Casino promoters eyeing parcel abutting tribal land

By Maria Armental
Providence Journal

PROVIDENCE, R.I. — A Charlestown developer who owns 81 acres abutting the Narragansett Indians' tribal land told town officials that three potential buyers — including two casino promoters — have offered him $20 million for the land, Charlestown officials said.

The developer, Larry LeBlanc, and his lawyer, William Landry, met with Town Administrator Edward M. Barrett, Town Solicitor Robert E. Craven and Public Works Director Alan Arsenault on Oct. 1 to discuss the town's possible purchase of the land. The town has until today to express interest.

LeBlanc declined to comment yesterday, and Narragansett Chief Sachem Matthew Thomas denied any involvement.

"We would like to have this property," Thomas said, "but the reality is we don't have this kind of money."

Yesterday, town officials met behind closed doors to discuss LeBlanc's proposal.

Craven and Barrett have recommended the town buy the land.

"This property has been the subject of much speculation by the town as a potential, suitable site for an Indian casino and has caused grave concerns as to the potential ramifications of an adverse ruling from the U.S. Supreme Court," Craven wrote in an Oct. 9 memorandum signed by Barrett

Craven estimated the cost of the land would be $3 to $5 million.

"We must act now or this dual benefit opportunity could pass us by," he wrote.

If the town were to buy the land, Craven said, it could use some of the $2 million previously approved by voters for open space and recreation projects.

The 81-acre parcel abuts the Narragansett's 31 acres that are the subject of a pending U.S. Supreme Court appeal over whether the land can be put into federal trust. Town officials have speculated that if the tribe or a partner were to buy the land, the Narragansetts could add it to the rest of its federal trust, giving it enough land for a mega-development such as a casino.

The court is to hear the case on whether federal or state and local laws apply on Nov. 3.

Acting Town Council President James M. Mageau said the town is in no position to buy the land, pointing to the state's precarious financial situation, and noting that the current Town Council has only one month left in office.

"I think it's all a shakedown . . . [to] artificially inflate the value of the property," Mageau said. "[LeBlanc] knows that the town is not in a position to buy land right now."

Councilwoman Harriet A. Allen said she supports buying an option to purchase the land.

"It's literally buying time so that the people, after the Supreme Court makes its decision, can decide," Allen said.

The land had been pitched as a location for a new school when Charlestown pursued a withdrawal from the Chariho Regional School District.

Voters eventually rejected the withdrawal proposal.

Most recently, LeBlanc proposed building 125 detached condominiums, including 31 affordable units, on the site.

Tribal police records not public documents

Richard Moore
Lakeland Times

MINOCQUA, Wis. — Police reports and records related to arrests and other law enforcement actions by tribal police officers outside the borders of their reservations against nontribal citizens are not available for public inspection under the state's open records laws, the attorney general's office told The Lakeland Times late last week.

The Times had posed the question to the Wisconsin Department of Justice after some citizens raised concerns about their ability to access police and incident records if they were ticketed or arrested in Oneida County by a Lac du Flambeau police department officer.

In an Oct. 3 letter to the newspaper, assistant attorney general Mary Burke said tribal police departments could not be compelled to comply with the open records law or to waive tribal immunity from lawsuits to enforce that law.

Under certain conditions, state statutes give tribal police officers the ability to enforce state laws outside their territorial jurisdiction. An attorney general's opinion on Oct. 1 that the state's tribes cannot participate in mutual aid calls between law enforcement agencies has called the reach of that ability into question, though undoubtedly tribal peace officers can act outside their jurisdiction in particular situations.

What Burke's interpretation means is, many of the same law enforcement arrest reports that would be subject to public inspection if the Oneida County Sheriff's Department made those arrests would not be open to public inspection if officers of the Lac du Flambeau police department made them.

Burke noted that, in construing the open records law, the Department of Justice has on multiple occasions concluded that state statutes define public records authorities as only those who are custodians of the records of state agencies or state offices or public bodies created by the constitution, statute, ordinance, rule or order or of a political subdivision of the state.

"It follows that a tribal police department would not be an 'authority' within the meaning of the [statutes] unless it could be considered an agency of the State of Wisconsin or Statutes, or by an ordinance, rule or order issued by a Wisconsin governmental entity or official," Burke wrote.

No go

And that, she stated, they are not.

"Similarly, a tribal police department is created by a resolution of the tribe's legislature, not by the Wisconsin Constitution or Statutes, or by ordinances, rules, or orders issued by a Wisconsin governmental body or entity," she stated.

What's more, she continued, the tribe's sovereign immunity would also shield tribal police department records.

"In addition, it is well established that Indian tribes possess sovereign immunity from lawsuits both in federal and state court," Burke wrote. "Tribal immunity applies to suits for declaratory and injunctive relief and to those for damages. The immunity extends to entities that are arms of a tribe, and also protects tribal officials and employees acting within the scope of their authority or employment."

Immunity also encompasses tribal activities that occur outside of Indian country, she stated.

Burke said the U.S. Congress could abrogate that immunity, or the tribe itself could waive it, but the state could do neither, and she said the prospects of a congressional action or tribal waiver were slim.

"There are no congressional acts abrogating tribal immunity from lawsuits filed under state laws such as Wisconsin's public records law, nor am I aware of any Wisconsin tribe that has waived its immunity from a lawsuit under Wisconsin's public records law," she wrote.

What's more, Burke stated, the state Legislature has expressly recognized tribal sovereign immunity with respect to tribal law enforcement agencies whose officers exercise state law enforcement powers.

For example, in specified circumstances state law grants tribal police officers the same powers as sheriffs to enforce state laws on their reservations - it should be noted that a state highway runs through the Lac du Flambeau reservation, thus conceivably giving tribal officers state authority on that portion of highway - but only if the tribe has adopted a resolution allowing enforcement in state court of the tribe's liability for the actions of its officers or that provides some other mechanism to do so.

"These provisions do not purport to directly regulate tribal police departments or to compel them to be sued in state court, but rather recognize tribal sovereignty by offering a grant of state powers to tribal police departments that voluntarily agree to meet state standards, to assume liability for the official acts of their officers, and to consent to suits in state court to enforce that liability," Burke wrote.

But, she continued, nothing in the statutes requires a tribe to comply with the state's public records law or to waive immunity from lawsuits to enforce that law as a condition of the state's grant of law enforcement powers to the tribe.

"If the Wisconsin Legislature had intended to impose such requirements, it would have done so expressly, just as it has done in the provision of [the statutes] discussed above," she wrote. "This acknowledgment of tribal sovereignty by the Wisconsin Legislature strongly supports the conclusion that - absent an actual waiver of immunity by the tribe - a tribal police department would be immune from a public records enforcement action . . . ."

Some recourse

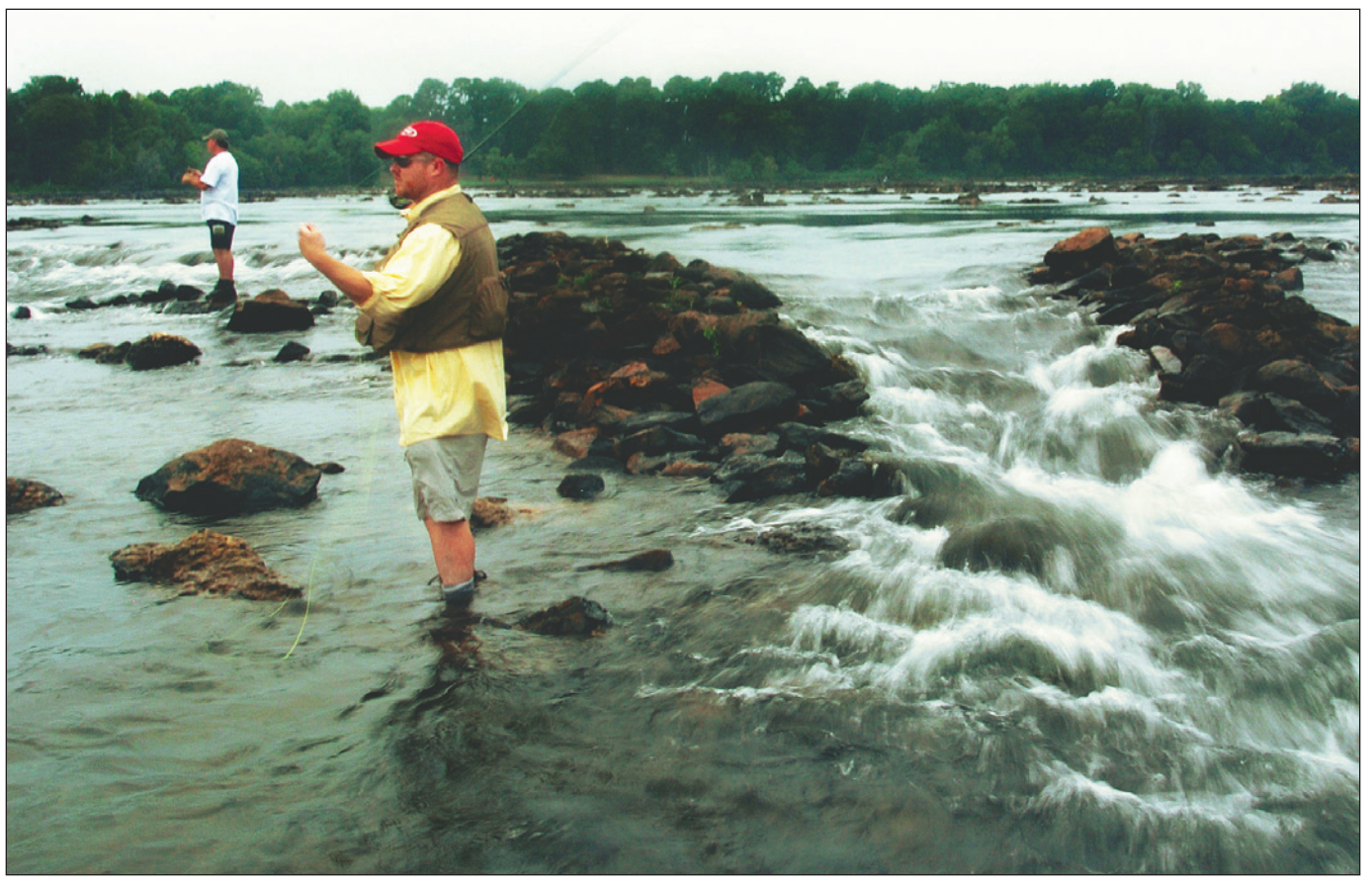
All that being said, an inability to obtain records through a public records request doesn't mean those records are completely inaccessible, Burke wrote.

"The public records law and the discovery statutes applicable in litigation provide separate mechanisms to obtain potentially the same records," she stated. "As already noted, tribal police departments that exercise state law enforcement authority under [the statutes] are required to consent to the enforcement in state court of tribal liability for the official acts of tribal police officers. Such consent undoubtedly would allow the use of discovery in such a court action to obtain records relevant to the underlying claim of liability."

In other words, a person arrested would, in court, have a defense entitlement for the records related to that arrest, and a person bringing a civil suit for liability would have a similar privilege.

However, that would still mean the general public would have no right to review tribal police reports, a right they have with state law enforcement agencies.

Old fishing holes



Rainier Ehrhardt/The Augusta Chronicle

Mike Floyd and Tim Kaiser, rear, fish next to an old Indian fishing weir on the Savannah River, Tuesday, Aug. 12, in Augusta, Ga. The V-shaped stone sluices that resemble primitive water slides have a very specific use as fish weirs, where American Indian tribes netted and speared seasonal runs of shad almost 4,000 years ago.

San Pasqual Indian Reservation: Tribe breaks ground on new hotel

By North County Times

SAN PASQUAL, Calif. — Officials with the San Pasqual Band of Mission Indians broke ground Monday on their new, 161-room hotel.

The tribe owns the Valley View Casino near Valley Center. It plans to build a boutique hotel to make room for guests that want to stay overnight.

"Breaking ground for our hotel is an exciting step in our expansion process," said Joe Navarro, president of the San Pasqual Casino Development Group.

In December, Valley View Casino completed a $114 million expansion of the casino adding more gambling and dining space. In June, construction began on its smoke-free casino addition and live poker room that will open on December.

The new hotel will include a 5,000 square-foot spa, 3,500 square-foot fitness center, a pool, a restaurant and a bar.

The hotel is scheduled to open in early 2010, casino officials said. When it opens, it will be the third North County tribe to open a hotel.

Seminole Nation plans Okla. abuse shelter

Oklahoman

OKLAHOMA — The Seminole Nation is working to open a shelter for victims of domestic violence in the state.

The shelter will be open to all domestic violence victims in Seminole County and tribal members who live outside Seminole County, said Melissa McKay, a client advocate for the Seminole Nation's domestic violence program.

Only about half of all domestic violence cases are reported, and American Indian women in Oklahoma are even less likely to report, according to the National Coalition Against Domestic Violence and the Violence Policy Center.

McKay said she and others working on the project think opening the shelter will give hope to victims of all races.

"It's all the same when it comes to domestic violence," McKay said. "Abuse is abuse."

Building begins soon

The Seminole Nation already owns the land, and construction will begin soon, McKay said.

The $500,000 shelter will have individual rooms, a children's room and a computer room.

Most of the money came from a federal grant, but a banquet, silent auction and tribal donations have brought the total to $305,000, McKay said.

The project goal is $500,000.

After the shelter is open, the tribe wants to open a visiting center for families that have been divided by domestic violence.

U.S. wants constitutional issues dropped

By Jody McNichol
Oneida Dispatch

WAMPSVILLE, N.Y. — The United States doesn't want to argue the Constitution.

The Department of Interior is asking the Second Circuit Court of Appeals to dismiss any complaint in the land into trust lawsuits that refer to the U.S. Constitution. The DOI made the decision to take 13,004 acres of land in Oneida and Madison counties into trust for the Oneida Indian Nation. Following that decision, the state, counties and some private organizations filed lawsuits against the DOI.

For the state and the counties of Madison and Oneida, the motion to dismiss refers to the first, second, and the 17th complaints, according to Rochester Attorney Dave Shraver.

Litigation expert on Indian affairs from the firm Nixon Peabody, Shraver gave a brief update on the land into trust lawsuits before the Madison County Native American Affairs Committee went into closed-door executive session Tuesday.

The first complaint says the delegation of authority from Congress to the Bureau of Indian Affairs is unconstitutional.

The second also refers to the delegation of authority, this time as it relates to the Tenth Amendment in the Constitution.

The amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

County Attorney S. John Campanie said that the DOI's plan to take the acreage from New York state is contrary to the amendment.

The 17th complaint in the suit relates to the Indian Gaming Regulatory Act, which requires a two-step process. The state is arguing that the decision exceeds the authority of the DOI and that the decision cannot be made without the governor of the state and the secretary of the interior agreeing.

The state will respond that the points are valid, forcing the DOI to argue those issues before the rest of the complaints are addressed.

"If we win on one of those points, we win the whole case. If we lose, the case is still alive because the issues are still on the table," Campanie said.

Also, County Administrator Paul Miller briefed the committee on the New York State Association of Counties Conference held in Niagara Falls recently. Miller said NYSAC has committed to support legislation requiring the state to collect taxes on gasoline and cigarettes sold by Indian tribes. "More people are talking about it than I have ever heard at a conference before," Miller said.

The request to dismiss the complaints that argue the constitutionality of the DOI decision is scheduled to be heard by Judge Lawrence Kahn in Albany on Nov. 7.