



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

To: State and Kent County Boundary Commissioners

Cc: Robert Munger, DuRay Development
David Pasquale, Lowell City Manager
Betty Morlock, Lowell City Clerk
Mari Stone, Vergennes Township Clerk
William Fahey, Attorney for Vergennes Township
Mark Nettleton, Attorney for Lowell Charter Township
State Representative Dave Hildenbrand
James Smiertka, Senior Executive Assistant Director/DLEG
Keith Lambert, Office of Land Survey & Remonumentation/DLEG

From: Christine Holmes, Manager
State Boundary Commission

Date: March 7, 2007

Subject: **SIGNED ORDER RE SBC DOCKET #04-AP-4**
Petition requesting annexation of territory in
Vergennes Township to the City of Lowell

Attached is a copy of the Final Order, which was signed by Director Swanson on March 2, 2007, to deny the above petition.

The enclosed material contains the following:

- Summary of Proceedings, Findings of Fact, and Conclusions of Law.
- Final Order.
 - Attachment A: Legal Description and Map of Area Proposed for Annexation (as petitioned).
 - Attachment B: Letter from Director Hollister to Boundary Commission (11-1-05).
 - Attachment C: Letter from Boundary Commission to City and Township (11-3-05).
 - Attachment D: Letter from Boundary Commission to Director Swanson (2-15-07).

As required by MCL 117.9 (Home Rule City Act – PA 279 of 1909, as amended), copies of the Final Order will also be mailed to property owners located within 300 feet of the area proposed for annexation.

Commission action on Docket #04-AP-4 is now closed. Please feel free to call me if you have any questions or wish to discuss this material.

Encl.

STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

BEFORE THE STATE BOUNDARY COMMISSION

In the matter of:

**Boundary Commission
Docket #04-AP-4**

**The proposed annexation of territory
In Vergennes Township to the City of Lowell,
Kent County**

**SUMMARY OF PROCEEDINGS,
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

SUMMARY OF PROCEEDINGS

The territory denied for annexation in Vergennes Township to the City of Lowell is described in Attachment A.

- A. On October 13, 2004, a petition was filed requesting the annexation of approximately 177 acres located in Vergennes Township to the City of Lowell.
- B. On November 18, 2004, the State Boundary Commission held an adjudicative meeting to determine the legal sufficiency of the petition. The petition was declared to be legally sufficient, pursuant to Public Act 191 of 1968, as amended and Public Act 279 of 1909, as amended.
- C. On March 3, 2005, the State Boundary Commission held a public hearing in the City of Lowell to receive testimony given pursuant to Public Act 191 of 1968, as amended.
- D. On September 15, 2005, at an adjudicative meeting, State Boundary Commissioners unanimously adopted a motion to postpone a final decision on this petition and recommended an extension of either 30 days, or until the next Commission meeting, for the City of Lowell and Vergennes Township to continue negotiations on developing a 425 agreement.
- E. On October 20, 2005, at an adjudicative meeting, the city and the township reported to the Commission on the status of their extended negotiations for a 425 agreement. The city and township agreed on the good efforts by both to negotiate, and that they achieved agreement on the duration of the contract and the allocation of millage; however, they could not reach agreement on the zoning jurisdiction of the property.

- F. On October 20, 2005, at an adjudicative meeting, the State Boundary Commission voted 3-1 to deny this petition for annexation. Voting in favor to deny the petition for annexation were State Commissioner Vicki Barnett, and Local Commissioners Robert Clarke and Susan Flakne. State Commissioner Ken VerBurg voted no on the motion to deny this petition. No dissenting comment was offered by Commissioner VerBurg.

The reasons stated by Commissioners for denying the request for annexation are as follows:

Local Commissioner Robert Clarke: The annexation petition to Lowell provided for some growth, but some additional sprawl. I am concerned that it ignores the contiguity and compactness assumptions that have guided this body--from the very beginning--about what we are here for, and the problems that growth in Michigan always entail and, of course, we don't want anyone to leave the state. But I think there is such a thing as orderly growth and this is not it.

Local Commissioner Susan Flakne: I have also been extremely troubled by the whole notion of the existence of the sewer line as it is. The City of Lowell is willing to allocate capacity via that same line as long as it's its own capacity, but not use that line to allocate capacity to serve people in this proposed development, and not be willing to allocate capacity to Lowell Township to do the same thing. I do think that a 425 would have been a win-win for the City of Lowell, and eventually provided for some growth, but this zoning thing - zoning, a regional land use plan, and the land use plans of the municipalities involved - is supposed to be one of the criteria that we are supposed to consider, and the fact that the city wants the ultimate control over that, I think, was a major negative factor, along with its unwillingness to share its capacity, when it was perfectly willing to allocate that same capacity to the development if it had jurisdiction.

State Commissioner Vicki Barnett: I ditto both of those (comments from local commissioners) - very well said.

- G. On October 20, 2005, at an adjudicative meeting, State Boundary Commissioners voted 3-1 to adopt the Summary of Proceedings, Findings of Fact, and Conclusions of Law, and recommended that the Director of the Department of Labor & Economic Growth sign an Order to deny this petition for annexation. Those voting in favor of the adoption and recommendation were State Commissioner Vicki Barnett, and Local Commissioners Robert Clarke and Susan Flakne. Voting against the adoption and recommendation was State Commissioner Ken VerBurg.

FINDINGS OF FACT

1. The proposed area for annexation is 177 acres of vacant land in Vergennes Township.
2. Annexation is requested by the petitioner in order to acquire sanitary sewer conducive for a proposed development. A proposal for development of the property has not been

finalized, and plans vary between residential and mixed-use (residential, condominiums, senior housing, and possibly multi-tenant rental housing, church, and small retail shops).

3. The north section of the territory proposed for annexation is L-shaped and contains approximately 97 acres. The south section contains approximately 80 acres, approximately one-third of which is wetland. The north and south sections are connected by a triangular parcel approximately 450 feet long by 150 feet wide.
4. The north parcel has approximately 1,075 feet of frontage on Vergennes Road to the north, and approximately 665 feet of frontage on Alden Nash Avenue to the west. The south parcel has no roadway frontage, but is contiguous to the City of Lowell boundary by approximately 1,320 feet. Vergennes Road is the major east/west route in this area north of I-96.
5. In 2003, DuRay Development requested a rezoning by Vergennes Township for a residential development on the northern parcel. Vergennes Township advised the developer to contact Lowell Charter Township, prior to proceeding with the rezoning request, for sewer service to the property. Lowell Township declined the request by DuRay Development, indicating their limited reserve capacity at the City of Lowell's sewer treatment plant.
6. DuRay Development then withdrew its rezoning request with Vergennes Township. The property owner then acquired the triangular parcel from a neighbor in order to connect the north and south parcel. The south parcel is landlocked and contiguous to the City of Lowell. The developer then filed this petition for annexation with the State Boundary Commission.
7. The area proposed for annexation is currently zoned low density residential (R-1). A rezoning in 2001 changed this zoning classification from rural agricultural (3 acres per unit) to low density residential (1 unit per acre). The 2002 Township Zoning Map identifies both the north and south parcel as low density residential.
8. The Township's 1999 Comprehensive Master Plan depicts future land use on the north parcel as low density residential, and zoning on the south parcel, which contains partial wetland, as medium density residential.
9. The Township stated that it is not opposed to development of this property at a density greater than one unit per acre if sanitary sewer service is available and development is in accordance with acceptable design standards and open space preservation techniques. The Township's zoning ordinance has a R-2 classification that permits nearly 3 units per *buildable* acre (v. 3 - 5 units per acre under City zoning), and also contains PUD and open space preservation provisions that permit bonus densities for the creative clustering of residential development and the preservation of open space and natural areas. The Township stated that use of these open space provisions may be the most appropriate for this development.

10. Sanitary sewer service is not available to the property by Vergennes Township. Vergennes Township could provide public water to the property through their water agreement with Lowell Township.
11. Lowell Charter Township owns, operates, and maintains the sanitary sewer distribution main within Vergennes Township pursuant to agreements between Lowell Township and Vergennes Township, and also agreements between the City of Lowell and Lowell Township. Lowell Township stated at the public hearing that they submitted a written request to the City of Lowell to expand its sewer capacity to Lowell Township. Lowell Township alleges that if they receive capacity to provide sewer service to this property, annexation is not necessary.
12. Lowell Charter Township owns both the sanitary sewer and water lines that run adjacent to the southern portion of and through the property. These lines deliver service to Lowell High School, located immediately west of the area proposed for annexation. Lowell High School and 32 residents in Vergennes Township receive public water through Lowell Township's capacity from the City of Lowell.
13. An adequate city sewer line to service development is located 1,400 feet from the property proposed for annexation. In order to receive city service, a sewer line must be within 200 feet of a structure.
14. The developer, the city, the township, and many local residents have all expressed interest in developing a 425 Agreement. Earlier this year, the City and Township entered into discussions, but negotiations broke down in July 2005. Consensus could not be achieved on zoning authority.
15. Vergennes Township wishes to maintain control of zoning authority in order for the development of the property to remain consistent with their comprehensive master plan. Areas of the township farther away from the City of Lowell are zoned largely low-density rural agricultural (one home per three acres). The City of Lowell zoning allows four or more homes per acre.
16. The Township's master plan was enacted after the Lowell High School facility was sited. The current land use of Vergennes Township identifies residential development as the predominant land use, comprising 87% of total property value.
17. No existing roadway directly connects any part of this property with the City of Lowell. If annexation occurs, access to the property by police, fire, public works, and other municipal services of the city would be obtained by travel through either Vergennes Township or Lowell Township. A Mid-Michigan Railroad track crosses Vergennes Road to the east of this property.
18. The property borders Lee Creek and encompasses its floodplain. Nearby natural features include a nature preserve and the Wege Natural Area. The overall landscape of Vergennes Township includes historical sites, farmlands, dense woodlands, and protected wetlands areas.

19. The City of Lowell has a population of 4,013 (2000 census). Population per square mile is 1,337. The City has police protection and a waste water treatment plant.
20. Vergennes Township has a population of 3,650 (2000 census). Population per square mile is 101. Police protection is provided by the Kent County Sheriff.
21. The Lowell Fire District serves the City of Lowell, Vergennes Township, and Lowell Charter Township.
22. Vergennes Township is strongly opposed to this proposed annexation and maintains that any development be consistent with their master plan for the preservation of rural and open space. High-density residential and commercial development in this area is inconsistent with the Township's master plan.
23. Many township residents expressed opposition of the proposed annexation, concerns about environmental impacts on the natural land areas of the township if this property were developed--especially at a higher density than what the Township zoning currently allows, and preference for mutual agreement among the local units of government regarding future growth and development. An analysis of the public comments made and correspondence received as a result of the public hearing reveal that a majority are opposed to the proposed annexation.
24. The City of Lowell supports the annexation proposal, and can provide water, sewer, and other municipal services to the site. The City indicates that it is generally supportive of the proposed annexation.

THE COMMISSION FINDS THAT

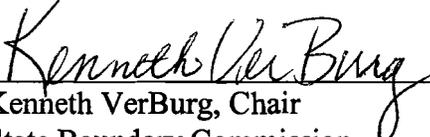
1. The petitioner, DuRay Development, has requested this annexation in order to acquire sanitary sewer for a proposed development to be located on the territory proposed for annexation.
2. With annexation, the necessary services for a development could be provided by the City of Lowell, either by extending their existing infrastructure, or by an intergovernmental agreement with Lowell Township.
3. Without annexation, Vergennes Township is not able to provide the sewer service that would be required for a large-scale residential or mixed-use development on the property. Agreements would need to be achieved among the involved local units of government (City of Lowell, Vergennes Township, and Lowell Charter Township) in order to provide sewer service to this property.
4. If sewer agreements could be achieved without annexation, differences between the developer and the Township on zoning and development continue to be unresolved.

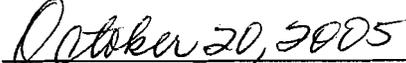
5. No existing roadway directly connects this property to the City of Lowell. Railroad traffic could hinder access to this property for emergency vehicles traveling west on Vergennes Road from the city, and west on Foreman Road from the city in order to access Alden Nash Avenue. Vergennes Road is the major east-west corridor north of I-96 for this area of the state.

6. Initial and extended attempts by the City of Lowell and Vergennes Township to develop an intergovernmental agreement were not successful. Correspondence from the City and Township summarizing the results of their extended negotiations, in compliance with the Commission's recommendation at the September 15, 2005 meeting, were submitted to the Boundary Commission at the October 15, 2005 meeting. The correspondence revealed that although consensus was achieved on the duration of the agreement and the allocation of millage, agreement could not be achieved on the jurisdiction of zoning authority. This impasse was affirmed by the governing boards of both municipalities at their respective board meetings held on October 17, 2005.

CONCLUSIONS OF LAW

The record of this docket, in accordance with the criteria stipulated under Section 9 of the Public Act 191 of 1968, as amended, supports the Commission's recommendation that the Director of the Department of Labor & Economic Growth sign the attached Order to deny the proposed annexation and adopt the Summary of Proceedings, Findings of Fact, and Conclusions of Law.


Kenneth VerBurg, Chair
State Boundary Commission


Date

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BEFORE THE STATE BOUNDARY COMMISSION

In the matter of:

**The proposed annexation of territory
in Vergennes Township to the City of Lowell,
Kent County**

**Boundary Commission
Docket #04-AP-4**

FINAL ORDER

IT IS ORDERED THAT this Summary of Proceedings, Findings of Fact, Conclusions of Law, and Order to deny the annexation of territory in Vergennes Township to the City of Lowell, as described in Attachment A, shall be effective 30 days after the date the Order is signed by the Director of the Department of Labor & Economic Growth.

IT IS FURTHER ORDERED THAT the Manager of the State Boundary Commission shall transmit a copy of this Order, including Attachment A, and the Summary of Proceedings, Findings of Fact, and Conclusions of Law, as adopted by the State Boundary Commission on October 20, 2005, to the clerks of the Township of Vergennes, the City of Lowell, the County of Kent, to the Secretary of State, and to the property owners located within 300 feet of the area denied for annexation.



Robert W. Swanson, Director
Michigan Department of Labor & Economic Growth

3/2/07
Date

Attachment A

OVERALL PROPERTY DESCRIPTION

Part of the West one-half of the Southeast one-quarter and part of the North one-half of Section 34, Town 7 North, Range 9 West, Vergennes Township, Kent County, Michigan, described as: BEGINNING at the South one-quarter corner of said Section 34; thence North $00^{\circ}12'24''$ East 2639.31 feet along the North-South one-quarter line to the center of said section; thence North $89^{\circ}49'15''$ West 2537.52 feet along the East-West one-quarter line to the East right of way line of Alden Nash Avenue; thence Northerly 102.69 feet along said right of way line on a 5688.88 foot radius curve to the left, the chord of which bears North $00^{\circ}41'51''$ East 102.68 feet; thence North $00^{\circ}10'49''$ East 665.64 feet along said East right of way line; thence North $89^{\circ}46'51''$ East 1220.28 feet; thence North $00^{\circ}10'49''$ East 1373.13 feet; thence North $89^{\circ}46'51''$ East 172.07 feet; thence North $05^{\circ}29'29''$ East 199.70 feet; thence North $08^{\circ}04'41''$ East 130.80 feet; thence North $12^{\circ}05'19''$ East 165.54 feet to the North section line; thence North $89^{\circ}46'51''$ East 1074.95 feet along the North section line to the North one-quarter corner; thence South $00^{\circ}12'27''$ West 2436.93 feet along the North-South one-quarter line to a point being 212.05 feet North of the center of said section; thence South $44^{\circ}48'49''$ East 475.77 feet; thence South $89^{\circ}49'29''$ East 987.89 feet parallel with and 124.43 feet South of the East-West one-quarter line; thence South $00^{\circ}18'03''$ West 2519.32 feet along the East line of the West one-half of the Southeast one-quarter of said section; thence North $89^{\circ}37'57''$ West 1320.29 feet along the South section line to the place of beginning.

Subject to oil and gas leases of record.

177.05 acres



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

Attachment B

November 1, 2005

State Boundary Commission
Department of Labor & Economic Growth
611 W. Ottawa Building
P.O. Box 30004
Lansing MI 48909

**RE: Docket # 04-AP-4
Proposed Annexation of Territory in Vergennes Township
to the City of Lowell, Kent County**

Dear Boundary Commissioners:

I have decided to postpone my consideration of the Order on the above docket at this time. It is my understanding that prior to the Commission's recommendation to deny the proposed annexation, the municipalities made substantial progress in their negotiations to reach a mutual agreement; however, zoning authority was the key unresolved issue. Therefore, before I reconsider this Order, I hereby ask that the Boundary Commission request the City of Lowell and Vergennes Township that they continue with their attempts to achieve a mutual agreement on the property proposed for annexation.

Throughout my experiences as an educator and an elected official, I well know the benefits of achieving mutual resolution. As the former Mayor of the City of Lansing for eight years, I was often personally involved in negotiations to create regional partnerships to promote community and economic development. It has been my experience that through cooperation and compromise, intergovernmental relationships can be significantly improved and gain new strength.

Therefore, I believe that it would be worthwhile for the City and the Township to continue discussions on an intergovernmental agreement that will benefit all interested parties.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "D.C. Hollister".

David C. Hollister
Director



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

November 3, 2005

Attachment C

The Honorable Jeanne Shores
Mayor - City of Lowell
301 East Main Street
Lowell MI 49331

The Honorable Tim Wittenbach
Supervisor – Vergennes Township
10381 Bailey Drive
PO Box 208
Lowell MI 49331

**RE: Docket # 04-AP-4
Proposed Annexation of Territory in Vergennes Township
to the City of Lowell, Kent County**

Dear Mayor Shores and Supervisor Wittenbach:

As you already know, Mr. David C. Hollister, Director of the Michigan Department of Labor & Economic Growth, postponed his consideration of the Order on the above docket. Instead, the Director has requested that the Boundary Commission request involved parties to continue with their efforts to negotiate an intergovernmental agreement.

The Director based his recommendation on the fact that the municipalities made substantial progress in their previous negotiations. Throughout his experiences as an educator and an elected official, the Director well knows the benefits of achieving mutual resolution. As the former Mayor of the City of Lansing for eight years, he was personally involved in negotiations to create regional partnerships to promote community and economic development. It has been his experience that through cooperation and compromise, intergovernmental relationships can significantly improve and gain new strength.

Therefore, on behalf of the state and local Boundary Commissioners, I hereby request that the City of Lowell and Vergennes Township continue with their efforts to reach agreement on the property proposed for annexation. The Commission suggests that your municipalities explore and consider either Public Act 425 of 1984 or Public Act 7 of the Extra Session of 1967, both of which prescribe standards for an intergovernmental agreement.

A Boundary Commission meeting is tentatively scheduled for Thursday, December 15, 2005. At that time, the Commission would like to discuss this request further with your representatives, and to mutually establish a deadline for a conclusion on this matter. A meeting notice will be distributed to involved parties earlier that month. In the meantime, if you wish to commence negotiations prior to meeting with the Commission on December 15, please feel free to do so.

Thank you.

Sincerely,



Kenneth VerBurg
Chairman
State Boundary Commission

cc: Robert Munger, DuRay Development
David Pasquale, Lowell City Manager
Betty Morlock, Lowell City Clerk
Mari Stone, Vergennes Township Clerk
Sue Conway, attorney for Vergennes Township
Mark Nettleton, attorney for Lowell Charter Township
Representative Dave Hildenbrand
David C. Hollister, Director, Department of Labor & Economic Growth
Thomas Martin, Director, Office of Policy & Legislative Affairs/DLEG
Keith Lambert, Office of Land Survey & Remonumentation/DLEG



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

ROBERT W. SWANSON
DIRECTOR

Attachment D

February 15, 2007

Robert W. Swanson, Director
Department of Labor & Economic Growth
611 W. Ottawa Street
Lansing, MI 48909

**RE: Docket # 04-AP-4
Proposed Annexation of Territory in Vergennes Township
to the City of Lowell (Kent County)**

Dear Director Swanson:

As you know, your predecessor, former Director Hollister, postponed his consideration to approve the Commission's recommendation to deny the annexation and sign the Order denying this proposed annexation in November 2005. Instead, he requested and encouraged the involved parties to continue their efforts to negotiate either an inter-governmental agreement or another amicable resolution. For your reference and convenience, attached are copies of the correspondence from the former director to the Boundary Commission, and from the Boundary Commission to the involved parties.

In compliance with the former director's request, this docket has been scheduled six times over the past 15 months to allow the involved parties the opportunity to provide the Commission with status reports of their on-going efforts and strategies to develop a cooperative agreement.

The status of negotiations was again discussed between the Commission and the involved parties at the February 15, 2007, State Boundary Commission meeting. As a result of this discussion, the Commission wishes to inform you of its conclusion that, in consideration of the extensive deliberations and negotiations, especially those that have occurred since this petition was originally filed over two years ago, a mutual resolution among the parties for the development of this property does not appear to be achievable at this time.

Therefore, by a unanimous vote at today's Commission meeting, the Boundary Commission determined that its involvement to facilitate an agreement among the involved parties is no longer necessary, and hereby recommends that you resume consideration to sign the Order to deny this proposed annexation.

The Commission wishes to acknowledge and commend all the involved parties for the extensive time, effort, and resources they devoted to consider numerous methods for resolution.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth VerBurg".

Kenneth VerBurg
Chairman
State Boundary Commission

Encl.

cc: Robert Munger, DuRay Development
David Pasquale, Lowell City Manager
Betty Morlock, Lowell City Clerk
Mari Stone, Vergennes Township Clerk
William Fahey, Attorney for Vergennes Township
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