

**Oneida Nation
Legislative Reference Office**

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Memorandum

TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: June 15, 2016
RE: Leasing Law: Public Meeting Comment Review

On May 19, 2016, a public meeting was held regarding amendments to the Leasing (Law). These are amendments which would:

- Delegate rulemaking authority jointly to the Oneida Land Commission and the Division of Land Management based on the Administrative Rulemaking law [see 65.5-1 and 65.10-5];
- Specify that this law does not apply to leases included in the Nation's home ownership programs administered using federal funding or leases lasting one (1) year or less [see 65.4-2(b)];
- Include valuation provisions for residential and agricultural leases [see 65.6-4, 65.6-5, and 65.7-5];
- Include a provision allowing a residential lease be entered into by a parent or legal guardian on behalf of their child or ward [see 65.6-6]; and
- Add additional information regarding the process required under the National Environmental Policy Act [see 65.9-2(a)-(d)].

This memorandum is submitted as a review of the oral comments received during the public meeting process; there were not any written comments received within the public comment period. The public meeting draft with comments is attached for your review.

Comment 1 – Division of Land Management Access to Leased Premises

65.5-2(j) Land Management shall ensure leases are in writing and contain, at a minimum, the following: Land Management has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with this law and any other applicable laws, policies and rules of the Nation, to enter the leased premises for inspection and to ensure compliance with the lease;

Diane Wilson: I just have a couple comments. On page 64-2, at line 31, it talks about only DOLM may enter lease premises for inspection and to ensure compliance with leases. Currently, zoning staff will come onto the property to ensure that the requirements of the zoning ordinance are being complied with and they will initiate compliance measures, they will inform us if there

is an issue with them not complying and then we will go forward with lease compliance. I think it should say only Oneida Nation representatives may enter lease premises.

Response

The commenter is correct that currently the zoning staff enter leased premises to enforce compliance with the Zoning and Shoreland Protection Ordinance. The access is granted to those zoning staff pursuant to that law and, therefore, is not required to be captured in this law. The only persons granted access to the lease premises based on the terms of the lease, is the Division of Land Management. Accordingly, I do not recommend any revisions.

Comment 2 – Division of Land Management Approval of Improvements to Premises

65.5-3(d) Land Management shall ensure lease documents set out requirements related to improvements, including: whether the lessee shall submit development plans and/or construction management schedules to Land Management for approval prior to beginning construction of any improvements;

Diane Wilson: And also at line 46, in regards to the improvements, currently, there is not requirement in the lease that states that we would be reviewing development plans and or construction management schedules, that too is administered through zoning. So we would expect that zoning would be the one that would be approving any kind of improvements and that it is in compliance with the Zoning Ordinance.

Response

Similar to comment 1, the zoning staff will retain control over the approval process of the project pursuant to the Zoning and Shoreland Protection Ordinance. This requirement is to require that the Division of Land Management approve that improvements as described in the plans may be made to lease premises. Accordingly, I do not recommend a revision based on this comment.

Comment 3 – Exception for Rents Charged for Business Owned by the Nation

65.7-5. *Lease Valuation.* Agricultural leases are valued based on the bidding process required as part of the lease award process included in the rules, which Land Management and the Oneida Land Commission shall jointly develop.

65.8-6. *Fair Annual Lease Value.*

- (a) No lease may be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:
 - (1) The lessee is in the development period;
 - (2) Land Management is providing an incentive for businesses to locate on tribal land, and is providing lease concessions, lease improvement credits, and lease abatements to attract such business; or
 - (3) Land Management determines such action is in the best interest of the Nation.

Brian Doxtator: Shekoli, 1560, the only comment is in reviewing the law, I did not see any exclusion of government, our own leases, for agriculture or business for government purposes.

In my opinion, as an enrolled citizen, we should not be charging the Nation lease money to go back to the Nation. It just doesn't make any sense and it's not excluded in this law. So most governments don't do that to themselves and we do that to ourselves constantly. For example, Hobart wanted to put sanction in leases on the police department land, taxes, and no government taxes firefighting, police functions, government responsibilities and we fought that with that argument and yet we do it to ourselves. We do have buildings that pay lease monies because we believe it's the appropriate cost of doing business, I disagree with that, and we do have the farms and other areas that are tribally funded and pay lease monies to land management, and I disagree with that, but this law doesn't allow for the government to exclude, when it's a government function, from leases.

Response

The law, as written, would already allow the Nation to make the exception that the commenter is requesting in regards to agricultural and business leases for businesses owned by the Nation.

In regards to agricultural leases, section 65.7-5 allows Land Management to create rules which determine the lease valuation process for agricultural leases, an exception could be included into those rules if the Division of Land Management so desired or if the Oneida Business Committee so directed through the Administrative Rulemaking process.

In regards to business leases, section 65.8-6 provides that a business lease may be approved for less than the present fair annual lease value as set forth in the appraisal if Land Management determines that it is in the best interest of the Nation.

Because the exception requested by the commenter may be implemented without revisions to this law, I do not recommend any revisions at this time.