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STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
STATE BOUNDARY COMMISSION
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In the matter of the proposed annexation
of territory in Caseville Township
to the City of Caseville

Docket No. 11-AR-1

CASEVILLE TOWNSHIP'S 30-DAY SUBMISSIONS

INTRODUCTION

Caseville Township, by its attorneys, Fahey Schultz Burzych Rhodes PLC, respectfully presents these 30-day Submissions to the State Boundary Commission. The purpose of these 30-day Submissions is to provide the State Boundary Commission additional information and supporting information relative to the October 4, 2011 Public Hearing.

The Statutory Criteria Must Control the State Boundary Commission's Decision

Pursuant to Section 9 of Act 191, MCL 123.1009, the "criteria to be considered by the [State Boundary] Commission in arriving at a determination shall be" the 18 objective "criteria" listed in that statute. MCL 123.1008 reiterates that: "The commission shall review proposed incorporations considering the criteria established by section 9." It also mandates that: "At the public hearing the reasonableness of the proposed incorporation based on the criteria established in this act shall be considered." (Emphasis added). As the Michigan Supreme Court has recently reiterated, in the construction of statutes: "'Shall' is a mandatory term, not a permissive one." *People v Francisco*, 474 Mich 82, 87; 711 NW2d 44 (2006). "The Legislature's

use of the word 'shall' indicates a mandatory and imperative directive." *Burton v Reed City Hosp Corp*, 471 Mich 745, 752; 691 NW2d 424 (2005).

In *Midland Township v State Boundary Commission*, 401 Mich 641, 667-669; 259 NW2d 326 (1977), our Supreme Court considered whether the State Boundary Commission Act contained sufficient standards to allow the constitutional delegation of annexation authority to the Commission under Michigan law. The Court held that the criteria contained in Section 9 provided the statutory standards that made the delegation of discretion to the Commission lawful and constitutional:

"The 1968 act, as incorporated in the home rule cities act by the 1970 amendment, provides for a public hearing at which the Commission shall consider the "reasonableness" of the proposed annexation based upon the "criteria" set forth in § 9 of the 1968 act:

"Criteria to be considered by the commission in arriving at a determination shall be:

"(a) Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future urban growth, including population increase and business, commercial and industrial development in the area. Comparative data for the incorporating municipality, and the remaining portion of the unit from which the area will be detached shall be considered.

"(b) Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

"(c) The general effect upon the entire community of the proposed action; and the relationship of the proposed action to any established city, village, township, county or regional land use plan." 1968 PA 191; MCLA 123.1009." (Emphasis added).

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Based on these statutory criteria, the Court concluded that “‘reasonableness,’ determined based on the statutorily enumerated criteria, is a sufficient guideline for the exercise of commission discretion.” Id (Emphasis added).

Following the Court’s decision in *Midland*, the Court of Appeals again addressed the Section 9 criteria in *Chase v State Boundary Commission*, 103 Mich App 193, 203-4 (1981), where the Court concluded that “consideration of the statutory criteria of § 9 is critical in reviewing all valid petitions for annexation (Court’s emphasis). . . By not examining the evidence in light of the statutory criteria of § 9, the commission’s decision was arbitrary, capricious and clearly in violation of law.” (Emphasis added).

The Courts’ treatment of the Section 9 criteria is consistent with the dictionary meaning of that term. A “criterion” is defined as “a standard of judgment or criticism; a rule or principle for evaluating or testing something.” *Random House Webster’s College Dictionary*, p 313 (1997). Also see *Funk & Wagnalls Standard College Dictionary*, p 319 (1974) (“A standard or rule by which a judgment can be made; a model, test or measure.”); and *Webster’s New Collegiate Dictionary*, p 197 (1961) (“A standard of judging; a rule or test by which anything is tried in forming a correct judgment respecting it.”).

As a matter of administrative interpretation, the Boundary Commission has observed the importance of the statutory criteria by making them the central focal point of its decisions. These criteria are addressed in the “Criteria Questionnaires” that the Boundary Commission requires all parties to file in annexation and incorporation proceedings. Traditionally, the Commission’s decisions address all the relevant criteria in each decision the Commission renders.

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Because of the importance of the criteria, the Township presents the following discussion of the applicable criteria in this case as part of its 30-day submissions. Additional information is contained in the Township's Criteria Questionnaire.

Criteria 1 - 2. Population; Population Density.

1. The population of the City and the Township is not relevant here, since no population is proposed to be transferred.
2. The population density is not relevant here, since no population is proposed to be transferred.
3. The area proposed to be annexed has no population.
4. The area proposed to be annexed includes 2.82 acres, and the expanded area includes 1.67 acres.

Criteria 3 - 7. Land Area; Land Uses; Assessed Valuation; Topography; and Natural Boundaries and Drainage Basins.

5. The proposed annexation area consists principally of the industrial property owned and operated by Blue Chip Manufacturing Co.
6. The proposed annexation area is planned and zoned by the Township for industrial uses, and it is currently used for industrial purposes in the Township.
7. The City's millage rate is substantially higher than the Township's millage rate: 14.075 mills in the City and less than 2 mills in the Township. Although the proponents of cityhood promised that the taxes would go down after cityhood, the opposite is true. According to the City's own Criteria Questionnaire, the combined Village and Township millages were 13.3733, but the City millage alone is now 14.075.
8. The present SEV of the proposed annexation area is \$421,700, and the SEV of the expanded area is \$64,000.

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9. The additional annual property tax that would be paid to the City of Caseville if the Blue Chip were annexed would be approximately \$10,000 per year based on the current SEV.

10. There is no state revenue sharing attributable to the proposed annexation area, because there is no population in that area.

11. There are no unusual or restrictive topographic features in the proposed annexation area that would affect the Commission's decision.

12. The Blue Chip property proposed to be annexed is subject to a tax abatement granted by the Township.

13. The Blue Chip property is located in the Township as a result of the State Boundary Commission's recent decision approving the incorporation of the City. The City's predecessor, the Village, prepared the petition that resulted in the determination of those boundaries, and the City voters approved those boundaries in a recent election.

Criteria 8 - 9. The Past and Probable Future Urban Growth, Including Population Increase and Business, Commercial and Industrial Development in the Area; Comparative Data for the Annexing Municipality, and the Remaining Portion of the Unit from which the Area will be detached.

14. As demonstrated at the hearing, if the proposed annexation is approved, Blue Chip may relocate its business to a different area, which would cause a loss in economic development to the area. Additional information concerning the Past and Probable Future Urban Growth, Including Population Increase and Business, Commercial and Industrial Development in the Area; Comparative Data for the Annexing Municipality, and the Remaining Portion of the Unit from which the Area will be detached is contained in the Township's Criteria Questionnaire filed with the Commission.

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Criteria 10 - 14. Need for Organized Community Services; the Probable Needs for Services; the Practicability of Supplying such Services in the Area to be Annexed; and the Probable Effect of the Proposed Annexation and of Alternative Courses of Action on the Costs and Adequacy of Services in the Area to be Annexed and on the Remaining Portion of the Unit from which the Area will be Detached.

15. There is no need for additional public services to the proposed annexation area that are not already provided.

16. Sewer is already installed and providing service to Blue Chip. Blue Chip is legally permitted to continue receiving its long-standing sewer service from the City, regardless of whether its property is located in the City or the Township, in accordance with the Michigan Supreme Court's opinion in *Royal Oak Twp v City of Ferndale*, 309 Mich 458, 467; 15 NW2d 707 (1944).

17. The property currently receives fire protection from the Township and police protection from a contract between the Township and the the County Sheriff. The City does not provide fire protection services of its own, and the City has declined to provide police services to the annexation area.

18. The City does not propose to improve any public services in the area to be annexed, and the property owner does not need additional or improved City services, as the current services provided by the Township are more than adequate. If the annexation is approved, however, the property owner will be forced to pay substantially increased property taxes due to the City's extremely high millage rate, without receiving any additional services or benefits from the City.

19. Approving this annexation could result in a property tax windfall to the City, at least initially. Due to the tax increase to the property owner however, Blue Chip is likely to move its business and its property to another location, so that the City could actually realize a net loss

in property tax revenues if the annexation is approved. In addition, the county, school district, state educational fund, and other taxing units would all lose substantial property tax revenues if the annexation is approved and Blue Chip relocates to another area.

20. Currently, 856 customers in the Township, including Blue Chip, receive public water service.

21. Currently, 1968 customers within the Township receive refuse and garbage collection service through the Township's contracted-for weekly refuse pickup.

22. The Township provides library services to its residents.

23. The Township provides ambulance services to its residents.

24. The Township granted a 12-year Industrial Facility Tax Exemption to the Blue Chip property within the proposed annexation area, which does not expire until December 2021.

25. The proposed annexation area would not gain any new services that Blue Chip wants or needs by being annexed to the City.

Criterion 15. The Probable Increase in Taxes in the Area to be Annexed in Relation to the Benefits Expected to Accrue from Annexation.

26. The increased tax cost to Blue Chip would outweigh any claimed benefits of annexation. As developed, the additional annual property taxes that Blue Chip would have to pay in the City would amount to approximately \$10,000 per year more than it currently pays in the Township. Blue Chip would gain no benefit from this increase in taxes.

27. In the earlier proceedings related to the City incorporation, the proponents of cityhood promised that, if the Village became a City: "Taxes Will Go Down Because the Village Residents Will No Longer Pay Township Taxes." In fact, the City has increased its millage since the incorporation, and the taxes of the City taxpayers have increased, without any increase in services. According to the City's own Criteria Questionnaire, prior to incorporation, the

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combined Village and Township millages were 13.3733, but now the City millage alone is 14.075.

Criterion 16. The Financial Ability of the Annexing Municipality to Maintain Urban Type Services in the Area.

28. The City has no ability to provide any services that are not already being provided to Blue Chip currently in the Township.

Criterion 17. The General Effect upon the Entire Community of the Proposed Action.

29. Approval of the annexation request would have the following negative effects on the entire community:

a. The increased taxes caused by this annexation will likely cause Blue Chip to relocate to another area, which will harm the City, the Township and all the other taxing units in the Caseville area.

b. The proposed annexation would deprive the Township of the ability to plan for its future physical and financial growth.

c. The proposed annexation would deprive the Township of the tax base that was developed under the guidance and supervision of the Township.

30. After seeing their taxes increase as a result of the City incorporation, many City residents are now actively seeking to detach their property from the City. Three detachment petitions, including a large portion of the City, have been filed and are awaiting a date for a detachment election in the City and the Township. One of the proposed detachment areas is immediately contiguous to the proposed annexation area. If that detachment is approved by the voters of the City and the Township, the proposed annexation area would no longer be contiguous to the City, and the area proposed for annexation would become a City island.

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Therefore, the Commission should not act on this petition until after the voters have acted on the pending detachment.

Criterion 18. The Relationship of the Proposed Annexation to Any Established City, Village, Township, County, or Regional Land Use Plan.

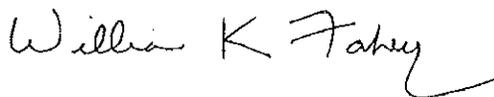
31. There is no support whatsoever for this proposed annexation in any officially-adopted plan by the City, the Township, the County, or any other level of government. The annexation area is planned, zoned and used for industrial purposes. If the annexation is approved, and Blue Chip moves from the area as a result, the detachment area will likely become an abandoned building.

RELIEF

Caseville Township respectfully requests that the State Boundary Commission deny the Petition for Annexation, based upon a full consideration of the mandatory statutory criteria discussed above.

Respectfully submitted,

FAHEY SCHULTZ BURZYCH RHODES PLC



Dated: November 3, 2011

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