people, just give us a call, and Chris or myself will come.
1  MS. WARREN:  Thank you so much.
2  CHAIRMAN FOX:  Okay. Next item.
3
4  14-02, BounceU of Nashville requests the Board to
5  reconsider the definition of amusement rides and
6  the fees associated with inspection.
7  And, you, sir, again?
8  MR. HOLTSCHLAG:  I'm J.T. Holtschlag, H-O-L-T-S-C-H-L-A-G.
9
10  CHAIRMAN FOX:  Please proceed, sir.
11  MR. HOLTSCHLAG:  BounceU is an
12  indoor inflatable party complex off of Sidco
13  Drive. We've been in business since 2007. We're
14  a franchise. Our parent company is called Fun
15  Brands. Fun Brands has two brands under it:
16  BounceU and Pump It Up. There's a couple of other
17  Pump It Ups in the Nashville area, but there's
18  probably 400 of us nationwide that fall under the
19  franchise. We're governed by the franchise.
20  We're -- you know, everything that we do is
21  certified by them for us to use in our facility.
22  You know, we -- our whole facility
23  is inspected annually by them to make sure we're
24  in compliance with the franchise standards. A
25  typical event at BounceU, you come in, you sign a
26  waiver to be in the facility. You watch a safety
video, and then you're allowed to play on the
equipment as long as you have socks on -- other
clothes, too, but, of course, you have to have
socks on.

So our whole environment is about
safety. In each room, we have employees next to
our inflatables so that, you know, basically our
only safety issue is human contact. It's not
really jumping on the inflatables. It's about
kids going nuts and running into each other. So
we have our employees in there that police the
environment.

So, you know, I guess over a month
ago, an inspector showed up and charged us a $200
inspection fee and told us we needed permits for
each inflatable in there, which we had never heard
of before; we'd been in business since 2007. And,
you know, we were asked to research the law, that
it was a new law.

And as we looked through the law,
there's nothing in there that addressed anything
that had to do with inflatables. The law pretty
much states moving devices, things 20 feet high,
you know, mechanical arms or mechanical items,
things of that nature. And as we looked to the
law, it just doesn't apply to our business. So we didn't understand the situation. So that's why we tried to figure out who we needed to go to.

My wife had a good conversation with Ron, here, and that's why I'm here today, to kind of figure out, you know, where we fit in that whole situation there. Like I said, our whole -- we're a franchise. We're governed by our franchise. Our whole element is about safety. If we aren't safe, we don't get business, and people don't come to us. So I didn't understand what the law was trying to do in terms of our industry or the inflatable industry.

CHAIRMAN FOX: Sir, I think -- let me try to answer it this way. We have always been -- I speak for me only. I have always been under the impression that inflatables were part of the law. We have not, in the past, inspected them; quite frankly, because we didn't have the personnel to do so. We didn't have the resources to be able to do that.

There's been a change in focus, and then we -- again, we started looking at those a little bit more than we did in the past and brought them into the process. That's about
the -- that's about the long and the short of it.

We've -- when we first started with this law, inflatables were considered, and we discussed those at length several times. We didn't do it -- and again, we didn't do anything with them because we didn't have the resources to physically go out there. But now we are moving in that direction. And that's the reason that we came to your facility.

MR. HALE: And we certainly appreciate those folks who have safety at the best interests of their patrons, but I think you also have to understand that while you have a safe operation, somewhere out there, there's somebody that could care less what the condition of their device is. And unfortunately, in order to police the entire industry, so to speak, the good folks have to be inspected just like the -- those folks who may not be operating at the high level that you are.

And we -- we know that's true all across the board, not just in inflatables, but in mechanical rides as well. There are the Dollywoods of the world that spend five figures in having outside source inspection, and then there's
this guy somewhere that him and his cousin welded
some stuff together and made an amusement ride,
and then -- and want us to believe that it's safe.

We have to inspect those folks at
Dollywood just like we've got to go out and tell
that guy that welded something together in his
garage and tried to call it an amusement device.
We have to be able to, all across the board, look
at all those situations.

So while nobody is doubting how
safe your facility is -- I've been to your
facility. And I certainly agree that you have a
safe facility. But, you know, just like policing
speed limits, you can't say, "Well, X brand of car
is safe, so it doesn't have to obey the speed
limit, but this car over here is not safe, so it
has to obey."

MR. HOLTSCHLAG: I understand that,
but I think with, as you said, limited resources,
I don't understand why you would go after -- or
not "go after" -- look at companies that were
under franchise and guided by franchises versus
going towards companies that are home-owned or
homegrown or, you know, don't necessarily have
that certification levels that we have, barring
that we're a franchise.

I would think that when you look at that -- the law like that -- and what I read was, pretty much, you were going after things that were kind of -- they would show up with a mechanical device like a carnival or things of that nature, and you want to make sure they're safe and you inspect them and you give them the certification that you have and that you get a permit for it.

And also, like from an inflatable perspective, in terms of people that drive them and just drop them off at people's houses, you know, obviously you'd want to have that certified and inspected to make sure that they're using all the right things, because they're not governed by anything or any franchise or anything like that.

I would think that that would be, from what I read from the law, that that's what you're really focusing on. You're not focusing on the good companies or the good franchises or people that have things set in place to make sure they're safe. You're after the guys that aren't.

MR. HALE: And that's true, but we have to be able to inspect all the way across the board. We can't randomly eliminate somebody just
because they're part of a franchise. We can't --
we don't eliminate Dollywood just because they're
a big company. The inspectors go up there and
look at the Dollywood rides, just like they go and
look at a mom-and-pop ride on the strip in
Pigeon Forge, and just like they go and look at --
and ensure that they have third-party qualified
inspections and so forth for amusement companies
that are mobile companies.

So the law can't be designed to
eliminate people that -- that are franchises.

MR. HOLTSCHLAG: Okay. From the
e-mails that we got, it said that if it was -- if
it was inspected by -- and it had some long code
of whoever was certified to do it -- that they'd
waive the $200 inspection fee. And I don't know
where I can get a copy of that to find out if our
franchise is certified because now they waived the
inspection fee, but they want to give us the --
we're still being charged the permit per device
that we have. Where do we go from there? I mean,
it's a permit per device. Is that just -- we have
a permit per device, and it's just that we pay
that once, and as long as we have that device in
operation, we don't pay that annually? That's
MR. SIDLER: Well, the way the --

what the law requires is for you to register as

a --

Might I . . .

CHAIRMAN FOX: (Nods head.)

MR. SIDLER: -- to register your

company. And that's the $150 fee for registering

your organization. And then the devices

underneath that, there's a fee for the device. I
don't know if there was confusion on the fee or

what numbers you were given. But a walk-through

is typically $25. A high-energy ride is $200.

All right. So Dollywood, for

instance -- I mean, he said this in legislative,

so I'm sure he doesn't mind me repeating it --

their permit fees totaled -- was near $5,000.

CHAIRMAN FOX: Yes.

MR. SIDLER: All right. So yours

should be $150 if you meet all the criteria -- the

insurance and inspection and all that -- and say

$25 a unit. If you've got 10, $250 there. Let's

just say that's the number. That's what should be

happening. And our coming to look at that

oversight inspection -- because you've already
been inspected by somebody, you've got all those
criteria -- we come to make sure that's all true,
and there shouldn't be an additional fee to that.
But if the guy comes back for whatever reason
because you're having troubles and they have
reinspections, then there would be an additional
fee. That's how it should be operating.

MR. HOLTSCHLAG: Well, we got -- I
mean, we got -- hold on. Do you mind if I look at
a couple of things real quick?

MR. SIDLER: What I'm saying is,
that's how it was set up to happen. Now, if there
was some confusion in that, that, you know, a
misunderstanding as to what the fee structure is,
that can be rectified. And I think I told your
wife that, too.

MR. HOLTSCHLAG: We had breakdown
fees was $150 for permit fees, so yes. We got
that. Then $700 for seven devices.

MR. SIDLER: Well, I don't -- in
my -- the way we did it prior to the revamping of
this organization, it wouldn't have been $700.
Now, I'm not inspecting that. I'm thinking --

John, is that not a walk-through?

MR. HOLTSCHLAG: And then the
inspection fee was $200.

MR. TUMEY: The $25 is for hand-powered devices. The devices for inflatables, it would either fall over the 42-inch or under the 42-inch mark. And so what we do is, we asked this particular franchise, they said they had five devices that was over 42 inches. And so that's $100 for each device that's over 42 inches. And then they had two devices that was under 42 inches, which would be $50 per device for that. So that made it $100 for the two devices that was under 42.

I can get a copy of the rules here and have the breakdown of . . .

CHAIRMAN FOX: Mr. Burch has a question he wants to ask.

MR. BURCH: During your preliminary statements, you indicated that you didn't think the law applied to you. Is that what I understood you to say? You didn't really think the law, amusement inspection law, applied to your system and your device. And to me, if that's what you think, then you need to operate on a different path if you -- if you think that they're in violation of inspecting you and the law doesn't
cover you, then that's a different ball game.

MR. HOLTSCHLAG: Okay.

MR. BURCH: But if you are, in fact, under the law, and you are, in fact, a part of the amusement devices that they are inspecting, then it seems to me that you would want either to attack it legally or either conform to -- to the system and bring your devices under this board or -- and these inspectors. And then that would mean you'd have to have more income, and you'd have to -- you know, people might be charged a little bit more, but you'd have the backing of the board as you operate your devices.

But again, if you feel like that they are inspecting you illegally, then you have another choice to make, is my opinion.

MR. HOLTSCHLAG: Well, like I said, when -- I read through the law, and it has nothing in there about inflatables. I'm not a lawyer by any stretch but, I mean, reading through it, it did not say anything about inflatables at all. It all had mechanical conversation, mechanical -- mechanical connotations. Everything was in there had -- it's something to do with mechanics or moveable parts and things of that nature, I mean,
so it didn't -- it didn't really --

CHAIRMAN FOX: Let me read the definition.

MR. HOLTSCHLAG: Okay.

CHAIRMAN FOX: (As read): Any mechanical or structural device that carries or conveys a person or that permits a person to walk along, around, or over a fixed or restricted route or course or within a defined area, including the entrances and exits to the device, for the purpose of giving persons amusement, pleasure, thrills or excitement.

I hope we get all those at Dollywood, but . . .

(As read): The amusement device includes, but is not limited to, roller coasters, Ferris wheels, merry-go-rounds, glass houses, and walk-through dark houses.

And it goes on and says (as read):

Also includes any dry slide, any portable tram, open car, combination of open cars or wagons pulled by a tractor or motorized device except hayrides, those used solely for transporting patrons to and from parking areas, or those used for guided or educational tours, but that do not
necessarily follow a fixed or restricted course.

And it gives a list of those things that it does not include. So the -- but --

MR. HOLTSCHLAG: But it starts off saying --

CHAIRMAN FOX: But it's not limited to -- it kind of brings the inflatables and other devices into the law.

MR. HOLTSCHLAG: But it starts out by saying "any mechanical device"?

CHAIRMAN FOX: Yes, sir.

MR. SIDLER: Or structural device.

CHAIRMAN FOX: Or structural device.

MR. SIDLER: That carries, conveys or permits a person to walk along, around, or through a fixed restricted area.

So it was written to cover mechanical and structural. That's what we're basing that on. That's what I want you to understand, calling that a structural device, just like a house of mirrors. It's a walk-through.

CHAIRMAN FOX: And in the rules -- the rules, it talks about ASTM-F1159 - 03a, which talks about amusement rides and devices and air
supported structures.

MR. HOLTSCHLAG: Okay.

CHAIRMAN FOX: And that's part of the rules, and that was adopted under the ASTM rules and regulations.

MR. HOLTSCHLAG: Okay.

MR. HALE: Seems to me like part of the issue seems to be defining the cost factor of inflatables. Is it $100? Is it $25? It seems to me a little of this issue revolves around establishing what that price should be. And maybe $100 is too much for an inflatable inspection.

MR. SIDLER: Well, you know, the three of us, along with Lee Bentley, if I might add, were the fee structuring people when we did this. And I went back to read the rules to make sure I wasn't thinking wrong. And the $25 where that 42-inch thing comes into play, of course, on all rides, but that $25 was a catchall that we created for -- and we just gave that hand-powered as an example, as an example of that. So that would include all the miscellaneous amusement devices not listed or under the -- and I think the inflatable would be that, much like a house of mirrors or a haunted house kind of walk-through
MR. HALE: I really believe that was our intention.

MR. SIDLER: It was our intention at the time. And, of course, it's a different direction this unit is going towards now with different leadership, and it's things we've got to work out. That's what I was telling your wife. Those are things that could be worked out easily, you know, that fee structure, the misunderstanding or communication with that.

The basic premise there of registering and insurance and all of that is there, I think. And I want to help you understand that by our interpretation of the law.

MS. JEFFERSON: Also, I want to add that the fee structure's based on the rules. This information is already set in the rules. In order for us to do something contrary to what's in the rules, we'll have to have a rule change, and Sydnã© would assist us. Both Sydnã© and Jason Beard in the back would assist us with that. So right now, we're bound by this. Our task is to make sure that we're abiding by what the rules say.

Now, if we're doing something
contrary to that, then as Ron said, we'll be happy
to -- after this meeting, to go over the fees just
to make sure that you-all were charged
appropriately, but we can't do anything outside of
what this says unless we have a rule change.

MR. HALE: Do we not believe that
the intent was to put inflatables in the $25
classification? I think that -- when we worked on
those, that fee -- and myself and Chairman Fox and
Sidler worked on that -- I think that was our
intent.

In order to clarify that intent, we
still need to make a change to the rules, SydnÃ©,
or would we -- can the board itself --

MS. EWELL: You could put whatever
you want in your rules that clearly identify the
charges that the companies will be -- that they
must adhere to.

CHAIRMAN FOX: To clarify his
question: If this board made a recommendation to
change the inflatable fee to $25, is that
something that we have the authority to do, and if
we passed it, would it take effect?

MS. EWELL: You have to go through
the rule-making process in order to do that. And
you can list specifically in the rule inflatables,
and there will be no question that it's an
inflatable.

MR. SIDLER: So right now, it's --
you're saying it's questionable whether -- you
need to make it clear? You don't think that our
interpretation originally is clear enough?

MR. HALE: I just wanted, as a
board, to go on record saying the intent was the
$25.

MR. SIDLER: Exactly.

CHAIRMAN FOX: That's what I meant.

My question was, was that sufficient.

MR. SIDLER: And is that not good
enough, Sydnã©?

MS. EWELL: I think it is, but he's
questioning the amount.

MR. SIDLER: Well, no. He said
there was a mention to his wife about a higher
fee. And like I told her at the time when I
talked to her and mentioned here, that that's
something we can figure out. If you were
misquoted on a fee, that's something that's -- you
know, that's what we can talk about. It's within
our realm to do. Those basic structures of
inspections, we can't -- we've got to do what
we've got to do there. And the bottom line is, we
can -- we'll make sure the right fee is charged
appropriately for that. I think --

MR. HALE: What we're saying, Kim,
is: In the mechanical amusement ride world, rides
are classified by the height of the person that
can -- and so if I'm a -- if I'm a fair and I'm
looking for rides, I'm going to require my
carnival provider to give me a certain number of
rides that the riders have to be above 42 inches,
and then I'm also going to say, "Well, it's okay
if you give me so many that are below that
number."

In other words, I'm okay if you put
me three kiddie rides, but I want a Himalaya and a
Scrambler. Okay? So I think the confusion is, we
put the 42-inch size in there to help define
larger rides more clearly. And that has lapped
over into somehow --

MR. SIDLER: Caused some other
confusion.

MR. HALE: -- the interpretation
for inflatables. And I think our intent was
only -- as far as that aspect of it's concerned --
1 was more mechanical risers.

    MS. JEFFERSON: Okay. And let me
2 just clarify here. Looking at the rules under
3 letter L, it says (as read): And a permit for
4 miscellaneous hand-powered amusement devices is
5 $25.

    That's the only fee. So is your --
6 was the intent at that time for the $25 fee to
7 cover inflatables? $25 that's mentioned here in
8 the rules to cover inflatables? Based on the
9 language that's there.
10
    MR. SIDLER: Yeah. We -- it was --
11 that was an example of hand-powered, walking
12 through. That was what we were -- that's what we
13 classified as hand-powered.
14
    MS. JEFFERSON: So in other words,
15 all of the inflatables would fall under
16 hand-powered?
17
    MR. SIDLER: Exactly.
18
    MS. JEFFERSON: Okay. Well, if
19 that's the case, then there is no need for us to
20 change it because it's clear.
21
    MR. SIDLER: Right. That was our
22 intent.
23
    MS. JEFFERSON: Okay. That's fine.
Sydnã©, do you have any problem with that, because it looks like the rule is clear?

MS. EWELL: I don't have a problem with it.

MR. HALE: I certainly don't mind making a motion, if you want that on the record, that we established $25 as the fee, now put the appropriate term to it for the $25 inspection fee. Is that what we're --

MR. SIDLER: Uh-huh, permit fee.

It's a permit fee.

MR. HALE: For inflatable devices.

MR. SIDLER: If I can clarify one thing that keeps getting confused in our industry, amusement. We have a company that's permitted, your company is permitted. And underneath the umbrella of that permit are all the devices you've got permitted. In Dollywood's case, there's all kinds of devices, spectacular through the walk-throughs. In your case, it would just be seven, maybe?

MR. HOLTSCHLAG: (Witness nods.)

MR. SIDLER: Seven of inflatables.

So that permit would include your permit, and underneath that, you'd have permits for each one
of those. And if you came back and expanded and
added ten more, then you'd have to have permits
for those, and then our inspection would -- that
would cover everything that we do.

MR. HOLTSCHLAG: Okay.

MR. SIDLER: That was the intent of
the program. That -- and the reason we did that
is -- and I keep using Dollywood because he's
here, you know; she's not, but he is -- but you've
got the large amusement company that makes a lot
of money but spends a lot of money. And to make
it fair for Dollywood, $150, and fair for you for
your permit, that's equal. You should not be
paying $5,000 to operate, or should he be paying
$25 to operate.

So the umbrella of devices
underneath the permit was the way we structured
that to make it fair for Mom and Pop or the huge
organization.

I wanted you to understand what we
were trying to do.

MR. HOLTSCHLAG: I understand.

MR. HALE: So now you're down in
the 325, 350 range, somewhere in there?

MR. HOLTSCHLAG: And that's a
one-time fee --

MS. JEFFERSON: It's annual.

MR. HOLTSCHLAG: -- for the permit?

MS. EWELL: Annual.

MR. SIDLER: Annual fee.

THE WITNESS: Why would it be an
annual fee if I bought a permit for that device?

MR. SIDLER: Because the law says it's each year.

CHAIRMAN FOX: Same reason you have
to get car tags every year.

MR. HOLTSCHLAG: Well, but I'm already paying a personalty tax on those devices as personal property every year, $525. So it's like a double taxation, almost.

MS. EWELL: That's a different department.

MR. HOLTSCHLAG: Well, it's one government. I pay a personalty tax for those devices, because they're personal property, of $525 a year. So now I've got to pay this for those devices too? I don't --

MR. SIDLER: And there again --

MR. HOLTSCHLAG: I shouldn't have to pay the personalty tax because they're
amusement devices, not personal devices. So where
do I go with that?

MR. SIDLER: But I want to tell you
the reason that the annual fee was put in there,
is we had to cover fixed and travel. We had to
make a law that covered the guys that come in and
out of the state, and then the guys that's there
365 days a year. So they had to be permitted each
year just like the traveling shows did. We never
know if they're going to come this year or not.
So the permit is for the year, and Dollywood, even
though they're all the time there, they're going
to have to be permitted every year, too, and -- as
would be your case because you're a local
business.

I'm just trying to explain to you
our --

MR. HOLTSCHLAG: I understand. I
just don't get it.

MR. SIDLER: I know it's hard to
swallow.

MR. HOLTSCHLAG: I just don't get
it. I don't understand what the -- I mean,
they're the same devices, they're in the same
building. We're not moving. You know, I know you
have the law, but you have your rules. The rules
are amendable, the laws are not.

I mean, I don't understand why it
has to be annually. I don't -- because it's the
same --

MS. EWELL: Because the statute
requires it. It's the law.

MR. HOLTSCHLAG: It's the law?

MS. EWELL: Section 68-121-117b.

MR. SIDLER: And we can -- there is
a process to do the rules. We can -- and there is
a process. It's not like we can do it today, but
in a few weeks, if we do the proper thing, the
board can change the rules. But the rules enforce
the law, and we can't change the law. That's the
legislative people that do that. We have no
control over the law once it's here. We're
enforcing it with the rules.

CHAIRMAN FOX: Any other
discussion?

MR. BURCH: Is there a motion on
the floor?

CHAIRMAN FOX: That's what I'm
about to ask for. Is there a motion?

MS. EWELL: Conflict of interest?
CHAIRMAN FOX: Is there a motion -- so the $25 is set? That's what the --

MR. HALE: Clarify that $25 is the amount for annual permit on an amusement -- inflatable amusement device.

MS. JEFFERSON: Is that hand-powered?

MR. SIDLER: Hand-powered.

MR. HALE: Well, the word "hand-powered," just put in there to -- as an example, not . . .


MR. HALE: It was just put in there for an example. Just like the word "merry-go-round" was put in the first part, but that doesn't cover everything you inspect.

CHAIRMAN FOX: Sir, as with the first one, your request for reconsideration died for lack of a motion, but the other side of it is, you probably have reduced the price of the permit for your rides.

MR. HALE: By half.

MR. HOLTSCHLAG: Thank you.

MR. HALE: Any call for questions,
Mr. Chairman?

CHAIRMAN FOX: There was no motion.

MR. HALE: Oh, I made a motion to clarify it at $25.

CHAIRMAN FOX: Okay. I stand corrected. I'm very sorry. Is there a second?

MR. HALE: My motion is, is that we go on record clarifying that the price for annual permit for an inflatable is $25.

CHAIRMAN FOX: Is there a second?

MR. BURCH: I second.

CHAIRMAN FOX: Seconded by Mr. Burch. Any conflict of interest? Any discussion?

There being none, all in favor of the motion, let me know by saying "Aye."

IN UNISON: Aye.

CHAIRMAN FOX: All opposed, like sign.

Motion carries.

MR. SIDLER: There again, if I can help you in any way to work through any of this, you or your wife, either one, call me.

MR. HOLTSCHLAG: Okay.

MR. SIDLER: John or myself, either
one, I'm -- I'll work with you in any way I can.

MR. HOLTSCHLAG: Okay. Thank you.

CHAIRMAN FOX: Thank you, sir.

MR. SIDLER: Climbing Wall Association?

CHAIRMAN FOX: Yeah, I was just considering taking a little break.

Could we take a 10-minute break and be back at -- it would be 10:30?

(Recess observed.)

CHAIRMAN FOX: We will now take Item 14-03, Climbing Wall group, and I don't know what the request is, so whoever is representing them, please step forward.

Please introduce yourselves again.

MR. ZIMMERMANN: My name is Bill Zimmermann. I'm the CEO of the Climbing Wall Association, Inc. CWA is a 501(c)(6) nonprofit trade association.

MR. BAUGH: And I'm Mark Baugh from Baker Donelson here in Nashville, Tennessee.

CHAIRMAN FOX: Gentlemen, what's the issue?

MR. ZIMMERMANN: It's a matter of statutory interpretation.
I represent 350 to 400 commercial climbing gyms around the country. Commercial climbing gyms operate essentially the same as a health or fitness club. Okay? Patrons buy memberships at commercial climbing facilities. They get training. They receive assessments to test their competency. And once they've passed through those steps, they're able to participate in climbing activities at a commercial climbing gym. Okay?

So what I'm here today to discuss is how we distinguish ourselves as a separate and distinct industry from the amusement industry. And this issue has come up a number of times for us. And usually, we've been able to establish the differences between our industry and the amusement industry as participants in a sport, in a sports endeavor.

So to kind of walk through the arguments to kind of explain to you how we distinguish ourselves, some of the arguments are economics, some of the arguments are operational, but I'd like to walk through some of the ways that we distinguish ourselves.

First of all, a majority of the
revenue or a significant proportion of the revenue of these facilities is by membership dues or day passes or through supervised programs. Okay? The sport, as practiced in climbing gyms, doesn't really conform to the definition, that standard ASTM definition of an amusement device or ride which many states have adopted or modified. Okay? And our argument is that to apply that definition to a sports activity is overly broad.

And you could -- if you use that logic, you could turn activities like tennis, indoor volleyball, indoor soccer, into amusement rides very easily. Okay? And climbing is no different.

We'll get to the part of the definition that deals with purpose or the nature of the activity itself. Amusements are typically characterized as eliciting thrills or excitement or entertainment. We argue that sports are -- while there might be -- there might be some excitement around sports participation, especially adventure sports like skiing, that sports participation is really about fitness, about developing skill over a long period of time.

It's a pastime with a lot of the
same qualities that golf might have. Okay? You train, you get better, you learn techniques that improve your performance over a long period of time. And the more experience you have, the better you get at it.

Climbing has all those aspects of sports participation. And it could be any sport. Baseball, hockey. We feel there's a really clear distinction between participation in amusement rides that's passive participation, no skill is required, no education is required, no preparation is required other than maybe a certain height requirement, weight requirement, or age requirement.

That is not true in sports participation, and it's certainly not true in climbing. I've worked as a climbing guide. I've worked as an association manager, credentialing outdoor schools for over 20 years, and I can tell you what we do is really different than what is going on in the amusement and entertainment industry.

Climbers develop their knowledge of the sport over time. They receive specific training in the use of personal protective
equipment, in climbing techniques, belaying, and are always assessed in terms of their competency before they're let loose in a climbing facility able to participate without direct supervision. Okay? Otherwise, it's a structured program with a person, a staff member, supervising that activity directly.

So typically, the CWA publishes a number of publications that the industry relies upon and our insurance programs rely upon for purposes of underwriting. We publish a document called the industry practices. It's a source book for the operation of manufactured climbing walls, and the market is the commercial climbing gym. That covers everything from ethics, ethics of a teacher and a trainer, all the way through to risk management considerations, insurance, human resource management, training and testing of patrons, equipment inspection, facility inspection, instructional inspection.

We also publish an engineering specification for the design of climbing structures. There are only two in the world: the one that we publish for North America and the EN Standard, EN 12572.
We published the first in the world --

CHAIRMAN FOX: I'm sorry, sir. Could you repeat that, please?

MR. ZIMMERMANN: EN 12572 is the European standard and our standard. They were written at about the same time.

Our predecessor organization submitted the engineering specification to ASTM F08. ASTM F08 worked on that standard for a number of years. They couldn't reach a consensus. We asked for that standard back, and within two years, finished it with many of the same committee members and published it. And it's been out there for a number of years now.

We published the first in the world structural inspection specification for climbing structures. The Europeans haven't yet published one.

We also instituted, after a number of years of development with the American Mountain Guides Association, a Climbing Wall Instructor's Certification Program. Okay? So we've been operating that program for four years.

So climbing wall instructors can be
credentialed in this country. It's very new. A
number of prerequisite skills and abilities are
required to even stand for the examination. And
those instructors would need to be tested as to
their competency, not merely to perform certain
functions and activities, but to teach those. So
to teach top rope climbing, to teach bouldering,
to teach lead climbing. Okay? So it's a very
rigorous certification.

It would take a number of -- a
number of years for someone to develop the skills
and get the experience necessary to pass that
eamination comfortably.

Likewise, patrons go through a
pretty rigorous process of orientation, this is
what the sport is about; training, if they're not
exposed to these -- this equipment and these
techniques; and would be trained over time to the
point where they might be able to pass an
assessment of skills that demonstrates to the
business owner that they understand how to use the
personal protective equipment -- harnesses,
carabiners, belay devices, auto belay devices --
that they understand how to construct the safety
system with a rope, an anchor, and carabiners and
belay devices, and operate a belay system without
direct supervision.

So all of these business owners
would have a system at their gym where they
tracked individual members to make sure that they
were at a certain point in that assessment and
qualification process before they were allowed to
climb without direct supervision. Not everyone is
guaranteed participation in a climbing gym. If
they cannot pass the assessment, if they do not
master the skills, they're not going to be allowed
to climb in that climbing facility in that gym.

Furthermore, if they demonstrate
that their skills have degraded or they're not
practicing sound technique, those privileges can
be revoked, removed by the business owner. It's
in the business owner's interest to make sure that
everybody that's climbing in that facility is
competent -- right? -- that they're exercising
good technique, they're using the equipment
properly.

And if they don't feel comfortable
with that, they're going to ask that person to
take some more training. They'll revoke those
privileges until that person can pass an
Some of the risks associated with climbing are what we call inherent risks, and they cannot be eliminated. Regardless of the regulatory regime, those risks are present, and no matter what the interventions the business owner puts in place, sometimes accidents will occur anyway.

So you can have the best design structure, you can have brand-new ropes, you can have the best belay devices, you can have a completely adequate inspection regime for all of the PPE and all of the structures, and accidents might still occur. Why? Most frequent cause of accidents in a climbing gym are inattention.

Just like plane crashes. It's almost always pilot error. Planes generally don't fly apart. Well, the same kinds of things apply in a climbing gym situation. Most of the things that occur are due to human error.

Now, there are robust supervisory plans in place at these facilities, but if you think about the nature of the sport of climbing and mountaineering, there's a certain amount of risk taking that's necessary. And as long as
people are willingly and voluntarily assuming those risks and choosing to participate, that responsibility should be theirs. It should be theirs to choose to participate. It should be their choice to decide how hard they climb or how high they climb.

We feel none of this, none of these characteristics or qualities are present in an amusement setting, okay, where the activity is so constrained. Somebody puts the harness on you. Somebody attaches you to a belay system. Somebody says, "There's the route. Once you get to the top, you just let go, and the auto belay device will lower you to the ground." Okay?

There's no learning, there's no behavior change, there's no competency. There's no -- there's no real choice about the risk taking. I mean, there's no discussion or exchange of information that might include an exculpatory agreement or an assumption and acknowledgment of risks, which is routine and typical in our industry.

That new member on-boarding process would include a discussion of the hazards and risks. It would include an assumption and
acknowledgment of risks. It would include
exculpatory language if that language were allowed
in the -- you know, under the State's laws.

So I hope what I'm painting is an
industry that's really separate and distinct from
how amusement parks and rides are operated.

I'm going to let you, Mark, deal
with this. I'm going to mention it, but . . .

I think a lot of states have laws
or amusement licensing laws that have rider
responsibility provisions, and I'm not sure if
Tennessee's does, but I can't find them. But I
would say that these rider responsibility
provisions in various states shift the
responsibility from the individual participating
to the business owner. Okay? There is -- that --
that division of responsibility, that line or what
the business owner in an amusement or
entertainment setting is responsible for is much
greater than somebody that might operate a ski
mountain or a climbing outfitter operation,
because there are lots of risks that that
outfitter or guide can't control. There are a lot
of risks that, you know, are just -- he controlled
all the risks where in an amusement setting, much
of the risks are manageable by maintenance of systems, mechanical systems, hydraulic systems, periodic inspections, and so forth and so on.

So the scope of risk is much more limited in an amusement setting than in a -- than in a climbing situation. Many states allow this kind of shift of responsibility from the business owner to the sports participant, to the -- to the climber, to the soccer player, to the hockey player through a written agreement. That -- that remedy is generally unavailable to somebody in an amusement or entertainment setting. But it's -- like I said, it's routine in guiding and outfitting indoor climbing and so forth.

To apply the licensing law written for a completely separate and distinct industry -- amusement and entertainment -- to a sports activity, we believe is improper. And it impacts this -- this principle of this doctrine of inherent risk.

We can't control the risks associated with climbing completely. So what we attempt to do in -- with our risk management systems is to reduce or minimize the frequency of those incidents and the severity of those
incidents, if they occur. Okay? And we do that a
number of ways. Like PPE inspections, structural
inspection, instructor training, supervisory plans
for these facilities. And in many, many other
ways: criminal records checks for employees, and
so forth and so on.

So we would argue that applying an
amusement licensing statute to a sports facility,
like an indoor soccer club or a tennis club or a
golf course, is such a broad interpretation of the
statute that it leads you quickly to kind of
absurd results, you know. And we believe,
therefore, it's improper. It's a -- I don't
believe that the legislatures in the various
states, in about 30 to 40 states, have amusement
licensing laws. Some states don't have them at
all. Wyoming, for instance, doesn't have an
amusement licensing law at all. They do have an
outfitter and guide licensing law, but they don't
have an amusement licensing law.

So I've looked at the amusement
regs -- amusement licensing statutes and the
attendant regulations in many states, and here are
a number of my concerns about how these laws are
structured and the regulations that are authorized
under these statutes. None of them adequately or
appropriately address or even contemplate key
public safety issues involved in climbing sports.

There are no rules that are relevant. There are
no procedures that make sense for us. There --
all that these licensing laws provide a state or a
commonwealth are a hammer. They provide you the
opportunity to say, "Got you."

They do not, in any proactive way,
prevent incidents. Generally there is nothing in
the regulations that would serve to minimize the
severity of an incident if one occurred. They're
merely a hammer. Revenue generation, making sure
that people are insured. Surely if a business
with risk exposures like a climbing gym didn't
have insurance, there are other laws you can use
to go after them. That's basic.

Surely if there are deaths due to
criminal negligence in a climbing gym -- which we
don't see -- but if there were, there are laws you
have to go after those business owners. So you do
have -- I think the various states do have
recourse, if there are irresponsible operators.

Generally speaking, our safety
record is very good. We operate the largest
commercial general liability insurance pool in the country for commercial climbing gyms. Amusement device operators are not allowed in our pool.

Our insurance programs recognize the distinction between sports and rides. So if you are an owner of a rental company and you have inflatable climbing structures or portable climbing structures, and you rent those out to members of the community or you operate them and you travel from place to place, you're not getting into our insurance programs. You're an amusement operator. Our pool is for commercial sports climbing facilities.

So even our insurance companies recognize the difference between the type of activities.

We also believe it would take considerable time and expense for the State of Tennessee to develop a rational program of oversight. Nothing that I've seen in the regulation shows me that the State is even prepared to regulate this activity in terms of its understanding of the activity, its understanding of the risks, the qualifications of the inspectors. None of that's in place.
The licensing and inspection fees, it's very unclear what those are. Those seem to change from e-mail to e-mail in terms of what -- how those -- how even basics like fees would be assessed to this industry.

And as to your point about fairness in terms of assessment of these, there are -- depending on how those fees were assessed to a climbing gym, there might be tens or hundreds of devices you could inspect, depending on how you define a "device."

The only state where this has been litigated, this matter has been litigated, is the state of New Jersey. And the New Jersey Department of Community Affairs argued that the presence of a carabiner, that the presence of a belay device that a climber uses to break or arrest the fall of a falling climber, made that activity conform to the definition of an amusement ride. So the presence of a mechanical link, a Screwgate carabiner, turned the whole activity into a ride. And the judge said, No, not in this universe or any other that I can think of.

And furthermore, I don't think you can write rules that could capture what's going on.
in a climbing wall -- in a climbing gym, a sports climbing facility. So first of all, you don't have the authority to regulate this kind of an activity because it's not an amusement; and second of all, you don't have any rules that are relevant to this activity.

So to date, that's the only state where the matter has been litigated. In many states, we've gone through this kind of a process, and the branches of state government responsible for regulating have considered our position and, by and large, have agreed. So the State of Colorado does not regulate commercial climbing gyms. They do regulate portables and inflatables. They do regulate fun centers. But none of the commercial climbing gyms where people are trained to climb are licensed.

Ohio, when we had this exchange of information with the Department of Agriculture in Ohio, counsel for the Department of Labor said, We agree with your interpretation, and by and large, those -- those commercial climbing gyms in Ohio are not licensed.

In Virginia, we had the board responsible come to a climbing gym and do a tour,
and showed them the differences between how we operate and how an amusement park operates. And they walked away and they said, Well, this isn't an amusement park, and those gyms in Virginia are not licensed.

So generally, the arguments about statutory interpretation have been successful where -- so I think -- let me see if I made all my essential points that I wanted to make.

Yeah, I think I've made all my essential points, so thank you for your time. I appreciate the opportunity to address you today, and I look forward to hearing what you have to say.

CHAIRMAN FOX: Thank you for the information, sir.

Mr. Baugh, do you have comments?

MR. BAUGH: No, I don't.

The -- I mean, just to kind of recap: We're here because -- well, we're here because we had a meeting a year ago with administration about whether the statute was applicable to climbing wall gyms as to the sport of climbing wall. And then it was decided that it would be good for us to come and make a
presentation here to this body to kind of outline what we do so there could be an understanding of why we don't believe that the statute and rules are applicable to climbing wall facilities or climbing wall gyms, in this case, in the sport of climbing wall.

CHAIRMAN FOX: Mr. Sidler, would you like to respond on this?

MS. JEFFERSON: Actually, I'll respond. We did have a meeting about a year ago, and I spoke with Mr. Baugh and the representative from the Climbing Wall Association or the other attorney from the office at the time. And it was our interpretation, the department's interpretation, that climbing walls do fall under Tennessee law as it is currently written. That's our interpretation. And, of course, there were different interpretations, so we walked away from the meeting -- we pretty much, you know, advised that was our interpretation, and in order for the law -- in order for -- you know, if they had a different interpretation, they should reach out to others to see which interpretation was correct.

And so after that meeting, we pursued climbing walls, and that's why our
inspectors recently went out, and they conducted inspections, and I believe that's why we're here today.

Now, I don't believe that it can be automatically concluded that rock climbing facilities are for exercise purposes only. We realize that some people utilize them for exercise purposes; however, some people utilize those climbing walls -- I have nephews who utilize those for recreational entertainment purposes. So it could -- you know, you could see it either way.

Now, if there is a membership agreement associated with what you do, then I think that would boost the argument that it falls under a gym, but if there is no exercise agreement -- or there's no membership agreement, rather, then I think it would be clear that this is something that we would regulate.

Now, even if we don't regulate it as a department of labor, Tennessee Department of Labor, gyms are regulated by Commerce and Insurance, the Division of Consumer Affairs, so either way it goes, they're regulated. This is not a state where gyms aren't regulated.

So if it's exercise, they're
regulated by Commerce and Insurance, but if it's
for entertainment purposes, it's regulated by the
Tennessee Department of Labor. But ultimately,
our interpretation is that it falls under current
law. So we're hoping that the board can give us
some guidance as to what to do about the climbing
laws as we go forth.

CHAIRMAN FOX: Comments?

MR. HALE: First, just a couple of
comments. One, I want to take exception to your
comment that the amusement laws of the State of
Tennessee were designed for anything other than
the safety of the people. And you made a comment
that it was to generate revenue.

Well, I didn't come here on this
board to generate revenue. I came here on this
board for the safety of people going to amusement
devices in the state of Tennessee. I put my own
personal time, uncompensated time, into helping
design the law and to sit here and help with the
fee structures and so forth. And I take extreme
exception that you would indicate that I was here
for the purpose of generating money. I'm here
because I want people that go to the fairs in the
state of Tennessee to know that when they step on
an amusement ride, it's a safe place for their
kids to be, for my kids, for my grandkids, for
your kids. That's why I'm here, and no other
reason.


And I think it's an essential function.

And my point, I -- perhaps I
misstated. My point is that the laws, the
statutes, and the regulations around the country,
the way they're constructed, really don't address
measures to proactively prevent the kinds of
incidents and accidents that might occur in a
sport like climbing.

MR. BAUGH: If I may, I don't think
he was addressing that the -- this body is here
for revenue generating. I think what he's saying
is, as it applies to climbing gyms, if there is
not a -- there's not a nexus between the
regulation of a climbing gym and the safety of a
climbing gym, then what are we regulating?

First is an amusement park where
the rider is a rider. It's not -- it is someone
who is at the -- well, I won't say the mercy, but
you get on a ride, and you're in the hands of a
second party or a third party, whereas when you're
weight lifting or climbing, you're climbing based on your own. And so I think what he was alluding to in terms of the regulation, if you want to regulate that climbing gym, then what are you regulating? Because you're regulating someone's individual activity versus me coming to your ride and getting on the ride, and this body saying the ride is either not safe or it is safe, and then having them inspect it to determine whether it's safe or not.

MR. HALE: Well, and it may very well be that, as was suggested, that maybe membership is a defining thing or something like that. But the fact of the matter is that there are climbing walls driving all over the state of Tennessee every day. And I guarantee you -- I would venture to guarantee you that there's not any of them got a certified instructor going out there with them.

MR. ZIMMERMANN: I can speak to this issue. Our argument is really predicated on the type of use. Okay?

MR. HALE: If your argument is whether someone is there in a membership situation with an instructor, and it requires training
before you can do that, then maybe that's a valid
issue, but rock -- but climbing walls are
mechanical devices by the way the statute is
defined, and whether climbing gyms need to be
separated from recreational climbing -- fun
climbing, for lack of a better word -- maybe
that's the issue.

MR. ZIMMERMANN: That's essentially
the argument. The number of points --

MR. HALE: But the broad brush
painted that rock wall climbing shouldn't be
regulated is wrong.

MR. ZIMMERMANN: That's not my
argument.

MR. BAUGH: We're not making that
argument. We're not saying that inflatables are
the ones that are used for amusement purposes that
fall under amusement guides. What we're saying is
that climbing wall gym, not where you go to a fair
and there's a climbing wall and there are kids or
teenagers going up and down a climbing wall.
We're saying where there is a climbing wall gym, a
facility that we're making available for people
who are interested in the sport of climbing, that
those gyms are not amusement devices or are not
amusement parks.

CHAIRMAN FOX: May I ask a

question?

MR. BAUGH: Yes, sir.

CHAIRMAN FOX: Do you have those

rides or those devices inspected annually by

anyone?

MR. ZIMMERMANN: Well, they're not

rides.

CHAIRMAN FOX: Your devices. Let's
call them a device for this.


mean, what --

CHAIRMAN FOX: The rock climbing

walls, the instruments that you use to ascend and
descend.

MR. ZIMMERMANN: Okay. Let me back

up a step. We cannot remove the climber from the

risk management process. So a climber that goes

into a climbing gym who brings his or her harness,
carabiner, belay device, inspects each one of

those pre-use. Okay?

CHAIRMAN FOX: Let me back up.

MR. ZIMMERMANN: The gym owner,

before they open their doors, inspects all of
their ropes.

CHAIRMAN FOX: I understand. Let me ask my question again, please.

The -- the rope, the wire, the nuts, the bolts, the -- whatever it takes to operate that climbing wall, are those pieces, instruments, devices, whatever term you want to use, are those things inspected annually, or are they inspected at any period during the year?

MR. ZIMMERMANN: Yes. They're inspected periodically, and they might be inspected much more frequently than annually.

CHAIRMAN FOX: Okay. Are they inspected by a third-party inspector?

MR. ZIMMERMANN: They may be or they may not be. There are -- our structural inspection standards stipulate very carefully who might be qualified to perform that structural inspection. If a person is trained to inspect that climbing structure, that might be from a -- from the manufacturer that designed it and installed it, that might be third-party training.

We work with one of the largest providers of third-party training in the country, Petzl Technical Institute, in Salt Lake City,
Utah, so we can provide training and certification on structural inspection, equipment inspection.

The PPE inspection course is three days long. Okay? Work at height training, rope access training.

So a gym manager at a facility, if that person is trained to conduct inspections, can conduct those inspections. There are independent third parties, engineers, and design build firms that can provide those services. Insurance -- the insurance company, the -- SAIG Everest that runs our program might require an insurance inspection. And there have been at least a dozen performed this year.

So yes, typically, routinely, PPE and structures are inspected.

CHAIRMAN FOX: Yes, sir. Please state your name.

MR. PAYNE: My name is Kevin Payne. I'm the inspector, and I went to the climbing wall gyms. I went to four of them here.

Now, two of them I looked at was excellent. Lance, here, he owns two of them. They were excellent. They had everything you want, excellent job.
The third one I went to, their rope didn't have any attachment in the top. They had to throw rope over top of some conduit. And that's how they were belaying their people: through -- over a conduit piece. It wasn't no pulley there or nothing else holding that person. I wish I took a picture of it, but the -- you know, the guy wasn't really, say, nice to me at the time, so I didn't think I should take a picture.

I also went back a month later. It was exactly the same way. They never changed it. So obviously they run their gym that way and hold people that way. And so it could have been -- I think it was electrical conduit. It was about an inch and a half, maybe 2-inch piece of pipe. No pulley, like I said. The rope just ran back and forth. That's why it needs to be inspected. If it was inspected, that inspector didn't know what he was doing.

MR. MOORE: Talking about inspections: If these inspections are conducted, are the records maintained? Could I walk in at any time and say, "Hey, I'd like to see the records with inspections"?
MR. ZIMMERMANN: Our instruction inspection specification requires a written report, yes.

CHAIRMAN FOX: Yes, sir?

MR. HALE: So just so I can clarify a little bit here: If I am participating at your -- at a climbing gym, I'm bringing my own harness, my own carabiners, my own devices.

MR. ZIMMERMANN: You may. You may rent them.

MR. HALE: If I am participating there, am I hooked to a device that belays me if I fall?

MR. ZIMMERMANN: You may. Some gyms have them, some gyms don't have them. If -- in gyms that have them, the manufacturers require that those are certified annually. So the modular types would be, say, TRUBLUE auto belay, get taken down, shipped to the company, inspected, recertified and sent back. And that's a requirement -- that's a requirement of the manufacturer, and that's done annually.

MR. HALE: And --

MR. ZIMMERMANN: The only user-serviceable part in that assembly is the
lanyard that's attached.

MR. HALE: So your statement is I can't leave this board meeting and ride over to a climbing gym and start climbing up the wall because I haven't been trained and certified by --

MR. ZIMMERMANN: You would not -- you would not be able to climb without direct supervision unless and until you passed an assessment that indicated to the business owner that you're competent, that you are -- you are able to attend to the risk management issues associated with climbing --

MR. HALE: So everybody that's going to the climbing gym is assessed for skills before they're allowed to climb?

MR. ZIMMERMANN: Yes. Or they're directly supervised, yes.

CHAIRMAN FOX: Do they pay a fee for that service?

MR. ZIMMERMANN: A fee for?

CHAIRMAN FOX: Being assessed.

MR. ZIMMERMANN: They may. It depends.

CHAIRMAN FOX: Do they pay a fee to access and use and/or utilize the rock climbing
wall, specific, separate and apart from any other fees that they pay?

MR. ZIMMERMANN: I wouldn't be the best person to ask. I don't own or operate a gym. I operate the trade association for the gyms.

CHAIRMAN FOX: But you're representing the group at this particular point.

MR. ZIMMERMANN: Well, the point is that there are a number of business models.

CHAIRMAN FOX: I understand.

MR. ZIMMERMANN: There are some gyms that are strictly members only. There are some gyms that have outdoor guide services, so you might pay for a three-day mountaineering course in Rocky Mountain National Park. There are some climbing gyms that don't have guide services associated with them.

MR. HALE: To my knowledge, we're not going out and inspecting people in the Rocky Mountains climbing, or in Gatlinburg climbing a mountain.

CHAIRMAN FOX: If we do, we need to stop.

MR. HALE: As I said, maybe there needs to be some way to define the difference
between someone that's there. I disagree with
your statement that they're not there for
pleasure. Everybody that participates in sports
is there because they get pleasure from it,
whether they're playing football or golf or
climbing a rock. They're there because they get
some level of pleasure and enjoyment out of it;
otherwise, why would they do it?

At any rate, maybe there should be
a way to define people that are there for the
health purposes of it versus somebody that's there
on an amusement device. I certainly don't
disagree with that. And maybe membership and
proof of training -- that your required training
is the way to do that.

But I think at this point, it
requires a change of the law. Is that -- would
you agree with that, or a redefining of the law.

MS. JEFFERSON: Our legislative
liaison is here, and I'll allow him to speak on
that. Jason Beard.

MR. BEARD: Far be it from me to
suggest to the legislature what they can do or not
do. As has been mentioned many times, the
definition which is currently on the books that
the legislature has passed, we have interpreted it
to include facilities such as this. As a
department, as a division, we have interpreted it
as such.

Our -- actually, our manager could
speak more directly as to that interpretation and
how it's carried out and -- but as far as I'm
concerned, what we have looked at, this is not
something that can be changed by rule or
regulation. It's -- it's something that would
have to be addressed by the legislature, and we,
as a department, are more than happy to defer to
the will of the legislature in any of these
matters, but . . .

CHAIRMAN FOX: Let me recognize
Mr. Sidler, and I want to recognize Mr. Tumey.

Yes, sir?

MR. SIDLER: I have one question on
what you said a while ago. You said that some of
the companies had a belay system and some did not.

MR. ZIMMERMANN: An auto belay
system.

MR. SIDLER: Right. And how do you
differentiate between that? I mean, why do some
have it and some don't?
MR. ZIMMERMANN: Great question.
Some gym owners don't. Some gym owners don't like
the overhead, the expense, the risk management
issues surrounding auto belays. So some gym
owners prefer to use them, some gym owners prefer
not to use them.

MR. SIDLER: So what do they use
instead?

MR. ZIMMERMANN: Rope systems that
climbers use. Ropes, carabiners, belays, anchors.

MR. SIDLER: Which I've climbed and
repelled before. I don't like the auto belay
either, you know, and so that's what I was
wondering. You said you send that off to be
certified, and you have very strict rules for
that, but yet in another avenue of it, there is
not. I was just trying to understand the
difference, why one facility would be unstructured
to do what they want to do, but the other one has
to have this strict -- the company sends these
off, and you look at them -- I'm just trying to
understand how --

MR. ZIMMERMANN: Oh, they're
different issues.

MR. SIDLER: You're saying they're
climbing facilities, and some choose to use them and some don't. I'm just trying to understand why, how you can choose to use a safety device and not -- the auto belay is safer than the -- because it rules out part of your personal problem of the human element, right?

MR. ZIMMERMANN: Part of that's right. It's a great question.

MR. SIDLER: Because if you get knocked out, you're not holding that belay rope and letting someone down if that person gets struck by lightning or whatever. So the auto belay takes care of that. Right?

MR. ZIMMERMANN: It can if you use it.

MR. SIDLER: That's what I mean, if it's chosen to use. So one would be safer than the other?

MR. ZIMMERMANN: No, absolutely not. You're changing -- let's look at a rope system versus an auto belay device. There are different risk management considerations.

First, let me back up. We treat -- in a commercial climbing gym, we treat an auto belay device just like any other piece of climbing
equipment. A rope, a harness, a carabiner, we
teach people how to use it. We teach people how
they operate properly. We teach people what the
rescue protocols are, like if you get stuck on
this thing, if the lanyard gets stuck beyond a
handhold, here is what is going to happen.
Demonstrate to us that you know how to use this
device.

They clip into the harness
properly, they climb up a short distance, they get
lowered. So even in that instance, there's an
information exchange, a training, an assessment
that's recorded before that climber can use that
device unattended or unsupervised.

The issues with a rope system, a
traditional rope system -- a climbing rope, a
belay device, and a carabiner -- that climber
needs to be taught, here's a rope, here's how to
tie a knot, here's how to fix the carabiner, the
harness. Here's how the belay device operates,
here's how you take in rope, here's how you pay
out rope, here's how you lower a climber. Here,
take all this stuff and show us you know how to do
it with a -- with an instructor present so that
that assessment of skills is demonstrated,
So we don't -- we don't treat the different belay methods any differently in terms of if we consider an auto belay device like any other piece of climbing equipment. A person has to be taught how to use it. And it has to be -- that competency or that ability to use it has to be demonstrated. And that process is recorded.

Even the software that climbing gyms use across the country, Rock Gym Pro, has places where these assessments, these skills assessments can be recorded as somebody walks in the door and presents a membership card that gets bar code scanned. And all of the assessments and tests that climber has passed are visible to the person at the desk.

So we treat auto belays just like any other piece of climbing equipment. There's an education and assessment process that the person goes through before they can use it unattended or unsupervised.

CHAIRMAN FOX: Thank you.

Mr. Tumey?

MR. TUMEY: I think the key element here is safety. I mean, whether it's an auto
1 belay or if it's a hand-powered -- you know,
2 somebody on the other end of the room, you've
3 still got mechanical devices there that wear.
4 They move. They're moving devices. So you've got
5 ropes, you've got pulleys, you've got bolts and
6 nuts. And when you have this system, there is --
7 needs to be some type of an inspection done on a
8 periodic basis of the system, because mechanical
9 parts do wear.
10 And it falls back under the ASTM
11 which -- rules, the ASTM that we adopted in our
12 rules was the ASTM 1159. And it specifically
13 says, in ASTM F1159, artificial climbing walls are
14 in there.
15 So to me, you know, they've got an
16 artificial climbing wall but they're a gym. Well,
17 Mom and Pop's has got an artificial climbing wall,
18 but they're mobile.
19 It kind of goes back to the
20 gentleman before with the BounceU. He's arguing
21 he's a franchise, and he should be different than
22 the guy that blows up a device in his backyard.
23 It's still the same device. It's still the same
24 structure -- you know what I'm saying -- that
25 we're looking at. So --
MR. ZIMMERMANN: I can speak to
that.

CHAIRMAN FOX: Any other comment
from the board? Any comment, any motions?

MR. BURCH: It just -- can I say
something?

CHAIRMAN FOX: Absolutely, please.

MR. BURCH: It seems to me that
this should have been worked out in a hearing
before the legislature. What we're hearing today
seems to me should have all been voiced before the
law was made or during the process for the law to
get enacted. This should have been worked out
there. It doesn't seem to me like that should be
something that we have to work out here on this
board. That should have been covered under the
law. And his hearing -- or his idea should have
been expressed to the legislature before that law
was made. And if the law covers him, I mean, he
falls under the law, then he falls under the law,
is the way I see it.

MR. HALE: And what needs to be
done is y'all need to work with the legislature to
exempt your type of facilities from the amusement
part of the law, not broad-brush exempt every rock
climbing wall that's traveling up and down the
road, but specifically, your types of facility.
And if the legislature sees fit to do that, then
that's -- that's what this board will comply with.
I mean . . .

MR. ZIMMERMANN: We're not making
the argument that, broad brush, every climbing
wall is exempt. We're making the argument that
sports facilities that the legislature, when they
pass an amusement licensing statute, never
intended to regulate a sports facility. That's
the argument.

MR. HALE: And again, that's what
you need to go back to the legislature and get
that defined in the law. I mean --

CHAIRMAN FOX: Folks, we've taken a
long time to discuss this. I think we have given
everyone ample opportunity to make comments,
suggestions. I think we've vetted this issue
pretty well. Now, I think your question is, if
there's a motion to be had, you want us to exempt
you from the law?

MR. ZIMMERMANN: No, I don't
believe the law applies to us. I think that's
clear. I think that's a commonsense reading of
CHAIRMAN FOX: Okay. You're asking us to exempt the sports facilities from the inspection process?

MR. ZIMMERMANN: From the licensing process.

CHAIRMAN FOX: From the licensing process?

MR. ZIMMERMANN: Yes.

CHAIRMAN FOX: Just so I'm clear.

We took a long time getting there. So I want to make sure I'm clear.

Now, is there a motion by any member to do that?

Okay. Thank you. Sir, your request would be denied at this point.

MR. ZIMMERMANN: Okay. I'd like to make another request. I'd like to make the request that any enforcement actions be stayed until this matter can be resolved with the legislature.

MR. BURCH: Did you hear what he said?

CHAIRMAN FOX: I did.

What's the pleasure of the board?
MR. BURCH: Well, I didn't --

CHAIRMAN FOX: He wants us to hold off on any enforcement until the legislature can meet and rule on this particular law.

MR. HALE: Because all of those devices are together, we're back to that painting with that broad brush again. I could not support that thought process. I'm certainly not arguing that you have a safe facility or that what you do, that you work toward a safe device. But again, we're back to Mom and Pop that own one that welded it together in their garage, and by saying we're not going to enforce, that means we're not going to enforce on them either.

MR. BAUGH: The question we have is: What is the permit -- what are the devices that you're charging a permit for? Because it's not enunciated in the rules or in the statute.

CHAIRMAN FOX: Sir, I'd have to go back -- well, Mr. Sidler --

MR. SIDLER: If I might. We read this in the previous, if you listened, to what -- we defined the amusement device. And they listed four or five categories as examples. But not -- it didn't exclude or include everything. It gave
some examples, then it gave 15 items that we did not inspect. Climbing walls was not one of the 15 items. Now, the logic in that is, since they're not one of the 15 excluded, anything else that comes into being that falls under that definition of climbing, walk through, ride through, any of that, then it becomes for pleasure and all of those little things that define, becomes something we will inspect.

So then what fee do we charge?

Then is it back down to -- that's what we have to figure out. Does the miscellaneous one at $25 cover it? Is that the best way to handle that? That gives -- the way I've interpreted it, and that's just my interpretation. I'm just telling you. That's the logic I would follow.

If it meets that definition, then the fee would be under miscellaneous, or is it going to be -- or do y'all have a structure that says 42 and above can climb, or 42 and below can't? I don't think you have that, so it's probably going to have to be a miscellaneous $25 inspection. That's just my --

MR. ZIMMERMANN: So a licensing fee

plus $25 for the facility?
MR. SIDLER: Yeah, but remember, the permit to operate in the state by X company is the permit to be registered in the state each year. Underneath the umbrella of that is the Dollywood with 40 rides or the Climbing Wall Association with five walls to climb, whatever the breakdown would be. It's a permit underneath that other permit. That was the logic to --

MR. HALE: Well, I think part of what his question is, and maybe I'm seeing -- if you walk into that gym, and there's this wall, and there are five belay devices up there, is that $25 for each of those five, or is the wall a $25 fee?

MR. SIDLER: That's what's going to have to be determined by applying the fee structure, just like we did with BounceU. Now --

MR. HALE: But each one of those is an individual structure.

MR. SIDLER: I know, and you're going to have to set a precedent and discuss, I would think, as John would do, that that wall -- and it's got five on there -- that wall is one inspection, or is there going to be five different inspections? That's what you're going to have to determine.
MR. BAUGH: That's one of the reasons we're here. It's not clear to us. Someone shows up one day and says, "You owe this amount of money." Then we get an e-mail, "You owe this amount of money," and they're different. And so, I mean, we're here for several reasons, but on the permit, I don't think anyone in this room is able to say on a climbing wall gym, what you're charging us a fee for and what we should pay. And that's one of the questions we'd like answered is: If you're charging for the facility, then we know you're charging for the facility. I mean, we're different than the BounceU that was here, because as this gentleman said, I mean, you come in, we have a wall, and we have belay device, and then some people carry their own. So --

But there's nothing in the rules that we can point -- we're not going under 42 inches or over 42 inches because we're a gym. So, I mean, you know, we -- I mean, we need some guidance. If this board believes that the law is applicable to us, then what are you charging us for?

CHAIRMAN FOX: Let me ask a
question, and I'd like a short answer. Okay?

MR. BAUGH: Sure. I'm a lawyer, so...

CHAIRMAN FOX: I understand.

How many people can be on the wall at any one time?

MR. BAUGH: Okay.

Lance, how many people can be on the wall at any one time?

MR. BROCK: And you're going to charge me based on that?

CHAIRMAN FOX: I don't know.

That's why I'm asking the question, sir.

MR. BROCK: I can have 100 or more.

150.

CHAIRMAN FOX: How many rope structures or how many individualized anchor points --

MR. BROCK: I have 78 ropes or auto belays in one gym. And the latest e-mail I got, that comes out to thousands of dollars apiece, not hundreds.

CHAIRMAN FOX: Okay.

MR. BROCK: 78 times 25 plus the inspection fees is a lot of money.
MR. SIDLER: Well, you said you could have 100 people on, but you only have 78. I'm confused with that number. Where did that difference of 25 come in?

MR. BROCK: Well, climbing is very complex. We have bouldering, we have lead climbing. There's different kinds of anchors for lead climbing versus --

MR. SIDLER: So the anchors in general didn't cover everything?

MR. BROCK: There's a top rope anchor which is different from a lead anchor, which is different from somewhere you can boulder.

MR. SIDLER: But everybody that climbs is tied off somehow, right?

MR. BROCK: Not necessarily.

Bouldering, you don't use ropes. You have padding. There's padding underneath the boulder, and you climb up maybe 10 feet and then come back down.

CHAIRMAN FOX: Okay.

MS. JEFFERSON: So it seems that we do need clarification as to what to do going forward in this matter. Do we charge per rope or anchor? Do we charge per wall depending on the
number of walls that are there?

So we would just like to defer to the board, because you-all -- some of you were there when the original legislation was drafted and enacted.

MR. SIDLER: May I speak again?

CHAIRMAN FOX: Yes, sir.

MR. SIDLER: Okay. I'm trying to wrap my head around the fee structure. All right. You've got a wall that you have built a structure to climb, a massive wall that you can get 78 people on. Right?

MR. BROCK: Yes, sir.

MR. SIDLER: Okay. So did that -- there's an avenue you could take in the fee structure. Did it take more than 40 hours to assemble that wall? Probably. So do you call that the inspection of the device? Do you call that a spectacular $200 device, and you rate that wall at the -- because it took more than 40 hours?

So, I mean, it's within the rule.

You could do that until it can be changed or manipulated or whatever. Then you've got a concrete, okay, it's $150 for your permit, and underneath the umbrella, you have one wall.
That's $200. Over here, you've got another wall.

That's $200. I don't care how many anchors you've got on it. It would all be part of it, but it would be a concrete way within our rules now to inspect.

Does that make sense? I'm just trying to come up with an idea of a way to -- it's just a suggestion.

MS. JEFFERSON: Let's find out what we currently assess. How do we currently assess?

MR. TUMEY: Well, right now, if you go by what's written in the rules, it would be $25 per hand-powered device. But, you know, that's where the clarity is, is because if you've got 78 devices in the gym, to me, that's pretty excessive. You know, for -- but, the rules itself state $25 per hand-powered device. So it might be something that maybe the board just might have to readdress, and, you know, the fee structure might be held off until y'all give us some clarity on how y'all want to address the fees.

MR. HALE: I think maybe Ron's suggestion is the viable suggestion. It -- in carnival rides, things that take greater than a certain amount of time to set up become a
spectacular, and they have a flat fee of $200.

Obviously, it took more than 40 hours to build this climbing wall. You didn't just throw it up in a week in a gym. So if you use his interpretation that this -- that, therefore, it's a spectacular, it's $200 as opposed to $1,950 that it is now.

MR. SIDLER: And then --

MR. HALE: And then if you want to work toward exempting it in the law, so be it.

MR. SIDLER: And that would relate, then, if you're talking about in the industry, you've got the spectacular ride, and it's got 15 cars on it, you don't tack on another 15 times that. That's part of that spectacular ride. So you have a validity to hang your assumption on and your fee structure on. There is something there to relate it to. It's not just like we're making something up. Trying to build it on what's here in the law now.

MR. HALE: So as opposed to having a $2,100 fee for an inspection, you've got -- when it's all said and done, you've got a $350 inspection, and you've saved -- you know, you've decreased the cost to you by $1,700.
MR. SIDLER: Until the legislation --

MR. HALE: And then if you want to go to the legislature and say, "We think we ought to be totally exempt from this completely."

MR. BROCK: The first inspection said that our gym was one device, the first e-mail. And that was -- what was that fee? Was that $100 for that one device?

And so -- so the inspection fee plus that would have been $250 total. Then the last e-mail said $25 per hand-powered device.

MR. HALE: And that's what we're trying to do for you now is, when you leave from here, you would know what that number would be.

MR. BROCK: But how do you characterize my walls when they're all connected in different ways to each other and to the structure?

MR. HALE: As long as it's all connected together, it's -- as long as it's all connected together, it's one wall.

(Court reporter interjecting.)

CHAIRMAN FOX: One at a time, please. This lady has a -- she does a phenomenal
job of getting this information down. This is important, and we need to help her, please.

MR. HALE: My answer would be: If all of your walls are touching this one wall, then it's $200, as long as it took you more than 40 hours to build it.

UNIDENTIFIED SPEAKER: In our gym, we built -- we may have one big room, but we may have -- in one room, we may have four walls that don't adjoin each other, and they may stop and then start.

So we probably have 25 walls in our gym that don't connect to the next -- we may have a space in between them. So in that case, our fee -- I mean, our fee could be as much as Dollywood under that methodology.

MR. BAUGH: It seems like that would still be just one room, I mean, just one room for inspection rather than 25 different walls.

CHAIRMAN FOX: I'm going to ask that -- we obviously have some confusion about this. I'm going to ask that we hold off on this until we meet again or we call another meeting at that -- at some time and that we -- I think we owe
it to these folks to come up with a fair assessment of how it would be done. And at that point, I would suggest to y'all that we hold any inspection fees, any inspections, until that meeting is held.

MS. JEFFERSON: As to climbing walls?

CHAIRMAN FOX: As to climbing walls only.

MR. HALE: Are you making that as a motion?

CHAIRMAN FOX: I'm asking if somebody would, please.

MR. HALE: So be it.

MR. SIDLER: I have a question.

CHAIRMAN FOX: Yes, sir.

MR. SIDLER: Are you going to set a date to reconvene for a special meeting, or are you going to wait --

CHAIRMAN FOX: At worst case, we're going to meet on March the 3rd.

MR. SIDLER: That's why I was asking. You've already got one set for March the 3rd.

CHAIRMAN FOX: We've got one set
for March the 3rd. I would like to get it sooner than that, but I think that's going to depend upon how -- on the inner workings of the Department of Labor and y'all's section. And we'll work together to come up with what we think is a fair and equitable assessment.

MR. BURCH: Does this motion include the people who are going to work on this? Do they know who they are, to come up with this fair fee to do this? Do they know?

CHAIRMAN FOX: I'm going to say that's Ron and Mr. Tumey and --

MR. BURCH: That's what I'm trying to say, is that defined in this.

CHAIRMAN FOX: And Ms. Sydnã®.

Yes, sir?

MR. MOORER: Just one comment, and it might --

CHAIRMAN FOX: We have a motion.

Do we have a second?

MS. O'CONNOR: I'll second.

CHAIRMAN FOX: All right. We have -- now, let's discuss.

MR. MOORER: Sitting here listening to all this, I think one thing we might overlook
is, I think everybody in the room is concerned about the people's safety, and that's what we should focus on is what's the right thing to do and what's the best thing to do to protect people's safety. And if we work together to do that, we can come up with something, but please don't overlook people's safety. That's what it's all about. That's what we're here for. And sometimes we get wound up in things and we forget about that, you know.

What's the cost of one person falling and breaking their back? So thank you.

MS. JEFFERSON: And, Mr. Chair, I'd just like to say that what we generally do for the other boards is to submit -- after we talk amongst each other, we come up with proposed fees. We'll talk directly with you so that you can provide the information to the board members so we can all make sure that we're on the same page.

CHAIRMAN FOX: Absolutely.

MR. SIDLER: That's what I was going to say.

CHAIRMAN FOX: Okay. All right.

We have a motion, a second.

Any conflict of interest?
MS. EWELL: Is this going to be a rule?

CHAIRMAN FOX: I don't know. We're going to vote on it here in just a second.

All in favor of the motion, let me know by saying "Aye."

IN UNISON: Aye.

CHAIRMAN FOX: Motion carries.

So we're going to hold off, and we will get back with the parties in the room somehow or another and let you know what the decision is. Or we'll tell you when the meeting is, and you can come back. How's that?

MR. ZIMMERMANN: I'd like to request some notice. I have to travel quite a distance to be here.

CHAIRMAN FOX: Sir, as soon as we know, you'll know.

MR. ZIMMERMANN: Great.

MR. BAUGH: Thank you.

CHAIRMAN FOX: Thank you.

Item VIII, possible upcoming ride inspection legislation.

MR. BEARD: All right. I just want to give you-all --
THE REPORTER: And your name, sir?

MR. BEARD: I'm sorry. My name is Jason Beard. I'm the legislative liaison for the Tennessee Department of Labor and Workforce Development.

We recently had a Sunset hearing. As you-all know, each agency and each board or commission attached to each agency has a Sunset date as a supervisory role that the legislature plays on the executive branch. And our hearing took place maybe a couple of weeks ago, I believe. And at that hearing, the department was extended for another four years. Let me say our Sunset date was set for June 30th, 2014.

The subcommittee made the recommendation that the department as a whole be extended for another four years. And there -- this board was also set for Sunset on June 30th, 2014, and it was extended for only one year, the reason being, the discussion that was just held regarding climbing walls, the legislature wanted to keep an eye on that discussion and to keep that dialogue open. And I believe that we've taken great steps in that direction to make everyone -- to come to an agreement that everyone can live
Upcoming potential legislation:

One thing that was brought up in the Sunset hearing was the potential to possibly consider separating the amusement device portion and the elevator portion and potentially make two boards rather than one to oversee those separate areas. That was just something that was discussed. I have seen no legislation or proposals associated with that, but it could be coming down the pike. Of course, what was just discussed, I would imagine that there will be some legislation in relation to climbing walls. I will not go -- belabor that one.

And another bill that I've been made aware that would be coming back, from Representative Dale Carr, I believe from Sevierville, is to take go-carts off of the exception list within the definition of amusement devices, thus giving us jurisdiction to inspect and license the same.

And that's all I have.

CHAIRMAN FOX: Okay.

MR. SIDLER: Thank you.
CHAIRMAN FOX: You covered the topic I wanted to bring up on the go-carts.

MR. BEARD: Oh, excellent. Thank you.

CHAIRMAN FOX: We have introduced that bill the last couple of years or last three years, and it may have energy to pass this time.

Next item, the dates for the next four meetings. One of the issues we were chided over in the assessment was not having meetings regularly, so one of the things I wanted to bring up was establishing those dates.

The first one would be on March the 3rd, second one on June 2nd, third one on September the 1st, and December the 3rd would be the fourth one.

And with that, we would -- we would meet and discuss -- hear reports and discuss the activities of both elevator and amusement devices at that time.

Any comments, questions, suggestions?

Ms. Jefferson, another issue that you and I had discussed in your office, along with Mr. Hale, was the direction of the amusement
inspection process. I can only speak for myself, but I would hope that we would hire additional people and at least have one person in each of the three grand divisions plus a manager or a supervisor, whatever that term may be. I don't know. I don't know the hierarchy. So -- but someone to supervise our ride inspection process. And we would ask that you would help -- I would ask; I don't speak for anybody else but me. Let the rest of them tell you what they think. But I would ask that we pursue that if at all possible.

MS. JEFFERSON: And we are in the process of pursuing that. We've already received authorization to hire an inspector for East Tennessee and West Tennessee, and I'm going to follow up after the meeting just to make sure, just to see where we are with that. Because we realize we cannot perform adequate inspections and oversee third-party inspectors like we want to without having at least one inspector in each division.

So we have one, which is Kevin Payne. We have our amusement device manager, our acting amusement device manager, which is John Tumey. And Anita assists with amusement device as
well as elevators.

So we have our administrative part,

and we have our management part, and we have our

inspector -- one-third of our inspector part. And

I'll check on the other two after the meeting.

CHAIRMAN FOX: Okay. Announcement

of next meeting will be Tuesday, March the 3rd,

same time, same station, as we always say.

MR. HALE: I just want to make one

very quick comment. I certainly want to echo your

statement that we need to continue to move

forward, and I'm glad to know that we're doing

that. And, you know, we -- this is probably the

first time we've had much controversy, for lack of

a better word, or debate as far as amusement law.

And I think one thing we need to remember is, is

that in the grand scheme of inspecting, we're

still a very young organization, and there is

still things that need to be refined and defined

and tweaked, if you will.

But I think we have made tremendous

leaps and bounds toward making sure that amusement

devices are safe in Tennessee. And I have -- I

visited 22 fairs this summer, and every one of

them -- every one of them -- complimented the job
that our inspectors were doing, and the fact that there is this regulation and law for amusement devices.

And I want to tell you, I have not heard a single carnival complain about these laws and inspections. They -- reputable folks are going to support what we're doing and --

MR. SIDLER: Have nothing to hide.

MR. HALE: -- because they've got nothing to hide.

And with that, I'll make a motion we adjourn.

MR. BURCH: Reckon you'll get a second on that?

CHAIRMAN FOX: I hope so. Please.

MR. BURCH: I second that.

CHAIRMAN FOX: Okay. We are adjourned.

(Meeting adjourned at 11:51 a.m.)
CERTIFICATE

STATE OF TENNESSEE )
COUNTY OF WILLIAMSON )

I, Deborah K. Watson, RPR, CRR, LCR# 446, a Notary Public in the State of Tennessee, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken on the 2nd day of December, 2014.

I further certify that I am not related to any of the parties to this action, by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of December, 2014.

_____________________________________
Deborah K. Watson, RPR, CRR, LCR# 446
Notary Public State at Large
My commission expires: 9/20/2016
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