

MINUTES

BOARD OF COMMISSIONERS GRAYS HARBOR COUNTY And QUINAULT INDIAN NATION SPECIAL MEETING

July 7, 2009

The Commissioners met in special session in the Quinault Indian Nation (QIN) Meeting Room in Taholah, Washington on Tuesday, July 7, 2009, at 1:00 p.m. Public Notice was provided with the date, time, place, and purpose of planning and policy decisions related to land use issues.

The following elected officials were present: Grays Harbor County Commissioners Al Carter, Terry Willis and Mike Wilson; Quinault Indian Nation Council-members Coni Wilson, James DeLaCruz, James Sellers, Richard Underwood, Phillip E. Martin, and President Fawn Sharp.

Others present were: Karen Allston, Attorney for the Quinault Indian Nation; Jonathan Ciesla of the Quinault Indian Nation; Dave Bingaman, Natural Resource Director for the Quinault Indian Nation; Brian Shea, Planning and Building Director for Grays Harbor County; Jeff Nelson, Environmental Health Director for Grays Harbor County; Jim Baker, Grays Harbor County Civil Deputy Prosecuting Attorney; and Donna Caton, Clerk of the Board.

President Fawn Sharp, Quinault Indian Nation, addressed the assembly, beginning with introductions. She stated there were three basic issues that they would like to discuss:

1. A Memorandum of Understanding (MOU) between Grays Harbor County and the Quinault Indian Nation developing a comprehensive approach to land use.
2. A joint resolution of sewer system problems in Amanda Park and related jurisdictional issues.
3. The release of information regarding the Quinault Indian Nation's pursuing evaluation of the ordinary high water mark in the Lake Quinault area and surrounding areas to establish clear Reservation boundaries.

President Sharp reported that the surveyors are doing pre-work and reviewing legal descriptions to determine where the ordinary high water mark lies in order to establish boundaries of the Quinault Indian Nation's land. Later this year they will survey Lake Quinault and document their findings, with expectations for the establishment of boundaries in early 2010.

Construction, trespassing, removing wood, and launching boats are activities within the reservation that occur without permission. Commissioner Carter asked whether property owners would still be able to launch boats and cut firewood after the boundaries are established and whether this would affect existing docks. He inquired whether there would be a process to obtain permits for these activities. Mr. Bingaman stated that they are trying to enforce the cutting of logs. There is no dock policy at this time, except in draft form. He talked about infractions in the lake area and the hardening of the bank with riprap. He emphasized that the

Tribe is working very hard on preservation of blue-back fish. Karen Allston stated that the Quinault Nation can issue hydraulic permits. President Sharp responded that the Tribal Shorelines Management Plan is to establish the boundary first and then decide to what extent they want to regulate those areas, which is all part of their 2010 planning process. Al Carter suggested that when they establish those policies and hold public meetings, he would be willing to attend. Discussion continued on a couple of developments that have been problematic within the shorelines.

President Sharp noted that at the May 29, 2008 meeting the county's issue was whether the Tribe would have the same building codes as the county. Since they have adopted the International Building Code (IBC), which is the same code as the county, she asked what other outstanding issues the county might have that would deter adoption of a Memorandum of Understanding regarding land use regulations. Commissioner Carter said that a few non-tribal owners of fee lands have expressed that they would like the county to be the regulatory agency. Commissioner Mike Wilson opened discussion on how to structure the agreement, whether the structure should be a Memorandum of Understanding (MOU) or an Interlocal Agreement. Attorney Jim Baker stated that a MOU is more informal, and an Interlocal agreement would be more binding, but it could be structured either way. The general consensus was to use a MOU.

Attorney Jim Baker explained that the issue is whether the county could transfer responsibility of land use issues. He stated that it is the opinion of the Prosecutor's office that if both the Tribe and the County have mirror image regulatory documents, the Tribe could act as an agent for the county.

Brian Shea stated that the staff's approach was to find out what regulations were adopted by the Tribe and then to be able to assure property owners that they would have the same or similar primary code regulations as other entities within the county, including due process for variances and appeals. If the Tribe mirrors the same codes as the county, the question would then be what would be the guiding code on non-native lands, what regulatory document would have jurisdiction. Brian Shea stated that since 2002, the county has not issued permits for property owners within the reservation. They have been referred to the Tribe and the county has had no negative feedback.

Jeff Nelson added that the sewer/septic regulations of the Tribe are similar to others.

The question was whether the QIN Comprehensive Plan and Zoning Regulations would be the governing regulations.

President Sharp referred to the jurisdictional issue, noting that Tribes are considered a subdivision of the State of Washington. This means jurisdiction could be transferred to the Nation.

Jim Baker stated that the county can delegate authority to administer its own codes to the Tribe, but questioned whether non-county codes could be applied to non-Indian owned land. His

concern was that similar properties in the county be treated the same and stated that if the county adopts the regulations that the Tribe has in place, it could work. In late 90's the county had some interim zoning. Brian Shea stated that this has been difficult to track. The county does not have any zoning regulations within Indian Reservations, including non-Indian fee land. President Sharp referred to interim zoning control for a six-month period in 1999, which the Commissioners adopted even though staff had suggested that it's not good policy to spot zone.

Brian Shea stated that the county staff prefers that development of non-native land within the Reservation be under Quinault Tribal codes to allow for consistent development. If the county adopted the Tribe's Comprehensive Development Plan and Zoning designations as a sub-area, both tribal owned and non-tribal owned land would be regulated the same throughout the reservation. Mr. Jim Baker added that the county could incorporate by reference the Tribal Code. Mr. Shea stated that the Comprehensive Development Plan map could designate sub-areas, but the only way to have mirror image regulations is to have the same zoning district designation as part of the county code and agree that the Tribe processes the permits. Mr. Jim Baker stated that this would solve jurisdictional issues.

Mr. Martin expressed that this is a tremendous opportunity to have joint relationships with the county through a cooperative agreement and to work on projects such as water and sewer within the boundaries of the reservation. He stated that we need to come up with a plan that works and addresses jurisdictional issues. It is good to have these discussions, but it is time for the nuts and bolts and to move forward together.

Mr. Delacruz objected that it seemed like a different approach than a year ago and expressed frustration that there is another obstacle after all the years he put in to this issue. He inquired as to how the county dealt with the cities on these issues and inquired as to the difference. The Tribe has resolved the building code issue, now he asked if this is truly the last hurdle. This affects development on the reservation, whether tribal owned or not. The Tribe attempts to have codes that are equitable to everyone.

Mr. Shea stated that adoption of the International Building Code was a significant step, as non-tribal jurisdictions are required to have locally adopted codes and this would bring the QIN to the same level. He also stated that local control of comprehensive development and zoning should be under the Tribe to express their vision. The county could adopt the QIN zoning as a subsection to the county codes. Commissioner Carter added that the MOU would be the agreement that would govern the regulations and administration of the regulations. Mr. Shea stated that the last code issue to address is septic/sewer regulations. It would be easier for the Tribe to consider adopting the county septic codes, similar to the approach used for the building codes. Jeff Nelson responded that, in general, the Tribe's set-back regulations may be different and more stringent. Councilman Martin agreed, noting that there are problems with the ground perking due to the clay problems. The Tribe is sensitive to the beach environment and geological erosion areas. Mr. Nelson stated that the county would be unable to provide technical assistance if the Tribe adopted codes other than those of the State of Washington. Mr. Shea stated that the county could revise the septic codes to include the QIN area as a special area to have added protections (which

are the QIN codes). Mr. DeLaCruz asked if there was a way to come to an agreement and move forward with the plan as discussed.

President Sharp stated that the Nation is working on updating codes and infrastructure plans, making it an ideal time to sort out an understanding with the county. She outlined the public process that the Nation is undertaking. Currently zoning regulations are the last update that is being worked on. Commissioner Terry Willis asked when the county adopts codes for this region, how would non-tribal landowners have representation under the proposed scenario, whether there would be a public meeting or public process for that property owner to be able to make comments. Brian Shea agreed that the county would be changing the zoning, comprehensive plan, and septic regulations. President Sharp stated that when they modify or amend Tribal codes the public is allowed to be engaged in the process. There are specific steps for public input: amendments require four reads and new provisions require six reads, during which the public at large has the opportunity to be engaged. Commissioner Willis asked how changes or updates would occur after the county adopted the QIN codes. Mr. Shea stated that for non-natives that own property on the reservation, there would be two opportunities for public input, one with the Tribe and then again with the county. He stated that the Tribal codes for developments should include a variance and appeal process. At Commissioner Carter's inquiry, Mr. Jim Baker added that land use law suits would be filed in Superior Court. President Sharp stated that a secondary process such as a dispute resolution board could be an avenue to resolve issues. Councilman Martin commented on the saturation of certain areas in relation to septic/sewer issues and potential related pollution.

Com. Carter stated that the county has the same codes, and at a certain density a sewer system is required instead of septic systems. He inquired as to whether we are going to move forward, as discussed. Both Jim Baker and Brian Shea agreed to work with QIN staff on the documents and maps.

(Two people left the room – Councilmember Delacruz and another individual)

President Sharp asked that the second issue of septic/sewer problems be discussed.

Jonathan Ciesla inquired as to how state laws implemented through the county would affect the Tribe who is under federal laws. Brian Shea stated that codes would be created as a subset of the county zoning code, and would be applicable under a joint Memorandum of Understanding (MOU). Currently, the Reservation is not regulated by the County for Shorelines Management.

Jeff Nelson stated that the county could adopt septic regulations that incorporate QIN setback regulations for the Reservation. Commissioner Wilson asked that differences in the documents be clearly identified.

Discussion continued on specific areas within the Reservation whereby sewer and septic problems have been an issue. Councilmember Coni Wilson noted that in order for the community to have an opportunity to grow, the water and sewer systems need to be in place.

The Nation would have to build its own sewer system and they have told the tribal members and citizens that they are working with the county on jurisdictional issues. Commissioner Carter stated that there is job potential as well. President Sharp stated the county staff has the technical capacity available and that the Tribe needs to look at the areas and what type of systems would be suitable and how to address expansion.

Brian Shea stated that Comprehensive Development Plans change every five years or so and that it takes good utilities to drive development. If the county adopts the QIN Comprehensive Development Plan, and makes the same changes to the document at the same time that the Tribe does, there is a better sense of due process with two public hearings, one at the Tribe level and one at the county. President Sharp encouraged investment in long-term planning. Coni Wilson explained that in 1972 the county did an assessment and it was discovered on the South Shore that all the sewers were running in to the Lake. Many of the homes were also drawing their water from the Lake. She emphasized the need for assessment of existing systems. Along the North Shore, the homes are situated along the bank of the lake and have no additional land to support septic systems. The Nation bought a home and abated it and in the process found that there was no container and the system was leaching in to the river. She stated that people don't want to do change. Commissioner Carter added that people save money when they are not hooked up, but that a line has to be drawn for health and safety reasons whereby everyone hooks up to a sewer. Coni Wilson stated that the jurisdictional issue is where the county is involved. Commissioner Carter stated that the area involves many jurisdictions including the U.S. Forest Service, Parks, private lands, and reservation land. Coni Wilson stated that they are comfortable with staff at county, they are very capable. She was hopeful that the issues would get worked out today. Jeff Nelson stated that they find areas after they have a problem and pose a risk. It is wide belief that septic are just as good as sewers, but the biggest component is maintenance of the systems. Coni Wilson stated that ground water doesn't drain in this area. The type of ground and the amount of rain, makes it not feasible to have septic tanks. The ground water level increases, the rain continues to fall, and the tide is high, making it impossible to have a good working septic system. In the Rainforest, the systems are just over-whelmed. President Sharp stated that there is now the potential for a partnership with the county to address these issues.

The third item of discussion is mainly informational that the Tribe is establishing the high water mark around the Lake and currently has a contract and work is in progress. Dave Bingaman stated that, due to the cost, they are only evaluating the majority of the North Shore Road area. They are few problems on the South Shore area as it is owned by the U.S. Forest Service. Discussion continued on who would be working out the details of the issues discussed at this meeting. It was decided that staff would work out the details of the documents for review by the respective legal departments, and then it would be placed before the policy makers for final decisions.

Jonathan Ciesla stated that the Tribe is on the last component of the Comprehensive Development Plan and they could make it a priority to complete the 10-year update, but are challenged with how to best benefit everyone involved. Brian Shea stated that the county has an existing Comprehensive Development Plan of which the QIN Plan, once provided, would

become a subset. Mr. Shea informed the Tribe that the county would take the documents that they have in place now to allow them the appropriate time to complete their updates.

Jeff Nelson inquired about how regulations such as food safety and others would be addressed. Mr. Baker responded that he would need to look in to how environmental health regulations would be addressed.

Coni Wilson stated that this is where they (tribal members) were born, with all its beauty, and this is where they fish and live. She noted cultural differences on the location of homes – that the Tribe members will walk to the ocean and that others want a view from their home, which may or may not be the best place to build. The area is pristine because the Nation kept it that way and there is no happy medium for these cultural differences.

Commissioner Carter asked for clarification on what the Tribe intends to do with the information on the ordinary high water mark. They discussed that there are a few owners that have been a problem along the shoreline. Karen Allston noted that the suggestions to the county for the Critical Areas Ordinance included a 200 foot buffer. Commissioner Carter stated that this buffer would extend to the other side of the road and asked how it would be handled. Karen Allston stated that existing homes would be a non-conforming use and grandfathered in.

It was determined that the QIN's Comprehensive Development Plan would be a subset of the Grays Harbor County Comprehensive Development Plan. Jim Baker stated that the county would adopt QIN codes by reference with a copy on file.

Jeff Nelson inquired how food safety regulations would be handled. Mr. Baker stated that the MOU would address this issue, stating that the regulations for the Reservation should be the same as other areas of the county.

The members of the QIN agreed to work with the county staff and push for October to have everything in place for the Memorandum of Understanding.

This meeting adjourned at 2:35 p.m.

Approved:

BOARD OF COMMISSIONERS
For Grays Harbor County
This ____ day of _____, 2009

Mike Wilson, Chairman

Terry L. Willis, District 1

Albert A. Carter, District 3

Attest:

Donna Caton, Clerk of the Board