



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES
IRVIN J. POKE
DIRECTOR

STEVE ARWOOD
DIRECTOR

STATE BOUNDARY COMMISSION

Meeting Location:
2501 Woodlake Circle - Conference Room 3/First Floor
Okemos, Michigan 48864

MINUTES
June 11, 2014

TUSCOLA COUNTY
DOCKET #13-AP-1

MEMBERS PRESENT

Mr. Dennis Schornack, Chairman
Mr. David Doyle, State Commissioner
Mr. James Stewart, State Commissioner
Mr. William Bortel, Local Commissioner
Ms. Ione Vyse, Local Commissioner

DEPARTMENT PERSONNEL ATTENDING

Mr. Kevin O'Brien, P.S., Office of Land Survey and Remonumentation
Mrs. Angela Sanderson, Secretary for the Office of Land Survey and Remonumentation
Mr. Chris Beland, Director, Office of Land Survey and Remonumentation
Mr. Patrick Fitzgerald, Assistant Attorney General

OTHERS IN ATTENDANCE

Mr. Andrew Mulder, Attorney for City of Caro
Mr. William Campbell, Indianfields Township Clerk
Mayor Dick Pouliot, City of Caro
Mr. Jared Olsen, City of Caro Manager
Mr. William Fahey, Attorney for Indianfields Township

1. CALL TO ORDER AND DETERMINATION OF QUORUM

Commissioner Stewart called the meeting to order at approximately 2:21 p.m. and read the Opening Statement. A quorum was determined present at that time.

Providing for Michigan's Safety in the Built Environment

2. **APPROVAL OF AGENDA**

A **MOTION** was made by Commissioner Doyle and seconded by Commissioner Vyse to approve the agenda for the meeting. **MOTION CARRIED UNANIMOUSLY.**

3. **APPROVAL OF DRAFT MINUTES**

A **MOTION** was made by Commissioner Doyle and seconded by Commissioner Stewart to approve the draft minutes for Tuscola County from the October 9, 2013 meeting on Docket 13-AP-1. **MOTION CARRIED UNANIMOUSLY.**

4. **ADJUDICATIVE SESSION**

a. **Docket Activity:**

Mr. Kevin O'Brien, Office of Land Survey and Remonumentation, recapped the docket activity to date for Docket 13-AP-1.

b. **Involved Parties:**

Mr. William Fahey, Indianfields Township Attorney, highlighted a couple of points directing the commission to the statutory criteria and that they strongly support annexation in this case. The City does not have a cemetery; the City's residents use this cemetery, and have been the principal users throughout history. He went on to say that the Township has two cemeteries and that they do not need this one. He said the City is in the best financial position to maintain this cemetery. They have a budget surplus in excess of the amount of Indianfields Township's entire budget and that is certainly enough to maintain these costs. The City is also in the best position to provide the services that this property needs – they have a police force and a public works department that the Township does not. This area has been subject to vandalism and will continue to be, so it needs to be policed. Public works is important for leaf removal, and the ability to clear snow off the roads through this cemetery. He closed by saying they would have liked to have worked out a deal where the City pays part and the Township pays part of the cost for the operation of the cemetery, but the City has refused to negotiate and said that they would not pay even one dollar toward the maintenance of the cemetery.

Mr. Andrew Mulder, Attorney for the City of Caro, explained the reasons why they feel it would be inappropriate to approve annexation in this matter. He said this petition is premised on the theory that MCL 117.14 would apply and transfer the ownership of the cemetery from the Township to the City. That statute is for incorporation matters only. The portion of the statute that deals with this matter is located under the section of the Home Rule City Act dealing with annexation, MCL 117.9(9), that says that assets and liabilities are only to be determined by the Commission when there are outstanding bonds or evidence of indebtedness – the statute specifically says that MCL 117.14 does

not apply. He went on to say that if the ownership of the cemetery does not transfer, then an approved annexation would bring a Township owned cemetery into the jurisdiction of a City to be administered by the Township, making the basic premise of the petition nonsensical. He said the cemetery issue was wrapped into the assets and liabilities case brought to court by the Township in 2011 and is covered in the consent judgment. He said he does not believe there is any historic support for this cemetery always being the "Caro Cemetery". Caro does not need this cemetery; they have several other cemetery options for its residents. He said there is no vandalism that would call for organized services at this cemetery. He refuted the Township's claims to support annexation based on criteria in the Boundary Commission Act. He also claimed that the audits provided by the Township to the State of Michigan show that the cemetery is profitable because the fund balances have increased since the incorporation of Caro as a City.

Commissioner Doyle asked Mr. Fahey if the cemetery is operating "in the black".

Mr. Fahey answered saying no. A change in the general accounting practices seemed to indicate a profit when there is not. He said it comes down to this fact: who benefits is who should pay, and the principal users of this cemetery are residents of the City – the majority of burials come from the City. Even though the City residents pay more for services there is a shortfall which the Township covers out of its general fund with no support from the City.

Commissioner Doyle asked for audit reports for this cemetery.

Mr. Mulder said they had included audit reports with their filings in this petition. He says the Township charges anyone who is not a resident of their Township three times what their residents pay to use this cemetery.

Mr. Fahey said that it was a shifting of money, a change in the general accounting practices, which made it appear to be higher fund balances than their actual was for the cemetery. He said if you look over time you would see horrendous losses. He further explained that by law they had to make deposits into the perpetual care fund but could only use the interest to help in ongoing costs of operation. The interest was not keeping pace with the costs.

Mr. Mulder responded saying the operations budget on the financial statement from that time shows revenues of \$87,000 and expenditures of \$77,000, so they were making a profit.

Chairman Schornack asked why the Township did not request that the cemetery be included as part of the City in the original incorporation.

Commissioner Bortel said that he was part of the State Boundary Commission during that time, and he remembers that they asked Almer Township and Indianfields Township if there was any other land that they wanted to have included in the boundaries and they both said definitely not.

Mr. William Campbell, Indianfields Township Clerk, said that the Village did not want the cemetery to be included in the boundary of the City. He said that the Township Clerk, Deputy Clerk and Cemetery Sexton were at the time embezzling money from the cemetery and they did not want that to come out if the cemetery became part of the City. He said the Township was influenced by the clerk. He said the Township is not making money on this cemetery; they are taking money out of general fund to pay for operations.

Chairman Schornack asked when the assets and liabilities were to be allocated in the settlement agreement, why was the cemetery not listed as an asset.

Mr. Fahey said it is not an asset. He said the City wanted a percentage of the perpetual care fund, but did not want the cemetery and when they were questioned about it, the City never talked about it again in those negotiations.

Mayor Dick Pouliot, City of Caro, indicated about the boundary discussion that it was never the intent of the Cityhood Committee to "land grab" or to avoid having the cemetery be included in the boundary. He said Indianfields Township Attorney, Mr. Howell, wrote a long opinion on the division of assets, and the cemetery was never in question. He said they had long discussions on cemetery rates and usage and this matter had already been settled once during the division of assets. He said they agreed to settle the division of assets in the consent judgment.

Commissioner Doyle asked how much the cemetery is losing every year.

Mr. Campbell answered that it is losing \$20,000 - \$30,000 on a yearly basis.

Chairman Schornack said that it seems that prior to 2009 everyone was paying to support the cemetery but then when the incorporation came about the cemetery got chucked to the Township and the City wants to absolve itself of its responsibility to its former citizens. He said that it is extremely disappointing to have this petition before the Commission and that these issues should be worked out at the local level.

Mr. Mulder said that the City contends that there are two basis for this not being an appropriate petition. First, is that annexation in front of the Boundary Commission is governed by MCL 117.9(9) - which says that you do not make an assets and liabilities allocation, unless there is indebtedness associated with the area to be annexed. He said MCL 117.14 does not apply here. MCL 117.14 is the provision under the statute that says if you incorporate and it includes the area of a cemetery it transfers to the City. That statute does not apply in a petition for annexation because this is not an incorporation petition. He said the Mayor had addressed the second reason, that when the City incorporated the two Townships that were involved, Almer and Indianfields, that the City was only able to reach a cemetery agreement with Almer Township that they would receive uniform rates, but they never got to that point of agreement with Indianfields Township.

Discussion ensued.

Commissioner Stewart noted that the Commission's decision must be based on the criteria in the State Boundary Commission Act. He said that both parties had done a good job of addressing the criteria. However, he did not think that the legislature intended that the annexation statute be used to allow a municipality to dump unwanted land on another municipality.

Commissioner Bortel expressed his concern about setting a precedence that non-taxable property can be brought into another municipality's jurisdiction over its objection.

Chairman Schornack said that he sees the City as being in a better position to provide services to the area, but that he does not like the statute being used in this way.

Commissioner Stewart asked the parties if the petition is denied would they be able to come to an agreement on their own.

Mayor Pouliot said they have tried before to negotiate a reasonable agreement, but they were unsuccessful. He said again, the residents of the City are charged three times the rates of Indianfields Township residents for the use of this cemetery. He said they filed this annexation petition with no discussions with the City whatsoever. He said he is not optimistic that they could come to an agreement on their own.

Mr. Fahey said the reason that they could not come to an agreement was because the City said they would not pay one dollar to support the cemetery. He said Indianfields Township offered that if the City would just pay part, they would no longer charge the City residents three times the Township resident's fee.

Commissioner Vyse said that she had went through all the materials provided and sorted them out according to fact and logic. She went into the history of why this cemetery is located where it is, not in the center of Indianfields Township, but on the border of the City. She said the cemetery came about from the same people who ran Indianfields Township and the Village of Caro and it was considered the Caro Cemetery because it's right next to Caro. She said she believes the facts support that the usage of this cemetery was created by the people of Caro for the use of the people of Caro. She felt the sign to the cemetery is irrelevant to the facts in this matter. She closed saying she supports the petition.

Commissioner Bortel said he spent many days reviewing everything in this matter. He said he asked Indianfields Township and City of Caro residents about how they felt about this cemetery being in the City, and most did not know about it and said they didn't care about it; but of the ones that did know and care about it (non-public officials) they said to leave it in Indianfields Township – leave it as it is. He said he wants the petition to be denied.

Commission Discussion

Commission discussion ensued regarding the desire not to set a precedent for the use of the annexation statute in this manner.

A **MOTION** was made by Commissioner Bortel and Seconded by Commissioner Doyle that the Commission recommend that the petition for the annexation of land in Indianfields Township to the City of Caro Docket #13-AP-1 be denied. **MOTION CARRIED 4-1; WITH COMMISSIONER VYSE OPPOSED.**

5. ADJOURNMENT

MOTION was made by Commissioner Doyle and Seconded by Commissioner Stewart to adjourn the session on Tuscola County. **MOTION CARRIED UNANIMOUSLY.** Meeting adjourned at approximately 3:30 p.m.

APPROVED:

Dennis Schornack, Chairman
State Boundary Commission

Date