Subject:	Fw:
From:	ARLINDA LOCKLEAR (alocklearesq@verizon.net)
To:	JBITTORF@oneidanation.org; BWEBSTER@oneidanation.org; RORCUTT@oneidanation.org;
Date:	Wednesday, October 5, 2011 1:04 PM

----- Forwarded Message -----
From: "Kowalkowski, Frank W." <FKowalkowski@dkattorneys.com>
To: ARLINDA LOCKLEAR <alocklearesq@verizon.net>
Cc: "Marquardt, Kay A." <KMarquardt@dkattorneys.com>
Sent: Wednesday, October 5, 2011 8:49 AM
Subject:

Arlinda:

I hope you had a good trip to Arizona. Attached you will find your proposed stipulated facts with my suggested modifications. We also discussed adding language that indicates the relevancy of these facts may still be disputed.

During our recent telephone call, I indicated some of the items I thought should be added include the fact the stormwater funds are segregated, have not been spent on things unrelated to stormwater management, etc. You indicated you did not believe you could stipulate to these facts at this time. Given the Village will not be moving for summary judgment at this time, as we also discussed, I have not added them to the stipulation. If it turns out they are relevant to the opposition of the Tribe's motion I will make them, and other facts, part of the record via affidavit.

Frank

Exhibit 3

Draft #1, 9/14/11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ONEIDA TRIBE OF INDIANS OF WISCONSIN,

Plaintiff,

v. Case File No. 10-CV-00137

VILLAGE OF HOBART, WISCONSIN,

Defendant.

STIPULATION OF FACTS
IN ACCORDANCE WITH LOCAL RULE 56(b),
UNITED STATES COURT FOR THE EASTERN DISTRICT OF WISCONSIN

1. The Oneida Tribe of Indians of Wisconsin ["Tribe"] appears on the list of Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs. [75 Fed. Reg. No. 190, at 60812, Oct. 1, 2010]

2. The Bureau of Indian Affairs has published a list of recognized Indian entities since 1994 in accordance with an amendment that year to the Indian Reorganization Act [IRA], 25 U.S.C. §479a-1, Act of Nov. 2, 1994, and the Tribe has appeared on every such list. [74 Fed. Reg. No. 153, Aug. 11, 2009; 73 Fed. Reg. No. 66, April 4, 2008; 72 Fed. Reg. No. 55, Mar. 22, 2007; 70 Fed. Reg. No. 226, Nov. 25, 2005; 68 Fed. Reg. No. 234, Dec. 5, 2003; 67 Fed. Reg. No. 134, July 12, 2002; 65 Fed. Reg. No. 49, Mar. 13, 2000; 63 Fed. Reg. No. 2ll, Dec. 30, 1998; 62 Fed. Reg. No. 205, Oct. 23, 1997; 61 Fed. Reg. No. 220, Nov. 13, 1996; 60 Fed. Reg. No. 32, Feb. 16, 1995]

3. The Tribe is organized under a Constitution adopted pursuant to the IRA, 25 U.S.C. §476, and approved by the Secretary of the Interior on December 21, 1936. ~~[Haas, *Ten Years of Tribal Government under the I.R.A.*, U.S. Indian Service (1947)]~~

4. In 1838, the United States treated with the First Christian and Orchard Parties of the Oneidas

of New York, who were moving to Wisconsin, to set aside "a tract of land containing one hundred (100) acres, for each individual," ~~for the Oneidas~~ "to be held as other Indian lands are held..." and containing approximately 65,400 acres ["Oneida Reservation"]. [Treaty of February 3, 1838, Art. 2, 7 Stat. 566]

5. The Village of Hobart ["Hobart"] was~~is an~~ incorporated into a Town, effective March 17, 1908 and as a Village, effective May 13, 2002, ~~municipality~~ in Brown County, Wisconsin, and is located within the exterior borders of the Oneida Reservation as set aside in 1838. [Complaint, ¶5; Answer, ¶5]

6. The United States holds 148 parcels of land in trust for the Tribe located within the boundaries of Hobart and the original Oneida Reservation; these parcels are referred to collectively herein as the subject trust lands. [May 18, 2011, Hobart demand for payment showing tribal trust lands, revised to omit individual trust lands, to add 1 tribal trust parcel recently partitioned but not recorded in county records as tribal trust, and to add 4 tribal trust parcels for which there are no delinquent charges for various reasons. See attached spreadsheet.]

7. The subject trust lands total approximately 1400 acres, all of which parcels were either already held or placed into trust between 1937 and 2007.

8. Since July 2007, Hobart has ~~purported to~~ imposed a "charge" upon all the subject trust lands in accordance with its Stormwater Management Ordinance. The "charge" consists of two parts: first, a base charge that is imposed on each and every lot or parcel within Hobart; and second, an equivalent runoff unit charge based upon the amount of impervious area located on the lot or parcel. [*Village of Hobart Code of Ordinances,* §§4.501; 4.505(1) & (4); 4.508(3)]

9. Hobart's stormwater "charges" are incorporated into property bills issued by Brown County. ~~and arrearages are collected through foreclosure proceedings in the same manner as delinquent property taxes. [Wis. Stat. §§66.0809(3), 74.07, 74.43, 74.45]~~

10. Hobart's stormwater management program consists, among other things ~~of~~, of a system of ditches, culverts, retention/detention ponds and curb and gutter systems. The ditches and ponds act as filtering agents. The curb and gutter systems are ~~is~~ currently ~~only~~ located in *Centennial Centre at Hobart,* the Thornberry Creek subdivision, the, ~~and~~ Polo Point subdivision and in portions of the Indian trails - subdivision~~s~~. Some of ~~T~~these developments also have retention ponds. Currently, t~~T~~he majority of Hobart's stormwater is managed by a ditch and culvert system and two large detention ponds located in the Southeast Industrial Park. [www.hobart-wi.org/vertical/Sites/%7B354A483F-042E-45E-A570-720BFEDE46D9%7D/uploads/%7BEC058A52-2487-4D1E-8C38-F9C5A1C07FD1%, accessed August 26, 2011, Village of Hobart, WI, 2011 Operating Budget, p. 94] The new Tailwind Subdivision calls for curb and cutter, underground water piping and detention ponds. Hobart has solicited bids from an engineering firm to review the Village's entire stormwater system and make recommendations for changes and improvements thereto.

11. Hobart has constructed no stormwater management structures or projects on ~~or relating to~~

the subject trust lands since adoption of its Stormwater Management Utility Ordinance and the attempted imposition of the "charges" ~~thereunder~~there under on the subject trust lands but has maintained ditches and performed other work on roadways and right of ways adjacent to and benefiting the subject trust land.~~.~~

~~12. In every year since the ordinance was adopted, Hobart has collected more stormwater management "charges" than it has expended on stormwater management projects. The total difference between "charges" collected and expenditures for stormwater management since 2007 is more than 3/4 of a million dollars, including projected revenues and expenditures for 2011. [Id., p. 95]~~

13. By letter dated January 31, 2008, the Tribe advised Hobart that it had received a tax bill that included an assessment in the amount of $70,462.80, representing "charges" ~~purportedly~~ imposed under the Stormwater Management Ordinance for the Tribe's fee land and subject trust lands located in Hobart. The Tribe further advised that it would not pay the "charges" as to either the fee land or the subject trust lands since the Tribe believed the "charges" to be invalid under federal law. [Complaint, ¶12 & Exh. A; Answer, ¶12]

14. In December 2008, Hobart again sought to impose "charges" under its Stormwater Management Ordinance on the Tribe's fee and subject trust lands. By letter dated January 14, 2009, the Tribe advised that it paid the "charges" for its fee lands in the amount of $34,427.07 under protest, representing the total amount billed by Hobart for the previous year and for 2008. The Tribe further advised that it would not pay the "charges" imposed on the subject trust lands since the Tribe believed the "charges" to be invalid under federal law. [Complaint, ¶13 & Exh. B; Answer, ¶13]

15. In December 2009, Hobart again sought to impose "charges" under its Stormwater Management Ordinance on the subject trust lands in the amount of $42,156.00. [Complaint, ¶18; Answer ¶18]

16. On or about March 27, 2009, the Tribe and Hobart received a letter from the Midwest Regional Office of the Bureau of Indian Affairs dated March 24, 2009, advising that per his opinion the "charges" under Hobart's Stormwater Management Ordinance constituted an impermissible tax on the subject trust lands. [Complaint, ¶17; Answer, ¶17]

17. On April 14, 2009, Hobart wrote the Midwest Regional Office of the Bureau of Indian Affairs disputing the March 24 letter's opinion~~determination~~ that the "charges" ~~purportedly~~ imposed on the subject trust lands constituted an impermissible tax. [Answer, ¶17 & Exh. A]

18. In December 2010, Hobart again sought to impose "charges" under its Stormwater Management Ordinance on the subject trust lands in the amount of $41,868.00.

~~19. The Tribe has received tax foreclosure notices from Brown County as to the majority of the subject trust lands that the stormwater management "charges" in the stated amounts are~~

~~outstanding and must be paid in order to avoid "foreclosure costs and the publication of delinquent taxes in the newspaper..." [see attached notices]~~

20. On May 18, 2011, Hobart made a demand for payment to the Great Lakes Agency, Bureau of Indian Affairs, in the amount of $237,682.06, representing "charges," interest, and penalties unpaid by the Tribe as to the subject trust lands, among other lands, under its Stormwater Utility Management Ordinance.

~~21. In 1981, the Tribe duly adopted its Zoning and Shoreland Protection Law. [Chap. 69, Oneida Code of Laws; Complaint, ¶19]~~

~~22. In 1988, the Tribe duly adopted its On-Site Disposal Ordinance. [Chap. 46, Oneida Code of Laws; Complaint, ¶19]~~

~~23, In 1990, the Tribe duly adopted its Sanitation Ordinance. [Chap. 47, Oneida Code of Laws; Complaint, ¶19]~~

~~24. In 1994, the Tribe duly adopted its Well Abandonment Law. [Chap. 43, Oneida Code of Laws; Complaint, ¶19]~~

~~25. In 1996, the Tribe duly adopted its Water Resources Ordinance. [Chap. 48, Oneida Code of Laws; Complaint, ¶19]~~

~~26. In 2007, the Tribe duly adopted its Non-Metallic Mining Ordinance. [Chap. 41, Oneida Code of Laws; Complaint, ¶19]~~

Frank W. Kowalkowski
Davis & Kuelthau
318 South Washington Street
Suite 300
Green Bay, Wisconsin 54301
(920) 431-2221
Fkowalkowski@dkattorneys.com

Arlinda F. Locklear
Bar No. 962845
4113 Jenifer Street, NW
Washington, D.C. 20015
(202) 237-0933
Alocklearesq@verizon.net

James R. Bittorf
Deputy Chief Counsel
Bar No. 1011794
Jbittorf@OneidaNation.org

Rebecca M. Webster
Senior Staff Attorney
Bar No. 1046199
Bwebster@OneidaNation.org
Robert W. Orcutt
Bar No. 1043266
Rorcutt@OneidaNation.org
N7210 Seminary Road
Post Office Box 109
Oneida, Wisconsin 54155
(920) 869-4327

Dated: _____