

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF

NOOKSACK INDIAN TRIBE
NOOKSACK'S NORTHWOOD
CROSSING CASINO
9750 NORTHWOOD ROAD
LYNDEN, WA 98264

LICENSE APPLICANT

License No. 400779

LCB NO. 22751

BOARD ORDER
ON RECONSIDERATION OF
MAY 4, 2007 ORDER
APPROVING APPLICATION FOR
SPIRITS/BEER/WINE
RESTAURANT
LOUNGE LICENSE

I. BACKGROUND

The above entitled matter first came before the Board pursuant to RCW 66.24.010 for consideration of the Nooksack Indian Tribe's application for a new spirits/beer/wine restaurant lounge license for Nooksack's Northwood Crossing Casino, License No. 400779. By Order dated May 4, 2007 the Board approved the license application and made the following Findings of Fact¹:

1. That Liquor Control Board licensing staff received the Nooksack Indian Tribe's application for a spirits/beer/wine restaurant lounge license for Nooksack's Northwood Crossing Casino (Northwood Crossing) on September 15, 2006.

2. That the license application is for a facility, Nooksack's Northwood Crossing Casino, which is located on tribal trust land. Whatcom County surrounds and abuts the tribal trust land upon which the Northwood Crossing Casino is sited. Pursuant to RCW 66.24.010 (8) (a) the

¹ Upon reconsideration of the May 4, 2007 Order the Board noted several minor typographical errors. Those errors are corrected in the recitation of facts set out in Section I, Background, above and also in the facts on reconsideration listed in Section III, Findings of Fact on Reconsideration.

Board licensing staff notified Whatcom County of the receipt of the license application on September 19, 2006.

3. That the Whatcom County Sheriff's Office and the Whatcom County Executive's Office timely submitted detailed written objections to the license application citing numerous bases for objection, including:

- concern that the area surrounding the tribal trust land where the proposed licensed premises would be located is zoned rural and agricultural and is not zoned to allow establishments to serve alcoholic beverages;
- concern that the county roadways leading to and from the proposed licensed premises are rural, with little illumination and are not designed for the higher traffic volumes the Northwood Crossing Casino might bring;
- concern that casinos serving alcoholic beverages are, statewide, most often among the premises drivers arrested for driving under the influence identify as the last place at which they drank prior to being arrested;
- concern that the Whatcom County sheriff's office lacks adequate resources to patrol the adjoining roadways and the anticipated increased attention devoted to the casino would challenge the sheriff's ability to provide adequate patrols and emergency responses elsewhere.

4. That the Liquor Control Board's Licensing Staff also received letters of protest from:

- 42nd District State Representative Doug Ericksen;
- Whatcom County Councilmember Barbara Brenner;
- City of Lynden Mayor Jack Louws;

- Lynden Chief of Police Jack Foster;
- Members of the Lynden School District Board of Directors;
- Lynden Christian School;
- Cornerstone Christian School;
- Lynden Protestant Reformed Church.

The common theme of the protest from schools, churches and public officials is similar to that of the Whatcom County officials: concern with the rural residential and agricultural character of the adjacent lands; concern with casinos being among establishments most often cited as the last place where a drunk driver consumed alcohol prior to being arrested; concern with casino related vehicle traffic in light of the rural character of the roadways leading to and from the casino, and the lack of illumination on those roads; and concern over the possibility of increased strain on local law enforcement resources.

5. That the Liquor Board's Licensing Staff received numerous forms of citizen protest, including:

- A protest petition containing 1,968 signatures. 634 of those signatures were from residents of the City of Lynden, the remainder from citizens from other areas including some from outside the State of Washington
- Protest letters from 121 citizens residing in the City of Lynden
- Protest letters from 68 citizens residing outside the City of Lynden
- Copies of 46 letters, 41 of which were from residents of the City of Lynden, sent to the Office of the Attorney General and copies of responses sent on behalf of the Attorney General.

The common theme of the citizen protest is similar to the concerns raised by Whatcom County officials and by the schools churches and public officials – concern regarding the perceived impacts of casino related traffic on local roadways, infrastructure and resources, particularly if the casino were to serve alcohol.

6. That the Liquor Control Board Licensing staff received four letters of citizen support for liquor licensure. One of the citizens writing in support lives in the City of Lynden, the others do not.

7. That the Liquor Control Board Licensing staff received a response from the Nooksack Tribe to the issues raised by the letters of protest submitted by the Whatcom County Executive and the Whatcom County Sheriff (as noted above, the additional protests received by the Liquor Control Board raise essentially the same concerns as identified by the Whatcom County Executive and Sheriff). The Tribe stated its commitment to working with local jurisdictions to minimize any effects the casino might have on traffic and public safety issues. In addition, the Nooksack response addressed each of the issues raised by Whatcom County as follows:

- Zoning of casino property and surrounding areas to allow establishments that serve alcohol. The Tribe noted the casino site itself is tribal trust land, not subject to local zoning laws, but subject to zoning laws imposed by the Tribe. The Tribe has zoned the area suitable for a casino. The Tribe noted its opinion that zoning status of surrounding properties has not been an impediment to granting other liquor license applications in Whatcom County.
- Traffic impacts on surrounding roadways. The Tribe provided traffic studies performed by an independent third party as part of an environmental assessment of the area in anticipation of the casino project. Those studies determined that even with the expected

casino related traffic the relevant roadways would operate at less than 50% of their capacities. The Tribe offered to work with the County to address additional measures such as widening the roads, reducing the speed limits and installing additional lighting. The tribe further noted its intention to employ marketing materials and signage to encourage the casino related traffic toward Northwood Road, a straight, two lane road with a 50 mph speed limit that goes directly to the casino entrance.

- Instances of drunk driving originating from casinos. The Tribe stated it will not tolerate driving under the influence of alcohol and pointed to specific practices and policies it has in place to govern alcohol service at its existing facility. The practices include: staff training beyond the level mandated by the state; a policy of no complimentary drinks and no discounted drinks and “cut off” of apparently affected patrons; patrons who are cut off are dissuaded from driving and informed that if they do attempt to drive, local law enforcement will be notified; strict identification checks to avoid service to minors and suspending employment of servers who allow service to minors. The Tribe further offered to train additional staff and offer further training if requested by the Liquor Control Board. The Tribe also provided an analysis of the documentation relied on to suggest drunk drivers most often originate from casinos. The Tribe’s analysis showed casinos are not the most often cited place where DUI offenders had been drinking prior to arrest, and showed that of those arrested for DUI who provided the name of the establishment where they last drank, only four identified the Nooksack’s other casino facility. The Tribe believes these statistics show the Tribe is vigilant in its approach to overservice issues.

- Impact on local law enforcement resources. The Tribe provided statistics to show the Nooksack's existing facility generated calls to the Whatcom County Sheriff at the rate of less than once a month and that many of the incidents where calls were made were not of an emergency nature and not related to alcohol service. The Tribe also noted that federal law gives the Tribe jurisdiction over non-Indians on the casino premises and that the Tribal law enforcement may, in consultation with the Sheriff's office, arrest non-Indians. The Tribe further noted the availability of other law enforcement personnel throughout the area that would be available to assist the Whatcom County Sheriff in patrolling the area for impaired drivers and the Tribe noted its intent to build a Tribal police substation on the casino premises.
- Citizen protest letters. The Tribe pointed out its perception that many of the letters indicated a general opposition to the casino project as a whole, and did not specifically identify issues regarding the liquor license application. The Tribe also pointed out many of the letters appeared to follow a form or template echoing the concerns raised in the protest letters from the Whatcom County Executive and the Whatcom County Sheriff.
- Mitigation with contribution of casino revenues to County. The Tribe asserted it has complied with its agreement to pay 2% of its net win from its existing Nooksack River Casino facility to Whatcom County, for the County to distribute as it prefers. The Tribe further stated it had offered to discuss additional mitigation measures with the County but that the County rejected the offers of discussion.
- Additional offers of mitigation. The Tribe stated its willingness to meet with the County to discuss improvements to the existing road system, increased lighting, the addition of traffic signals and other mitigation in the form of assistance to the Sheriff's Office.

8. That the Whatcom County Sheriff's Office responded to the Tribe's attempts to address the concerns raised by the Sheriff's Office, but did not believe any of the concerns to be resolved and did not appear to accept the Tribe's offer for continuing discussions of offers of mitigation.

9. That the Liquor Control Board's Licensing Staff recommends to the Board that the liquor license application be granted, subject to the Tribe providing a loan/account number on the loan documents from Marshall Bank First and subject to a final inspection of the premises by a Liquor Enforcement Officer.

10. That the proposed licensed premises are located on tribal trust land, and not located in the governmental jurisdiction of Whatcom County or in the jurisdiction of any other non-tribal government subdivision. No representatives of the Tribe have indicated objection to the proposed license.

11. That the Tribe has offered, and continues to offer, to work with Whatcom County and other surrounding local government subdivisions to mitigate any traffic or public safety impacts the casino might have on the surrounding lands located in non-tribal jurisdictions.

12. That the Board has given due consideration to the written submissions of Whatcom County officials, residents, churches and schools and the other persons or groups submitting objections, and the Board does not find that those submissions, when considered in conjunction with the materials submitted by the Tribe, establish that issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health or welfare of the community surrounding the trust land upon which the premises will be located. *See* WAC 314-07-065 (7).

From the above Findings of Fact contained in the Board's Order of May 4, 2007, the Board entered the following Conclusions of Law on May 4, 2007:

1. The objections and other materials filed with the Board do not establish sufficient reason for the Board to deny the license.
2. It is an appropriate exercise of the Board's discretion to grant the license applied for. *See* RCW 66.24.010 (2).

In the portion of the May 4, 2007 Board Order dictated by the Administrative Procedure Act, RCW 34.05.461 (3), which requires agency orders to "include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief" the Board advised, consistent with its Finding of Fact No. 10:

Further Review of Board Order

The licensed premises is not located within the governmental jurisdiction of Whatcom County and no further administrative review is available to Whatcom County under WAC 314-09-015 (a) nor is Whatcom County an aggrieved party with standing to obtain judicial review of this Order under RCW 34.05.530.

May 4, 2007 Order at pp 8 and 9.²

II. RECONSIDERATION

The Board hereby reconsiders its May 4, 2007 Order to the extent set out below. To the extent any of the portions of this Order on Reconsideration conflict with or supersede the Board's May 4, 2007 Order, the conflicting portions of the May 4, 2007 Order are revoked and superseded by this Order on Reconsideration.

² Upon reconsideration of the May 4, 2007 Order the Board noted a clerical error in the section of the Order entitled "Further Review of Board Order." That section incorrectly references the applicable provision of the Washington Administrative Code as "WAC 314-09-015 (a)." The correct citation is to WAC 314-09-010 (2) (a). Regardless, the section entitled "Further Review of Board Order" is deleted from this Order on Reconsideration.

III. FINDINGS OF FACT ON RECONSIDERATION

Finding of Fact No. 1:

Finding of Fact No. 1 is unchanged from the May 4, 2007 order and is as follows:

1. That Liquor Control Board licensing staff received the Nooksack Indian Tribe's application for a spirits/beer/wine restaurant lounge license for Nooksack's Northwood Crossing Casino (Northwood Crossing) on September 15, 2006.

Reconsideration of Finding of Fact No. 2:

Finding of Fact No. 2 is amended on reconsideration as follows:

2. That the license application is for a facility, Nooksack's Northwood Crossing Casino, which is located on tribal trust land not within the boundaries of an incorporated city or town. Pursuant to RCW 66.24.010 (8) (a), which requires notification to "the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns" the Board licensing staff notified Whatcom County of the receipt of the license application on September 19, 2006.

Findings of Fact Nos. 3-9:

Findings of Fact Nos. 3-9 are unchanged from the May 4, 2007 Order (except to correct typographical errors) and are as follows:

3. That the Whatcom County Sheriff's Office and the Whatcom County Executive's Office timely submitted detailed written objections to the license application citing numerous bases for objection, including:

- concern that the area surrounding the tribal trust land where the proposed licensed premises would be located is zoned rural and agricultural and is not zoned to allow establishments to serve alcoholic beverages;

- concern that the county roadways leading to and from the proposed licensed premises are rural, with little illumination and are not designed for the higher traffic volumes the Northwood Crossing Casino might bring;
- concern that casinos serving alcoholic beverages are, statewide, most often among the premises drivers arrested for driving under the influence identify as the last place at which they drank prior to being arrested;
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4. That the Liquor Control Board's Licensing Staff also received letters of protest from:

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where a drunk driver consumed alcohol prior to being arrested; concern with casino related vehicle traffic in light of the rural character of the roadways leading to and from the casino, and the lack of illumination on those roads; and concern over the possibility of increased strain on local law enforcement resources.

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6. That the Liquor Control Board Licensing staff received four letters of citizen support for liquor licensure. One of the citizens writing in support lives in the City of Lynden, the others do not.

7. That the Liquor Control Board Licensing staff received a response from the Nooksack Tribe to the issues raised by the letters of protest submitted by the Whatcom County

Executive and the Whatcom County Sheriff (as noted above, the additional protests received by the Liquor Control Board raise essentially the same concerns as identified by the Whatcom County Executive and Sheriff). The Tribe stated its commitment to working with local jurisdictions to minimize any effects the casino might have on traffic and public safety issues. In addition, the Nooksack response addressed each of the issues raised by Whatcom County as follows:

- Zoning of casino property and surrounding areas to allow establishments that serve alcohol. The Tribe noted the casino site itself is tribal trust land, not subject to local zoning laws, but subject to zoning laws imposed by the Tribe. The Tribe has zoned the area suitable for a casino. The Tribe noted its opinion that zoning status of surrounding properties has not been an impediment to granting other liquor license applications in Whatcom County.
- Traffic impacts on surrounding roadways. The Tribe provided traffic studies performed by an independent third party as part of an environmental assessment of the area in anticipation of the casino project. Those studies determined that even with the expected casino related traffic the relevant roadways would operate at less than 50% of their capacities. The Tribe offered to work with the County to address additional measures such as widening the roads, reducing the speed limits and installing additional lighting. The tribe further noted its intention to employ marketing materials and signage to encourage the casino related traffic toward Northwood Road, a straight, two lane road with a 50 mph speed limit that goes directly to the casino entrance.
- Instances of drunk driving originating from casinos. The Tribe stated it will not tolerate driving under the influence of alcohol and pointed to specific practices and policies it has in place to govern alcohol service at its existing facility. The practices include: staff

training beyond the level mandated by the state; a policy of no complimentary drinks and no discounted drinks and “cut off” of apparently affected patrons; patrons who are cut off are dissuaded from driving and informed that if they do attempt to drive, local law enforcement will be notified; strict identification checks to avoid service to minors and suspending employment of servers who allow service to minors. The Tribe further offered to train additional staff and offer further training if requested by the Liquor Control Board. The Tribe also provided an analysis of the documentation relied on to suggest drunk drivers most often originate from casinos. The Tribe’s analysis showed casinos are not the most often cited place where DUI offenders had been drinking prior to arrest, and showed that of those arrested for DUI who provided the name of the establishment where they last drank, only four identified the Nooksack’s other casino facility. The Tribe believes these statistics show the Tribe is vigilant in its approach to over-service issues.

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- Mitigation with contribution of casino revenues to County. The Tribe asserted it has complied with its agreement to pay 2% of its net win from its existing Nooksack River Casino facility to Whatcom County, for the County to distribute as it prefers. The Tribe further stated it had offered to discuss additional mitigation measures with the County but that the County rejected the offers of discussion.
- Additional offers of mitigation. The Tribe stated its willingness to meet with the County to discuss improvements to the existing road system, increased lighting, the addition of traffic signals and other mitigation in the form of assistance to the Sheriff's Office.

8. That the Whatcom County Sheriff's Office responded to the Tribe's attempts to address the concerns raised by the Sheriff's Office, but did not believe any of the concerns to be resolved and did not appear to accept the Tribe's offer for continuing discussions of offers of mitigation.

9. That the Liquor Control Board's Licensing Staff recommends to the Board that the liquor license application be granted, subject to the Tribe providing a loan/account number on the loan documents from ██████ Bank ██████ and subject to a final inspection of the premises by a Liquor Enforcement Officer.

Reconsideration of Finding of Fact No. 10:

Finding of Fact No. 10 is deleted on reconsideration.

Renumbering on Reconsideration of Findings of Fact Nos. 11-12:

Findings of Fact Nos. 11-12 are unchanged from the May 4, 2007 order, but are renumbered as Findings of Fact Nos. 10 and 11 in light of the Order on Reconsideration deleting Finding of Fact No. 10.

The renumbered Findings of Fact on Reconsideration Nos. 10 and 11 are as follows:

10. That the Tribe has offered, and continues to offer, to work with Whatcom County and other surrounding local government subdivisions to mitigate any traffic or public safety impacts the casino might have on the surrounding lands located in non-tribal jurisdictions.

11. That the Board has given due consideration to the written submissions of Whatcom County officials, residents, churches and schools and the other persons or groups submitting objections, and the Board does not find that those submissions, when considered in conjunction with the materials submitted by the Tribe, establish that issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health or welfare of the community surrounding the trust land upon which the premises will be located. *See* WAC 314-07-065 (7).

IV. CONCLUSIONS OF LAW ON RECONSIDERATION

Conclusions of Law Nos.1 and 2:

Conclusions of Law Nos. 1 and 2 are unchanged on reconsideration and are as follows:

1. The objections and other materials filed with the Board do not establish sufficient reason for the Board to deny the license.

2. It is an appropriate exercise of the Board's discretion to grant the license applied for.

See RCW 66.24.010 (2).

Conclusion of Law No. 3 Entered on Reconsideration:

The Board enters the following Conclusion of Law No. 3 on Reconsideration:

3. Pursuant to RCW 66.24.010 (8) (d) Whatcom County's request for a hearing is granted on the issue of the Board's determination to grant the Nooksack Tribe's application for a liquor license at the Nooksack's Northwood Crossing Casino (License No. 400779) over the stated objections of Whatcom County. As directed by RCW 66. 24.010 (8) (d) and WAC 314-09-010 (2) (a) such hearing will be an adjudicative proceeding subject to the applicable provisions of the Administrative Procedure Act (Chapter 34.05 RCW) in which the County, the Board and the licensee (the Tribe) will be given the opportunity to present evidence at the hearing.

V. ORDER ON RECONSIDERATION

To the extent set out above, the Board's May 4, 2007 Order is RECONSIDERED and pursuant to RCW 66.24.010 (8)(d) and WAC 314-09-010 (2) (b) it is ORDERED that an adjudicative hearing shall be held on the issue of whether the license application should be granted over Whatcom County's stated objections. Such hearing will be governed by the applicable provisions of the Administrative Procedure Act (Chapter 34.05 RCW) and will be scheduled by the Office of Administrative Hearings on an expedited basis; specifically, it is ordered that within 30 days of issuance of this order an Administrative Law Judge will be assigned to this matter and a pre-hearing conference will be convened at which time a hearing date or dates will be set.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. Any petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail.

RCW 34.05.010(19).

DATED at Olympia, Washington this 19th day of July, 2007.

WASHINGTON STATE LIQUOR CONTROL BOARD

Amaree Lee

Putnam Kuyper

Debra Hoar