

2-13-2023

RESOLUTION OF THE TOWN BOARD OF THE
TOWN OF SANBORN

Whereas, pursuant to the 1854 Treaty between the United States Government and the Chippewa Indians in Northern Minnesota, Wisconsin, and Michigan, reservations were established, and lands were allotted in Fee Simple to the Tribes and tribal members within the boundaries of the reservations. This included the Bad River Reservation (herein after "Reservation") of the Bad River Band of Lake Superior Tribe of Chippewa Indians (herein after "Tribe") in Ashland County, Wisconsin. The Town of Sanborn (herein after "Town") is located entirely within the boundaries of the Bad River Reservation.

Whereas, the Town of Sanborn is the "Taxing Jurisdiction" for the lands located within the boundaries of the Town. The Tribe and Tribe member lands made up approximately 85% of the taxable real property in the Town of Sanborn. The Tribe and Tribe member lands were taxed under the Wisconsin Real Estate Tax laws through 2006.

Whereas, the following is the:

HISTORY OF TOWN OF SANBORN NATIVE
PROPERTY TAXATION ISSUES

- 1) In November of 2006, *Keweenaw Bay Indian Community v. Naftaly*, 452 E 3^d 514 (2006) became Federal case precedent on taxation of Indian lands. The case established that the lands allotted to the Tribe and Tribe members under the 1854 Treat were not taxable under State real estate taxation law and the Reservation lands were a permanent home for the Tribe and Tribe members.
- 2) On January 31, 2007, the Town of Sanborn received correspondence from the Tribe declaring that, based on the Keweenaw Case, the Tribe would no longer pay property taxes on Reservation property within the Town. The Tribe intended to advise its Tribe members to do the same. The Tribe requested that all property owned by the Tribe and its members be removed from the Tax Rolls by February 15, 2007.
- 3) The Town of Sanborn Assessor received on April 14, 2007, a letter from the WI Department of Revenue ("DOR") citing the Keweenaw Bay case, an opinion of the Attorney General (720AG74 (1983)) and the Wisconsin Property Assessment Manual. The DOR advised that there:
 - Was no presumption of taxability of Tribe or Tribe member land on the Reservation. The burden of proof of taxability rests with the municipality, and

- For the Tribe or Tribe property to be immune from tax, the municipality would be required to determine:
 - a) The fee simple parcel is within the boundary of the Reservation, and
 - b) The parcel was subject to the 1854 Treaty.
- 4) On July 23, 2007 the Town of Sanborn adopted RESOLUTION #0723-2007, implementing the revision of the Town Tax Rolls within the guidelines from the Wis. DOR.

The Tribe and Tribe member-owned lands were removed from the Tax Rolls in 2007.

Notes: What the Town of Sanborn did with the tax rolls in 2007 is now the law pursuant to 2022 Federal Court Case Law.

- 5) On August 24, 2007, the DOR sent a letter to “Local Assessors of Fee Lands Owned by Native Americans in Reservations in Ashland, Bayfield, Iron, Sawyer, Washburn, Burnett, and Vilas Counties.” The DOR confirmed the process for tax exemption of Native American-owned lands on the Reservations. The DOR letter discussed the process of handling refunds of unlawful taxes paid.
- 6) On May 8, 2008, the DOR wrote the presumption that the Native American owned lands were tax exempt. The DOR added a new provision. If Native American lands owned lands are sold to a non-Tribal member, the lands would be taxable. If a tribal member bought it back it would lose its taxable immunity. Such land would thereby be taxed. The town of Sanborn was not aware of the new provision until 2016.
- 7) The Town of Sanborn started a Town Levy beginning in 2015 and it had not issued a Town levy in any previous year.
- 8) On July 8, 2016, non-tribal taxpayers in the Town of Sanborn sued the Town and the DOR, *Klein et al v Tom of Sanborn, et al*, Ashland County Circuit Court Case 2016CV00083. In this case, the Circuit Judge, on January 12, 2017, ordered that the Native American lands that were transferred to non-tribal members lost tax exempt status and Native re-purchase of the lands does not restore the tax exempt status of the lands. All Native-owned lands with this history were ordered returned to taxable status and placed back on the tax rolls.
- 9) The Town of Sanborn complied with the Court Order and added the Native properties which had been sold and re-purchased to the tax rolls.
- 10) On June 1, 2018, Forty-two (42) lawsuits were filed against the Town of Sanborn in Ashland County Circuit Court by Native taxpayers seeking reimbursement for

payment of unlawful taxes. The lawsuits were preceded by Notices of Claims and Claims by the Taxpayers. The lawsuits were removed to Federal Court. Federal Court Orders now exist compelling payment of approximately \$750,000.00 plus accruing interest to the Native taxpayers by the Town of Sanborn.

- 11) In 2018, affected Indian Tribes, including Bad River, commenced a Federal Court lawsuit against the Wisconsin Governor and DOR seeking relief from the actions of the Circuit Judge in Ashland County, placing Native property with title gaps back on the tax roll (*Lac Courte Oreilles et al v. Evers et al*)

Whereas, on August 15, 2022, in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians at al. v. Evers et al.*, 46 F.4th 552 (7th Cir. 2022), the U.S. Court of Appeals for the Seventh Circuit held that the State of Wisconsin and its municipalities shall not tax property located within reservations established pursuant to the 1854 Treaty owned by members of the signatory tribes, including members of the Bad River Band, The decision was not appealed to the Supreme Court and became final and binding law.

Whereas, all of the Native American-owned land in the Town of Sanborn is now listed as non-taxable.

The current law on Town of Sanborn taxation is exactly the same as it was in 2007.

Whereas, Tribal members have valid claims for tax refunds of tax payments dating back to 2015. Tribal members have preserved their claims for refund of unlawful taxes paid and have filed actions against the Town of Sanborn, which are pending in Federal Court. The tax refund claims total approximately \$750,000.00 plus accruing interest. Wisconsin towns are statutorily required to satisfy upfront that amount (as opposed to other taxing jurisdictions, like the school district or county, doing so), and the Town does not presently have nor imminently will have the financial capacity to pay such amount; and

Whereas, the Town continues, with reasonable diligence, to explore all its options to pay the tax refunds, with interest, for the subject tax years. Such undertaking includes, but is not limited to, exploring its options for a private or public loan or grant including consulting with the State of Wisconsin and/or the State Department of Revenue, Department of Administration or Board of Commissioners of Public Lands (or any federal counterparts to such agencies) from which such a loan or grant may be available, and

Whereas, the impact of the Tribe and Tribe member Real Estate Tax Issues goes far beyond the Town's obligation to refund unlawful taxes paid by Native American taxpayers:

- a) The Tribe and Tribe members, formerly taxable property in the Town, was approximately 85% of the taxable property in the Town. The non-Tribe and non-Tribe member owners of the remaining 15% of the taxable property must now bear the entire tax burden of the Town.

- b) The Town of Sanborn previously received subsidy payments from the Tribe and Bad River Housing for Ambulance Service to Town residents. (\$870,000.00 from 2002 - 2017) The 2017 subsidy payments were \$80,000.00. The Tribe and Bad River Housing stopped subsidy payments in 2017 due to the Real Estate Tax issues.
- c) The Town of Sanborn received Tribe payments and in-kind services in excess of \$2,700,000.00 for disaster relief from flooding of Town roads in 2016 and 2018. The Tribe repaved Town roads (Ackley, Kagerville, McDonald, and Government) for a total of \$1,200,000.00.

All Tribe financial assistance to the Town of Sanborn ended in 2017.

The above impacts have a direct impact on the future and survival of the Town of Sanborn.

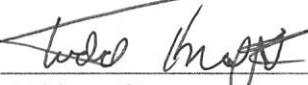
Now, Therefore, the Town of Sanborn Town Board resolves as follows:

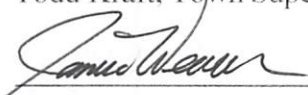
1. The Town of Sanborn has been placed in a unique and financially devastating position by the above referenced August 15, 2022 U.S. Court of Appeals Decision.
2. The Town of Sanborn respectfully implores the State of Wisconsin to provide immediate financial assistance to the Town of Sanborn to meet the pending obligations and continuing needs.
3. The Town of Sanborn will provide additional information and documentation requested, to assist the expedient handling of this matter.

This Resolution was adopted by the Town Board at a meeting on the 13th day of February, 2023, by unanimous vote.


Luis Salas, Town Chairman


Ben Connors, Sr. Town Supervisor


Todd Kraft, Town Supervisor


Jamie Weaver, Town Clerk