

THE LAW OFFICES OF

**O'Brien, Shafner,  
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May 11, 2007



Fred Allyn, Jr.  
Chairman, Ledyard Town Council  
12 Case Street, Suite 204  
Norwich, CT 06360

RE: Proposed Land Swap- Clark Farm/Indiantown Park

Dear Mr. Allyn and Members of the Town Council:

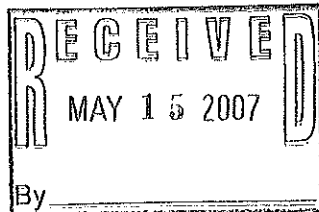
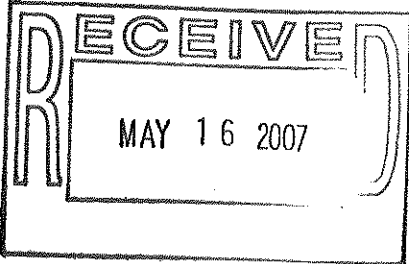
I am in receipt of your inquiry dated May 8, 2007 asking certain questions pertinent to the proposed land swap between the Town of Ledyard and the Mashantucket Pequot Tribal Nation ("MPTN") regarding the Clark Farm and Indiantown Park. Specifically, you have asked for clarification on three items:

- (1) An analysis of Connecticut General Statutes Sections 7-131n and 7-131i with specific thought to comments made by Mr. David Bainbridge.
- (2) A question about the Town Meeting and Resolution regarding the Land Swap and the issue of potential annexation of the land to be transferred to the MPTN.
- (3) A question about anything existing in the Town's land records or other public records regarding whether the Indiantown Park land was ever formally dedicated for park purposes.

I. Analysis of CGS Sec. 7-131n and 7-131i as applicable to this proposal

I have reviewed both of the above referenced statutes and believe that they do not apply to the proposed land swap but can certainly be used by the Mayor, Town Council and Town Meeting as a guide should any of those parties/entities wish to impose certain conditions hereafter.

CGS Sec. 7-131i provides that "...land acquired or developed by any municipality, for which a state grant was awarded under sections 7-131d to 7-131k, inclusive, shall not be conveyed other



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than to another municipality or to the state for use for recreation or conservation or converted to any use other than recreation or conservation..." As Attorney Stacy Haines of my office stated in her December 28, 2006 letter on this proposal, it seems evident that the Town of Ledyard purchased the Indiantown Park land from Mr. Eaton Goldthwaite in 1960 using an appropriation of town funds in the amount of \$3,250.00. Therefore, with no evidence that any State grant monies were used to acquire or develop this parcel, I do not believe that this statute is applicable to this matter.

CGS Sec. 7-131n, to which Mr. Bainbridge refers, is subject to further interpretation. On the one hand, the plain language of that statute references the concept of a "taking" of land for highway or other purposes. The statute says in relevant part that "[i]f any municipality takes any land, for highway or other purposes, which land was purchased for park or other recreational or open space purposes, ... or which had been dedicated for such purposes, such municipality shall provide comparable replacement land at least equal in value and per unit area size to the value and per unit area size of the land taken..." The use of the word "takes" would infer that the legislature was concerned about the use of eminent domain to take land that had been dedicated for use as a park and utilize it for some other purpose. There are no court cases that my office could locate that address or interpret this particular statute. Clearly, the municipality's "taking authority" is not being used here. The Town Meeting is deciding on a mutual conveyance of real estate between the Town and the MPTN.

However, if a court were to interpret the use of the word "takes" in the statute as meaning, in a broader sense, changing the use of a property from dedicated park land to some other use (whether by the Town or the MPTN would not matter), then an argument can be made that Section 7-131n applies at least to the extent of the Town replacing the acreage of conveyed park area either within the land to be acquired from the MPTN (the "Clark Farm") or elsewhere. The Town, however, pursuant to this statute would need to identify the area of replacement open space lands.

There is no question that the land at Indiantown Park had previously been "dedicated" for park purposes. Therefore, any possible claim regarding the aforementioned statute would rest upon an interpretation of the "taking" language. As I mentioned earlier, plausible interpretations can be made using the eminent domain reference (not our case here) but also the broader definition that simply changing the ownership and/or use of the dedicated park/open space lands would trigger the statute's requirements that replacement land be found.

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II. Issue of Annexation.

As you know the MPTN, as a federally recognized tribal nation, retains certain rights to petition the federal government to allow for the annexation of lands owned by the tribe into Trust status. A discussion of or questions about possible annexation would be a legitimate topic for the Town Meeting to address. The MPTN has not indicated any intent to annex the land which would be conveyed to them pursuant to the proposed land swap but obviously that position may change in the future.

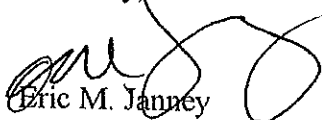
III. Information Regarding Dedication of by the Town of Ledyard of Indiantown property as a Park

The concept of dedication to a certain purpose can be illustrated in a number of ways. In some cases a municipal entity formally passes a Resolution or Ordinance dedicating a parcel to a particular purpose (e.g. dedicating a parcel for highway purposes). However, in my opinion, even without a formal vote or resolution regarding dedication, a municipality can exhibit that it has treated or intended a parcel as dedicated to a particular purpose over time.

In the case of the property known as Indiantown Park, it is clear that the Town of Ledyard had dedicated this land for park purposes involving at one time both active and passive recreational activities. The Town in approximately 1977 abandoned those uses since the maintenance of the land was not feasible and the park has been closed since that time.

As you know, I will be out of the office on vacation but Attorney Frank Eppinger of my Groton office is available to you for further discussion on the above-named topics. Frank is also Town Attorney for the Town of North Stonington and thus is well versed in the unique aspects of transactions involving the MPTN. He can be reached at 445-2463.

Sincerely,



Eric M. Janney  
Town Attorney Town of Ledyard  
cc: Mayor Susan B. Mendenhall

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