

T. 5.a.

AGENDA COVER MEMO

AGENDA DATE: 28 May 2004

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: LANE COUNTY OFFICE OF LEGAL COUNSEL

PRESENTED BY: David B. Williams, Assistant County Counsel

AGENDA ITEM TITLE: IN THE MATTER OF SCHEDULING A HEARING ON THE APPEAL OF THE SHERIFF'S RECOMMENDATION ON THE LIQUOR LICENSE APPLICATION OF THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS.

I. MOTION: I move to approve the order scheduling a hearing on the appeal of the Sheriff's recommendation on the liquor license application of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

II. ISSUE OR PROBLEM: Under LM 16.120(4), the Sheriff is authorized to issue recommendations to OLCC on license applications. On May 6, 2004, the Sheriff recommended approval of the application for an on-premises sales license for the Three Rivers Casino. LM 16.120(5) provides that any person aggrieved by the Sheriff's recommendation may, within 10 days of the Sheriff's recommendation, request a hearing. Debby Todd of Florence requested a hearing by letter dated May 17.

The primary issue for the Board to address at this time is this:

Assuming a timely notice of appeal, but leaving final resolution of that issue for fact-finding at the appeal hearing, should the full board hear the appeal, or should the board designate an individual to conduct the hearing?

III. DISCUSSION: Statutes and OLCC's rules provide for local governments' recommendations on OLCC licenses. The statutes and rules set out criteria for what the rules call "valid grounds" for a local government's unfavorable recommendation.

The statutes and rules do not require any type of appeal process to the local government of the local government's recommendation, but a process of that nature is provided in the Lane Manual. Since we have created an appeal process for persons aggrieved by the recommendation of the Sheriff, the appeal process should be followed.

Although there may be some question as to the timeliness of the request for hearing, resolution of that matter may require a factual determination. At this stage, the safer approach is to assume, for preliminary purposes, that the notice may be timely. Final resolution of that issue may be left for the appeal hearing.

LM 16.120(5) indicates that a hearing may be "before the Board or a designee." The Board may therefore choose to hold the hearing itself, or delegate the hearing authority.

Under the Lane Manual, there needs to be at least 10 days' notice of the hearing sent to the applicant and the person requesting the hearing.

IV. OPTIONS:

1. Schedule a hearing before the board; or
2. Schedule the hearing before a person designated to hear and decide the issues.

In either case, and assuming a timely appeal, the ultimate issue for the board or its designee will be whether to affirm the Sheriff's decision or recommend to OLCC that it disapprove the license application.

V. RECOMMENDATIONS: Designate a person to hear and decide the appeal (Option 2).

VI. TIMING: OLCC is apparently in the process of considering the matter. The County hearing should be set promptly.

VII. IMPLEMENTATION/FOLLOW-UP: Notice of the hearing date must be sent to the applicant and the person requesting the hearing.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

In the Matter of Scheduling a Hearing on the Appeal of the Sheriff's Recommendation on the Liquor License Application of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

WHEREAS, the Sheriff of Lane County recommended approval of the liquor license application of the Confederated Tribes on May 6, 2004; and

WHEREAS, LM 16.120(5) permits a person aggrieved by the Sheriff's recommendation to request a hearing to appeal the Sheriff's recommendation;

WHEREAS, Debby Todd requested a hearing by letter dated May 17, 2004; and

WHEREAS, LM 16.120(5) provides for a hearing before the Board or its designee,

IT IS HEREBY ORDERED that a hearing on Ms. Todd's appeal is set for 10 a.m. on June ____, 2004 at 125 E. 8th Avenue, Eugene, Oregon;

IT IS FURTHER ORDERED THAT the County Administrator or his designee shall cause not less than 10 days' notice of the hearing to be sent by mail to the Confederated Tribes and Ms. Todd; and

IT IS FURTHER ORDERED THAT _____ shall hear and decide Ms. Todd's appeal as the Board's designee and, if it is determined that the merits of the appeal are properly before the designee, either affirm the Sheriff's recommendation or recommend denial of the application to OLCC based on applicable criteria.

Adopted this _____ day of _____ 2004.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 6/1/04 Lane County


OFFICE OF LEGAL COUNSEL