

MINUTES
KEWEENAW BAY INDIAN COMMUNITY
SPECIAL COUNCIL MEETING
TRIBAL CENTER CONFERENCE ROOM
WEDNESDAY – NOVEMBER 26, 2008 – 9:00 A.M.

- A. Date: November 26, 2008
- B. Call to Order: President Swartz called the meeting to order at 9:00 a.m.
- C. Invocation: Lord’s Prayer
- D. Roll Call: Present: Warren C. Swartz, Jr., President
Susan J. LaFernier, Vice-President (left 9:43 a.m. – 1:00 p.m.)
Toni J. Minton, Secretary
William E. Emery, Assistant Secretary
Jennifer Misegan, Treasurer (left 11:10 a.m. – 1:00 p.m.)
Larry J. Denomie III, CEO
Doreen G. Blaker (arrived at 1:10 p.m.)
Jerry Lee Curtis
Michael F. LaFernier, Sr. (arrived at 9:34 a.m., left 9:45 – 10:07 a.m.)
Elizabeth “Chiz” Matthews (left 11:19 a.m. – 1:00 p.m.)
Elizabeth D. Mayo
Fred Dakota
- E. Declaration of Quorum: President Swartz declared a quorum present and proceeded with the order of business.
- F. Approval of Agenda: November 26, 2008
- Additions: FYI- 2. A memo from Pokagon Band regarding CITGO’s Energy Program
3. Godfrey & Kahn Indian Nations Law Alert
Closed Session- 5. Susan LaFernier, Vice-President - Diversification and Long-Term Investment Proposal

MOTION MADE BY JENNIFER MISEGAN TO APPROVE THE AGENDA WITH THE ADDITIONS. SUPPORTED BY WILLIAM E. EMERY. NINE IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, TWO ABSENT (Doreen G. Blaker, Michael F. LaFernier, Sr.), MOTION CARRIED.

G. Old Business:

1. Jennifer Misegan – a) **9:00 a.m. - 3rd Reading** – Title 21B Tobacco Ordinance 2008-02

President Swartz read from the Legislative Process. The Council will consider and may make amendments to the proposed ordinance. [See Legislative File]

Present: President Warren C. Swartz, Jr., Susan LaFerner, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota, Peggy Minton, Jeff Lamson, Ginny Ann Jermac, Beth Waara, Jerry Mayo, Kerry Varline, Debra Picciano, Suzanne Conte and Attorney John Baker.

Jennifer Misegan introduced the Tobacco Ordinance with the intent to prohibit the sale of tax free tobacco products unless sold by the Tribe and to regulate and license individuals to sell taxed tobacco products. Jennifer discussed a nation-to-nation trade agreement with the Seneca Nation from New York for tobacco products. This relationship came about as a result of thousands of cartons of cigarettes being confiscated from Joe Fish and David LeClaire which in turn resulted in the Tribe being notified from their wholesaler in New York that the Seneca Nation informed them that they would no longer be able to sell to anyone from the Keweenaw Bay Indian Community. Members of the Council met with the Seneca Nation and were able to convince them to sell to businesses owned by the Tribe. The nation-to-nation trade agreement would also mean there would be no need for an MOU with the State of Michigan on tobacco regulation. The ordinance will regulate licensed individuals to sell taxed tobacco products and will enable Tribal Members to benefit from the sale of tobacco products, which is believed to be a right for the Tribal Members to purchase tax-free tobacco products and a treaty right of the Tribe to be able to regulate trade on the reservation.

MOTION MADE BY JENNIFER MISEGAN TO ADOPT THE PROPOSED TOBACCO ORDINANCE 2008-02. SUPPORTED BY TONI J. MINTON.

Discussion- Fred Dakota questioned the authority of the Council to change our constitution. Fred stated that he would like a written opinion from the BIA on the proposed ordinance to ensure the ordinance is not stepping on our constitution. Fred wrote a letter to the Gerald Parish, BIA Superintendent, to find out if this was constitutional or not and he also asked the Council to get a written opinion from our lawyers to see if this is constitutional and got nowhere with that. Fred asked President Swartz if he contacted Gerald Parish. President Swartz replied that he did contact Gerald Parish regarding his letter and asked him if it was a habit of the BIA to overlook the Tribe’s proposed ordinances and was told that they do not; the BIA only reviews *passed* ordinances, not *proposed* ordinances.

MOTION MADE BY ELIZABETH D. MAYO THAT THE PROPOSED TOBACCO ORDINANCE 2008-02 BE THROWN OUT. SUPPORTED BY FRED DAKOTA.

President Swartz declared the motion out of order; the same effect will result from the original motion

Attorney John Baker stated that the BIA only looks at certain ordinances with the Tribes that are required by the Tribe’s constitution.

Amendment #1 to Section 5, 21B.501- Furnishing of Tobacco Products to a Minor Regarding Spiritual or Cultural Ceremonial Purposes

MOTION MADE BY JENNIFER MISEGAN TO APPROVE AMENDMENT #1 TO THE PROPOSED TOBACCO ORDINANCE 2008-02 AMENDING SECTION 21B.501. SUPPORTED BY TONI J. MINTON. SEVEN IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews), TWO OPPOSED (Elizabeth D. Mayo, Fred Dakota), ABSTAINING - 0, TWO ABSENT (Doreen G. Blaker, Michael F. LaFernier, Sr.), MOTION CARRIED.

Amendment #2 Adding to Section 6, add 21B.604- Net Profits from the Sale of Tobacco Products by the Community

MOTION MADE BY LARRY J. DENOMIE III TO APPROVE AMENDMENT #2 TO THE PROPOSED TOBACCO ORDINANCE 2008-02, ADDING SECTION 21B.604. SUPPORTED BY ELIZABETH “CHIZ” MATTHEWS. SEVEN IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews), TWO OPPOSED (Elizabeth D. Mayo, Fred Dakota), ABSTAINING - 0, TWO ABSENT (Doreen G. Blaker, Michael F. LaFernier, Sr.), MOTION CARRIED.

Fred Dakota stated his opposition: He doesn't feel there will be any profits from this.

Amendment #3 changes to wording throughout the ordinance for consistency-

MOTION MADE BY SUSAN J. LAFERNIER TO APPROVE AMENDMENT #3 TO THE PROPOSED TOBACCO ORDINANCE 2008-02, AMENDING THE INTRODUCTORY PARAGRAPH AND AMENDING SECTIONS 21B.301C AND 21B.302A&C. SUPPORTED BY WILLIAM E. EMERY. SEVEN IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews), TWO OPPOSED (Elizabeth D. Mayo, Fred Dakota), ABSTAINING - 0, TWO ABSENT (Doreen G. Blaker, Michael F. LaFernier, Sr.), MOTION CARRIED.

Elizabeth Mayo stated her opposition: She feels you don't need an MOU if you are doing yourself in.

Return to the original motion with the Amendments:

3rd Reading Tobacco Ordinance 2008-02- Adoption

MOTION MADE BY JENNIFER MISEGAN TO ADOPT THE PROPOSED TOBACCO ORDINANCE 2008-02 WITH AMENDMENT NUMBERS ONE, TWO AND THREE. SUPPORTED BY TONI J. MINTON. SEVEN IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews), TWO OPPOSED (Elizabeth D. Mayo, Fred Dakota), ABSTAINING - 0, TWO ABSENT (Doreen G. Blaker, Michael F. LaFernier, Sr.), MOTION CARRIED.

Ginny Ann Jermac stated, on behalf of our Tribal Members, I would like to thank you for considering all of our Tribal Members in this proposal and for approving the ordinance.

Beth Waara stated that in reference to Jennifer Misegan’s report on what happened in New York, there is a lot more to the story than what the Council is hearing. Joe Fish along with Richard Mayo had a Kentucky license when their cigarettes were seized in New York. She asked the Council to look into it more, of what was actually taking place. President Swartz asked Ms. Waara if she would like to share her story, for the record. She responded that she would like Joe Fish to tell the Council the story, being that she was not there. Toni Minton responded that Joe Fish is not our Tribal Member. Jennifer Misegan stated that after the incident with Joe Fish, the Seneca Nation was not going to sell any cigarettes to anyone on the Keweenaw Bay Indian Community reservation any longer. President Swartz added that what Joe Fish has to say is irrelevant as he is a non-native and the Tribe is working on a nation-to-nation agreement between the Seneca Nation and the Keweenaw Bay Indian Community. What Joe Fish does is up to him and it was not a concern to the Tribe until the tobacco products from the Seneca Nation stopped coming to the Keweenaw Bay Indian Community.

Mike LaFernier arrived at 9:34 a.m.

Jeff Lamson asked the Council if the cigarette shops would be given any time before this takes effect.

President Swartz replied they have thirty days from today. Beth Waara asked if they will be notified. President Swartz said, “You have been notified.”

b) Homebound Senior Citizens – A request from Roger Duschene, Treasurer of the Senior Citizens. All seniors are not able to attend the Christmas parties. He asked for Christmas gifts of fruit baskets and a visit for our Homebound Seniors.

The Council, in response to the request from Roger Duschene, suggested to award an increase in the amount of money given to the Baraga County Seniors for their Christmas party to be comparable to the amount given to the Marquette County Seniors based on the number of individuals in the Marquette County divided by the total amount of \$1500.00 that was given for each party. Baraga County has 197 seniors and Marquette County has 52.

MOTION MADE BY LARRY J. DENOMIE III TO INCREASE THE AMOUNT OF MONEY GIVEN TO THE BARAGA SENIOR CITIZENS TO BE EQUAL TO THOSE SENIORS IN MARQUETTE COUNTY FOR THEIR CHRISTMAS PARTY. SUPPORTED BY WILLIAM E. EMERY. TEN IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, ONE ABSENT (Doreen G. Blaker), MOTION CARRIED.

H. For Your Information:

1. A memo from John Baker, Tribal Attorney for Attorney's Fees and Expenses in connection with litigations in Tribal Court
2. A memo from the Pokagon Band regarding CITGO's Heating Energy Assistance Program informational meeting on December 4th at New Buffalo, MI
3. Godfrey & Kahn Indian Nations Law Alert – Class I Designation Under the Clean Air Act: “What it means, why it's important for Tribes.”

Susan LaFerner left at 9:43 a.m.

Break: 9:45 – 10:00 a.m.

Mike LaFerner left at 9:45 a.m.

I. Approval of Meeting Minutes:

1. February 4, 2006

MOTION MADE BY ELIZABETH D. MAYO TO APPROVE THE FEBRUARY 4, 2006 MEETING MINUTES. SUPPORTED BY TONI J. MINTON. FIVE IN FAVOR (Toni J. Minton, William E. Emery, Larry J. Denomie III, Elizabeth “Chiz” Matthews, Elizabeth D. Mayo), OPPOSED - 0, THREE ABSTAINING (Jennifer Misegan, Jerry Lee Curtis, Fred Dakota), THREE ABSENT (Susan J. LaFerner, Doreen G. Blaker, Michael F. LaFerner, Sr.), MOTION CARRIED.

2. February 7, 2006

MOTION MADE BY ELIZABETH “CHIZ” MATTHEWS TO APPROVE THE FEBRUARY 7, 2006 MEETING MINUTES WITH THE CHANGE. SUPPORTED BY LARRY J. DENOMIE III. FIVE IN FAVOR (Toni J. Minton, William E. Emery, Larry J. Denomie III, Elizabeth “Chiz” Matthews, Elizabeth D. Mayo), OPPOSED - 0, THREE ABSTAINING (Jennifer Misegan, Jerry Lee Curtis, Fred Dakota), THREE ABSENT (Susan J. LaFerner, Doreen G. Blaker, Michael F. LaFerner, Sr.), MOTION CARRIED.

3. September 11, 2008

MOTION MADE BY TONI J. MINTON TO TABLE THE SEPTEMBER 11, 2008 MEETING MINUTES UNTIL CHANGES ARE MADE AS REQUESTED. SUPPORTED BY JENNIFER MISEGAN. EIGHT IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, THREE ABSENT (Susan J. LaFerner, Doreen G. Blaker, Michael F. LaFerner, Sr.), MOTION CARRIED.

Mike LaFerner returned at 10:07 a.m.

4. September 18, 2008

MOTION MADE BY TONI J. MINTON TO APPROVE THE SEPTEMBER 18, 2008 MEETING MINUTES. SUPPORTED BY ELIZABETH “CHIZ” MATTHEWS. NINE IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, TWO ABSENT (Susan J. LaFernier, Doreen G. Blaker), MOTION CARRIED.

5. September 23, 2008

MOTION MADE BY JENNIFER MISEGAN TO APPROVE THE SEPTEMBER 23, 2008 MEETING MINUTES. SUPPORTED BY TONI J. MINTON. SEVEN IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Elizabeth “Chiz” Matthews, Elizabeth D. Mayo), ONE OPPOSED (Fred Dakota), ONE ABSTAINING (Michael F. LaFernier, Sr.), TWO ABSENT (Susan J. LaFernier, Doreen G. Blaker), MOTION CARRIED.

Fred Dakota stated his opposition: He is opposed because it doesn't say what happened in Closed Session.

J. New Business:

1. John Baker, Attorney – New Business License – Donald Messer d/b/a Da Shack

MOTION MADE BY LARRY J. DENOMIE III TO APPROVE THE BUSINESS LICENSE FOR DONALD MESSER, JR. AND CO-APPLICANT JASON MESSER DOING BUSINESS AS DA SHACK. SUPPORTED BY MICHAEL F. LAFERNIER, SR. NINE IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, TWO ABSENT (Susan J. LaFernier, Doreen G. Blaker), MOTION CARRIED.

2. Jennifer Misegan, Treasurer – New Businesses

Jennifer stated that a second gas station is being considered in L'Anse. Gregg Nominelli is suggesting a feasibility plan.

MOTION MADE BY WILLIAM E. EMERY TO MOVE FORWARD WITH A FEASIBILITY STUDY FOR A NEW GAS STATION IN L'ANSE ON US-41. SUPPORTED BY ELIZABETH “CHIZ” MATTHEWS. NINE IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, TWO ABSENT (Susan J. LaFernier, Doreen G. Blaker), MOTION CARRIED.

K. Closed Session:

1. Jennifer Misegan, Treasurer – 2% Distributions

2. John Mantila, Baraga Casino/David Haataja, Marquette Casino/Jackie Marinich, Marketing Director
3. **1:00 p.m. Grievance Hearing Case #007-08**
4. Warren C. Swartz, Jr., President
5. Susan LaFernier, Vice-President - Diversification and Long-Term Investment Proposal

MOTION MADE BY ELIZABETH “CHIZ” MATTHEWS TO GO INTO CLOSED SESSION AT 10:18 A.M. SUPPORTED BY MICHAEL F. LAFERNIER, SR. SEVEN IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews), TWO OPPOSED (Elizabeth D. Mayo, Fred Dakota), ABSTAINING - 0, TWO ABSENT (Susan J. LaFernier, Doreen G. Blaker), MOTION CARRIED.

Break: 10:25 – 10:35 a.m.

Jennifer Misegan left 11:10 a.m. – 1:00 p.m.

Elizabeth Matthews left 11:19 a.m. – 1:00 p.m.

Lunch: 11:42 a.m. – 1:00 p.m.

Susan LaFernier returned at 1:00 p.m.

Doreen Blaker arrived at 1:10 p.m.

Break: 2:21 – 2:31 p.m.

MOTION MADE BY ELIZABETH D. MAYO TO GO INTO OPEN SESSION AT 3:08 P.M. SUPPORTED BY MICHAEL F. LAFERNIER, SR. TEN IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Larry J. Denomie III, Doreen G. Blaker, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, ONE ABSENT (Jennifer Misegan), MOTION CARRIED.

(Jennifer Misegan out of the room)

Break: 3:09 – 3:13 p.m.

2% Distributions April – September 2008-

MOTION MADE BY TONI J. MINTON TO APPROVE RESOLUTIONS KB-1645-2008 AND KB-1646-2008 FOR THE BARAGA AND MARQUETTE 2% DISTRIBUTIONS. SUPPORTED BY SUSAN J. LAFERNIER. ALL IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Doreen G. Blaker, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth “Chiz” Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, ABSENT - 0, MOTION CARRIED.

Reciprocity Declaration with the State of Michigan's Department of State-

MOTION MADE BY MICHAEL F. LAFERNIER, SR. TO APPROVE THE RECIPROCITY DECLARATION WITH THE STATE OF MICHIGAN'S DEPARTMENT OF STATE. SUPPORTED BY ELIZABETH "CHIZ" MATTHEWS. EIGHT IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Doreen G. Blaker, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth "Chiz" Matthews), TWO OPPOSED (Elizabeth D. Mayo, Fred Dakota), ONE ABSTAINING (Susan J. LaFernier), ABSENT - 0, MOTION CARRIED.

Grievance Hearing Case #007-08-

MOTION MADE BY MICHAEL F. LAFERNIER, SR. TO REINSTATE THE EMPLOYEE IN GRIEVANCE HEARING CASE #007-08 AND TO EXTEND THE PROBATIONARY PERIOD TO THREE MONTHS, EFFECTIVE NOVEMBER 26, 2008. SUPPORTED BY ELIZABETH "CHIZ" MATTHEWS. EIGHT IN FAVOR (Toni J. Minton, William E. Emery, Jennifer Misegan, Doreen G. Blaker, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth "Chiz" Matthews, Fred Dakota), OPPOSED - 0, THREE ABSTAINING (Susan J. LaFernier, Larry J. Denomie III, Elizabeth D. Mayo), ABSENT - 0, MOTION CARRIED.

L. Adjournment:

MOTION MADE BY ELIZABETH D. MAYO TO ADJOURN AT 3:18 P.M. SUPPORTED BY FRED DAKOTA. ALL IN FAVOR (Susan J. LaFernier, Toni J. Minton, William E. Emery, Jennifer Misegan, Larry J. Denomie III, Doreen G. Blaker, Jerry Lee Curtis, Michael F. LaFernier, Sr., Elizabeth "Chiz" Matthews, Elizabeth D. Mayo, Fred Dakota), OPPOSED - 0, ABSTAINING - 0, ABSENT - 0, MOTION CARRIED.

Respectfully submitted,

Peggy Minton
Recording Secretary