

JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORT
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER, PHD
SENIOR STAFF ATTORNEY

ONEIDA LAW OFFICE

N7210 SEMINARY ROAD
P.O. BOX 109
ONEIDA, WISCONSIN 54155

PATRICIA M. STEVENS GARVEY
KELLY M. MCANDREWS
MICHELLE L. MAYS
ROBERT W. ORCUTT

(920) 869-4327

FAX (920) 869-4065

FAX TRANSMISSION COVER SHEET

Date: January 14, 2016

FAX No.: 414-395-8773

To: Shannon D. McDonald

From Kelly M. McAndrews

Number of Pages: 18 (including cover sheet)

Comments:

If there are any problems with this transmission, please call (920) 869-4327

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original via U.S. Postal Service. Thank you.

JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER, PHD
SENIOR STAFF ATTORNEY

ONEIDA LAW OFFICE

N7210 SEMINARY ROAD
P.O. BOX 109
ONEIDA, WISCONSIN 54155

PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS
MICHELLE L. MAYS

(920) 869-4327

FAX (920) 869-4065

January 14, 2016

Outagamie County Clerk of Circuit Courts
Outagamie County Justice Center
320 S. Walnut Street
Appleton, WI 54911

RE: *Stumph v. Oneida Zoning Department, et. al.*
Outagamie County Circuit Court No: 15 CV 1036

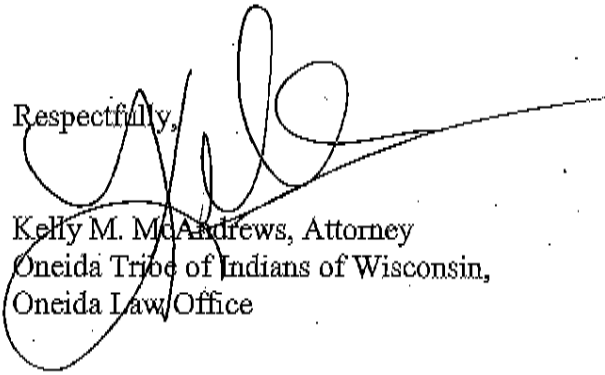
Dear Clerk,

Enclosed, please find the original and one copy of each of the following in the above captioned matter:

- Respondent's Reply to Petitioner's Brief
- Affidavit in Support of Respondent's Reply to Petitioner's Brief

You may contact Senior Paralegal Heidi Wennesheimer or me at (920)869-4327 with questions..

Respectfully,



Kelly M. McAndrews, Attorney
Oneida Tribe of Indians of Wisconsin,
Oneida Law Office

Enclosures

Cc: Attorney Shannon D. McDonald, (Attorney for Diane Stumph) (w/ enclosures)- via fax
414-395-8773, then via U.S. Mail

Oneida Zoning

Troy Parr, Zoning Administrator (w/ enclosures)

William Vandenhueval, Building Inspector (w/ enclosures)

Oneida Police Department (w/ enclosures)

STATE OF WISCONSIN : CIRCUIT COURT : OUTAGAMIE COUNTY

DIANE M STUMPH,

Petitioner,

-vs.-

Case No. 15 CV 1036

ONEIDA ZONING DEPARTMENT,
ONEIDA POLICE DEPARTMENT,
TROY PARR, ZONING ADMINISTRATOR,
BILL VANDENHUEVAL, BUILDING INSPECTOR,
Respondent/ Defendants.

RESPONDENT'S REPLY TO PETITIONER'S BRIEF

FACTS

On December 18, 2015 the court heard Respondent's Motion to Dismiss. Prior to the hearing, Respondent filed a Brief in Support of the motion, addressing threshold issues and seeking dismissal on several grounds including: tribal sovereign immunity (and as extended to Tribal departments and employees), state jurisdictional preemption under federal common law, and state jurisdictional bar based on principles of comity. *See* Brief in Support of Defendant's Motion to Dismiss at 3-6, *Stumph v. Oneida Tribe of Indians of WI*, 15-CV-1036 (November 10, 2015). Although Respondent's initial Brief addressed several issues in an attempt to respond to the somewhat unclear Petition, the motion hearing focused on the extension of tribal sovereign immunity to the Tribe's departments and employees. To clarify the issue, Petitioner previously acknowledged the Tribe has tribal sovereign immunity from this action¹ but alleged tribal employees do not. *See* Transcript of Proceedings at 11, *Stumph v. Oneida Tribe of Indians of WI*, 15-CV-1036 (November 11, 2015) (Ms. Stumph admits, "[T]hey are sovereign, the Tribe is sovereign, but the individuals are not. . . ."). Thus, the motion hearing specifically focused on

¹ The Tribe was initially a named party, but dismissed for lack of service.

whether the Tribe's immunity extended to Tribal Departmental officials acting in the scope of their authority and representative capacity. *See* Transcript of Proceedings, Motion Hearing at 7 and 20, *Stumph v. Oneida Zoning*, 15-CV-1036 (December 18, 2014). Since representative capacity was not disputed, the primary focus remains on the issue of "scope of authority".

Mr. Troy Parr, an employee/ agent/ and officer of the Tribe—the Tribe's Zoning Administrator, provided testimony confirming the Tribe has a code of laws, which includes a Sovereign Immunity Law, Marital Property Law, and Zoning and Shoreland Protection Law. *Id.* 8- 9. According to Mr. Parr there has been no Tribal waiver of immunity for this action to proceed²; additionally, no evidence was presented that the Oneida Tribe of Indians of Wisconsin ("Tribe" or "Oneida Tribe") waived its immunity or the immunity of its departments and employees. *Id.* at 11- 12. Also, no waiver of immunity specific to the Oneida Police Department has been alleged, argued, or presented relevant to Wis. Stat. § 165.92(3)(a).

Mr. Parr confirmed the Oneida Zoning Office ("Department"), a Department of the Tribe, was created by the Tribe pursuant to its authority of self-government. *Id.* at 7. Mr. Parr's specific employment responsibilities include administering the Department to ensure: plan reviews are complete, permit requirements are met, building permits are issued, inspections are done, certificates of occupancy are issued, and "enforce[ment of] the Oneida building code and the Oneida Zoning laws³" occur when necessary. *Id.* at 9. Building permits cannot be issued when there is no application for a permit, when a proposed plan cannot be approved, or

² *See also* Melinda Danforth's Affidavit in Support of Defendant's Motion to Dismiss at 2, *Stumph v. Oneida Tribe of Indians of WI*, 15-CV-1036 (November 6, 2015) (Confirming no waiver of immunity).

³ "Zoning and Shoreland Protection Code". *See* transcript, p. 8, lines 16-20. Also referred to as "Zoning and Shoreland Protection Law" and broadly as "Code" (referring to the provisions in the Zoning and Shoreland Protection Code specific to buildings-- building code).

completed work does not comply with the Tribe's Code. *Id.* at 10. Additionally, enforcement under the Code allows the Tribe's Zoning Department to "tag a building as uninhabitable" or "issue a stop work order". *Id.* at 10. Enforcement correspondence is issued by the Department, on letterhead, with citation to the applicable provision of Tribal Code. *Id.* Correspondence from the Department is typically sent via certified mail and if returned as "undeliverable" or "refused" the Department uses the Oneida Police Department, the Tribe's police department, to serve Tribal documents in accord with Tribal procedure. *Id.* at 12.

Since the Tribe has jurisdictional limitations, prior to assuming jurisdiction over property on the Tribe's Reservation, the Department researches a property prior to exercise of jurisdiction and enforcement. *Id.* at 13. Such research includes review of relevant county land records. *Id.* Mr. Parr is aware there are times when Wisconsin Administrative Code (commercial building code) does not apply to tribes and tribal members. *Id.* at 28; *See also* Wis. Admin. SPS 361.02(3)(b). Mr. Parr stated his Department asserted jurisdiction over the [Terry and Diane] Jordan property located at W140 Service Road, Oneida, and began enforcement action pursuant to the Tribe's Code. *Id.* at 13-14. Terry Jordan is an enrolled Oneida Tribal Member and husband to Diane Jordan (also referring to herself in this matter as "Diane Stumph")⁴, and began enforcement action pursuant to the Tribe's Code. *Id.* Mr. Parr sent notice (to Mr. Jordan) on Department letterhead and when it was returned "undeliverable", the Oneida Police Department was used as a means of service of Tribal notice to Mr. Jordan. *Id.* at 13-14.

Mr. Parr confirmed he was aware there were structural issues with the building on the Jordan property for two reasons: There was a significant fire in the building in December 2014

⁴ This fact is not disputed.

and a later building inspection performed in response to the Jordan's offer to sell the property again confirmed there were significant structural, plumbing, electrical, and mechanical concerns impacting the public's health, safety, and welfare. *Id.* at 25-26. Mr. Parr stated after receiving notification that some type of work was being performed on the Jordan property in violation of the Code, he requested William (Bill) Vandenhueval, the Department's Building Inspector (and his employee), to verify whether work was being performed and later directed Inspector Vandenhueval to post a Stop Work Order on the Jordan property in accordance with the Tribe's Code. *Id.* at 19, 21-22.

Neither the Petition, nor any other argument contains allegation that Mr. Parr or any other Tribal employee had personal or financial gain in enforcing the Tribe's Zoning and Shoreland Protection Law.

Petitioner does not dispute the facts set forth in Melinda Danforth's Affidavit in Support [of the Motion to Dismiss], so it is not necessary to further address whether the Oneida Tribe is a federally recognized Indian tribe possessing all the rights, privileges, and immunities attendant to that status. *See* Melinda Danforth's Affidavit in Support of Defendant's Motion to Dismiss at 1-2, *Stumph v. Oneida Tribe of Indians of WI*, 15-CV-1036 (November 6, 2015). It is also unnecessary to further address the Tribe's immunity or P.L. 280 concerns, as there has been no argument requiring rebuttal⁵. Respondent reserves further argument as to facts not subject to

⁵ Although Petitioner mischaracterizes whether P.L. 280 is a concern by stating, "[I]ndividual tribal members of Indian tribes may be sued civilly in state courts pursuant to Public Law 280", whether Public Law 280 has authorized this suit is not relevant, because Public Law 280 does not prevent the Tribe from exercising its authority to adopt or enforce Tribal laws. *See* Petitioner's Response to Respondent's Motion to Dismiss at 6, *Stumph v. Oneida Zoning*, 15 CV 1036 (January 4, 2016); *But see* Brief in Support of Defendant's Motion to Dismiss at 7, *Stumph v. Oneida Zoning*, 15 CV 1036 (November 10, 2015).

cross examination at the motion hearing, and realleges and incorporates by reference the arguments made in its first Brief in Support, including: the present action is barred by the doctrine of sovereign immunity, state jurisdiction is preempted under federal common law, and state jurisdiction is barred by principles of comity. Brief in Support of Defendant's Motion to Dismiss at 7, *Stumph v. Oneida Zoning*, 15 CV 1036 (November 10, 2015). Consistent with the motion hearing, this brief's argument is narrowly confined to the issue of whether Tribal officials⁶ were acting in their "scope of authority". All rights, challenges, and defenses are reserved for further argument.

ARGUMENT

I. The Oneida Tribe's Sovereign Immunity Extends to Its Departments and to Mr. Troy Parr, the Tribe's Zoning Administrator, and Mr. William Vandenhueval, the Tribe's Building Inspector, Requiring Dismissal.

First, as an arm of tribal government, tribal departments possess the attributes of tribal sovereignty and suits are normally barred absent a waiver of sovereign immunity. *See, Hardin v. White Mountain Apache Tribe*, 779 F.2d 476 (1985). In *Hardin*, a non-Indian residing on Reservation land, brought suit in district court against the Tribe, Tribal Court, Tribal Council, and various officials in their individual capacities, seeking declaratory and injunctive relief and damages on constitutional and statutory grounds after the White Mountain Apache tribal court issued a decision permanently excluding him from the Apache reservation. *Id.* at 478. The court found that sovereign immunity shielded the Tribe [as wells as its departments and offices] from any suit arising out of the tribe's proceeding. *Id.* at 479 (citations omitted). Additionally, the

⁶ To be clear, at the motion hearing Petitioner vaguely implied "Officer" or "Official" was narrowly restricted, however in this context "Officer" or "Official" encompasses more than elected or appointed officials. For example, courts have found the doctrine of sovereign immunity protects employees such as teachers, police officers, and that it even applies to governmental and commercial activities. *See E.F.W. v. St. Stephen's Indian High School*, 264 F.Supp. 1297, 1304 (2001); also *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (1985); and *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 756 (1998).

court found that tribal immunity extended to all individual tribal defendants, because they were acting in their representative capacity and within the scope of their [delegated] authority. *Id.* at 479-480 (citations omitted); *See also* Brief in Support of Defendant's Motion to Dismiss at 3, *Stumph v. Oneida Zoning*, 15 CV 1036 (November 10, 2015); *See also Weeks Constr., Inc., v. Oglala Sioux Housing Auth.*, 797 F.2d 668, 671 (1986) (stating "[A]s an arm of tribal government, a tribal housing authority possesses attributes of tribal sovereignty, and suits against an agency like the Housing Authority normally are barred absent a waiver of sovereign immunity." (citations omitted)).

Second, a Wisconsin case addresses whether the doctrine of tribal sovereign immunity bars suits against tribal officials. In *Landreman v. Martin*, 191 Wis. 2d 787, 530 N.W.2d 62 (Ct. App. 1995), outside investors brought a Wisconsin circuit court complaint against two tribal agents, seeking contract related recovery under a number of theories, including fraud and misrepresentation. The *Landreman* court summarized the attributes of tribal sovereign immunity as follows:

[I]ndian tribes enjoy sovereign immunity from lawsuits similar to the immunity of the United States government. An Indian tribe cannot be sued without the consent of the tribe or of Congress. However, sovereign immunity applies to the tribe itself, not the individual members of the tribe. Tribal officers, however, share the tribe's immunity of their actions are within the scope of their representative capacity. *Id.* at 801 (citations omitted).

The court concluded tribal officers were acting within the scope of their authority stating, “The dispositive element in our analysis is that their actions were not for their own personal interest or economic gain, but for the tribe’s benefit.” *Id.* at 802. The court went on to state:

This conclusion is consistent with the federal government’s long-standing policy promoting tribal self-determination and government. *See Three Affiliated Tribes v. Wold Eng’g*, 476 U.S. 877, 890 (1986). The United States Supreme Court recognizes a deeply-rooted policy of allowing Indians to be free from state jurisdiction and control.

McClanahan v. State Tax Comm’n, 411 U.S. 164, 168 (1973). This policy is also evidenced by federal legislation affecting Indians. Further, sovereign immunity of governmental officers is supported by the theory that it is “better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation”. *Barr v. Matteo*, 360 U.S. 564, 572 (1959).

Similar to the *Landreman* court, the court in *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (1991) stated a tribe’s immunity extends to suits for declaratory and injunctive relief and mere allegation that a tribe acted beyond its powers⁷ are not enough to defeat tribal immunity (citations omitted). *Id.* at 1271. Since individual action of the Band’s officials was limited to action in their capacity as the Band’s officers, the court was not able to view the suit against the officials as anything other than a suit against the Band itself, finding it necessary to extend the Band’s immunity because, absent a colorable claim, “[d]efendant tribal

⁷ Among the various allegations, the Imperial Granite Company alleged violations of state law regarding trespass and nuisance. *See Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (1991).

officials acted within the proper scope of their authority in exercising jurisdiction. . .” *Id.* at 1271-1272.

Although Plaintiff cites *Burlington Northern R. Co. v. Blackfeet Tribe of Blackfeet Indian Reservation*, 924 F.2d 899 (1991) for the proposition that “if [a] tribal officer or official is accused of violating the law, he or she is not acting within the scope of his or her representative capacity, and, therefore, tribal sovereign immunity does not apply.”, such assertion is mistaken. See Petitioner’s Response to Respondent’s Motion to Dismiss at 7, *Stumph v. Oneida Zoning*, 15 CV 1036 (January 4, 2016). This claim amounts to a misstatement of the *Burlington* decision. In fact, although the *Burlington* court concluded “[T]ribal sovereign immunity does not bar a suit for prospective relief against tribal officers allegedly acting in violation of *federal law*” (emphasis added), this decision was limited to suits challenging the constitutionality a federal statute and did not preclude application of a scope of authority/ representative capacity analysis.⁸ *Id.* at 901-902. In applying its own analysis of “representative capacity” to the issue, the *Burlington* court dismissed the Tribes and their legislative and executive bodies on sovereign immunity grounds. *Id.* at 906. Petitioner’s reliance on *Puyallup Tribe Inc. v. Dep. ’t. of Game*, 433 U.S. 165 (1977) is equally misguided because “[*Puyallup*]. . . is a suit to enjoin violations of state law by individual tribal members fishing off the reservation. [And a]s such. . . is analogous to prosecution of individual Indians for crimes committed off reservation lands. . . .” (citation omitted). *Id.* at 171. Neither *Burlington* nor *Puyallup* found allegations that a Tribe enforcing its own laws could overcome tribal sovereign immunity in a state court; and neither case precluded application of the scope of authority and representative capacity analysis.

⁸ The facts in the *Burlington* case are historically involved, but the issue was limited to a question of whether sovereign immunity extended to officials acting pursuant to an allegedly unconstitutional federal statute. *Burlington Northern R. Co. v. Blackfeet Tribe of Blackfeet Indian Reservation*, 924 F.2d 899, 901 (1991).

Last, since the only issue (and argument) appears to be whether Tribal officials were acting within the scope of their authority, the Oneida [Tribal] Zoning Department and Oneida [Tribal] Police Department should be dismissed from this suit in accordance with *Hardin* and *Weeks Construction*. *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 478 (1985); and *Weeks Constr., Inc., v. Oglala Sioux Housing Auth.*, 797 F.2d 668, 671 (1986). In the present matter, Mr. Parr confirmed the Tribal Zoning Department and Tribal Police Department, both located on the Oneida Reservation, were (and are) operating in accord with their Tribal responsibilities in accord with Tribal law and in accord with the Tribe's powers of self-government. See also Melinda Danforth's Affidavit in Support of Defendant's Motion to Dismiss at 2, *Stumph v. Oneida Tribe of Indians of WI*, 15-CV-1036 (November 6, 2015). Thus, the Tribe's immunity extends to the named Departments and dismissal is appropriate.

Additionally, the *Landreman* test should be applied to Troy Parr (Tribal Zoning Administrator) and William Vandenhueval (the Tribal Zoning Department's Building Inspector), who were and are acting within the scope of their authority⁹. Mr. Parr testified, in short, that the Tribal Zoning Department began inquiry into W140 Service Road, a property on the Oneida reservation, after being informed work commenced on that property for which there were previously known code issues related to a significant building fire. After confirming the property belonged to Terry and Diane Jordan, with Terry Joran being an enrolled Tribal member, the Zoning Department assumed jurisdiction and began Tribal enforcement action per the Code. Mr. Parr sent Mr. Jordan correspondence on official letterhead, citing Tribal law, requested

⁹ Whether Mr. Parr and Mr. Vandenhueval were acting within their representative capacity (of the Oneida Tribe) has not been raised an issue, so it is only necessary to address scope of authority.

Inspector Vandenhueval verify whether work was being performed in violation of the Tribe's Zoning and Shoreland Protection Code and, later, "tag" the property in accordance with the Code. Since Mr. Parr and Mr. Vandenhueval were acting for the Tribe's benefit, testimony confirmed there was no act for personal interest or economic gain, and there has been no contrary allegation or evidence to support Mr. Parr or Mr. Vandenhueval were somehow acting for their own personal interest or economic gain, the Tribe's immunity extends to them and they should be dismissed from this matter. Plaintiff's Pleadings contain nothing more than mere conclusory allegations and no colorable claim exists.

Ignoring the absence of tribal exhaustion in this matter¹⁰ and notwithstanding argument concerning proper venue¹¹ for review of Tribal assumption of jurisdiction, although Petitioner has tried to introduce outside facts in an attempt to somehow have this court make a determination on the issue of tribal jurisdiction in the Tribe's enforcement of its own laws, including through recent introduction of a purported prenuptial agreement, the introduction of such untested facts does not impact the assertion of Tribal immunity and is not relevant to determining whether the Tribe's officials were acting in their scope of authority. While such facts may also be introduced in the Tribal forum, subject to Tribal restrictions, an attempt to introduce an untested and late mentioned document and facts amounts to the proverbial "red herring". Respondent reserves further right to make bad faith argument(s).

¹⁰ See *Teague v. Bad River Band*, 236 Wis.2d 384, 398 (2000) (provided a discussion of the doctrine of tribal exhaustion and states, "Tribal courts in particular have been heralded as playing "a vital role in tribal self-government" and the federal government has consistently encouraged their development. This encouragement is apparent in the doctrine of tribal exhaustion.").

¹¹ *Id.* at 398 (assertion of absence of tribal power under federal law is a federal question, tempered by tribal exhaustion).

II. In Addition to the Extension of Tribal Sovereign Immunity to Tribal Departments, The Current Action Cannot Be Maintained Against The Oneida Police Department.

Although Petitioner has made no argument concerning the impact of Wis. Stat. § 165.92(3)(a) on the Oneida Police Department's immunity in this matter, and no argument concerning the Oneida Police Department generally, it is still necessary to provide additional information for consideration.

First, Wis. Stat. § 165.92(3)(a) states, "The tribe that employs a tribal law enforcement officer is liable for all acts and omissions of the officer while acting within the scope of his or her employment, and neither the state nor any political subdivision of the state may be held liable for any action of the officer taken under the authority to [enforce the laws of the state and make arrests for violations of such laws. . . .]".

Oneida Business Committee resolution (#09-03-08-A), "Resolution Waving Sovereign Immunity for Law Enforcement Purposes", states:

BE IT FURTHER RESOLVED, that the Oneida Tribe continues to accept liability for all acts of each Oneida Police Department law enforcement officer while acting within their scope of his or her employment, and the Oneida Business Committee hereby waives the Oneida Tribe's sovereignty *to the extent necessary to allow the enforcement in the courts of the State of Wisconsin* of this liability in accordance with section 165.92(3)(a) of the Wisconsin Statutes (emphasis supplied). *See Eric Boulanger's Affidavit in Support of*

Respondent's Reply to Petitioner's Brief, *Stumph v. Oneida Zoning*, 15 CV 1036 (January 14, 2016).

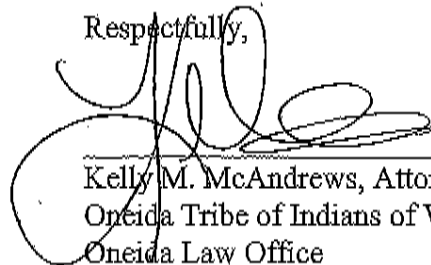
Wis. Stat. § 165.92(3)(a) and Resolution #09-03-08-A are consistent. In addition to the argument concerning extension of tribal sovereign immunity to Tribal Departments, even considering the requirements of Wis. Stat. § 165.92(3)(a), the Oneida Police Department retains its immunity because neither Wis. Stat. § 165.92(3)(a) nor Resolution #09-03-08-A waives the Police Department's Tribal immunity. Under the current facts, Tribal sovereign immunity has not been waived as to the Oneida Police Department because: a.) Individual law enforcement officers are not parties; and b.) Police Department service of tribal process occurred pursuant to Tribal Code, rather than State law. Thus, there exists no argument the Oneida Police Department was required to waive its immunity pursuant to Wis. Stat. § 165.92(3)(a).

CONCLUSION

For all of the foregoing reasons, this Honorable Court should enter an Order dismissing the petition and award Respondents their costs and attorney fees.

Dated this 14th day of January, 2016.

Respectfully,



Kelly M. McAndrews, Attorney
Oneida Tribe of Indians of Wisconsin,
Oneida Law Office
N7201 Seminary Road
Oneida, WI 54111
(920)869-4327
SBN: 1051633

STATE OF WISCONSIN : CIRCUIT COURT : OUTAGAMIE COUNTY

DIANE M STUMPH,

Petitioner,

-vs.-

15 CV 1036

ONEIDA ZONING DEPARTMENT,
ONEIDA POLICE DEPARTMENT,
TROY PARR, ZONING ADMINISTRATOR,
BILL VANDENHUEVAL, BUILDING INSPECTOR,
Respondents/ Defendants.

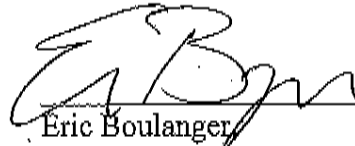
**ERIC BOULANGER'S AFFIDAVIT IN SUPPORT OF RESPONDENT'S REPLY TO
PETITIONER'S BRIEF**

I, Eric Boulanger, being duly sworn, depose and state as follows:

- 1.) I am the Assistant Chief of Police of the Oneida [Tribal] Police Department. I am making this affidavit in order to provide facts which are necessary for the Court to determine its jurisdiction, consider the Tribal Immunity of the Police Department, and in support of Respondent's Reply to Petitioner's Brief.
- 2.) The Oneida Tribe is a federally recognized Indian tribe, and possesses all of the rights privileges, and immunities attendant to that status. The Tribe has a reservation which was created pursuant to the 1838 Treaty with the Oneida, 7 Stat: 566, and which encompasses approximately 65,400 acres. The Tribe is organized under the Indian Reorganization Act of 1934, 25 U.S.C. § 461-479, and has a Constitution and Bylaws which were approved by the Secretary of the United States Department of the Interior on December 21, 1936. Neither the Tribe nor the United States Congress has waived the Tribe's sovereign immunity in relation to the above captioned case, and neither the Tribe nor Congress has consented to suit against any of the Tribe's officers or employees in relation to the above captioned case.
- 3.) Under Article III of the Tribe's Constitution, the Tribe is governed by a General Tribal Council composed of all the qualified voters of the Tribe, and by an elected nine-person Business Committee composed of a Chairperson, Vice-Chairperson, Treasurer, Secretary, and five Councilmembers. The General Tribal Council has delegated the governmental authorities enumerated in Article IV of the Tribe's Constitution to the Business Committee, including the authority to promulgate and enforce ordinances. The five Councilpersons serve as the Tribe's Legislative Operating Committee, and are responsible for drafting ordinances and policies for adoption by the General Tribal Council and Business Committee. Over the years, the Tribe has enacted a substantial

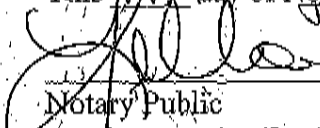
body of laws, which may be viewed online on the "Oneida Register" at: <https://oneida-nsn.gov/Laws/>.

- 4.) The Tribe has not waived its sovereign immunity to allow this matter to come before a Wisconsin Circuit Court, nor has it consented to subject matter jurisdiction or to personal jurisdiction over its employees or officials.
- 5.) The Oneida Police Department is a department of the Oneida Tribe of Indians of Wisconsin. The Oneida Police Department is located on the Oneida's Reservation at 2783 Freedom Road, Oneida, WI 54155.
- 6.) Pursuant to the Requirements of Wis. Stat. § 165.92(3)(a) the Oneida Business Committee Resolution #09-03-08-A, has provided a limited waiver of tribal immunity for individual police officers acting in the scope of employment to the extent necessary to allow enforcement of State law. An exact copy is attached hereto.
- 7.) The Oneida Tribe, through the Oneida Business Committee, has not waived the Police Department's tribal sovereign immunity and has not waived tribal sovereign immunity, generally, as to enforcement of Tribal laws.


 Eric Boulanger
 Oneida Police Department

State of Wisconsin,
 County of Ozaukee

Subscribed and sworn to before me
 This 14th day of ~~November~~ ^{January}, 2016


 Notary Public
 My Commission Expires: n/a - permanent

**Oneida Tribe of Indians of Wisconsin
BUSINESS COMMITTEE**



Onedas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had constantly refused to aid them.



P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

RESOLUTION # 09-03-08-A

Resolution Waiving Sovereign Immunity for Law Enforcement Purposes

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty Tribe organized under the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida General Tribal Council has delegated the authorities of Article IV of the Oneida Tribal Constitution to the Oneida Business Committee; and
- WHEREAS,** the Oneida Business Committee recognizes that the safety of all Tribal members and residents of the Oneida Reservation is of the highest priority; and
- WHEREAS,** the Oneida Tribe has dedicated significant resources to the development, improvement, and maintenance of a fully functioning Oneida Police Department to enforce the laws of the State of Wisconsin and the laws of the Oneida Tribe; and
- WHEREAS,** all Oneida Police Department law enforcement officers meet or exceed the State of Wisconsin qualifications for law enforcement officers as prescribed by Wisconsin Statute; and
- WHEREAS,** all Oneida Police Department law enforcement officers are qualified and available to provide mutual aid and assistance to surrounding law enforcement agencies; and
- WHEREAS,** the Oneida Business Committee previously adopted Resolution 3-13-96-C, pursuant to which the Oneida Tribe maintains a liability insurance policy covering the actions of Oneida Police Department law enforcement officers, and under which the insurer is prohibited from raising the defense of sovereign immunity; and
- WHEREAS,** the Wisconsin Department of Justice has opined that Resolution 3-13-96-C meets the requirements of section 165.92(3) of the Wisconsin Statutes, and since that time Oneida Police Department law enforcement officers have enforced state law pursuant to section 165.92 of the Wisconsin Statutes; and

WHEREAS, Oneida Police Department law enforcement officers are also deputized by the Sheriff of Brown County, Wisconsin, pursuant to section 59.26(5) of the Wisconsin Statutes, and enforce state law pursuant to such deputization; and

WHEREAS, the Oneida Tribe accepts liability for all acts of each Oneida Police Department law enforcement officer while acting within the scope of his or her employment; and

WHEREAS, the Oneida Business Committee desires to adopt a new Resolution incorporating the pertinent language of section 165.92(3)(b)(1) of the Wisconsin Statutes regarding the waiver of sovereign immunity for liability for acts of tribal law enforcement officers;

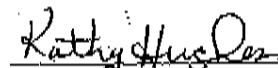
NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby rescinds Resolution 3-13-96-C; and

BE IT FURTHER RESOLVED, that Oneida Tribe continues to accept liability for all acts of each Oneida Police Department law enforcement officer while acting within the scope of his or her employment, and the Oneida Business Committee hereby waives the Oneida Tribe's sovereign immunity to the extent necessary to allow the enforcement in the courts of the State of Wisconsin of this liability in accordance with section 165.92(3)(a) of the Wisconsin Statutes; and

BE IT FINALLY RESOLVED, that duly trained and certified Oneida Police Department law enforcement officers shall continue to be authorized to enforce the laws of the State of Wisconsin in accordance with section 165.92 of the Wisconsin Statutes.

CERTIFICATION

I, the undersigned, as Vice Chair of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 7 members were present at a meeting duly called, noticed and held on the 3rd day of Sept., 2008; that the foregoing resolution was duly adopted at such meeting by a vote of 5 members for; 0 members against, and 1 members not voting; and that said resolution has not be rescinded or amended in any way.



Kathy Hughes, Vice Chair
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."