



MEMORANDUM


TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: February 3, 2020

SUBJECT: Petition – Nancy Dallas – Funeral Home – Two Petitions

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Jo Anne House
Date: 2020.02.03
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You have requested a legal review regarding two petitions submitted by Nancy Dallas. The Enrollment Department has verified enough signatures on both petitions. The petition contains the following request.

“To put a hold on the building which is the Woodland Worship Center, located at 760 Airport Drive, Oneida Wis. and to make this a funeral home.”

“To make a Funeral Home on the property of the Woodland Worship Center and have the property to be an Enterprise Division for the Oneida Nation”

These petitions have the same result, to make the Woodland Worship Center a funeral home. As a result, a single combined legal opinion is being generated.

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, reviews from Oneida Nation operational areas, and various other resources. This opinion is broken into sections to address the issues raised in the petition – general funeral home industry; costs of operating; simple business plan; and, alternative use of the facility.

Note, a separate legal opinion regarding jurisdiction and application of Wisconsin laws will be submitted.

NOTE ON GENERAL TRIBAL COUNCIL MOTION OF JANUARY 20, 2020

The following motion was adopted by the General Tribal Council on January 20, 2020. The effect of this motion requires that any action, including petitions, which call for “economic development” or “financial strategy” must have a third-party review who will also be present to respond to questions from the General Tribal Council.

“That any economic development or financial strategy be reviewed and vetted by an independent 3rd party for appropriate due diligence; That the strategy include any and all pertinent assumptions; That the strategy be presented to GTC for review and approval; and That the independent 3rd party be present at the GTC meeting to answer any questions.”

Prior to this motion, the General Tribal Council approved an amended time frame to bring petitions before the General Tribal Council in resolution # GTC-01-21-19-A, *Amending the 120-Day Petition Timeline Adopted by the General Tribal Council*. The petition was submitted on December 31, 2019 and the meeting must be held on or before June 28, 2020. This generally allows for 60 days to conduct any research and draft informational materials for the General Tribal Council meeting. It is not possible to conduct research regarding the economic activity in the petition, identify a business plan which includes “any and all pertinent assumptions”, and identify a qualified third party to review and be available at a General Tribal Council meeting within that time period.

This legal review does not include development or review of a business plan/economic development. Based on the Ten Day Notice Policy, the General Tribal Council must receive information at least ten days prior to the meeting in order to take action on the proposed petition matter. As a result, this legal review is limited to the general legal and administrative issues surrounding the petition. The General Tribal Council, as a result, is limited to identifying whether the Oneida Business Committee should be directed to investigate the economic development opportunity in accordance with the January 20, 2020 action of the General Tribal Council.

Background

This section will cover the funeral home industry in general terms, including the Federal Trade Commission’s Funeral Rule. There are sections regarding – general industry, employment, burial and cremation, equipment and supplies, FTC Funeral Rule, green funerals, sample business plan, and current alternative considerations for use of facility.

General Funeral Home Industry

There were 416 funeral homes and 147 cemeteries listed in Wisconsin. Eleven funeral homes are within a 25-mile radius of the 54155 ZIP code. *Funeralwise.com*. In 2015, 54% of funerals involved cremation. In Wisconsin, the percent of families choosing cremation in 2010 was 44.9%. *US-Funerals.com*. That percentage climbed to 55.1% in 2015 and is estimated at 74% by 2025. *Kentley Insights*.

Funeral homes are subject to several federal laws regarding air and water emissions, hazardous materials storage and use, and bio- and hazardous waste disposal. Embalming, which is not required to be performed under state law, utilizes several hazardous chemicals. It should be noted that there are alternatives to the use of formaldehyde that are either less or not carcinogenic. Cremation in Wisconsin is performed under high heat processes. This generates approximately the same air pollution levels as a car driving 600 miles.¹ There are ‘green’ cremation solutions, such as alkaline hydrolysis, which is not currently authorized in the State of Wisconsin.

There are two sets of licensing/permits for funeral homes. The funeral director and any apprentice and the premises. *Wis. Stats. 445.045, .095, and .105*. Generally, to become a funeral director you must pass two tests (state and national exams), have taken a 16-hour mortuary

¹ See www.brandongaille.com/37-funeral-industry-statistics-and-trends, citing AARP statistic.

science course, and apprenticeship where you partake in at least 25 of each – embalming, body preparation other than embalming, and funeral services. *See Wis. Stats. 445.095*. Licenses are renewable and ongoing education credits are required to be reported every two years.

Employment

The funeral industry is trending towards fewer employees in operations with 0-99 employees, the largest decrease, -7%, in operations with 0-4 employees. Most of this is the effect of consolidation of the industry. The payroll cost per employee in the funeral home industry is \$34,176, with an average of \$44,7072 for operations of 0-4 employees and \$38,861 for operations with 5-9 employees. Payroll costs make up 39.2% of operating expenses.²

The U.S. Bureau of Labor Statistics identifies the following job descriptions specific to the funeral industry, presented in order of a ‘career ladder’.

- BLS# 11-9061 – Funeral Services Manager
- BLS# 39-4031 – Funeral Director, Mortician, Undertaker
- BLS# 39-4011 – Embalmer*
- BLS# 39-4021 – Funeral Attendant

* This occupation and 39-4031 combined make up the licensed position in Wisconsin.

In addition to the above categories, funeral homes also have additional personnel such as accounting and bookkeeping, drivers, maintenance, receptionist. The following U.S. Bureau of Labor Statistics job codes would be relevant.

- BLS# 13-2011 – Accountant, Auditor
- BLS# 43-3031 – Bookkeeping, Accounting, Auditing Clerk*
- BLS# 11-2021 – Marketing Manager**
- BLS# 13-1161 – Market Research Analyst, Marketing Specialist
- BLS# 49-0000 – Installation, Maintenance, and Repair Occupations***
- BLS# 43-4171 – Receptionist

* The Accountant occupation was presumed as some financial analysis may be involved.

** The Analyst/Specialist occupation was presumed as the Funeral Director was presumed to be the decision maker.

*** A general occupation was used, but specific skills may be needed.

The U.S. Bureau of Labor Statistics conducts market sampling of salary ranges, employment rates, and other employment related subjects. Based on 2018 information, the table below identifies the lowest 10%, median, and highest 90% salaries across the United States. All personnel options identified above are presented, however, those items in bold are proposed equivalents for employees in a funeral home identified in the petition.

² See Kentley Insights, and SEC filings from Carriage Services an, Service Corp. International.

BLS #	BLS Title	Lowest	Median	Highest
11-9061	Funeral Services Manager	\$ 41,410.00	\$ 79,180.00	\$ 151,680.00
39-4031	Funeral Director, Mortician, Undertaker	\$ 29,050.00	\$ 52,650.00	\$ 89,050.00
39-4011	Embalmer	\$ 25,260.00	\$ 44,250.00	\$ 71,920.00
39-4021	Funeral Attendant	\$ 18,900.00	\$ 26,400.00	\$ 40,860.00
43-3031	Bookkeeping, Accounting, Auditing Clerk	\$ 25,260.00	\$ 40,240.00	\$ 61,650.00
13-2011	Accountant, Auditor	\$ 43,650.00	\$ 70,500.00	\$ 122,840.00
11-2021	Marketing Manager	\$ 69,840.00	\$ 134,290.00	\$ 181,780.00
13-1161	Market Research Analyst, Marketing Specialist	\$ 34,310.00	\$ 63,120.00	\$ 121,080.00
43-4171	Receptionist	\$ 20,600.00	\$ 29,140.00	\$ 41,660.00
49-0000	Installation, Maintenance, Repair Occupations	\$ 25,860.00	\$ 45,540.00	\$ 78,140.00

* Note, the salary levels identified in this table are United States general. Salary analysis for Wisconsin and/or the Green Bay area should be researched and is likely to be slightly less than these averages because of the lower cost of living.

The table identifies accounting and maintenance personnel. It should be noted that the petition calls for the funeral home to be an enterprise of the Nation. While these services would generally be part of the overhead of the Nation, the cost of these services should be identified within the operational expenses. Further, there may still be a need to have a specialized accountant within the enterprise to manage billing and purchasing costs.

Note, that personnel fringe costs in a funeral operation identified by Kentley Insights (6.8%) are significantly reduced from the expense charged within the Oneida Nation for fringe benefit costs, and that some personnel may not be needed. An internal enterprise would have fewer personnel but higher employee fringe costs, a stand-alone business would have higher personnel costs and lower employee fringe costs.

Burial and Cremation

Based on industry reports, there is a definite shift toward cremation and a reduction of religious drivers in the funeral services. There are multiple reasons for this shift. The National Funeral Directors Association makes the following observation.

The steady rising popularity of cremation is attributed to a number of factors, including consumer cost considerations, environmental concerns, an increasingly transient population, fewer religious prohibitions of the practice and changing consumer preferences, such as the desire for simpler, less ritualized practices....A surge in the number of Americans that no longer identify with any religion has contributed to the decline of the historically traditional funeral in America and the rise in cremation as the disposition of choice.

In general, a 0.6% growth in the industry is projected over the next five years, and much of that growth is part of the consolidation of funeral homes merging into larger corporations.³ In addition, in comparison with other subsectors, the five-year compound annual growth rate (CAGR), or in this case contraction not growth, is -0.5% and -0.4% for the number of companies and the number of locations.

³ See Kentley Insight (December 2019) *2020 Market Research Report Funeral Homes and Funeral Services*. Report # 812210. Private business analysis report.

Besides the consolidation of funeral home ownership, the costs of cremation average about one-third to one-half of that for a funeral service, while the operating expenses generally remain stable. Funeral service costs are influenced by the economy with families willing to spend more on funeral services when the economy is good. Finally, funeral homes rely on the forward-looking income from established pre-need (pre-paid funeral costs) as stable income generators.⁴

Revenue for funeral homes is derived from six general areas. Funeral planning services, which includes at-need and pre-need planning, generate 30.8% of the revenue. The resale of merchandise, caskets, urns, memorials, generate 29.2% of the revenue. Body preparation and interment constitute 14.4% and 13.7% is generated by pre-need insurance/trusts and customized services. Finally, cremation accounts for 7.2% and transportation accounts for 4.7% of the revenue. *NFDA 2017 Report*.

Kentley Insights, in its 2020 Market Report, identifies the following “breakdown of top product lines”.

45.8%	Pre-burial services for human remains
28.7%	Resale of funeral goods, caskets/urns
10.8%	Packaged funeral services for the preparation and disposition of human remains
5.6%	Cremation services for human remains
3.2%	Interment of human remains
3.0%	All other receipts
1.7%	Graves, plots, and other spaces for human remains
1.1%	Resale of merchandise other than caskets/urns
0.1%	Cemetery maintenance services

Based on this distribution of costs, 47.6% (items in bold) are already provided through the Oneida Nation. As a result, almost half of the potential revenue sources for a funeral home are unavailable. It should be noted that the pre-burial or pre-need services could result in significant use transfer to a proposed funeral home, however it is not be a requirement of the Oneida Life Insurance Plan Plus program or beneficiaries.

A life insurance company operates under state law, and its policies are sold by agents licensed under state law. *Wis. Stat. 445.125*. The current Oneida Life Insurance Plus Policies are already in place and under contract. The program was approved by the General Tribal Council with the current standards in place. It is likely that changing the program rules to affect the ability to use the proceeds of the policy as directed by the member or by the beneficiary would be unconstitutional as a retro-active amendment to a private contract.

It is also unclear how the program rules would be carried out by those members not living on or near the Reservation, not living in Wisconsin or near Wisconsin, or not living within the United States. It may not be lawful to create a program which can provide a life insurance policy that restricts use to some members living within a geographic area and not others. This is the opposite

⁴ See also, National Funeral Directors Association (2017) *The 2017 NFDA Cremation and Burial Report: Research, Statistics and Projections*. Available at NFDA.org.

of restricting access to members living within a service area, it is treating one group – members – differently depending on where they reside.

How Do Individuals Choose a Funeral Home?

Funeral Business Advisor Magazine provides the following analysis (not all categories included).⁵

Reason	Percentage		
	2014	2015	2016
Previous family funeral	50%	48%	49%
Convenience	32%	31%	33%
Pre-arranged	27%	28%	28%
Reputation	27%	25%	26%

Price of the funeral services is stable at 6% of the reasons, and church or organization was stable at 4% of the reasons.

This is important in understanding the potential funerals that would be handled by a new funeral home. A review of the Kaliwhisaks obituaries for 2019 identifies that there were approximately 106 notices posted. Of those notices, 18 did not identify a funeral home and 11 were from out-of-state. Of the remaining 97 obituaries, 59 identified the services were held or assisted by Ryan Funeral Home.

The Trust Enrollment Department has identified that between 2016 to 2019, there have been an average of 147 deaths per year, although there were 151 deaths in both 2018 and 2019. EPIC Life Insurance has statistically modeled a mortality rate that projects an increase in approximately 5 deaths per year.⁶ In 2013, of the 115 funerals, 41 involved cremation and 2 donated their body to science; in 2019, of those 67 members passing who lived in the State of Wisconsin, 36 involved cremation. This is an increase of 18% over a six-year period.

In 2019, there were 76 deaths within the State of Wisconsin. Of the funerals in 2019 within the State of Wisconsin, 60 were conducted by Ryan’s Funeral Home and Crematory, 5 were conducted by Max A. Sass & Sons Funeral Home, 4 each were conducted by Blaney Funeral Home and Newcomer Funeral Home, and 3 were conducted by Muehl Boettcher Funeral Home.

Because of members accustomed to utilization and the frequency of use, Ryan’s Funeral Home and Crematory can arrange for Oneida Nation specific funeral services, many without additional charge or small charge.⁷ Typical funeral home arrangements are pre-pay not invoiced. As identified by Trust Enrollment, much of the acceptance of invoicing or reimbursement of funeral expenses by funeral homes is the result of contacting the funeral directors and managing an

⁵ See www.funeralbusinessadvisor.com/funeral-industry-trends-insights/funeral-business-advisor for complete report.

⁶ EPIC Life Insurance conducts statistical analysis in order to identify the costs of the life insurance product the Nation is purchasing for its members.

⁷ These extra services include pre-payment of many costs accepting reimbursement through the life insurance proceeds; Oneida singers; veteran’s services; multiple wakes and funeral services at homes, the Longhouse, and area churches.

understanding of the Oneida Life Insurance Plan Plus benefit since the inception of the program. Based on the information from the program, average traditional funerals range from \$10,000 to \$12,000 and cremation ranged from \$7000 to \$9000.

Equipment and Supplies

A funeral home and crematorium can expect to have roughly \$400,000 in start-up equipment and supplies. This includes approximately \$50,000 in embalming related equipment including interment; \$90,000 in crematory equipment; \$100,000 in transportation equipment (hearse, carts, lifts); and \$50,000 in display and caskets/urns for sale.⁸ There are also ongoing costs related to licensing, utilities, and disposal items that are monthly or annual expenses.

In addition, the proposed location is set up to be a church with classrooms and office space. Remodeling this facility will require upgrading HVAC, electrical, storage, ventilation, insulation and floors/walls/ceilings for the embalming, refrigeration storage, and cremation equipment and is estimated at \$600,000. The remainder of the facility should be remodeled to set aside viewing, services and memorial services for one or more to be conducted at the same time, space to meet with families to identify funeral arrangements, storage and display of merchandise, and offices for personnel is estimated at \$400,000 to remodel. Finally, although there is currently a parking lot on the facility grounds, it may not be large enough for the purposes of conducting a funeral service or services.

Building

The Woodland Worship Center building is approximately 16,000 square feet. Many funeral homes are remodeled homes or retail business locations generally around 5000 square feet in size. New funeral homes are constructed based on the number of funerals (preparation room space, chapels) and on-site services (such as cremation).

A review of new funeral home construction identifies ranges from 836 square feet to 12,252 square feet.⁹

Sq. Ft.	Name	City, State	Includes
836	Nelson-Doran FH	Brainerd, MN	Chapel, retail, community rooms, offices
7,734	Haudenshield FH & Cremation	Cuba City, WI	150 seat chapel, 70 seat community room, retail, preparation room, 2 offices
9,000	Zarzycki Manor Chapels, LTD	Willow Springs, IL	250 seat chapel, retail, 2 prep stations, flower delivery room
9,640	Dunn Family FH with Crematory	Oswago, IL	200 seat dividable chapel, family lounge, flower delivery room, prep room, crematory
12,252	Maher Funeral FH	Tinley Park, IL	Dividable chapel, 2 family lounges
19,184	Kempf Family FH & Cremation Services	Marshall, MI	

⁸ These estimated prices were identified through internet searches for specific product lines or estimates identified in articles or reports.

⁹ See generally, www.jstarchitects.com; www.keystonedb.com; or www.millerab.com for funeral home building and remodeling projects.

Federal Regulation - FTC Funeral Rule

The U.S. Federal Trade Commission adopted the Funeral Industry Practices regulations, 16 C.F.R Part 453, in 1984. These rules are intended to require certain costs to be specifically identified and made available to individuals planning or pre-planning a funeral service. The Federal Trade Commission makes the following statement regarding the rule.

The Funeral Rule requires you [the funeral director] to give consumers accurate, itemized price information and various other disclosure about funeral goods and services. In addition, the Rule prohibits you from:

- Misrepresenting legal crematory, and cemetery requirements;
- Embalming for a fee without permission;
- Requiring the purchase of a casket for direct cremation;
- Requiring consumers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services; and
- Engaging in other deceptive or unfair practices.

Failure to follow the Funeral Rule requirements could result in penalties up to \$41,484 per violation. The Federal Trade Commission conducts inspections of funeral homes.¹⁰ In 2017, inspections of funeral homes and price list disclosure violations were found in several funeral homes. For example, seven of the 15 funeral homes inspected in Lansing, Michigan failed to comply with the price list disclosure requirement. A total of 29 of the 134 funeral homes inspected failed to disclose required price lists.¹¹

Newcomer Funeral Home Green Bay Chapel publishes their General Price List online at www.newcomergreenbay.com. Some pricing examples include a ‘Simplified Pricing Plan’ for convenience.

Funeral Ceremony. Ceremony at funeral home or other facility with a public viewing the day before. Our charge for this service includes: transfer of remains to funeral home, embalming, dressing, cosmetizing [sic], basic services and overhead of funeral director and staff, use of facilities for viewing and funeral ceremony or supervision of viewing and funeral ceremony at other facility, utility vehicle, hearse to local cemetery, and committal or other disposition service. *This charge does not include casket, outer burial container, any merchandise or cash advance items.* \$2795.

The basic services fee, which is charged with all services provided.

Basic Services and Overhead of Funeral Director and Staff. Our fee for the basic services of funeral director and staff includes, but is not limited to, staff to respond to initial request for service; arrangement conference with family and responsible parties; arrangement of funeral; preparation and filing of necessary authorizations and permits; recording vital statistics; preparation and placement of obituary notice; care of body; and coordination with those providing other portions of the funeral. Also included in this charge are overhead expenses relative to our facilities such as professional licensing, legal and accounting fees, insurance, building and utility expenses, maintenance, taxes, equipment, furnishings, and administrative expenses. \$1,170.

¹⁰ See FTC.gov (2018) *Complying with the Funeral Rule*. available at www.business.ftc.gov.

¹¹ See FTC Press Release (April 18, 2018) *FTC Undercover Inspections of Funeral Homes in 11 States Prompt Compliance with Funeral Rule Disclosure Requirements*. www.ftc.gov/news-events/press-releases.

This fee for our basic **services and overhead** will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

Green Funerals

In addition to traditional burial and cremation, green funerals are also rising in use throughout the United States. Green funerals are services that use natural goods and resources that leave the smallest possible environmental impact. This includes the use of shrouds, wicker/bamboo caskets, and alkaline hydrolysis cremation processes.

In general, there are no state requirements regarding the use of traditional caskets, burial vaults, embalming, or cemeteries.¹² With some limitations, a body may be buried or cremated remains disburged on private property or released in the water. Note, that public lands and navigable waters do have state and/or federal requirements and there may be state or local laws regarding burials or disbursement of cremated remains on private property. The Oneida Nation regulates activities on tribal land through the Public Use of Tribal Land law, Chapter 609.

Although alkaline hydrolysis is not a new cremation technique, its recent incorporation as a funeral alternative has resulted in legislative action that either prohibits directly or indirectly its use. The State of Wisconsin has considered legislation authorizing alkaline hydrolysis cremation, it has not yet been adopted or signed into law.

This cremation process reduces air emissions created by heat cremation processes, reduces chemical introduction into the land or water through embalming processes, and results in clean sterile remains. The equipment for this type of process exceeds the cost of heat cremation equipment, around \$150,000, and uses approximately 300 gallons of water per treatment.¹³ However, the high pH content of the water at the conclusion of the treatment requires notifying waste water facilities to allow the pH balance in the facilities to be adjusted, or treating the water to lower the pH balance.¹⁴

Shrouds and natural materials caskets are significantly less expenses than traditional caskets, beginning around \$100 to \$300. A simple traditional casket purchased on-line can begin around \$700 plus shipping costs.¹⁵

Sample Business Plan

A sample business plan is attached to this legal opinion. The information in this plan is very general and may exclude some critical information. Given the time allotted, it was not possible to

¹² It should be noted, like the Oneida Nation, cemetery owners/operators may impose requirements such as vaults to reduce the ground from caving in, ground level headstones to improve grass maintenance, etc.

¹³ See www.everplans.com and www.nfda.org for further information.

¹⁴ However, some treatment facilities utilize the high pH values in their treatment processes lowering overall costs of operation of the facility. See <https://www.oneworldmemorials.com/pages/hydro-cremation-vs-traditional-cremation> or <https://newrepublic.com/article/148997/fight-right-cremated-water-rise-alkaline-hydrolysis-america> for an explanation of the process and environmental concerns.

¹⁵ See www.casketsite.com, www.allthingsfuneral.com, or www.bestpricecaskets.com for examples of prices.

verify the information or conduct a more in-depth review.¹⁶ Depending on where costs are allocated and recovered, as well as how many services are conducted, it is potentially possible for a funeral home and crematory to make a profit.

Further, some costs are affected as a result of jurisdiction and legislation. Members should review the separate legal opinion regarding regulation of the industry and impact of laws. The business plan, based on the separate legal opinion, presumes that the Oneida Nation will not have time to implement laws regarding funeral services and state law will apply. Members are encouraged to visit the National Funeral Directors Association website, the Cremation Association of North America, and the Green Burial Council websites for general policy, ethics, and business guidelines that might be used in the development of legislation by the Oneida Nation.¹⁷

The attached business plan uses presumptions in assigning costs. First, efforts to identify equipment and supply costs were researched to find actual catalogues. If such efforts were not successful, anecdotal evidence from industry reports, industry articles, or newspaper articles were used. The determination of what price to use generally reverted to the average median cost found. Except, crematoriums, where on-line resources identifying costs were generally from outside the United States where the quality could not be confirmed, and the shipping costs would have been considerable.

There are some limitations regarding starting a funeral home. State law prohibits owning a funeral home and a cemetery, or any financial interest therein. This is to avoid self-interested recommendations regarding either business. Further, the regulations regarding the insurance and financial trust industry regarding the Oneida Life Insurance Plan Plus are likely to prohibit mandating use of the funds within a funeral home operated by the Nation. There is insufficient time to verify whether this might be an allowed action. Currently, the Oneida Life Insurance Plan Plus program, although developed as a long-term substitute for a burial fund program, requires only that a beneficiary be identified. How the funds are used upon distribution can be set forth with the policy, but that decision is subject to the wish of the member filing the beneficiary form.

¹⁶ The sample business plan was reviewed for general accuracy by Troy Parr, Community and Economic Development Division Director and Eric McLester, Business Compliance Analyst. As identified in this opinion, development of a formal business plan and obtaining a third-party review in accordance with the January 2020 General Tribal Council motion is not possible within the 180-day time frame regarding petitions.

¹⁷ See International Conference of Funeral Service Examining Boards (June 2017) *Regulations in Funeral Service Licensing, Continuing Education and Pre-Need*. Located at www.theconferenceonline.org. In general, the following standards were identified.

1. Every jurisdiction requires licensing of funeral directors, embalmers, or funeral director/embalmers.
2. Every jurisdiction requires apprenticeship prior to licensing, most within the state which is issuing the license.
3. Most require the National Board Exam from The Conference.
4. Most require a background check.

These standards have been consistent since at least 1957. See Planning Advisory Service, American Society of Planning Officials (April 1957) *Funeral Homes, Information Report # 97*.

Options to Reduce Expenses in Business Plan

There are areas within the business plan where expenses could be reduced. The following paragraphs identify these areas.

The employment based is recommended based on holding at least two services at one time, preparation of at least one deceased, and ongoing funeral arrangement conferences.¹⁸ This presumes the funeral director and at least one apprentice/funeral assistant are available at any given time depending on the activities scheduled. It is possible to reduce the number of apprentices from two to one, which would reduce payroll by \$26,400 and fringe by \$1795.20. This may impact the ability to schedule multiple services, schedule pick-up of deceased, and other services. *Potential Cost Savings Employment Base Reduced by \$28,195.*

In addition, it may be possible to outsource all maintenance services for less than the cost of hiring a maintenance employee at \$45,540. The per hour cost of this type of service is unknown. Presuming that warranties and maintenance plans are purchased on all equipment, it is possible to save \$10,000 on the salary costs, which would equal about \$3,097 in fringe. *Potential Cost Savings Employment Base Reduced by \$48,637; Increase Contract Cost by \$35,540; Savings \$13,097.*

It is possible to reduce both hard costs and operating expenses by delaying implementation or not implementing cremation services. However, given the trends regarding cremation within the Oneida Nation (36 of 67 Oneida member families chose cremation in 2019), this is likely to negatively impact the revenue stream. This reduces estimated annual revenues by almost half and affects a small portion of start-up costs and potential equipment loan costs and a very small portion of operating costs.¹⁹ *Crematory Reduced by Remodel \$300,000; Hard Cost \$95,854; Operating Cost \$7,800; Potential Revenue Impact \$100,000.*

It is also possible to enter a longer-term repayment on the equipment costs. The business plan identifies a 5-year repayment period. This is based on prior discussions at General Tribal Council meetings. However, a 10-year repayment period would lower the loan payment for hard costs, excluding remodeling from \$78,359 to \$44,998. This does include the \$95,000 for cremation equipment. *Lengthen Loan Period From 5 to 10 Years Savings \$33,361.*

Based on the above estimates regarding employee costs and lengthening the repayment period on the equipment loan, a total savings of \$74,85, it is possible that a funeral home operating for five or more years (having made it through the start-up costs and initial operating years) could break even, excluding the leasing cost. However, much of this depends on the transfer of member funerals to the new business and development of other business opportunities. Further, it is likely that the estimated revenue per service of \$5000 would become exceedingly high based on the transition to cremations which generally cost \$2500 for the complete service. This would require

¹⁸ Cremation, including placement of ashes in the urn or embalming (if requested) and body preparation are estimated to each take at least four hours.

¹⁹ It is possible that the cremation process may be contracted by the proposed funeral home. This would remove costs associated with equipment and maintenance but would likely be substituted by the costs of outsourcing cremation to a third-party.

the funeral home to double the number of services provided to continue to break even. New business development would be necessary since the mortality rate within the Oneida Nation has remained somewhat stable.²⁰

Unfortunately, the commercial lease costs on the building results in an operating deficit of \$182,892 that is difficult to overcome. Typical square foot costs for buildings of this type are around \$1.72 per square foot with a monthly lease of \$9300.²¹ Although the monthly lease would be less for an internal enterprise, the typical enterprise lease is based on repayment of the purchase price over a short period of time, five to ten years²². This amount does not include maintenance costs.

Finally, it is difficult to identify cost-cutting scenarios which would address the start-up losses projected in the initial five years, even if projections for annual operational costs were reduced to reflect start-up considerations. Based on these reductions, the losses over the initial five-year period are projected at \$675,458, or \$1.2 million with lease costs included. It is possible the transition of members to utilizing of the proposed funeral home will be quicker than projected, but there is no research identified that this would occur.

Consideration of Alternative Use of Facility

When the property was considered for purchase, the Land Commission requested potential uses of the facility by the Oneida Nation. This was to avoid the building sitting empty which decreases the lifespan of the building.²³ At that time of purchase, all parties understood that the current occupant would be leasing the building for at least a year, with the possibility of extending the lease annually. The Woodland Worship Center concluded their lease at the end of 2019.

The initial thought was utilizing the Airport Road facility for the Oneida Nation Museum.²⁴ The current museum facility pre-existed the health center building located in the same area and was built in early 1970. Its viable building use lifespan has been greatly exceeded and comprehensive

²⁰ Note, this does not address the long-term financial outlook change when the baby boomer generation has passed (date of birth 1960 and older), and the mortality rate drops. Oneida Members born in or before 1964 make up 23% of the current enrollment, or 4,879 members. Of those members, 2,190 of those born on or before 1964 live within Brown and Outagamie Counties and on the Reservation.

²¹ See generally, www.loopnet.com for commercial leasing prices. This is based on a 'triple-net lease' which is a monthly lease fee and the tenant pays taxes, utilities and maintenance costs.

²² The purchase price for the property (11 acres, 16,000 square foot facility and two garages) was \$1.95 million. Monthly lease payments based on 0% interest rate, and a ten-year payoff would be \$16,250; or a 15-year payoff would be \$10,833; or, a 20-year payoff would be \$8,125. None of this addresses the estimated \$30,000 annual property tax until the land is placed into trust.

²³ See for example, HUD Office of Policy Development and Research (Winter 2014) *Vacant and Abandoned Properties: Turning Liabilities into Assets*. www.huduser.gov/portal/periodicals/em/winter14/highlight1.html

²⁴ See Land Commission minutes of April 17, 2017, regarding consideration of purchase of property; and, minutes of September 9, 2019 approving the LUTU I and LUTU II reports authorizing use of property to "use this property for Government uses which include a museum[.]"

repairs will be necessary to continue using the building. A list of repairs to the current museum facility identifies the following.²⁵

1. Electrical Service – needs to be upgraded to meet code, expanded to meet current use patterns, and expanded to accommodate fire alarm and security system to properly protect assets.
2. Windows, doors and flooring have outlived useful life.
3. Site drainage has changed over the years and a complete site evaluation is required to stop leaking and flooding.
4. Americans with Disabilities Act Compliance – which prohibits access to the museum and classroom facilities and restroom facilities.
5. HVAC, Humidity Control, Boilers – all beyond useful life and replacement is restricted given current structure and available space.
6. Classroom Facility – trailer used for this purpose is also meeting the end of its useful life and reasonable ability to repair.

In addition to the above, the museum facility is in an out-of-the-way area and does not contain enough space for museum artifact storage in a climate-controlled area. Although there is a long advertising history based on the location of the museum (“I Found the Oneida Museum” bumper stickers), moving the museum to a more prominent and accessible location can result in greater awareness of the Oneida Nation and its history. This site makes the museum more accessible, it also provides a larger area for outdoor presentations, such as the longhouse; and, culturally significant vegetation, such as white corn, bergamot, and the like.

This 11.5-acre parcel has a fee-to-trust application submitted and is currently in the appeal process. The application identified that the purpose of the purchase was “to expand the Oneida Nation land base and to provide a site for continued commercial use.” Relocating the museum to this site fits within the current use of the facility and does not introduce potential environmental concerns that may be associated with a funeral home and would not result in revising the application and restarting the fee-to-trust process.

Analysis

The petition(s) request the General Tribal Council to consider developing a funeral home at the Woodland Worship Center site. The following list identifies prior directives or delegations by the General Tribal Council or by law which impact this petition.

- The January 20, 2020 action of the General Tribal Council requires business development opportunities to be presented with a third-party review and the reviewer to be present at the meeting.
- Prior action of the General Tribal Council directed, as amended by resolution # GTC-01-21019-A, that petitions be presented within 180-days of receipt by the Tribal Secretary.
- Real Property Law which codifies prior actions of the General Tribal Council and delegates land acquisition and use decisions to the Land Commission.
- Fee-to-trust application currently in the appeals process designated use of the land.

²⁵ Summary of Department of Public Works building analysis dated January 28, 2019 and supported by prior CIP and facilities management team requests.

- Adoption of the budget and Capital Improvement Projects which does not identify available funding.
- Oneida Life Insurance Plan Plus program adopted by the General Tribal Council.

In the limited time available, research identified general business operation cost and revenues. Much of this information should be further researched to identify local costs. The funeral home industry remains a reputation-based industry that is highly impacted by tradition and family relations. As a result, it may be difficult to change that reputation/family relationship within the five-year time frame allocated in the proposed business operations. Further, additional research is needed to identify a business plan that reflects the changing industry from traditional burials to cremation. Without taking this into consideration, the business is not likely to succeed and will result in requiring substantial tribal contribution. It may be that additional research and planning will more clearly identified the associated expenses and revenues that result in a break-even or positive revenue resource expected of enterprise units. *The January 20, 2020 motion would require a two-thirds vote to overturn if this petition is acted upon.*

The Oneida Nation has zoned the property as commercial property and either a museum or a funeral home will fit within that zoning designation. The property is owned in fee by the Nation, and ongoing conflicts with the Village of Hobart will likely be impacted as the Village zoning does not allow for funeral homes within the permitted uses. Although the Oneida Nation's Applefest litigation with the Village encompasses more legal issues than zoning, it is likely there will be challenges to the use of the facility as a museum, but it will be more likely if the facility is used as an unpermitted funeral home.

The Oneida Life Insurance Plan Plus is a program adopted by the General Tribal Council to replace the prior burial expenses program. Under the current program, the Oneida Nation purchases a \$15,000 life insurance policy, and members are authorized to designate any beneficiary they desire, for any purpose they desire. To change the program would require additional General Tribal Council action. Further, it may not be possible to change the program retro-active to those members who are already participating. Research regarding the cost of terminating the insurance policies and beginning a new program, the constitutionality of modifying the current policies unilaterally, or the cost of operating a program by the Oneida Nation would need to be conducted. *Amending the Oneida Life Insurance Plan Plus program would require a two-thirds vote.*

Conclusion

As a part of this review, there are some actions that could be brought forward regarding the Oneida Nation's Cemetery. There has been change in funeral services from traditional burials to cremation. In addition, green funerals have become more common. It is possible that the Oneida Nation may want to consider creating a memory garden to scatter ashes and a memorial wall to place a small plaque, rather than limit use of headstones and limiting number of uses per burial plot.

Action to approve a funeral home to be developed at the Woodland Worship Center location would require a two-thirds vote as a result of the January 20, 2020 motion requiring third-party

review. It is possible, based on the limited information presented, the General Tribal Council could, by majority vote, direct the Oneida Business Committee to complete development of the business plan and obtain a third-party review. It is not recommended that a time frame be placed on this as there is no way to identify how long it would take to develop the business plan, identify an expert to conduct a review, and to schedule that expert to be present at a General Tribal Council meeting.

Action to amend the Oneida Life Insurance Plus Plan would not be in order. There is insufficient information available to identify costs or constitutionality of making changes to this program. Again, the General Tribal Council could, by majority vote, direct the Oneida Business Committee to research and report back on options available.

Action to move forward with this proposed petition action would also require amendment to the Oneida Nation's budget and Capital Improvement Projects. The proposed enterprise and related costs are not included with the FY2020 budget adopted on September 16, 2019 by the General Tribal Council. This would require a two-thirds vote to amend the budget. Given the amount of projected start-up costs and estimated remodeling required to the facilities, it is likely that budget modification may not be possible.

The General Tribal Council has approved the financial strategy of reducing debt carried by the Nation in order to free-up allocation to interest payments for use in balancing the budget. It is possible that a loan for this enterprise could be obtained, however, this would depend on the viability of the business plan. There is no specific directive regarding loan reduction, approval of a loan would be a simple majority vote.

If you have further questions, please contact me.

Estimates	Annual Operation Costs	Comments - Costs
	Employee and General Business Costs	
\$ 219,890.00	Personnel	Kentley Insights suggests 39.2% of operating expenses
\$ 14,952.52	Personnel Fringe/Taxes = Personnel * 6.8% From Kentley Insights	
\$ 5,000.00	Business marketing is separate	
\$ 7,142.00	Utilities - some estimated more with crematory	Avg 5663 kwh/mth; \$0.1051/kwh; avg \$595/mth
\$ 111,600.00	Rent	Triple net lease
\$ 870.00	Licenses/Permits/Exam	
\$ 13,045.00	Insurance	
	Miscellaneous Service Supplies	
\$ 500.00	Registration/Prayer books	reusable, replace as needed, various religions?
	Memory Cards/bookmarks/etc.	one time use - special order paper printed on site
\$ 500.00	Drapery for Casket/Urns	2 sets, replacements as needed
\$ 15,000.00	Miscellaneous Embalming Supplies	
	Embalming Fluids	\$669 first set of tools * 52 services = \$34,788, choose half to reflect some re-usable and resulting cost savings.
	Needles/Threads/Scissors	
	Gloves/Protective Gear	
	Tubes, hoses, connections	
	Maintenance	
	Warranties	
	Miscellaneous Cremation Supplies	
\$ 2,250.00	Urns	\$80-\$200, options available 10-15
\$ 5,000.00	Boxes - Cardboard and/or Wood	\$100 to \$800, options available 10-15
\$ 250.00	Thermostats	It is not clear if these are one-time use
\$ 300.00	Brushes, shovels, scoops	replace as need - reusable
\$ 2,000.00	Miscellaneous - Body Preparation	
	Cosmetics	There are some multi-use aspects to these pieces of equipment/items.
	Positioning tools - arms, hands, heads, eyes	
	Reconstruction	
	Rental clothing - mens, womens	
	Miscellaneous - Office Software	
\$ 285.00	Tribute Center software - free, per use charge	Develop and print memorial products
	FrontRunner Professional	funeral arrangement; billing; accounting; \$79 per month for basic services
	SRS Procession	
\$ 948.00	Osiris Software	
	MS Office Suite	
\$ 399,532.52 Annual Costs Subtotal		
\$ 78,359.00	Loan Payment for Hard Costs, excluding remodeling	APR 6%; compound monthly; 5 year repayment
\$ 477,891.52 Estimated Annual Costs		
\$ 295,000.00	106 funeral listed in 2019 Kali; Assume half of in state transfer to FH	59 funerals at \$5000 average cost
\$ [182,891.52] Profit/Loss for a going concern, + 5 years out		APR 6%; compounded monthly; 10 year repayment; see GTC comments regarding LPGA loan

As a separate entity, about half if internal enterprise.

Annual	Insurance Breakdown (Italics Optional)	Notes
\$ 720.00	Commercial General Liability	if combined General and Property then Business Owners
\$ 3,600.00	Commercial Property	
	Director & Officers	
\$ 400.00	Professional	Used median - licensed
\$ 2,800.00	Commercial Auto	
\$ 4,525.00	Worker's Compensation	used lowest - few employees
	Commercial Umbrella/Excess	
	Pollution Liability	
\$ 500.00	Employment Practices	
	Money & Securities	pre-need trusts
\$ 500.00	Employee Theft & Crime	
	Property of Deceased	
	Valuable Papers	
	Signs & Glass	
	Floods & Earthquakes	
	Sewer Backup	
\$ 13,045.00	Sub-Total Insurance - known costs	

Annual	Licensing/Exams	Notes
\$570	National Exam - One Time Licensing	Initial licensing
\$75	State Exam - One Time Licensing	Initial licensing
\$75	Funeral Director License	annual
\$75	Funeral Home Permit	annual
\$75	Funeral Director Apprentice	annual
\$870	Sub-Total Licensing	

Assumptions

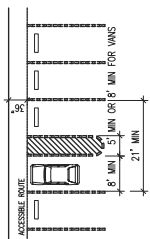
- Rent is market rate
- Items in italics are "guesstimates" based on number of services and available pricing
- Storage space for casket/urns/resale merchandise is on-site
- Option for multiple services at the same time
- No food preparation on-site
- Creation of office spaces is not a significant cost.
- The estimated revenues are based on an established funeral home.
- Initial start-up years may have far fewer funeral services provided.
- No wage changes from year 1 to on-going business operations
- Custodial services are provided by existing personnel.

\$ 316,840.00	Annual payment with remodeling costs
\$ 78,359.00	Annual payment without remodeling costs
	Using - https://www.calculator.net/business-loan-calculator.html

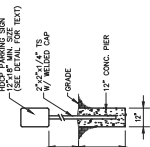
\$ 181,948.00	Annual payment with remodeling costs
\$ 44,998.00	Annual payment without remodeling costs

Cost	Location	Description/Notes
	Inside Chapel	
\$ 4,385.00	Chapel/Devotions	May not be necessary
\$ 1,889.00	Urn Bier	
\$ 1,099.00	Casket Bier	
\$ 1,890.00	Post/Rope	\$189 each, 10 sets
\$ 448.00	Funeral Notice	Wall mount, \$224 each, 2 sets
\$ 2,839.00	Pall Bearer Cart	carriage of casket
\$ 5,000.00	Rental Casket	2 at varying prices
\$ 25,000.00	Caskets	Sale caskets, 5 standard otions at varying prices
\$ 400,000.00	Remodel	viewing rooms, services rooms, storage, offices, public facilities
	At Graveside	
\$ 2,369.00	Mat cover	For client/guests standing and seating
\$ 2,927.96	Lowering Device	
\$ 769.00	Grave/Soil Cover	covers soil mound and opening sides during ceremony
\$ 2,500.00	Tent	Inclement weather
\$ 79,000.00	Hearse	Used, 2018 sample cost
	Back of House - Embalming	
\$ 669.00	Start-up Instrument kit	these are replaceable instruments - initial set
\$ 300,000.00	Remodel	100 square feet per embalming station walls/floors
\$ 3,640.95	Duotronic V	pushes embalming fluid
\$ 16,199.95	Mortech Model 1036-25	ventilated embalming station, includes water, flushing, aspirator
\$ 7,499.95	Mortech Model 600035	ventilated embalming table, connection to station
\$ 20,599.95	Mortech Model 1036-R109	six body refrigerator, individual units, no storage equipment needed
	Back of House - Cremation	
\$ 15,900.00	AC-2 Auto loader	Moves body/casket into crematory
\$ 70,000.00	Crematory	various sizes/pricing; used an average of pricing found, one body
\$ 6,595.00	A-2000s	Ventless processubng station; direct to urn
\$ 3,359.00	Scale	scale with ramp to calculate crematory timing
\$ 300,000.00	Remodel	Insulation, cooling, electrical
	Back of House - General	
\$ 1,000.00	Display/Transport Carts	1 each at \$500
\$ 2,995.00	Mobi Electric Casket & Body Lift	move body to/from embalming, body prep, casket
	Transport	
\$ 50,000.00	First call vehicle	Pick-up body; can use hearse, but separate vehicle keeps mileage down
\$ 1,328,574.76	Estimated Start-up Cost	\$530,000 are remodeling costs
	Assumptions	
\$ 30,000.00	1. Chairs/pews available	
\$ 25,000.00	2. Office equipment is separate	
	3. Software is separate	

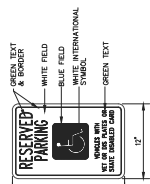
Years in Business	# Funerals	Revenue	Expenses	Profit/Loss	Adjusted Profit/Loss	Notes
Year 1	10	\$ 50,000.00	\$ 477,891.52	\$ (427,891.52)	\$ (307,891.52)	Reducing personnel by half and operational expenses to adjust for entry year -\$105,000/\$15,000
Year 2	20	\$ 100,000.00	\$ 477,891.52	\$ (377,891.52)	\$ (257,891.52)	Reducing personnel by half and operational expenses to adjust for lower # - \$105,000/\$15,000
Year 3	30	\$ 150,000.00	\$ 477,891.52	\$ (327,891.52)	\$ (244,891.52)	Reducing personnel by third and operational expenses to adjust for lower # - \$73,000/\$10,000
Year 4	40	\$ 200,000.00	\$ 477,891.52	\$ (277,891.52)	\$ (194,891.52)	Reducing personnel by third and operational expenses to adjust for lower # - \$73,000/\$10,000
Year 5	50	\$ 250,000.00	\$ 477,891.52	\$ (227,891.52)	\$ (227,891.52)	Full costs
			5-year Total	\$ (1,639,457.60)	\$ (1,233,457.60)	



HANDICAPPED PARKING SPACES



SIGN POST DETAIL
NOT TO SCALE



PARKING SIGN DETAIL
NOT TO SCALE



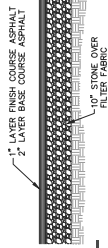
INTERNATIONAL SYMBOL OF ACCESSIBILITY

6.7.11.1 CURBS. ANY CURBS IN CROSSING SHALL BE CONSIDERED A RAMP AND SHALL COMPLY WITH 4.8 RAMP. ANY CURB IN CROSSING SHALL BE CONSIDERED A RAMP AND SHALL COMPLY WITH 4.8 RAMP. ANY CURB IN CROSSING SHALL BE CONSIDERED A RAMP AND SHALL COMPLY WITH 4.8 RAMP.

BUILT-UP CURB RAMP
CONSTRUCTED ON EXISTING SURF OR IN EXISTING BUILDING OF FACILITIES THAT HAVE SURF AND REST AS ALLOWED BY LOCAL ORDINANCES THROUGH THE USE OF 1:12 SLOPE OR LESS.

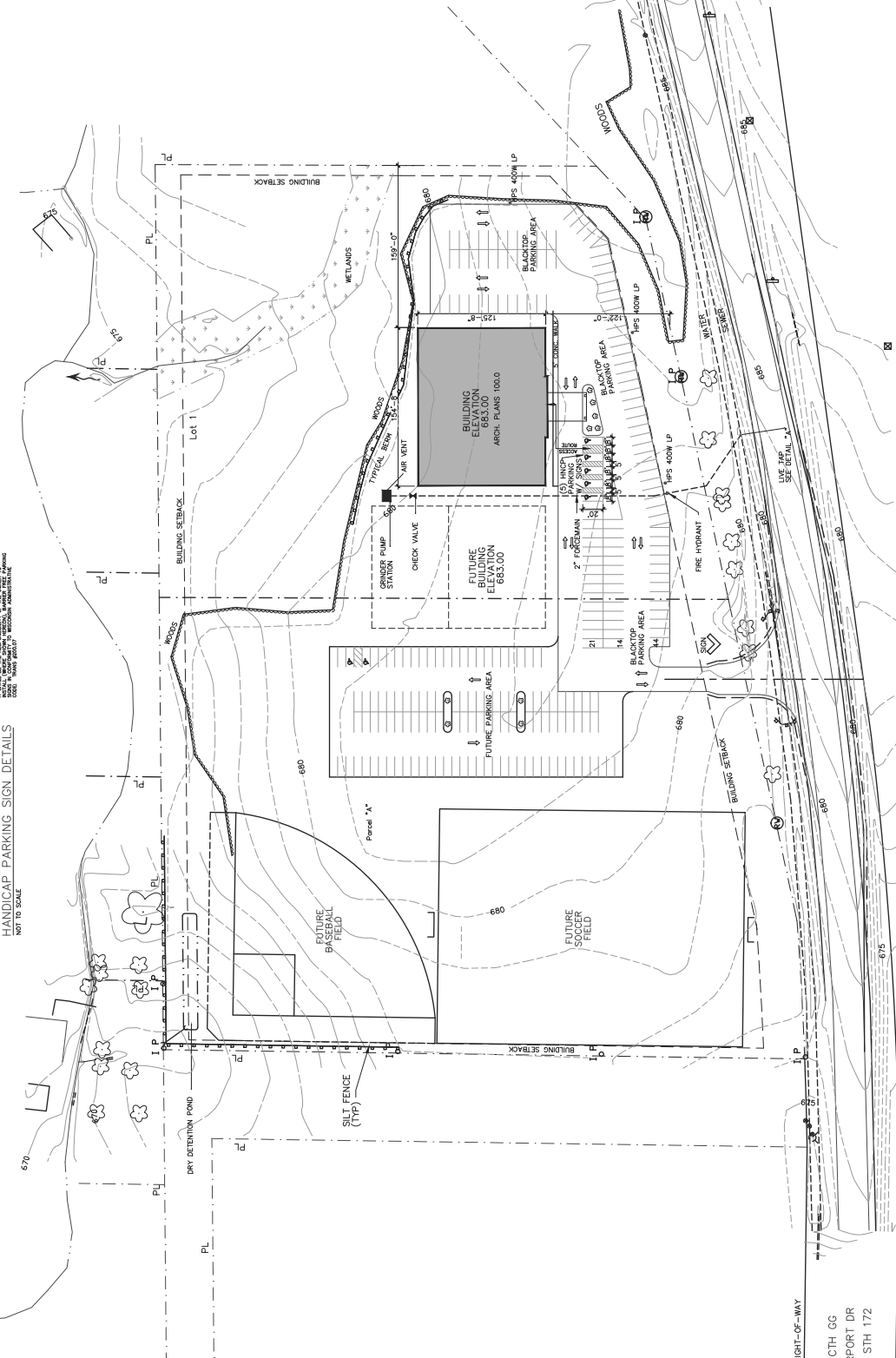


BLACKTOP SPEC. DETAIL
NOT TO SCALE



NOTE:
CONTRACTORS SHALL LOCATE ALL UTILITIES BEFORE CONSTRUCTION AND NOTIFY ARCHITECT AND OWNER OF ANY INTERFERENCES.
CONTRACTORS SHALL PROVIDE ALL BARRIERS, BARACADES, AND SIGNAGE AS SHOWN ON THIS PLAN. ALL CONSTRUCTION SHALL BE DONE IN ACCORDANCE WITH ALL APPLICABLE CODES AND SAFE CONSTRUCTION PRACTICES. THE DESIGNER OR AGENCIES HAVING JURISDICTION OVER THE PROJECT.
ALL MATERIALS SHALL BE INSTALLED PER MANUFACTURERS REQUIREMENTS AND RECOMMENDATIONS.
NOTE:
CONSTRUCTION OF THIS BUILDING SHALL MEET OR EXCEED ALL APPLICABLE NATIONAL AND STATE CODES. THE CASE OF CONFLICT, THE MOST STRINGENT SHALL APPLY. STATE OF WISCONSIN ADMINISTRATIVE CODE: CHAPTER 50-64. WISCONSIN STATE MECHANICAL CODE. WISCONSIN STATE PLUMBING CODE. NATIONAL ELECTRICAL CODE. UNIFORM FIRE PROTECTION CODE. ROOF LIVE LOAD: 30 P.S.F. DEAD LOAD: 15 P.S.F. WIND LOAD: 20 P.S.F. CONCRETE STRENGTH: 3000 P.S.I. SOIL BEARING CAPACITY: 3000 P.S.F. PRESUMED
GENERAL CONTRACTOR NOTE:
GENERAL CONTRACTOR TO VERIFY ALL SITE DIMENSIONS, DETAILS, AND LAYOUT WITH MEAD AND HUNT INC. BEFORE PROCEEDING WITH CONSTRUCTION PROJECT.

JOB SITE LOCATION
CTH GG AIRPORT DR STH 172
TOWN OF HOBART, WISCONSIN
BUILDING SQUARE FOOTAGE
TOTAL BUILDING SQ. FTG: 19,558
BUILDING HEIGHT (FLOOR LINE TO PEAK): 33'
FIRE PROTECTION
NO FIRE SPRINKLING SYSTEM
BUILDING OCCUPANCY
CLASS 8, WOOD FRAME UNPROTECTED
INDEX TO SHEETS
SHEET 1 SITE PLAN
SHEET 2 FOUNDATION PLAN
SHEET 3 FLOOR PLAN
SHEET 4 EXTERIOR ACCESS ROUTE DETAILS AND RIGID ACCESS ROUTE
SHEET 5 EXTERIOR BUILDING ELEVATIONS
SHEET 6 EXTERIOR BUILDING ELEVATIONS
SHEET 7 BUILDING SECTION 4/7
SHEET 8 BUILDING SECTION 4/8
SHEET 9 BUILDING SECTION 4/9
SHEET 10 WATER SUPPLY PLAN
SHEET 11 WATER SUPPLY PLAN
SHEET 12 PLUMBING DETAILS
SHEET 13 PLUMBING ISO
SHEET 14 PLUMBING ISO
SHEET 15 PLUMBING ISO
SHEET 16 HVAC DETAILS
SHEET 17 POWER PLAN
SHEET 18 LIGHTING PLAN



PROPOSED BUILDING FOR
WOODLANDS WORSHIP CENTER
TOWN OF HOBART, WISCONSIN
JOB NO. 002600 FILE NO. 12 DATE: 2/25/00
DAVID R. VAN LANEN ARCHITECT

RIGHT-OF-WAY
CTH GG AIRPORT DR STH 172
RIGHT-OF-WAY
SCALE: 1"=50'
SITE PLAN
NORTH
1



FLOOR PLAN SCALE: 1/8"=1'-0"

REVISED: 3-8-2000 (PER STATE LETTER)

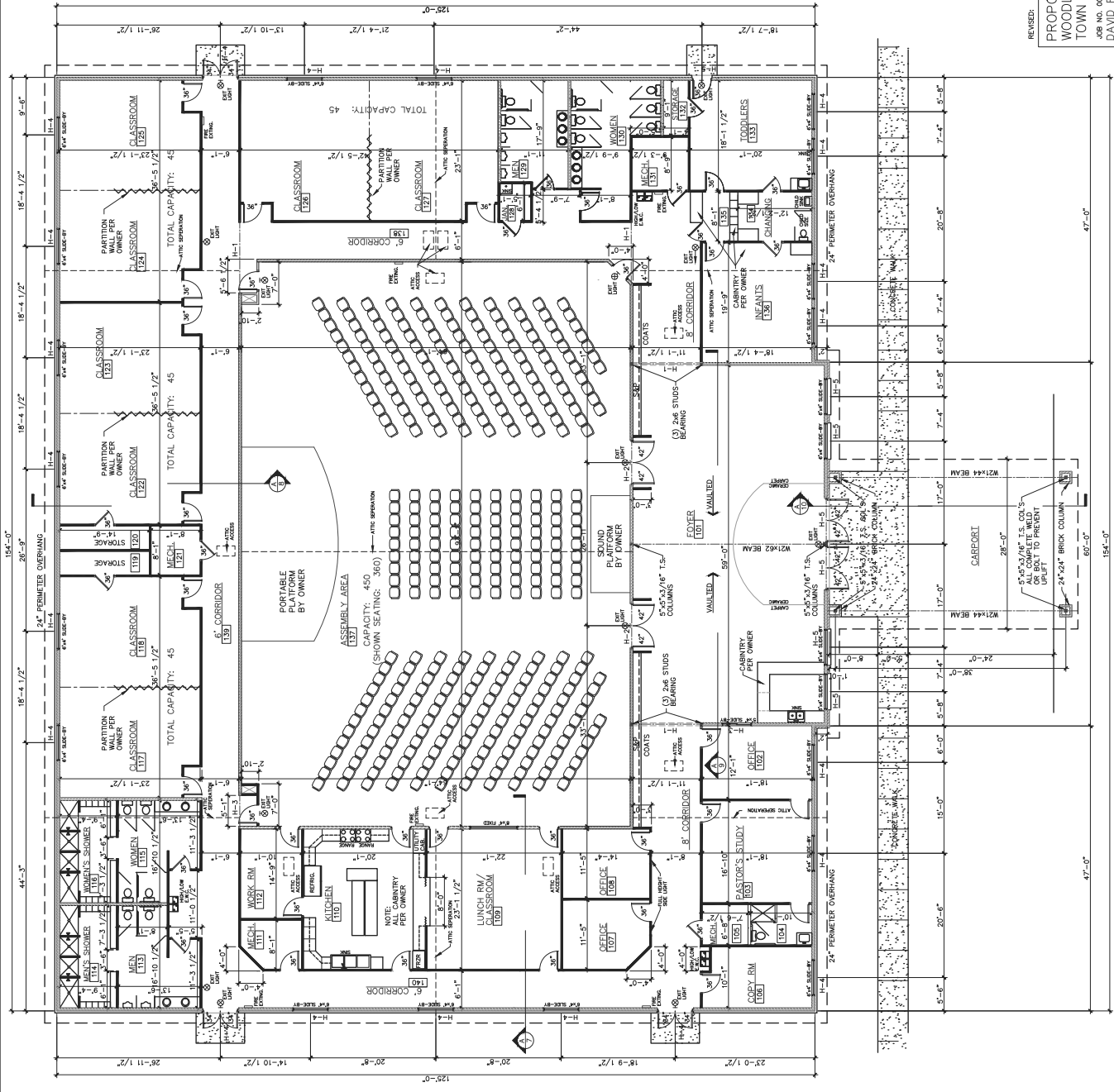
PROPOSED NEW BUILDING
WOODLAND WORSHIP CENTER
TOWN OF HOBART, WISCONSIN
JOB NO. 0202601 DATE: 02/25/00
DAVID R. VAN LANEN ARCHITECT

GENERAL NOTES
ALL HEATING EQUIPMENT TO BE SEALED COMBUSTION TYPE. WATER HEATERS TO BE ELECTRIC.
ALL STOP AND CONCRETE WALK FINISHED TO BE HIGH-SUP SURFACE.
ALL INTERIOR DIMENSIONS ARE FROM FACE OF STOP TO FACE OF STOP.
ATTIC SEPERATION
ATTIC SEPERATION TO BE 1/2" SHEETROCK APPLIED TO ONE SIDE OF PARTITIONING INTO THE OVERHANGS.
ATTIC ACCESS OPENINGS TO BE 22"x36".

DOOR NOTES
ALL DOOR MONTHS ARE IDENTIFIED BY THE OWNER.
DOOR SPECIFICATIONS SHALL BE DETERMINED BY THE OWNER.
ALL DOOR HANDLES TO BE LEVER OR LOOP TYPE.

HEADER SCHEDULE
H-1 = (3) 2X12 MICRO LAM
H-2 = (3) 2X12 Fb-950
H-3 = (3) 2X10 Fb-950
H-4 = (3) 2X10 Fb-950
H-5 = (3) 2X8 Fb-950

WALL SCHEDULE
POURED CONCRETE
FACE BRICK
2X4 STUDS 18" O.C W/ 5/8" DRYWALL
2X6 STUDS 18" O.C W/ 5/8" DRYWALL



Plat of Survey

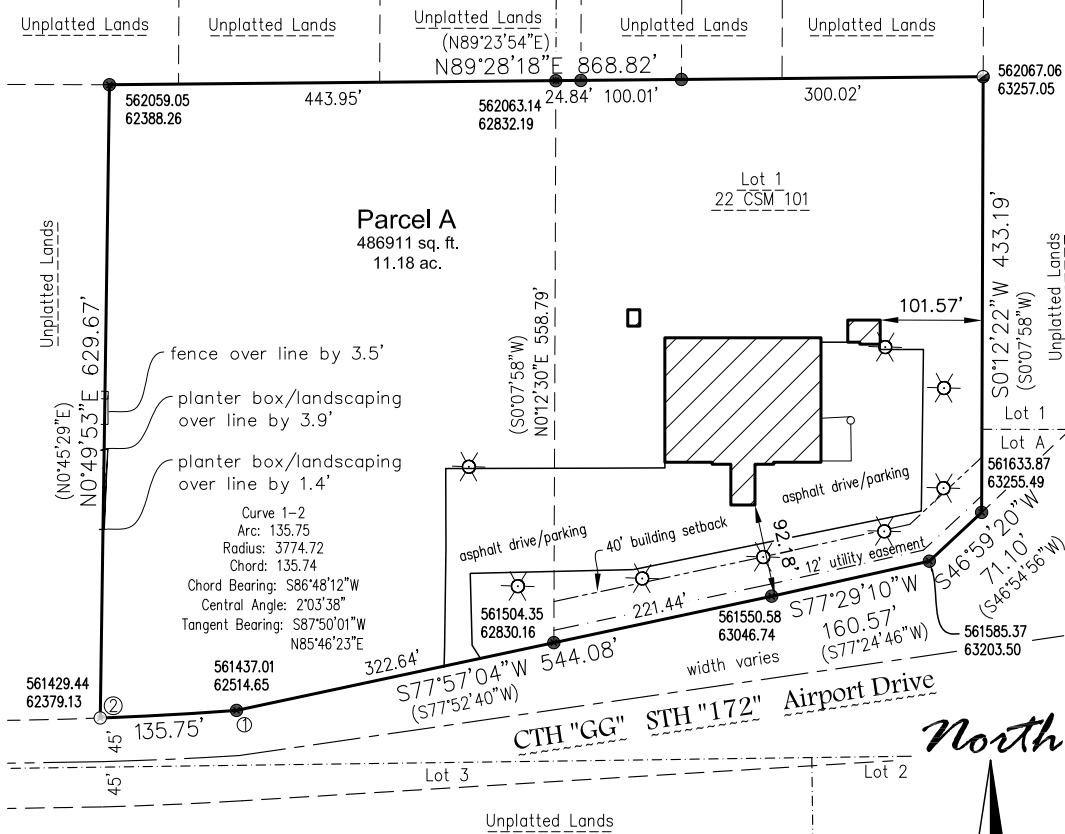
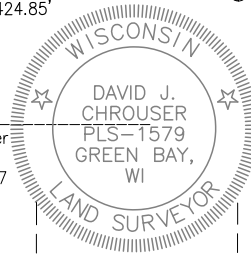
All of Lot 1, Volume 22, Certified Survey Maps, Page 101, Map No. 3897, Document No. 1199032, Brown County Records, and part of the Northwest 1/4 of the Northeast 1/4, Section 2, T23N-R19E, East of the Fourth Principal Meridian, Village of Hobart, Brown County, Wisconsin.
~760 Airport Road~



North 1/4 Corner Section 2 T23N-R19E
Scale: 1" = 150'
N89°43'06"E 1310.03'
1/16 Corner Section 2 T23N-R19E

Legend

- 1" iron pipe found
- 2" iron pipe found
- ⊙ Brown County monument - type noted
- () recorded as bearing / distance
- existing building
- light pole



NOTES

Bearings referenced to the North line of the NW 1/4 of the NE 1/4, Section 2, T23N-R19E, assumed to be N89°43'06\"E.

Client: American Dream Homes
Tax Parcel: HB-96
Drafted By: MRA
File: S-12789POS 100617.dwg
Data File: P-14781.txt

Mau & Associates, LLP
 LAND SURVEYING & PLANNING
 CIVIL & WATER RESOURCE ENGINEERING
 Phone: 920-434-9670 Website: www.mau-associates.com
 400 Security Blvd, Green Bay, WI 54313

Sheet One of Two
 Project No.: S-12789
 Drawing No.: L-10166
 Fieldwork Completed: 10/06/17





PARCEL A

All of Lot 1, Volume 22, Certified Survey Maps, Page 101, Map No. 3897, Document No. 1199032, Brown County Records, and part of the Northwest 1/4 of the Northeast 1/4, Section 2, T23N-R19E, East of the Fourth Principal Meridian, Village of Hobart, Brown County, Wisconsin, more fully described as follows:

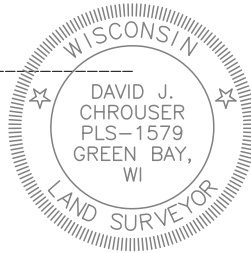
Beginning at the Northeast Corner of Lot 1, Volume 22, Certified Survey Maps, Page 101, Map No. 3897, Document No. 1199032, Brown County Records; thence S0°12'22"W, 433.19 feet along the East line of said Lot 1; thence S46°59'20"W, 71.10 feet along the North right of way of CTH "GG", also known as STH "172", also known as Airport Drive; thence S77°29'10"W, 160.57 feet along said North right of way; thence S77°57'04"W, 544.08 feet along said North right of way; thence 135.75 feet along said North right of way being the arc of a 3774.72 foot radius curve to the right whose long chord bears S86°48'12"W, 135.74 feet; thence N0°49'53"E, 629.67 feet; thence N89°28'18"E, 868.82 feet along the North line of said Lot 1 and its extension to the point of beginning.

Parcel contains 486,911 square feet / 11.18 acres more or less.
Parcel subject to easements and restrictions of record.

SURVEYOR'S CERTIFICATE

I, David J. Chrouser, Professional Land Surveyor, PLS-1579, do hereby certify that the above described property was surveyed and mapped in accordance with AE-7 of the Wisconsin Administrative Code and is correct to the best of my knowledge and belief.

David J. Chrouser
PLS-1579
October 12, 2017



Client: American Dream Homes

Tax Parcel: HB-96

Drafted By: MRA

File: S-12789POS 100617.dwg

Data File: P-14781.txt

Mau & Associates, LLP

LAND SURVEYING & PLANNING

CIVIL & WATER RESOURCE ENGINEERING

Phone: 920-434-9670 Website: www.mau-associates.com
400 Security Blvd, Green Bay, WI 54313

Sheet Two of Two

Project No.: S-12789

Drawing No.: L-10166

Fieldwork Completed: 10/06/17





MEMORANDUM

TO: Oneida Business Committee
FROM: Kelly M. McAndrews, Senior Staff Attorney
DATE: February 18, 2020
SUBJECT: Petition- Nancy Dallas- Funeral Home, Jurisdictional Issues

Kelly M.
McAndrews

Digitally signed by Kelly M.
McAndrews
Date: 2020.02.17 19:28:08 -06'00'

FACTS

A tribal member, Nancy Dallas, filed two petitions requesting the Nation convert a commercial building it owns into a funeral home and operate it as an enterprise of the Nation. This memorandum is a legal review of jurisdictional issues regarding the petitions submitted by Nancy Dallas. The sufficiency of the petitions, as well as the non-jurisdictional aspects of the petitions are addressed in the related Memorandum provided by Chief Counsel Jo Anne House.

The petitions (“Dallas Petitions”) were submitted for the following purpose:

“To put a hold on the building, which is the Woodland Worship Center, located at 760 Airport Drive, Oneida, WI and make this a funeral home.”

“To make a funeral home on the property of the Woodland Worship Center and have the property to be an enterprise Division for the Oneida Nation.”

The purpose of the petitions is the same.

If the funeral home is an enterprise of the Nation, the funeral directors employed at the funeral home are employees of the Nation. Although the Nation has a Cemetery law, it has no laws concerning funeral directors and funeral homes. In addition, the commercial building at issue has been operated as a church for several years and is currently being leased to the church that previously owned it.¹ The Nation purchased the building in January 2018, and shortly thereafter applied to the BIA for fee-to-trust acquisition. The BIA agreed to the commercial acquisition and the local municipality (Village of Hobart) appealed to the IBIA. The appeal is currently pending. During the acquisition comment period, the municipality did not cite specific concerns over the use/zoning of the property.

¹ This Memorandum does not address the repurposing of the building.

Converting the building into a funeral home in this area appears to create some conflict with the Village's zoning laws, because such use is considered a "conditional use" under the Village's zoning law. Notwithstanding the fee-to-trust issues raised, it is not known if the Village will attempt to impose its conditional use process on the Nation for this use.

Jurisdictional issues exist concerning the following:

- I. Regulation of a funeral home owned by the Nation and funeral directors employed by the Nation.
- II. Land Use Regulation concerning the property located 760 Airport Drive.

ISSUES

I. What Regulations Apply To A Funeral Home Owned By The Nation And Funeral Directors Employed By The Nation.

SHORT ANSWER

Wisconsin's funeral home and funeral director licensing laws and regulations are civil/regulatory laws and are not expressly applicable to the Nation. Although the Nation has no laws regulating funeral homes and/ or funeral directors, the Nation has historically required its employees and facilities maintain State credentials as a measure of professionalism. Although the Nation has the option of adopting its own laws, Wisconsin has numerous well-developed funeral home and funeral director laws. The Nation's voluntary adherence to such laws is consistent with the historical practice of the Nation. Not only does voluntary adherence to such laws offer the Nation well-developed professional standards, it negates concerns that a court may require adherence to State law via some legal test.

However, Wisconsin's requirement that a funeral establishment operator have no financial connection to a cemetery remains a concern. As this matter progresses, if the Nation determines the best option appears to be voluntary compliance with Wisconsin funeral home and funeral director laws, this issue would require resolution. The Funeral Directors Examining Board may be consulted for questions surrounding this matter and for possible assistance.

ANALYSIS

First, state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided. In Wisconsin, Congress has expressly granted jurisdiction over specified areas of Indian Country within its boundaries. Although Pub. L. 280 granted Wisconsin broad criminal jurisdiction over offenses committed by or against Indians within Indian Country, Congress' conferral of jurisdiction over civil matters is limited. Generally, Pub. L. 280 does not authorize enforcement of state civil/regulatory laws on an Indian reservation.² Wisconsin's laws

² When a state law generally permits the conduct at issue, subject to regulation, it is classified as civil/regulatory (rather than criminal/prohibitory).

and regulations generally governing funeral homes and funeral directors appear to be civil/regulatory laws. As such, these civil/ regulatory laws are not expressly applicable to the Nation.

Second, even in the absence of express congressional consent to do so, in “exceptional circumstances” a State may assert jurisdiction over the on-reservation activities of tribal members.³ This area of law is complex and caselaw has yielded varying results when determining whether the state interest at stake is sufficient to justify the assertion of state authority. Tribal sovereignty is at its strongest in the context of self-governance, when a tribe exercises authority over its own members on its reservation. Although the Nation has a Cemetery Law which governs eligibility for burial and regulates land related issues specific to the Oneida Nation cemetery, the Nation has no laws which regulate funeral directors, funeral homes, and the various standards of both.

Third, Wisconsin courts have adopted a unique preemption test to determine whether a state law is applicable to tribal members on their reservation. In *County of Vilas v. Chapman*, 122 Wis. 2d 211 (1985), the Wisconsin Supreme Court examined the applicability of a state traffic law (civil/regulatory) to a tribal member who received a traffic citation on his reservation. The Court determined that the tribe did not have a well-established tradition of self-government in the area of traffic regulation and the court did not recognize any other basis for federal preemption of the county’s noncriminal traffic laws.⁴ Thus, the Court found that the county possessed jurisdiction to enforce its ordinance against the tribal member. Wisconsin has consistently followed this reasoning.⁵

Fourth, for those professions the Nation lacks regulation and credentialing requirements for, the Nation has voluntarily relied on State credentialing and requirements. For example, the Nation has required employees have and maintain professional State licensing/certification for: social workers, counselors, attorneys, master electricians, journeymen (in various professions), plumbers, dieticians, registered nurses, licensed practical nurses, certified nurse aides, medical assistants, BLS/CPR/AED, physician assistants, physicians, psychologists, radiographers, therapists, physical therapists, pharmacists, pharmacist technicians, opticians, optometrists, dental hygienists, dentists, IT professionals, teachers, and law enforcement.⁶ Likewise, the Nation has voluntarily relied on State credentialing and licensing requirements for its professional facilities, including: health clinic, nursing home, and behavioral health facility. This reliance has provided uniform standards for the Nation’s professional employees and regulated facilities.

While the federal government regulates general funeral industry practices⁷ and implements Occupational Safety and Health Standards for various aspects of funeral homes (example: bloodborne pathogens, formaldehyde standards, and hazard communications), the State extensively regulates the licensing of funeral homes and funeral directors. State regulation

³ Also known as a “preemption analysis”.

⁴ This is a summary of the “test”.

⁵ *Also State v. Big John*, 146 Wis. 2d 741 (1988); *St. Germaine v. Chapman*, 178 Wis. 2d 869 (Ct. App. 1993).

⁶ Not an exhaustive list.

⁷ A form of consumer protection. See 16 C.F.R. Part 453.

includes standards of practice, rules of conduct, embalming standards, cremation, transportation and disposition of human remains, registering and reporting of deaths, apprenticeships, and burial agreements funded with life insurance requirements. Just as the Nation has done with other professions and regulated facilities, it is presumed the Nation would rely on the already developed system of regulation for funeral directors and funeral homes, should the Dallas Petitions progress.

Lastly, a potential conflict may exist between owning a cemetery and owning a funeral home licensed under Wisconsin law. There are two provisions of Wisconsin law that are of concern:

- [N]o cemetery authority⁸ may have or permit an employee or agent of the cemetery to have an ownership, operation, or other financial interest in a funeral establishment. . . . Wis. Stat. §157.067(2).
- No licensed funeral director *or* operator of a funeral establishment may operate a mortuary or funeral establishment that is located in a cemetery *or* that is financially, through an ownership or operation interest or otherwise, connected with a cemetery. . . . Wis. Stat. §445.12(6).

The Nation's primary concern is related to Wis. Stat. §445.12(6)-- Wisconsin's prohibition of licensed funeral establishment operators having an ownership or operation interest connected with a cemetery.⁹ The Wisconsin Court of Appeals has resolved questions regarding the above statutes as prohibiting financial connections between cemeteries and funeral establishments that are broader than "direct ownership or direct control of operations". *Cemetery Services, Inc., v. Dept. of Regulation and Licensing*, 221 Wis. 2d 817 (1988). In *Cemetery*, the court found direct and indirect ties between a large corporation's closely related subsidiaries that provided Cemetery Services and Funeral Services. There was a "strong financial connection" between Cemetery Services and Funeral Services; the subsidiaries were a formalistic, not substantive, and were contrary to Wisconsin's law requiring a cemetery authority have no financial interest in a funeral establishment. *Id.* at 828.

Although the Nation's Cemetery Law regulates the Nation's Cemetery, it is currently unclear if this separate tribal regulation is enough to resolve the Wisconsin prohibition on licensed funeral establishments having an "ownership or operation interest" with a cemetery. Notwithstanding the separate system of regulation, the Cemetery Law indicates plots are available "for purchase". While it may be possible to negate Wisconsin's financial connection prohibition through a change to the "purchase" requirement in the Cemetery Law (and any other

⁸ On its face, it appears that the Nation does not meet the definition of "Cemetery Authority". Thus, this provision of law may not apply to the Nation if it seeks to comply with Wisconsin licensing requirements. Wis. Stat. §157.061(2) states "Cemetery Authority" is any person who owns or operates a cemetery as specified by Wis. Stat. §157.065(1). Wis. Stat. §§157.065(1) allows for burials in cemeteries only when: a.) The cemetery was in use on April 4, 1864; or b.) The cemetery is organized and operated by: a municipality, a religious association, a fraternal/ benevolent society, an incorporated college of a religious order, a cemetery association created under Wisconsin law, a business corporation or nonstock corporation, or a limited liability corporation.

⁹ The Nation's cemetery is located on West Adam Drive (located in the Village of Hobart, Brown County). The cemetery is located on a fee parcel and the Nation pays taxes on this parcel.

policy), this is an issue that would require further exploration. Since some conflict may exist between the Nation licensing a funeral home in accordance with Wisconsin law and Wisconsin's prohibition on a funeral establishment having a financial connection with a cemetery, additional consultation with the Wisconsin Funeral Director Examining Board may be necessary.

II. Whether There Are Land Use Regulation Concerns That Would Apply To A Funeral Home Operated by the Nation At 760 Airport Drive.

SHORT ANSWER

Three zoning-based conflicts become apparent in the following areas if 760 Airport Drive is converted into a funeral home owned by the Nation: 1.) In the fee-to-trust application process; 2.) Conditional use permitting; and 3.) Court interpretation of the applicability of municipal zoning laws to tribes. 760 Airport Drive, a fee parcel, is located within the Village of Hobart and is currently subject to a fee-to-trust appeal. In the trust application process, although the Nation disclosed the property would be used for continued commercial use, it did not disclose there were jurisdictional problems or conflicts to the BIA because none existed at that time. Since Hobart's Zoning Code lists "undertaking establishments and funeral parlors" as a conditional use, subject to heightened scrutiny and permission requirements, converting the facility into a funeral home creates a jurisdictional conflict. This conflict, minimally, would disrupt the fee-to-trust process and may ultimately result in BIA refusal to acquire the parcel into trust.

Even if the Nation were willing to subject itself to the Village's conditional use process for this parcel, the Village's conditional use process (which cumbersome) is not guaranteed to result in approval. More concerning and considering the active litigation with the Village and the Village's willingness to litigate land related issues, are recent court holdings (including in the 7th Circuit) which demonstrate judicial willingness to allow municipalities to subject tribes to land use regulations.

ANALYSIS

First, the parcel located at 760 Airport Drive, within the Village of Hobart, Brown County, WI, is currently the subject of a fee-to-trust appeal. The Nation purchased this parcel on or about January 31, 2018. Shortly thereafter, an application for trust acquisition was submitted to the BIA. The application indicated that the land would be used for "continued commercial use". The property was previously owned by the Woodland Worship Center, Inc. In support of the "continued commercial use" the application packet included the Master Ground Lease from the Nation to the Woodland Worship Center. The initial term of this lease ended on October 31, 2019 and it was extended to October 31, 2020. Although the Village provided comments on the fee-to-trust acquisition, the Village was silent on the regulatory factor concerning current jurisdictional issues or conflicts of land use. However, the Village speculated that there could be future conflicts.¹⁰ At that time of the application and comments, there was no known jurisdictional problems or conflicts of land use (no incompatible zoning). If the Nation intends for the property to be used as a funeral home, based on the change in the type of commercial use,

¹⁰ 25 C.F.R. 151.10(f).

environmental and occupational issues associated with funeral homes, and the lack of opportunity for the Village to comment on such, it is the current practice of the Nation to withdraw such applications and resubmit with accurate, updated information. Since this matter has quickly proceeded to appeal in *Village of Hobart v. Acting Midwest Regional Director*, IBIA Docket No. 20-012, withdrawal of the existing application would: a.) disrupt the current appeal; and b.) create additional delay for a new/amended application. Additionally, this new use and any jurisdictional problems or conflicts related may result in the BIA declining to accept the property into trust.

Second, in examining the Village of Hobart zoning classification for this property, this property is classified as a “B-1 Community Business District”. As classified, “Undertaking establishments and funeral parlors” are not classified as a “Permitted Use” in the B-1 Community Business District. This use is classified as a “Conditional Use”. According to the Village of Hobart’s Zoning Code, a “Conditional Use” is:

A use, either public or private, which because of its unique characteristics, cannot be properly classified as a permitted use in a particular district or districts. After due consideration, in each case of the impact of such use upon neighboring land, and of the public need for the particular use of the particular location, such “conditional use” may or may not be granted, subject to the terms of this chapter.

Property owners may apply to the Village to allow a conditional use. The conditional use application process requires: plans and/ or data showing the proposed conditional use will conform to the standards set forth in the zone district (documentation required may be extensive), notice of public hearing, a public hearing before the Village Planning and Zoning Commission, and written recommendation to the Village Board. The Board determines whether or to act on an application. The Board may refuse conditional uses.

Third, the Dallas Petitions seemingly conflict with the Village of Hobart’s Zoning classification and, if the Village’s zoning law applies, a conditional use permit would be required to operate a Funeral Home at this location. This conflict has potential to result in litigation, the expense of which is not examined by this memorandum. The outcome of the Nation’s current litigation with the Village may also impact this analysis.¹¹ The United States District Court for

¹¹ In *Oneida Nation v. Village of Hobart*, 16-C-1217, United States District Court, Eastern District of WI, the Nation filed a lawsuit in federal district court against the Village seeking relief prohibiting the Village from attempting to enforce its special events permit ordinance against the Nation. Cross Motions for Summary Judgment were briefed and argued. On March 29, 2019, the court issued a decision and order. The court determined: 1) the 1838 Treaty created an Indian reservation; 2) the 1933 court decision relied upon by the Village did not bar the Nation from arguing the Reservation exists; 3) the allotment of the Reservation, issuance of fee patents and acquisition of Reservation land by non-Indians diminished the Reservation so that the current size and location of the Reservation consists of those parcels held in trust by the United States for the benefit of the Nation; 4) the Village may enforce its special event ordinance against the Nation with respect to those portions of the Big Apple Fest that take place on fee land; and 5) the Village’s claim for monetary damages is barred by the Nation’s sovereign immunity. On April 26, 2019, the court issued a judgment in which it denied the Nation’s request for declaratory and injunctive relief prohibiting the Village from enforcing its ordinance, but stayed the effect of the judgment by staying enforcement of the Village’s ordinance pending appeal. The Nation believes the court committed serious

the Eastern District of Wisconsin has not found in the Nation's favor on issues concerning *in rem*¹² jurisdiction. For example, in *Oneida Tribe of Indians v. Vill. of Hobart*, 542 F.Supp 2d 908 (2008) the court held that the General Allotment Act granted authority to local governments to condemn tribally owned fee property for roadway purposes.¹³ Although courts have been inconsistent on whether local governments can zone tribal fee land,¹⁴ recent courts tend to look to the Supreme Court decision in *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005), to make such determinations. Although the sole legal question in *Sherrill* was limited to whether the land became tax exempt when the tribe reacquired it, the Supreme Court opined on other issues, including zoning. The Court warned that if the tribe "may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free these parcels from local zoning or other regulatory controls that protect all landowners in the area." *Id.* At 220. The Court cited two pending lower-court cases involving the applicability of local zoning authority to tribal fee land. After the *Sherrill* decision, the two pending lower court cases determined that tribal fee land in a land claim area was subject to local-government land-use regulation.¹⁵

These petitions create serious zoning concerns that would impact the fee-to-trust process concerning this property (and possibly prevent trust acquisition), create conflict with the municipal zoning code because the use is a "conditional use", and some courts are willing to extend local zoning authority to tribal fee land.

errors of law and appealed. This matter has been fully briefed before the Seventh Circuit Court of Appeals in Case No. 19-1981 and is awaiting further order of the court (for oral argument).

¹² Property.

¹³ In this complex analysis, the court cited *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992) and *Sherill* for support.

¹⁴ *Gobin v. Snohomish County*, 304 F.3d at 917 (9th Cir. 2002).

¹⁵ For Example, *Cayuga Indian Nation N.Y. v. Village of Union Springs*, 390 F.Supp. 2d 203 (N.D. N.Y. 2005); *Seneca-Cayuga Tribe of Okla. V Town of Aurelius*, 233 F.R.D. 278 (N.D. NY 2006).