
Subject: proposed stipulation of facts - stormwater suit

From: ARLINDA LOCKLEAR (alocklearesq@verizon.net)

To: FKowalkowski@dkattorneys.com;

Cc: JBITTORF@oneidanation.org; Amy.tryon@usdoj.gov;

Date: Tuesday, January 3, 2012 10:10 AM

Good morning, Frank:

Attached is the proposed stipulation of facts in support of the Tribe's motion for summary judgment, due January 23. I think it pretty well tracks our discussions on this last fall, with the following changes:

1. I added introductory language (which we had discussed but I forgotten to include in the last draft) stating that the stipulation goes to facts only, not legal implications or consequences.
2. I added a final stipulation on the US response to your demand letter for payment.

As far as our notes indicate, this draft addresses all your last concerns.

We'd appreciate your review/response at your earliest convenience.

Arlinda.

Exhibit 6

Draft #32, 120/2742/11

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**

By their signature below, the parties stipulate to the following factual matters as stated. By doing so, the parties make no stipulation, admission, or concession regarding legal implications or alleged consequences of the stated factual matters.

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.

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.

~~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.~~

~~34. The Village of Hobart ["Hobart"] is an incorporated municipality in Brown County, Wisconsin, first organized as the Town of Hobart on March 4, 1908 and is located within the ginal exterior borders of the Oneida Reservation as set aside in 1838.~~

~~45. The United States holds 148 parcels of land in trust for the Tribe located within the~~

boundaries of Hobart; these parcels are referred to collectively herein as the subject trust lands.

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

67. Since July 2007, Hobart has ~~sought to 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.

78. 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.~~

89. 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” ~~Hobart sought to 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.

940. 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.

104. 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.

112. 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.

123. 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.

13. On October 20, 2011, by letter signed by the Assistant Secretary – Indian Affairs, Department of the Interior, the United States declined to pay the “charges” claimed by Hobart as to the subject lands, among others, under Hobart’s Stormwater Utility Management Ordinance.

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Dated: _____