

TRIBE'S LAWSUIT THREATENS NORTHERN MICHIGAN WAY OF LIFE AND PROPERTY VALUES: THE TIME FOR ACTION IS NOW!

The Tribe's Lawsuit

About a year ago, the Little Traverse Bay Bands of Odawa Indians filed a federal lawsuit against Rick Snyder, as Governor of the State of Michigan, seeking a stunning expansion of their Reservation so as to include huge amounts of land owned by non-Indians. The claim is based upon an unwarranted reading of Treaties in 1836 and 1855 between predecessor tribes and the United States of America. Today, the Tribe's Reservation consists of only a relative handful of parcels of land that have been bought by or on behalf of the Tribe and are held in trust by the federal government. If the Tribe prevails in this lawsuit, the Tribe's Reservation will expand to incorporate almost all of Emmet County and a part of Charlevoix County, a tract of something like *332 square miles*.

The Lack of Widespread Local Reaction

Unfortunately, many non-Indians find it difficult to imagine that the lawsuit could have serious effects on them and their neighbors. This appears to be the product of several seemingly plausible, even logical, assumptions, but the reality is otherwise. For example:

- Most people understandably lack any real knowledge of the Indian law issues, let alone any appreciation of the arcane and counter-intuitive rules that govern the rights of an Indian Tribe vis-a-vis State and local governments and nontribal members. They perceive an "Indian Reservation" as some quaint or obscure technical term that won't impact them, or that only affects land owned by the Tribe. ***But an Indian Reservation is hardly an abstraction – it defines the principal sovereign authority, and all property within a Reservation, including land owned by non-Indians, is literally and legally "Indian Country." Hence, the Tribe's claims are very real, very impactful and very significant for everyone within the claimed Reservation, including the non-Indians who own a vast majority of this land.***
- Many find it difficult to comprehend that more than 160 years of history can be undone by a single ruling from a federal court. ***But the Judge in this lawsuit, following similar rulings by other courts, already has ruled that the past 160 years of history is almost completely irrelevant to the question of whether the Tribe was granted a large Reservation that continues to exist today.***
- People assume that this lawsuit will take decades to resolve and won't have any impact in their lifetimes. ***In fact, the primary issue in the lawsuit – the boundaries of the Tribe's Reservation - will be tried in late 2017 or early 2018, and the experts and lawyers must act now to prepare for that trial. Even before a trial, once the implications of being on an Indian Reservation become more widely recognized, the overhanging cloud of uncertainty created by the pendency of this lawsuit may well impact property values.***
- Many can't fathom how profoundly these claims could impact the entire region in terms of the rule of law, property values, quality of life and the "Northern Michigan way of life." ***But if the Tribe wins, the effects will be profound, permanent and very unappealing to non-***

Indians. Even though the Tribe's claims (at least as of now) do not extend to attacking title to lands held by non-Indians, if the Tribe wins this lawsuit many other important rights and protections that non-Indians have enjoyed in the past will abruptly end, and the land and lifestyles that non-Indians pass on to the next generation will be fundamentally diminished.

- Many have been lulled into apathy by the carefully orchestrated campaign by the Tribe to downplay the significance of its bold claims and the consequences of the Tribe winning the lawsuit. ***But the Tribe has not been forthcoming with disclosing its ultimate agenda. Furthermore, if the Tribe wins, any future Tribal Council will be free to ignore any past assurances and may in fact be obligated to its members to act contrary to those assurances and assert all powers and rights that apply in its Reservation.***
- People can't believe that the State won't protect them from any significant disruption of their rights and property interests based on Treaties that have lied dormant since before the Civil War. ***But the State has limited resources that are inadequate to meet the massive resources being deployed by the Tribe to prosecute this lawsuit. Furthermore, political shifts, differing priorities and persistent competing demands on State resources could result in the State capitulating in a way that will be to the great disadvantage of non-Indians.***

The Reality of the Tribe's Quest for Power

The lawsuit is not simply a dispute between the Tribe and the State over technical regulations, taxes, child welfare issues or obscure fishing or hunting rights. Rather, it is a determined attempt by the Tribe to establish its *superior sovereignty* that will in many respects supplant the sovereign rights not only of the State, but also of every city, village, township, school district and county in the claimed Reservation. If the Tribe wins the lawsuit, all of the land in the region, whether owned by the Tribe, a member of the Tribe or non-Indians, will be legally declared Indian Country and a part of the Tribe's Reservation. The resulting consequences include:

- The Tribe will be sovereign authority of all matters involving the Tribe *and its members*.
- Conversely, the Tribe *and each of its members* will be beyond the sovereignty of the State or any of its local governmental units. State and local taxes, zoning laws, building regulations, environmental laws and all other types of state or local regulations will simply cease to apply to the Tribe *or any of its members*.

A Look at the Region Ten Years Later if the Tribe Prevails

To gain a perspective on how the Tribe's lawsuit may impact the region, consider the following preview of what the region could look like a decade from now if the Tribe's claims are upheld:

- Property tax revenues will have dropped significantly, in part because property owned by the Tribe or any of its members is exempt, *but in larger part because the market values of properties within the Reservation have plummeted.*

- As time has passed and the consequences of being in an Indian Reservation have started to sink in, buyers will have concentrated on the many attractive options (e.g., Torch Lake, lower Walloon Lake, lower Lake Charlevoix) that are outside of an Indian Reservation. Buyers will have purchased in the region only at a deep discount.
- The “hole” in downtown Petoskey (formerly the Petoskey Pointe project) will have been developed as *whatever* a developer wanted it to be, so long as the developer was (or was aligned with) the Tribe *or any member of the Tribe*. The development will not have been subject to any limits as to uses, stories, overall size, architecture, adequacy of parking, etc.
- There will be several fast food restaurants in both downtown Petoskey and downtown Harbor Springs. Once more, the local municipality was helpless to prevent whatever any Tribe member decided to develop.
- Gaming will have proliferated throughout the Reservation – to any location that the Tribe *or any of its members* chose. Gas stations, convenience stores, party stores, etc., all are likely candidates as sites for so-called Class II gaming (essentially slot machines).
- No significant residential or commercial expansion or development of any nature will have taken place that requires a federal permit for air, water, wetlands, etc. The Tribe, not the State, has the authority to administer any of these federal laws.
- There will be a host of wind farms in the region, several located along the shoreline where the winds are the heaviest and most consistent. Once more, the State and local governments were powerless to prevent the siting of these wind farms.
- A lakeside homeowner on M-119 will find that the adjacent property has been bought by a member of the Tribe with plans to redevelop the property as a convenience store with a flea market during summer months. Once more, the State, county and local governments will be powerless to prevent the Tribe member from doing whatever he or she decides to do.
- Billboards will be splattered throughout the region, even along scenic roads such as M-119. Local and state laws regulating billboards don’t apply to the Tribe or any of its members.
- Residents in condominiums or resort associations who thought they were protected by recorded deed restrictions and condominium protections will have found that they are not as protected as they assumed. If a member of the Tribe has purchased in the complex and challenged the validity of the restrictions and protections, the challenge likely will have been determined by a Tribal Court.
- An overwhelming number of businesses dealing with goods or services involving significant taxation at the State level, such as liquor stores, gas stations and convenience stores, will be owned by members of the Tribe. Non-Indians who pay such taxes haven’t been able to compete against Tribe members who are exempt from them.

- Any non-Indian establishments requiring a liquor license, including restaurants, liquor stores, private country clubs and bars, also will be sorely tested. In addition to complying with State permits and licenses, they also will have had to comply with licensing, permits and associated fees or taxes imposed by the Tribe.
- A non-Indian whom is deemed to have “conducted business” with a member of the Tribe will not enjoy the protection of a Michigan court, but rather is subject to being dragged into a Tribal Court. And the term “conducted business” is so nebulous that many non-Indians will be shocked to discover that they are subject to Tribal Court jurisdiction.
- The Tribe will have established and deployed its own police department to patrol the entire region. The lines between their authority and that of State and local police agencies will be blurred and impede effective and efficient law enforcement.
- Marijuana establishments will have proliferated throughout the Reservation, as State drug laws don’t apply to Tribe member dispensary owners and recent developments in the law have led the federal government to allow Indians to ignore federal drug laws.
- Many existing residents in the Reservation will learn to live in Indian Country because they have no choice. But a feeling of malaise and disenfranchisement will have settled in among non-Indians in the region, as the consequences of being on an Indian Reservation are slowly but unremittingly impressed upon them. Non-Indians will have been affected by the decisions of a Tribal Council for whom they had no vote. They will not even have had the right to attend meetings of the Tribal Council.
- Tribal policy will have fluctuated as Tribal politics evolved. Any public assurances given by the past leaders of the Tribe were not binding on future Tribal Councils and may well have been ignored or explicitly rejected. *The actions of future Tribal Councils are governed by their obligation to act in the best interests of the Tribe and its members*, even if completely at odds with prior assurances or the rightful interests and expectations of non-Indians.

While these scenarios may seem apocryphal, they all are entirely possible in the event that the Tribe prevails on its claims. The only certainty will be that non-Indians and the State and local leaders they elect will be helpless to prevent any of them.