

## WEST LAKELAND TOWNSHIP

November 29, 2016

7:00 p.m.

Oak-Land Jr. High

Present: Chairman Dan Kylo, Supervisor Steven Ebner, Supervisor Dave Schultz; Carrie Seifert, Clerk; Mr. Scott McDonald, Township Attorney; Ms. Marsha Olson, Treasurer; Mr. Dave Dupay, Planning Commission Chair;

### Call to Order

Chairman Kylo introduced the special meeting of the West Lakeland Town Board at 7:03 PM. The purpose of the special meeting was a public meeting for information regarding the fee to trust land process, and how it impacts the purchase of the parcel on I-94 and Manning Avenue. Chairman Kylo introduced Mr. Kevin Quigley, of Gray, Plant, Mooty, who has been hired to consult with the township regarding the legal process and concerns that may arise with this issue.

Mr. Quigley provided his background and explained his expertise in Indian and Gaming law. He or his firm have been involved in similar issues nationally over the past twenty years. Mr. Quigley provided informational handouts regarding the fee to trust land process, and the requirements for establishing gaming on Indian land.

Mr. Quigley described the fee to trust land process. The acquisition process appropriate to the land in West Lakeland is governed by 25 CFR 151, implementing trust acquisition under the Indian Reorganization Act of 1934. Under this authorization, the acquisition must also comply with the requirements for the National Environmental Policy Act (NEPA). The approving authority is the Secretary of the Interior or designated representatives. In this instance, it is expected that the approving authority will be the Regional Director for Indian Affairs.

Mr. Quigley described the two approval processes. One is for acquisition for non gaming purposes, which is the anticipated route in this instance. There is a second process for approving use as gaming. If approved as a non gaming use, it is possible for the tribe to apply for gaming purposes in the future.

Factors to be considered in the application include the proximity to the existing reservation, the anticipated benefits to the members of the tribe, and detrimental impacts on the state and local municipalities, including jurisdiction, taxes and special assessments. There are about sixteen steps in the approval process. The process requires a 30 day comment period by the local municipalities and any interested parties. The official notification of the request that initiates that time period has not yet been received. Individuals and other government agencies can apply as interested parties, and then have notification and appeal rights. There is not a requirement for the BIA to share the response from the tribe to the Township's concerns, but it is generally done.

The notice of decision is prepared to document if the request is approved or denied, and the land goes into trust. For non gaming applications, there are a high percentage of applications that are approved. After the record of decision is published, there is a 30 day period for impacted state and local governments or interested parties to make an administrative appeal. It is possible to further appeal in court, but the administrative appeals must be exhausted for a lawsuit to have standing.

The role of the Metropolitan Council in this process is not clear, as it is a more unique government structure. They can be notified by any participant, and can become an interested party to the application, should they so choose.

Mr. Quigley then described the additional processes for using land for gaming purposes. There is additional oversight by the Office of Indian Gaming. Unless the trust land is historic tribal land, or land as part of a land claim settlement, the approval for gaming is a two part process. For this process, the

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state has larger influence on the approval. Lands entered into trust after 1988 that are being converted to gaming must have state concurrence by the governor.

The following specific questions were addressed

What are the criteria and process to put land into trust? The criteria and process are defined by CFR Part 151.10 and CFR Part 151.11, for on and off reservation applications. The process can take from a few months to 8 or more years. The process is rigorous, and usually takes about a year.

What are the municipality's rights in the process? The municipality is limited to the comments requested as part of the 151 process regarding jurisdiction issues, tax concerns and land use conflicts. The municipality can also address environmental concerns as defined by NEPA.

Other than the municipality's comments, how can concerns be raised? Concerns about the application to move the land to trust can be raised with the congressional delegation for that area, the Secretary of the Interior, Secretary of Indian Affairs, and Solicitor for the Department of Indian Affairs. All have oversight of this process. The nature of the administration in office at the time of the request can impact the decision. If the concerns are not addressed sufficiently, the local municipality or an identified interested party can bring a lawsuit within six years. However, the person bringing a lawsuit must demonstrate that they have exhausted the internal appeals processes.

Can the tribe develop the land in ways other than stated in the original application? Yes, with some restrictions on converting the land to gaming purposes. There are detailed regulations for converting trust land after 1988, the state and local governments are given period to comment. Under the part 292 regulations, the state must concur with the decision to convert to gaming if the land is not part of the initial reservation. For other than gaming purposes, there is no additional application necessary.

Who decides if gaming is an allowed use? This decision is done by the Secretary of the Interior and the National Indian Gaming Commission (NIGC). The decision is subject to judicial review.

Who would have jurisdiction over services such as public sewer and water on trust land? Generally, there is no oversight from any other agency unless defined in a previous agreement. The closest analogy is to compare the trust land to a separate state. The trust land is subject to some federal laws, and can have cooperative agreements with local municipalities, counties or the state. This is not uncommon. The trust land is subject to tribal regulations and decision making.

Will potential commercial value of the land be considered? The current zoning is a criteria used in the decision making process, as is the current use and tax base of the land.

What is the nature of the application for the property in West Lakeland? The formal request has not yet been received. The draft document provided indicates the land is to be used for agriculture and housing.

Is the state law granting authority to purchase 1500 acres into trust land considered a congressional mandate? This is a state action, not a congressional action, and thus is not a congressional mandate.

What is considered gaming? There are 3 classes of Indian Gaming. Class 1 is ceremonial gaming, as is often part of the pow-wow. Class 2 is gaming such as bingo or poker. Class 3 is more extensive gaming. Class 2 and Class 3 are governed by the CFR 25, Part 292.

Does Minnesota get revenue from the Indian casinos? Yes, there can be some reimbursement for costs based on the agreement with the tribe.

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How can the local community impact the use of the trust land? The local community can best address concerns with local cooperative agreements with the tribe. Generally, services such as water and sewer are done through local agreements.

Chairman Kylo thanks Mr. Quigley for his time and expertise. Chairman Kylo asked if any resident wanted to be kept abreast of the process, to provide an email address to the clerk, and the clerk would forward any pertinent information.

Respectfully submitted,

A handwritten signature in cursive script that reads "Elizabeth Vance". The signature is written in black ink on a light-colored background.

Elizabeth Vance  
Recording Secretary