



c/o Manistee County Controller/Administrator's Office
415 Third Street • Manistee, MI 49660
Telephone: (231) 398-3500 • Fax: (231) 723-1795

MEMBERS:

Dennis Bjorkquist, Chairperson
B. Allan O'Shea, Vice-Chairperson
Colleen Kenny, Secretary

MINUTES

Monday, December 14, 2009
5:00 P.M.

Manistee County Road Commission
8946 Chippewa Highway, Bear Lake, MI 49614

Members Present: Dennis Bjorkquist, Chairperson; B. Allan O'Shea, Vice-Chairperson; and Colleen Kenny, Secretary

Others Present: Thomas Kaminski, Administrative Support; R. Lance Boldrey of Dykema Gossett, PLLC, Legal Counsel; Jeri Lyn Prielipp, Recording Secretary, and numerous audience members representing Manistee County, the City of Manistee, Law Enforcement, the Townships, Villages, School Districts, the public, and the media.

The meeting was called to order at 5:00 P.M. Roll call was taken. The Pledge of Allegiance was recited.

The Chairman requested approval of the meeting Agenda.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to approve the Monday, December 14, 2009 Meeting Agenda, as presented. Motion carried.

The Chairman then requested approval of the minutes from the Monday, October 12, 2009 meeting of the Manistee Local Revenue Sharing Board.

There was a motion by Ms. Kenny, supported by Mr. O'Shea to approve the minutes from the Monday, October 12, 2009 meeting of the Manistee Local Revenue Sharing Board, as presented. Motion carried.

The Board next discussed scheduling the 2010-Cycle I grant application deadline.

There was a motion by Ms. Kenny, supported by Mr. O'Shea to set the 2010-Cycle I grant application deadline for Friday, March 5, 2010, and any applications that are not submitted to the County Controller/Administrator's Office, 415 Third Street, Manistee, Michigan, 49660, by the 5:00 P.M. deadline will not be considered. Motion carried.

The Chairperson next requested the Board's consideration to approve payment of 50% of the 2009 administrative fees owed to Manistee County per agreement, in the amount of \$25,000.

There was a motion by Ms. Kenny, supported by Mr. O'Shea, to approve payment of 50% of the annual administrative fee to Manistee County in the amount of \$25,000.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

The Chairman next requested the Board's consideration to approve payments to Dykema Gossett PLLC for legal services provided to the Revenue Sharing Board during the months of September, October, and November 2009.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to approve payment of invoice #1301425 dated October 14, 2009 in the amount of \$15,881.21 to Dykema Gossett, PLLC for legal services provided to the Board in September 2009.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Ms. Kenny, supported by Mr. Bjorkquist to approve payment of invoice #1305838 dated November 6, 2009 in the amount of \$1,672.50 to Dykema Gossett, PLLC for legal services provided to the Board in October 2009.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to approve payment of invoice #1310591 dated December 4, 2009 in the amount of \$1,910.40 to Dykema Gossett, PLLC for legal services provided to the Board in November 2009.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

At the request of the Chairman, Mr. Kaminski reported that the total account balance as of December 13, 2009, totals \$1,566,310.88, which includes interest earnings through November 30th, grant reimbursements from Cleon and Arcadia Townships, and after deducting the Administrative fees and other invoices approved for payment through December 13, 2009. After deducting the \$44,464.11 in administrative and legal fees that were just approved, less \$10,000 to remain in the account for operating expenses, and adding in the projected interest earnings over the next three months, the balance available for grant distribution this evening is \$1,513,736.77. The minimum amount required for distribution in the form of Public Safety grants for Cycle II-2009 is \$101,260.59, and includes the \$6,872.56 that was reimbursed by grant recipients. Mr. Kaminski further reported that he estimated the P.I.L.T. grant obligation that will be paid in February 2010 at \$1,416,163.94, based on current taxable value and reduced by 44.61228%.

The Chairman then announced that the Board would proceed to consider authorizing grant payments based upon Cycle II-2009 Grant Applications. Throughout the grant award process, Mr. Kaminski kept track of the funds dispersed and what remained available for distribution this Cycle.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to award \$4,411.00 to the Arcadia Township Fire Department to purchase one MSA Air Pack (SCBA) with two air bottles.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Ms. Kenny, support by Mr. O'Shea to grant a partial award of \$15,490.00 to the City of Manistee Police Department to purchase two in-car video cameras with accessories and installation in patrol cars.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to award \$9,450.00 to the Manistee County Fire Fighters Association to purchase training manuals and DVDs for the County Fire Departments.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to grant a partial award of \$3,000.00 to the Maple Grove Township Fire Department to be applied toward fire and EMS training for the Fire Department.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Ms. Kenny, supported by Mr. O'Shea to grant a partial award of \$8,106.00 to the Eastlake Village Fire Department for EMT training and firefighter equipment.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Ms. Kenny, supported by Mr. O'Shea to award \$1,500.00 to the Manistee Township Fire Department to purchase water supply fittings for the Fire Department.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. Bjorkquist, supported by Ms. Kenny to award \$5,000.00 to the Bear Lake Township Fire & Rescue Department to partially fund the purchase of a Class A Foam Skid Unit with accessories.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to grant a partial award of \$17,600.00 to the Cleon Township Fire Department for various Fire Department equipment repairs.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Ms. Kenny, supported by Mr. O'Shea to grant a partial award of \$6,131.00 to the Manistee County Sheriff's Office to purchase rifles for the Sheriff's patrol vehicles, along with training and duty ammunition.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. Bjorkquist, supported by Ms. Kenny to award \$15,000.00 to the City of Manistee Fire Department for the purchase and installation of an emergency power generator which will be installed at the Manistee Fire Department.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

At the request of the Chairman, Mr. Kaminski reported that there was \$15,573.00 remaining for distribution this Cycle in the form of Public Safety Grants.

There was a motion by Ms. Kenny, supported by Mr. O'Shea to award \$6,000.00 to the Stronach Township Fire Department to send four new members of the Township Fire Department to EMT school to become licensed EMTs in the State of Michigan.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

There was a motion by Mr. O'Shea, supported by Ms. Kenny to grant a partial award of \$9,573.00 to West Shore Medical Center to partially fund the purchase of a 2009 McCoy-Miller ambulance on a Chevrolet Chassis.

A roll call vote was taken:

Yeas: 3 (Bjorkquist; O'Shea; and Kenny)

Nays: 0

Absent: None

Motion carried.

The Chairman announced the closure of the Cycle II-2009 grant awards.

Under public comment, Kevin Hughes, Superintendent of Onekama Schools, expressed his gratitude to the Board for hiring legal counsel to help define the P.I.L.T. district and indicated that he is still waiting for a response from the Board to his requests for P.I.L.T. funding for Onekama Schools because the water tower and tribal law enforcement offices are located in the Onekama School District. Chairman Bjorkquist stated that the report of legal counsel that will be given this evening will hopefully address those questions.

David Meister, Onekama Township Supervisor, argued that there hasn't been any depreciation put into the assessment and everything is still being valued at 100%, including the parking lot. He feels it was wrong to use the County multiplier higher than one for several years. Mr. Meister directed his questions to Kendra Rohdy, Equalization Director. Mr. Kaminski responded that Ms. Rohdy is not the person that should be asked these questions. The two people that need to be asked the questions are the people that did the appraisals, that being the former Equalization Director, Peggy Falk, and former County employee, Ginny Martz. Mr. Meister then asked who is responsible to do the appraisal and if it is Manistee Township, then why hasn't Manistee Township ever been billed for the County's appraisal? Mr. Kaminski replied that Manistee County along with the Township is under contract to perform the appraisals for the Revenue Sharing Board. Ms. Rohdy stated that there is no appraisal of the casino for the past three years because the appraisers have been denied access to the property so the Equalization Department could only go by previous appraisals and update the figures as best they could without being able to get on site. Chairman Bjorkquist concluded that he will do what he can to get the answers for Mr. Meister at a later date or subsequent meeting.

Chairman Bjorkquist presented R. Lance Boldrey of Dykema Gossett, PLLC, who is Legal Counsel to the Revenue Sharing Board. Mr. Boldrey introduced himself and indicated that he is the head of his law firm's Indian law and gaming practice. He stated that he was asked by the Board to address a number of questions that arose in the context of the Compact, specifically the definition of the Class III gaming facility for purposes of calculating the P.I.L.T. payment. He then explained the history that his law firm (and he personally) have had in litigating cases pertaining to the Compact before Michigan Appellate Courts and the Michigan Supreme Court. Mr. Boldrey gave a power point presentation to the Board and audience members (APPENDIX A) on how he came to his conclusion for the definition of a Class II gaming facility. This presentation led up to two very different options for a definition. He also explained the strengths and weaknesses of each option.

Option one is a rather broad definition: ***"Class III gaming facility" shall mean the entirety of the single structure in which the Band offers Class III gaming. For purposes of this definition, different components of the structure need not share a single foundation or contiguous walls and may be connected by doorways or walkways.***

Option two is a narrower definition: ***"Class III gaming facility" shall mean, within the single integrated structure where the Band offers Class III gaming, those portions of the structure where the Band actually conducts Class III gaming activities as well as those portions of the structure that house administrative, security, managerial, or banking functions related directly to the Band's Class III gaming activities. For purposes of this definition, different components of the structure need not share a single foundation or contiguous walls and may be connected by doorways or walkways.***

Later in the meeting, Mr. Boldrey explained that the Board has the discretion to come up with their own definition of a Class III gaming facility that would need to be crafted prior to the next meeting where the Board amends the Bylaws. In the alternative, the Board has the ability to stay with the existing Bylaws.

Mr. O'Shea felt strongly that anything added to the casino after 2005, such as the entertainment center, the hotel and indoor garden, should be excluded in the definition of a Class III gaming facility. Mr. Bjorkquist didn't agree with that line of thinking because those additions were included in the original blueprints. Following lengthy discussions amongst the Board members, Mr. Boldrey and audience members,

There was a motion by Ms. Kenny, supported by Mr. Bjorkquist that the Board proposes to amend Article IX, Section 8.5.I. of its Bylaws to define a "Class III gaming facility" to mean the entirety of the single structure in which the Band offers Class III gaming. For purposes of this definition, different components of the structure need not share a single foundation or contiguous walls and may be connected by doorways or walkways, and it is at this Board's discretion to craft an alternative definition if they so choose.

A roll call vote was taken:

Yeas: 2 (Bjorkquist and Kenny)

Nays: 1 (O'Shea)

Absent: None

Motion carried by 2-1 vote.

The Bylaws state, "Article X: Amendment. These Bylaws may be amended at a regular or special meeting by a motion which is adopted by a majority (2) of a quorum. At least ten (10) days prior to the adoption of an amendment, the Board shall provide public notice of the proposed amendment at the locations required for public notice in the Open Meetings Act. The Board shall not amend these Bylaws in a manner which would create a conflict with or cause or violation of the Compact."

The proposed amendment to the Bylaws will be discussed and voted on at **a special meeting on Wednesday, January 13, 2010, at 5:00 p.m. at the Commissioners meeting room of the Manistee County Courthouse and Government Center.** The Board also agreed to hold its **Organizational Meeting at the Manistee County Courthouse and Government Center on Monday, February 8, 2010, at 5:00 p.m.**

There being no further business to come before the Revenue Sharing Board and with no other concerns from Board members, the meeting was adjourned at 7:00 P.M.

Respectfully submitted,

Colleen Kenny, Secretary

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Presentation to Manistee Local Revenue Sharing Board

Definition of "Class III gaming facility" for purposes of payments in lieu of taxes under the compact between the State and the Little River Band of Ottawa Indians

Payments in lieu of taxes ("PILT")

- **The Compact calls for the Board to distribute local revenue sharing payments made by the Tribe.**
- **After making payments to local public safety organizations, Section 18 of the Compact requires that "each local unit of government receive no less than an amount equivalent to its share of ad valorem property taxes that would otherwise be attributed to the Class III gaming facility if that site were subject to such taxation."**
- **The Compact does not define "Class III gaming facility."**

Definition in the Board's current bylaws.

- The Board's bylaws define "Class III gaming facility" for purposes of PILT as "the building(s) which house the Band's gaming operations; any appurtenances; and any contiguous or non-contiguous parcel(s), whether owned by the Band or held in trust for the Band by the federal government, which can be reasonably be considered a part of or amenity to the Band's casino operations." Bylaws, Article IX, Section 8.5.1.

Question asked.

- Recently, there have been questions raised about whether "gaming facility" should include a water tower and tribal justice center well over a mile from the casino, and, in general, what is meant by the Compact's term "Class III gaming facility."
- The Board asked Dykema to look at the bylaws' definition and determine if it was accurate.
- This is the only question addressed in this presentation.

Our research.

- **We consulted the following resources and materials in undertaking this project:**
 - **The Compact and other compacts entered into by the State;**
 - **State statutory, regulatory, and case law relevant to gaming and taxes;**
 - **State administrative materials relevant to gaming and taxes;**
 - **Interviews with parties involved in negotiating, drafting, and implementing the Compact;**
 - **Relevant ordinances and laws of the Tribe relating to gaming; and,**
 - **Federal statutory, regulatory, and case law relevant to Indian gaming.**

Fundamental concepts.

1. **The Compact is a contract between the State and the Band; it is not legislation directly governing the conduct of the Board.**
2. **Local units of government are third-party beneficiaries of the Compact.**
3. **The Board has some discretion in crafting a definition of "Class III gaming facility."**

Fundamental concepts continued...

- The Michigan Supreme Court squarely addressed the Compact's status in *Taxpayers of Michigan Against Casinos v Michigan*, 471 Mich 308; 685 NW2d 221 (2004) ("TOMAC").
- The TOMAC Court ruled that the Compact is a contract between two sovereigns, not legislation.

Fundamental concepts continued...

- The TOMAC Court ruled that the relevant local units of government are third-party beneficiaries of the Compact. The Compact does not mandate that the local units of government take any particular action, but compliance with the terms of the Compact is a condition precedent to receiving the local revenue payment benefits.
- The Board's procedures, guidelines for the criteria or a formula for revenue distribution, and other matters not established by the Compact are to be determined by the Board, subject to some limitations on the priority of distributions.
- In other words, the Board is to follow the Compact, but may exercise discretion where adherence to the Compact does not demand a particular result.

Interpreting the Compact.

- Because it is a contract, basic contract interpretation principles apply in determining the meaning of the Compact's provisions. This means we first look to see whether terms have a defined or settled meaning and, if not, look to the language of the Compact and extrinsic evidence of the parties' intent to ascertain what is meant by a term.

Interpreting the Compact continued...

- The term "Class III gaming facility" is not defined in the Compact.
- There is no "common" or "uniform" definition of the term in the gaming industry; it does not have a "settled meaning."

Interpreting the Compact continued...a common definition?

- Neither IGRA nor NIGC regulations define "Class III gaming facility."
- Compacts in other states have a range of definitions – from including all areas of a facility that are meant to serve a Tribe's gaming operations to only including spaces where gaming actually occurs.
- Although there is no common definition, we found no out-of-state authority to support including off-site amenities or facilities in the definition of "gaming facility."

Interpreting the Compact continued...a common definition?

- Michigan law does not define the term "gaming facility," but instead uses the word "casino," defined as "the building in which gaming is conducted."
- Michigan law draws a distinction between the casino and the business. A "casino enterprise" under Michigan law is "the buildings, facilities, or rooms functionally or physically connected to a casino, including but not limited to any bar, restaurant, hotel, cocktail lounge, retail establishment, or arena or any other facility located in a city under the control of a casino licensee or affiliated company."
- Finally, in an attempt to help local revenue sharing boards, the State Tax Commission recently issued a nonbinding definition of "Class III gaming facility" as: the "integrated class III gaming facility" e.g. the various components that exist as a single structure ("under one roof")."

**Interpreting the Compact
continued...looking to the parties'
intent.**

- Because the term is ambiguous, we look to the parties' intent. In other words, we look to what the State and the Tribe meant by the term "Class III gaming facility," by examining the Compact language, the conduct of the parties, and the belief of the parties' representatives at the time of negotiation.

**Interpreting the Compact
continued...Compact language and
conduct of parties.**

- Compact provides for a single facility, on a single site: "A total of one (1) tribal Class III gaming facility may be located on eligible Indian lands." Compact, Section 2(B)(1); "[local governments receive] share of ad valorem property taxes that would otherwise be attributed to the Class III gaming facility if *that site* were subject to such taxation." Compact, Section 18(A)(iv).
- MGCB jurisdiction over "gaming" – extends only to gaming floor and areas where liquor is sold.

**Interpreting the Compact
continued...interviewing the parties.**

- We interviewed individuals involved in negotiating and implementing the Compacts, including legal counsel involved in negotiating on behalf of several Indian tribes (including the Little River Band), legal counsel to the Band, and legal counsel for the Governor's office and State.

**Interpreting the Compact
continued...interviewing the parties.**

- Counsel for the tribes generally, and the Band specifically, believed that the scope of tribally-owned facilities subject to valuation for payments in lieu of taxes was to be "narrowly" construed, although they acknowledged this was more a matter of concern for the State's negotiators.

**Interpreting the Compact
continued...interviewing the parties.**

- The Band's legal counsel also believes that the Compact's use of the term "Class III gaming facility" should be read narrowly. When applying its own Gaming Ordinance to its property, the Band only considers "gaming facilities" to be those that must be licensed under federal law and are subject to the Gaming Commission's jurisdiction. This does not include "off-site" facilities or even all of those on the gaming site.

**Interpreting the Compact
continued...interviewing the parties.**

- Counsel to the Governor, negotiating for the State, explained that the State was primarily concerned with ensuring that the Tribe was limited to gaming at a single site.

**Interpreting the Compact
continued...interviewing the parties.**

- One attorney to the Governor and negotiating for the State also explained that his understanding was that the term "gaming facility" included a casino and any other portions of a building or buildings that were "directly connected" to a casino.

**Interpreting the Compact
continued...interviewing the parties.**

- No person interviewed believed that either party to the Compact intended any off-site property be included in the definition of "Class III gaming facility."

What this means.

- There is no concrete or definite definition of the term "Class III gaming facility."
- Because the Compact does not define the term, the Board has some discretion in choosing the definition.
- Although discretion exists, the Board cannot adopt a definition that clearly does not fall within the parties' intended meaning.

What this means continued...

- Nothing in our research of state or federal law or our interviews with the individuals responsible for negotiating the Compact provided any evidence to support the current definition of "Class III gaming facility" found in Article IX, Section 8.5.1, of the Board's bylaws.

Recommendations.

- We recommend that the Board amend its Bylaws to include a new definition of "Class III gaming facility" under Article IX, Section 8.5.1.
- Because the Board has some discretion in this regard, we suggest two possible options.

Option 1.

- "Class III gaming facility" shall mean the entirety of the single structure in which the Band offers Class III gaming. For purposes of this definition, different components of the structure need not share a single foundation or contiguous walls and may be connected by doorways or walkways.

Pros and cons of Option 1.

- Pros:
 - Easy concept to understand—
"everything under one roof."
 - Appraiser should have an easier time determining value.
 - In line with the State Tax Commission's definition.
- Cons:
 - This definition includes areas where no gaming occurs (i.e. the hotel).
 - The Band has no legal duty to allow the State or others access to areas where gaming does not occur (other than where liquor is served).

Option 2.

- "Class III gaming facility" shall mean, within the single, integrated structure where the Band offers Class III gaming, those portions of the structure where the Band actually conducts Class III gaming activities as well as those portions of the structure that house administrative, security, managerial, or banking functions related directly to the Band's Class III gaming activities. For purposes of this definition, different components of the structure need not share a single foundation or contiguous walls and may be connected by doorways or walkways.

Pros and cons of Option 2.

- Pros:
 - A more narrow definition that is in line with the Band's understanding.
 - Distinct lines drawn—only gaming and gaming related areas are included.
 - An assessor can gain access (through the State) to any of the areas covered by this definition.
- Cons:
 - It may be more difficult to assess a building that is carved up into separate pieces unrelated to the structure's physical make-up.
 - Conflicts with one State negotiator's understanding of the term.

Important things to remember

- Due to the high value of the Casino and other tribal assets and the Casino's current financial performance, the choice between these proposed definitions will not affect the amount of revenues currently distributed by the Board. The Tribe's 2% payments currently do not cover the amount that would be received if the Tribe paid property taxes based on either definition.
- These are only recommendations. Because the Board has discretion, other definitions may also work.

QUESTIONS?