

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
STATE BOUNDARY COMMISSION

IN RE:

PETITION FOR ANNEXATION OF
TERRITORY IN CLAM LAKE TOWNSHIP
TO THE CITY OF CADILLAC (WEXFORD
COUNTY)

Docket No. 13-AP-2

CITY OF CADILLAC'S BRIEF IN SUPPORT OF ANNEXATION PETITION

Introduction

For six years, local developer TeriDee, LLC (“TeriDee”) has endeavored to spur economic growth in Wexford County by developing its property located near highways M-55 and US-131. To that end, TeriDee has petitioned for annexation of property in Clam Lake Township (“Clam Lake”) to the City of Cadillac to allow for commercial development and to bring revenue to an area that has been hit hard by the recession. The City of Cadillac stands ready to provide the necessary water and sewer services to the property so that economic development can begin immediately.

Unfortunately, Clam Lake has long opposed the commercial development of the property, and it has done everything in its power to block economic growth. Clam Lake previously refused to allow the property to be rezoned to allow for commercial development, and its citizens also voted against an Act 425 agreement between Clam Lake and the City of Cadillac, which would have allowed for commercial development. In 2011, after TeriDee filed its first annexation petition, Clam Lake entered into a sham Act 425 Agreement with Haring Township (“Haring”) in a transparent attempt to block the annexation, which this Commission found was invalid. Now, in anticipation of this annexation request, Clam Lake and Haring

cooked up yet another sham Act 425 Agreement, which again attempts to divest this Commission of its jurisdiction.

Clam Lake and Haring's purported Act 425 Agreement is, like its predecessor, a sham. Although Clam Lake and Haring have tried to dress it up in new clothes, the new Act 425 Agreement suffers from the same fatal flaws as the prior agreement. The agreement is so obviously one-sided that no reasonable municipal officials would approve it unless they knew it was an illusory agreement, and the timing of the agreement and circumstances surrounding its approval show that it was manufactured solely to divest this Commission of jurisdiction.

Moreover, the new Act 425 Agreement imposes a tremendous financial burden on TeriDee, which will serve to hinder development, not promote it. Haring is using the Act 425 Agreement to extort money from TeriDee to fund its own public improvements, which is exactly what Haring has done to at least one major developer in the past. The purpose of Act 425 is to foster economic growth – not smother it, which is what Clam Lake and Haring are determined to do. The City of Cadillac requests that this Commission conclude, as it did in the previous annexation proceeding, that the Act 425 Agreement between Clam Lake and Haring is a sham and that it does not divest this Commission of jurisdiction. The City supports the proposed annexation and requests that this Commission approve TeriDee's petition.

Background

This Commission is well-acquainted with the history of this annexation request. Briefly, TeriDee filed a petition in 2011, requesting annexation of approximately 241 acres from Clam Lake to the City of Cadillac. The proposed annexation would have facilitated a commercial development project that would create an estimated 850 to 1,000 jobs.

After TeriDee filed its 2011 petition, Clam Lake and Haring hurriedly compiled an agreement under Public Act 425 of 1984 (“Act 425”) that contemplated some unspecified, future development for the same land. E-mails between Clam Lake and Haring officials made clear that the 2011 agreement was engineered to “avoid the possibility of the Boundary Commission making the decision on the development project.”

This Commission was not fooled by the sham Act 425 agreement. In its “Summary of Proceedings, Findings of Facts and Conclusions of Law” dated August 8, 2012, this Commission concluded that “the 425 Agreement was created **solely as a means to bar the annexation and not as a means of promoting economic development.**” (Exhibit A, p. 1, emphasis added.) Although the Commission found that the Act 425 Agreement was invalid, the Commission nonetheless denied the annexation request based on the factors set forth in MCL 123.1009.

On April 11, 2013, a City of Cadillac official notified Clam Lake that TeriDee intended to file a new annexation petition. Immediately thereafter, on May 8, 2013, Haring and Clam Lake hastily entered into another Act 425 Agreement. The agreement was both introduced and approved at a joint special meeting of the Clam Lake and Haring Township Boards. Attorney Ronald Redick represented both townships in connection with the Act 425 Agreement. The agreement took effect on June 10, 2013.

On June 5, 2013, TeriDee filed this annexation petition. Not surprisingly, Clam Lake filed an objection to the annexation, arguing that the Act 425 Agreement divests this Commission of jurisdiction. This Commission found that the petitioner is legally sufficient by way of a memorandum dated July 17, 2013. The memorandum “recommend[ed] that the Boundary Commission examine the validity of this [Act 425] agreement following a review of the evidence to be provided at a public hearing in Wexford County[.]”

A public hearing was held on October 23, 2013. The City of Cadillac now submits this brief in support of the annexation pursuant to Rule 123.56.

Argument

I. The Act 425 Agreement is a sham and was intentionally designed to attempt to thwart this Commission's jurisdiction.

In the prior annexation proceeding, this Commission correctly found that Clam Lake and Haring's Act 425 Agreement "was invalid because it was not being used to promote economic development." (Exhibit A, p. 2.) The same finding must be made in this proceeding. As explained below, the new Act 425 Agreement is also a sham. There is no reason to think that since the last proceeding, Clam Lake and Haring's intentions have suddenly become noble. They continue to oppose development of this property, and their new Act 425 agreement is yet another thinly veiled attempt to thwart that development by divesting this Commission of its jurisdiction.

a. Township of Casco v State Boundary Commission prohibits "sham" Act 425 agreements.

As this Commission is well aware, municipalities cannot adopt a sham Act 425 agreement to thwart an annexation petition or to deprive the State Boundary Commission of jurisdiction to consider an annexation petition. *Township of Casco v State Boundary Commission*, 243 Mich App 392; 622 NW2d 332 (2001) (Exhibit B). In *Casco*, a developer filed a petition with the State Boundary Commission, seeking to annex certain land in Casco Township and Columbus Township into the City of Richmond. Shortly before the annexation petition was filed, Columbus Township and Casco Township entered into Act 425 agreements with neighboring Lenox Township to transfer the same land to Lenox Township. The State Boundary Commission, however, concluded that the Act 425 agreements did not meet the

statutory criteria and therefore approved the annexation. The townships filed suit, and the circuit court upheld the annexation.

The Michigan Court of Appeals agreed with the circuit court's holding that the Act 425 agreements were nothing more than “fictional agreements intended only to deprive the [State Boundary Commission] of jurisdiction.” *Id.* at 398-99. The court found that the townships did not have any “real plan for economic development” and that the Act 425 agreements were adopted solely to “ward off any attempts by municipalities to annex a portion of the [t]ownships.” *Id.* at 402. In so finding, the court emphasized that the Act 425 agreements only “vaguely contemplated a plan of development at some point in the future.” *Id.* Consequently, the court held that the Act 425 agreements were “illusory” and therefore did not bar the State Boundary Commission from approving the annexation.

- b. *As in the previous proceeding, Clam Lake and Haring's new Act 425 Agreement is a “sham” agreement under Casco.*

Clam Lake and Haring have already tried, and failed, to divest this Commission of jurisdiction by entering into a fictional Act 425 agreement. In concluding that the previous Act 425 Agreement was invalid, this Commission made the following findings:

- a. No clearly defined economic development project is named.
- b. Clam Lake Township received no benefit from the agreement, i.e., there is no revenue sharing included.
- c. Copies of emails obtained by the petitioner through a Freedom of Information Act request and provided to the Commission between Clam Lake Township and the Charter Township of Haring discuss the 425 Agreement as a means to deny the Commission jurisdiction over the proposed annexation.
- d. Concern over the Charter Township of Haring's ability to effectively and economically provide the defined public services. No cost study was proven to analyze the differential of connecting the area to public services from the Charter Township of Haring versus connecting to services from the City of Cadillac.

- e. The timing of the 425 Agreement. The agreement was executed more than three months after the annexation request was filed.

(Exhibit A, p. 3.)

Attorney Redick, who represents both Clam Lake and Haring, proudly announced at the public hearing that these defects were “remedied” with the new Act 425 Agreement. Apparently, the Townships endeavored to draft a more believable fictional agreement this time. But the new Act 425 Agreement is still fatally flawed for numerous reasons and remains a “sham” agreement under *Casco*.

1. The timing and circumstances surrounding the new Act 425 Agreement show that it is a sham.

Although the Townships have attempted to dress up their new agreement, the timing of the agreement and the circumstances surrounding its adoption show that it, too, is a sham. Clam Lake claims that the Act 425 Agreement was approved before the annexation petition was filed and that, therefore, the agreement could not have been intended to thwart the annexation. (Exhibit C, Clam Lake’s Objection to Legal Sufficiency.) But Clam Lake is deliberately misleading this Commission. At the public hearing, the City of Cadillac’s Mayor Pro Tem, Art Stevens, reported that **on April 11, 2013, a City official informed Clam Lake officials that TeriDee would be filing a new annexation petition.** Thus, Clam Lake and Haring were **fully aware** that a new annexation petition would be filed, and as soon as they found out, they rushed to create another sham agreement.

Their haste in preparing the new agreement is obvious. The Townships called a joint special meeting on May 8, 2013, where – **for the first time** – they discussed the prospective Act 425 Agreement. (Exhibit D, Minutes.) A review of the minutes available on Clam Lake’s website shows that the only other discussion about an Act 425 Agreement was in September of

2011, when the previous sham agreement was hastily approved. The Township approved the new Act 425 Agreement at the same meeting on May 8, 2013, where they were both advised by the same attorney, after a short 30 minute public hearing. *Id.*

The Act 425 agreement recites that the Townships considered myriad factors before approving the agreement. (Exhibit E, Act 425 Agreement, p. 3.) The minutes of the special meeting, however, do not reflect any such consideration of those factors. (Exhibit D, Minutes.) The likelihood that both Township Boards considered those factors during a mere 30 minute public hearing is remote. Obviously, the Act 425 Agreement was cooked up between April 11, 2013 and May 8, 2013, and then approved by the Township Boards without actually considering those factors.

At the public hearing, Attorney Redick boasted that there are no e-mails at issue in this proceeding. Attorney Redick was referencing the e-mail correspondence exchanged between Clam Lake and Haring in 2011, in which Township officials admitted that the Act 425 Agreement was designed to thwart this Commission's jurisdiction. The absence of such damning admissions does not mean that the agreement is any less of a sham; it simply means that this time, the Township officials were more cautious in their communications. This Commission should not be comforted by the fact that the Townships are trying to do a better job of hiding their intentions. Thus, the timing of the Act 425 Agreement and the circumstances surrounding its hasty approval show that, once again, Clam Lake and Haring have manufactured this agreement in an effort to thwart this Commission's jurisdiction and block annexation.

2. The Act 425 Agreement is illusory.

The terms of the Act 425 Agreement reveal that it is illusory and not a genuine agreement to promote economic development. The Act 425 Agreement is blatantly one-sided in favor of Haring. The agreement includes a sweepingly broad, one-way indemnification and hold

harmless provision, which puts Clam Lake on the hook for the costs any proceedings arising out of the agreement. (Exhibit E, p. 26.) Clam Lake is also required to pay all of Haring's costs and expenses, including **actual** attorney fees, arising out of the drafting and obtaining approval of the agreement, implementing new zoning requirements, and returning jurisdiction to Clam Lake upon termination of the agreement. (Exhibit E, pp. 26-27.)

Even more significantly, the agreement requires Clam Lake to be "solely responsible" for paying and financing all of Haring's costs for constructing a new wastewater treatment plan, "including, but not limited to, the costs of design, bidding, construction, permitting, easement acquisition (if needed), legal services, bonding, and all other costs of extending wastewater and water infrastructure to the Transferred Area[.]" (Exhibit E, p. 5.)

In exchange for this tremendous liability, Clam Lake receives **no revenue sharing**. This Commission found the prior agreement to be invalid because Clam Lake received no benefit (no revenue sharing), and yet the new agreement also provides no revenue sharing. Such an agreement is so blatantly one-sided and unfair that no reasonable municipal official would approve it on behalf of Clam Lake unless the parties knew that the agreement was merely a sham. Clam Lake's approval of the agreement with Haring is especially suspect because the City of Cadillac and Clam Lake were discussing a potential Act 425 Agreement that would include a revenue sharing provision, under which Clam Lake would be allocated 3 mills of the millage levied by the City. (Exhibit F, City of Cadillac Minutes, 5/6/2013.) Just two days after the City of Cadillac approved moving forward with discussions about such an agreement, Clam Lake instead entered into the agreement with Haring. Rejecting a 3-mill revenue sharing agreement and instead accepting an agreement with Haring that offers *no* revenue sharing makes no sense – unless Clam Lake knew that the agreement with Haring would be a sham agreement.

Moreover, if the agreement were genuine, Clam Lake and Haring each would have sought the advice of separate attorneys, rather than having the same attorney represent both parties in such a lopsided contract. Haring and Clam Lake are clearly adverse to one another in the Act 425 Agreement, and rational municipal officials would have sought independent legal advice if this were a bona fide agreement. This behavior shows that the agreement is mere fiction, intentionally devised to strip this Commission of its jurisdiction to decide a legitimate annexation petition.

Because this is a sham agreement, neither party is actually *required* to perform. Haring is not required to construct infrastructure or provide water and sewer services until such services are requested by Clam Lake, and Clam Lake is not required to request such services. (Exhibit E, p. 5.) Moreover, Haring has “sole discretion” to determine whether it has capacity to provide services, even if such services are requested. (Exhibit E, pp. 5-6.) Whether development is actually permitted will depend on the whims of Clam Lake and Haring – and given their opposition to commercial development on the property, one can expect the Townships to erect plenty of obstacles.

In fact, the Act 425 Agreement itself creates those obstacles. The agreement includes 10 pages of zoning requirements that the property owner must satisfy before Haring will even “consider” a PUD rezoning application. (Exhibit E, pp. 8-18.) Haring and Clam Lake have crafted heightened zoning requirements just for this property – which is not typically found in Act 425 agreements. Moreover, the agreement gives Clam Lake “veto” power over those zoning regulations. Clam Lake can amend the zoning requirements imposed by the agreement, as it did recently on September 18, 2013. Such unusual, heightened zoning requirements and the discretion afforded to the Townships further shows that the agreement is illusory.

3. Clam Lake and Haring are using the Act 425 Agreement to extort money from TeriDee.

As discussed above, the Act 425 Agreement places a tremendous financial burden on Clam Lake. Clam Lake is required to fund Haring's wastewater treatment system and pay all of Haring's costs and expenses (including attorney fees) related to the agreement, the zoning amendments, and the transfer of jurisdiction over the property. Clam Lake will undoubtedly pass these costs along to TeriDee, and the resulting cost to TeriDee will be far greater than the cost if the annexation is approved.

The Act 425 Agreement's requirement that Clam Lake pay all of Haring's costs bears a striking resemblance to an agreement that Haring required from another major developer – Wal-Mart. In 2011, a developer proposed construction of a Wal-Mart store in Haring and requested sewer service using sewer system capacity that Haring had purchased from the City of Cadillac. In exchange for providing use of its capacity, Haring required the developer to pay \$1 million to reimburse Haring for various costs, including legal fees. (Exhibit G.) Haring's *modus operandi* apparently is to extort huge sums of money from developers to fund its public infrastructure – which is exactly what the Act 425 Agreement seeks to accomplish as well.

4. Haring cannot “effectively and economically” provide sewer services to the subject property.

Among other reasons, this Commission rejected the prior Act 425 Agreement because the Commission was concerned about Haring's “ability to effectively and economically provide the defined public services.” This Commission also noted that “[n]o cost study was proven to analyze the differential of connecting the area to public services from the Charter Township of Haring versus connecting to services from the City of Cadillac.” (Exhibit A, p. 3.) Here, as in the prior proceeding, Haring cannot “effectively and economically” provide sewer services, which threatens the possibility of commercial development on the property.

First, Haring is still not able to provide immediate sewer services. Contrary to Attorney Redick’s arguments at the public hearing, Haring’s wastewater treatment plant is not a “sure thing.” Bonds have not been issued, and the financing has not yet closed. The prospect of a wastewater treatment plant in Haring remains uncertain. Even if Haring’s plant is eventually constructed, sewer services will not be available until mid-2015 at the earliest. The City of Cadillac, on the other hand, is ready to provide water and sewer services **now**. Connecting to the City’s system provides far more certainty for the developer.

Moreover, even if Haring offers sewer services in the future, connecting to Haring’s system will be far more expensive than connecting to the City’s system. Haring and Clam Lake have provided a “Comparison of Infrastructure Capital Cost and Property Tax,” which purports to compare the costs of connection to services from Haring and the City of Cadillac. (Exhibit H.) That chart shows that the cost of connecting to Haring for sewer and water services is dramatically higher than connecting to the City of Cadillac:

	City of Cadillac	Haring Charter Township
Public Water Extension	\$525,000	\$1,182,000
Public Sewer Extension	\$512,500	\$1,257,000

Based on those projections, connecting to Haring’s water and (potential) sewer systems would cost **\$1.4 million more** than connecting to the City’s (existing) water and sewer systems.

Haring and Clam Lake, however, claim that over time, the property taxes paid to Haring will be less than what would be paid to the City of Cadillac over a period of ten years and that, therefore, connecting to Haring is actually less costly. Haring and Clam Lake miss the point entirely. The comparison above makes clear that the costs of connection would be drastically

higher if the annexation is denied and the property receives services from Haring. The projected property taxes have nothing to do with the development costs. TeriDee, as the developer, will not be the party paying the property taxes because the development will result in one or more sales of the property.¹ Thus, the actual cost of developing the property is prohibitively greater if the property relies on Haring for sewer and water services.

The City also expects that Haring's commodity charges (user fees) for water and sewer will be far greater than what the City charges. The City has, through a Freedom of Information Act request, asked Haring to identify its proposed sewer commodity charges, but Haring has not yet responded to that request. In fact, Haring and Clam Lake have failed to provide all of the documents that they discussed at the public hearing, even though they promised to provide those documents to the City and even though the documents – such as the resolutions approved by the Townships – are readily available to the Townships.

In short, Haring cannot provide effective and economical services to the subject property. Haring's construction of the wastewater treatment plant is not a "sure thing." Even if it is constructed, services will not be available until at least 2015, and the developer will have to pay \$1.4 million more than it will pay if the annexation is approved and services are obtained from the City of Cadillac. Commodity charges will likely be higher in Haring as well, and the developer will have to meet the heightened zoning requirements that Haring intends to impose on the property. Meanwhile, the City of Cadillac stands ready to provide immediate, economical water and sewer services, applying the same consistent zoning standards that apply to other City property. Haring and Clam Lake cannot be permitted to block development and strip this Commission of its jurisdiction by offering yet another sham agreement.

¹ Moreover, Haring and Clam Lake have no way to know what the future property taxes would be, as millage rates can and likely will change.

The City of Cadillac strongly believes that approving TeriDee's annexation request is in the best interest of the public. On October 21, 2013, the City Council approved a resolution expressing its unequivocal support for the annexation petition and finding that "the proposed annexation will foster economic development and immediately create new jobs in the area by ensuring that necessary public infrastructure from the City of Cadillac is extended to the subject property in a timely manner and at a more reasonable cost due to availability and proximity." (Exhibit I, Resolution.) The public will best be served by annexation to the City of Cadillac, and for these reasons, the City requests that this Commission reject the new Act 425 Agreement and approve the annexation.

Conclusion

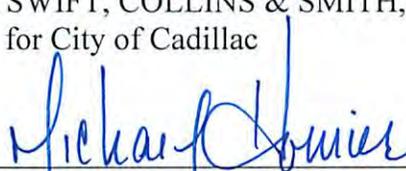
For these reasons, the City of Cadillac requests that this Commission determine that the Act 425 agreement is an invalid "sham" agreement and approve TeriDee's annexation petition.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for City of Cadillac

Date: November 22, 2013

By:



Michael D. Homier (P60318)
1700 East Beltline, N.E., Suite 200
Grand Rapids, MI 49525
(616) 726-2230



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

October 25, 2012

Kevin O'Brien
State Boundary Commission
PO Box 30254
Lansing, MI 48909

RE: #11-AP-2 Annexation

Dear Mr. O'Brien:

This letter serves to acknowledge the Office of the Great Seal's receipt on October 23, 2012 of the filing of the annexation *denial* pursuant to Public Act 191 of 1968, as amended, for the proposed annexation of territory in Clam Lake Township to the City of Cadillac. The effective date of this denial is the date signed on the State Boundary Commission Order of October 3, 2012. This filing has been designated as Job Number 12-021.

*****No further acknowledgment will be sent*****

Sincerely,

Michele Martin, Technician
Office of the Great Seal
517-241-1829

cc: Cadillac City Clerk
Clam Lake Township Clerk
Wexford County Clerk
Michigan Department of Labor and Economic Growth, State Boundary Commission
Michigan Department of Labor and Economic Growth, Liquor Control Commission
Michigan Department of Labor and Economic Growth, Office of Land Survey and
Remonumentation
Michigan Department of Technology, Management and Budget, Center for Shared Solutions
& Technology Partnerships
Michigan Department of Treasury, Office of Revenue and Tax Analysis
Michigan Department of Transportation, Bureau of Transportation Planning
U.S. Bureau of the Census
Job Number 12-021



RICK SNYDER
GOVERNOR

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

STEVEN H. HILFINGER
DIRECTOR

In the matter of:

Boundary Commission
Docket # 11-AP-2

The proposed annexation of territory
in Clam Lake Township to the City of Cadillac,
Wexford County

CERTIFICATION

TO: Michelle Martin, Supervisor
Office of the Great Seal
Legal and Regulatory Services Administration
Secretary of State
108 S. Washington
Lansing, MI 48933

Pursuant to the Order of the Department of Licensing and Regulatory Affairs denying the proposed annexation regarding the above captioned docket, attached hereto is a true and accurate copy of the Order, the original of which is on file with the Office of the State Boundary Commission.

This information is being transmitted for your records.

Kevin M. O'Brien, P.S.
State Boundary Commission
October 9, 2012

State of Michigan
County of Ingham

Subscribed and sworn to before me this
9 day of October, 2012

Dawn Canfield, Notary Public
Ingham County, State of Michigan
My Commission Expires: 12-23-13

DAWN M. CANFIELD
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires Dec. 23, 2013
Acting in the County of Ingham

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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
STATE BOUNDARY COMMISSION

In the matter of:

Docket No. 11-AP-2

The proposed annexation of land in
Clam Lake Township to the City of
Cadillac, Wexford County

Agency No. BCC-1008
Agency: Bureau of
Construction Codes

Case Type: Annexation Petition

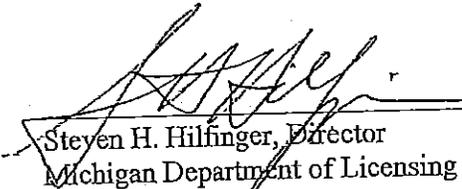
Issued and entered
This 3rd day of Oct, 2012
by Steven H. Hilfinger, Director
Department of Licensing and Regulatory Affairs

FINAL DECISION AND ORDER

IT IS ORDERED THAT the proposed annexation of territory in Clam Lake Township, as described in Attachment A, to the City of Cadillac is denied.

IT IS ORDERED THAT the Summary of Proceedings, Findings of Fact and Conclusions of Law, and the Order to deny the annexation of territory in Clam Lake Township to the City of Cadillac, as described in Attachment B, shall be effective on the date signed below by the Director of the Department of Licensing and Regulatory Affairs (Lara).

IT IS FURTHER ORDERED THAT the State Boundary Commission shall transmit a copy of this Order with the Summary of Proceedings, Findings of Fact and Conclusions of Law to the clerks of Clam Lake Township, the City of Cadillac, the County of Wexford, and to the Secretary of State.



Steven H. Hilfinger, Director
Michigan Department of Licensing and Regulatory Affairs

10-3-12

Date

ATTACHMENT 'A'

ANNEXATION PETITION BY OWNERS OF AT LEAST 75% OF THE LAND

PART III

The territory proposed for annexation to the City of Cadillac is legally described as follows:

Description of proposed Annexed Area:

Part of the NW fractional 1/4 and part of the NE fractional 1/4, Section 2, T21N, R9W, Clam Lake Township, Wexford County, Michigan, described as: Beginning at the N 1/4 corner of said Section 2; thence S89°07'47"E 1314.49 feet along the North line of said NE fractional 1/4; thence S00°57'32"W 368.00 feet along the East line of the West 1/2 of said NE fractional 1/4; thence S89°07'47"E 108.56 feet; thence N01°24'56"E 100.00 feet along the West line of the East 1/2 of said NE fractional 1/4; thence S89°07'47"E 116.00 feet; thence S01°24'56"W 100.00 feet; thence S89°07'47"E 103.33 feet; thence S01°04'24"W 15.00 feet; thence S89°07'47"E 327.89 feet along the South line of the North 3/4 of said NE fractional 1/4; thence S01°11'25"W 118.53 feet to the centerline of a MichCon Gas line easement; thence S17°58'43"E 859.13 feet and S11°17'05"E 1658.18 feet along said centerline to a point on the South line of said NE fractional 1/4 which is N88°40'29"W 5.38 feet from the E 1/4 corner of said Section 2; thence N88°40'29"W 2576.84 feet along the South line of said NE fractional 1/4 to the center of Section 2; thence N88°42'27"W 705.93 feet along the South line of the NW fractional 1/4, Section 2 to the Westerly line of Highway US 131; thence N02°10'26"W 191.40 feet along said Westerly line; thence S87°49'49"W 40.76 feet and N03°10'21"W 1023.48 feet and N33°50'59"W 739.99 feet and N70°00'30"W 780.55 feet along said Westerly line to the South line of the North 3/4 of said NW fractional 1/4; thence N89°07'52"W 652.19 feet along said South line to the West line of said NW fractional 1/4; thence N00°26'38"E 836.10 feet along said West line to the NW corner of said Section 2; thence S89°07'52"E 2627.41 feet along the North line of said NW fractional 1/4 to the place of beginning.

Contains 241.31 acres.

Dept. of Energy, Labor & Economic Growth
FILED

JUN 03 2011 11 AP 2 1

STATE BOUNDARY COMMISSION

ATTACHMENT 'B'

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
STATE BOUNDARY COMMISSION

In the matter of:

State Boundary Commission
Docket #11-AP-2

The proposed annexation of land
in Clam Lake Township to the City of Cadillac,
Wexford County.

SUMMARY OF PROCEEDINGS,
FINDINGS OF FACT AND CONCLUSIONS OF LAW

SUMMARY OF PROCEEDINGS

1. On June 3, 2011, a petition was filed with the State Boundary Commission by TeriDee, L.L.C. requesting the annexation of land in Clam Lake Township to the City of Cadillac. The map and legal description of the area proposed for annexation are included as Exhibit A.
2. On November 17, 2011, the State Boundary Commission found by a vote of 4-0 that the annexation petition was legally sufficient and scheduled a public hearing to be held on January 9, 2012.
3. On January 9, 2012, the Commission held a public hearing at the Cadillac City Hall. At the meeting, the Commission heard comment from the involved parties and the public on the merits of the proposed annexation and the 425 Agreement. Following the hearing, a 30-day public comment period was opened and expired February 8, 2012. Following the 30-day public comment period, a 7-day rebuttal period opened March 12, 2012 and expired March 19, 2012.
4. On June 13, 2012, the State Boundary Commission unanimously voted to recommend to the Director of the Department of Licensing and Regulatory Affairs that he find the 1984 PA 425, Conditional Transfer Agreement between the Charter Township of Haring and Clam Lake Township that was filed with the Michigan Secretary of State on October 20, 2011 invalid. The Commission believes that the 425 Agreement was created solely as a means to bar the annexation and not as a means of promoting economic development.

5. On June 13, 2012, the State Boundary Commission voted 3-2 to recommend to the Director of the Department of Licensing and Regulatory Affairs that he deny the petition for annexation.
6. On August 8, 2012, the Commission voted unanimously to adopt the draft Minutes for the June 13, 2012 meeting reflecting the Commissioners decisions on this case, and the draft Summary of Proceedings, Findings of Fact, and Conclusions of Law recommending that the Director of the Department of Licensing and Regulatory Affairs sign an order denying the proposed annexation of land in Clam Lake Township to the City of Cadillac.

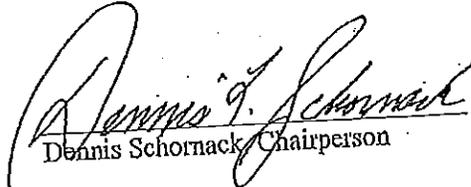
FINDINGS OF FACT

1. The proposed area for annexation is located at the interchange of state highway M-55 and US-131, a federal, limited access, interstate highway. It is located adjacent to the easterly boundary of the City of Cadillac and along the northerly boundary of Clam Lake Township. State highway M-55 traverses the common boundary between Clam Lake Township to its south and the Charter Township of Haring to its north.
2. The City of Cadillac has public services, i.e., water and sanitary sewer services, within one-quarter of a mile from the proposed annexation area. According to the documents filed, the request for annexation was initiated to facilitate an economic development project within the area to be annexed. The economic development project, however, cannot come to fruition without connection to public services, and the City of Cadillac is able to provide the needed services in the immediate future.
3. The 1984 PA 425 Conditional Transfer Agreement included the area of the proposed annexation, plus additional lands, in Clam Lake Township, east of and adjacent to the proposed annexation area. A copy of the 425 Agreement is included as Exhibit B. In the 425 Agreement, the Charter Township of Haring indicates that they can provide Clam Lake Township with the needed public services, i.e., water and sanitary sewer services; however, their nearest existing services are approximately 3 miles from the proposed area for annexation.
4. The portion of the proposed annexation area designated for an economic development project is currently zoned "Forest/Recreational" according to the current Wexford County Zoning Map and pursuant to the current "Wexford County Comprehensive Plan" dated May 19, 2004.
5. The portion of the proposed annexation area designated for an economic development project has been denied the required rezoning in 1998 by the Clam Lake Township Board of Commissioners and again in 2008 by a vote of the citizens of Clam Lake Township.
6. The Commission found that the 425 Agreement was invalid because it was not being used to promote economic development. Their determination was based on the following:

- a. No clearly defined economic development project is named.
- b. Clam Lake Township received no benefit from the agreement, i.e., there is no revenue sharing included.
- c. Copies of emails obtained by the petitioner through a Freedom of Information Act request and provided to the Commission between Clam Lake Township and the Charter Township of Haring discuss the 425 Agreement as a means to deny the Commission jurisdiction over the proposed annexation.
- d. Concern over the Charter Township of Haring's ability to effectively and economically provide the defined public services. No cost study was proven to analyze the differential of connecting the area to public services from the Charter Township of Haring versus connecting to services from the City of Cadillac.
- e. The timing of the 425 Agreement. The agreement was executed more than three months after the annexation request was filed.

CONCLUSIONS OF LAW

1. The State Boundary Commission has considered the requirements in section 9 of 1968 PA 191, MCL 123.1009 and has come to the conclusion that these criteria support the majority vote of the Commission. The Commission recommends that in the case of Docket# 11-AP-2, Petition for Annexation of Territory in Clam Lake Township to the City of Cadillac, Wexford County, be denied by the Director of the Department of Licensing and Regulatory Affairs.
2. Pursuant to Executive Reorganization Order 1996-2, this denial is contingent on the concurrence of the Director of the Department of Licensing and Regulatory Affairs.


Dennis Schornack, Chairperson

8/8/12
Date

EXHIBIT A

ANNEXATION PETITION BY OWNERS OF AT LEAST 75% OF THE LAND

PART III

The territory proposed for annexation to the City of Cadillac is legally described as follows:

Description of proposed Annexed Area:

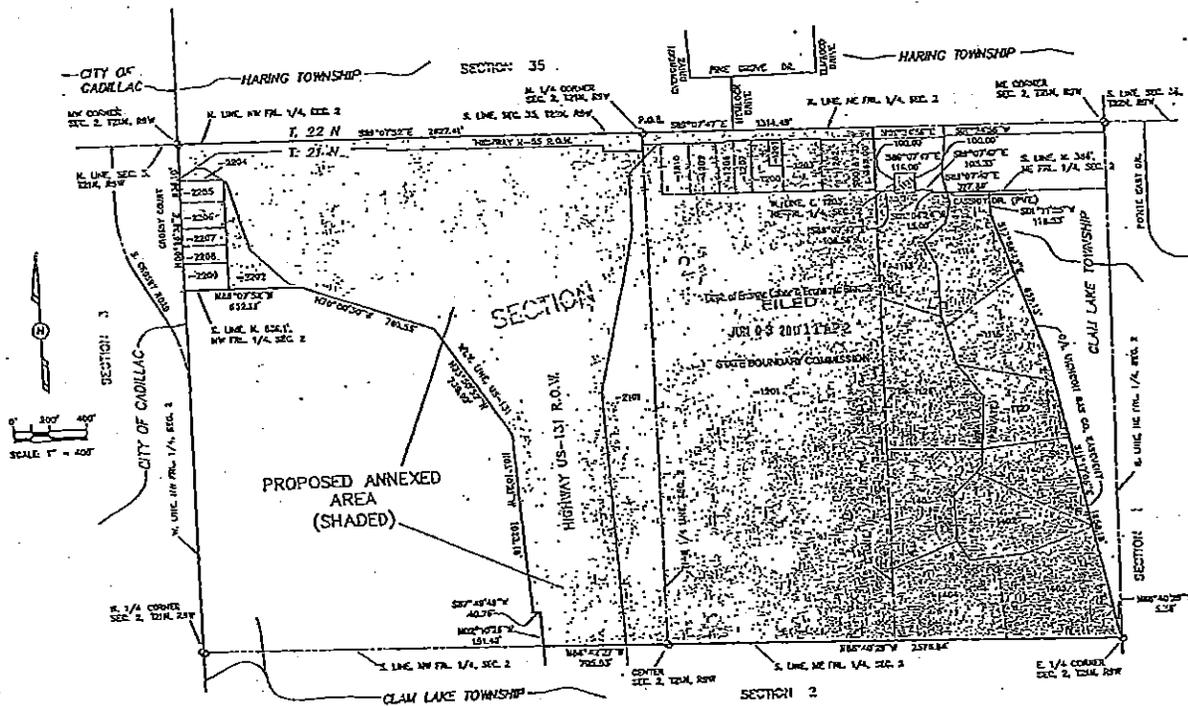
Part of the NW fractional 1/4 and part of the NE fractional 1/4, Section 2, T21N, R9W, Clam Lake Township, Wexford County, Michigan, described as: Beginning at the N 1/4 corner of said Section 2; thence S89°07'47"E 1314.49 feet along the North line of said NE fractional 1/4; thence S00°57'32"W 368.00 feet along the East line of the West 1/2 of said NE fractional 1/4; thence S89°07'47"E 108.56 feet; thence N01°24'56"E 100.00 feet along the West line of the East 1203 feet of said NE fractional 1/4; thence S89°07'47"E 116.00 feet; thence S01°24'56"W 100.00 feet; thence S89°07'47"E 103.33 feet; thence S01°04'24"W 15.00 feet; thence S89°07'47"E 327.89 feet along the South line of the North 383 feet of said NE fractional 1/4; thence S01°11'25"W 118.53 feet to the centerline of a MichCon Gas line easement; thence S17°58'43"E 859.13 feet and S11°17'05"E 1668.18 feet along said centerline to a point on the South line of said NE fractional 1/4 which is N88°40'29"W 5.38 feet from the E 1/4 corner of said Section 2; thence N88°40'29"W 2576.84 feet along the South line of said NE fractional 1/4 to the center of Section 2; thence N88°42'27"W 705.93 feet along the South line of the NW fractional 1/4, Section 2 to the Westerly line of Highway US 131; thence N02°10'26"W 191.40 feet along said Westerly line; thence S87°49'49"W 40.76 feet and N03°10'21"W 1023.48 feet and N33°50'59"W 739.99 feet and N70°00'30"W 780.55 feet along said Westerly line to the South line of the North 836.1 feet of said NW fractional 1/4; thence N89°07'52"W 652.19 feet along said South line to the West line of said NW fractional 1/4; thence N00°26'38"E 836.10 feet along said West line to the NW corner of said Section 2; thence S89°07'52"E 2627.41 feet along the North line of said NW fractional 1/4 to the place of beginning.

Contains 241.31 acres.

Dept. of Energy, Labor & Economic Growth
FILED

JUN 03 2011 11 AP 2

STATE BOUNDARY COMMISSION



PROPERTY OWNED BY PETITIONER	
PPM (PREFIX = 2109-02 FOR ALL PARCELS)	AREA
-1113, -1114, -1115, -1121, -1125, -1127, -1201, -1203, -1204, -1207, -1208, -1209, -1210, -1401, -1402, -1403, -1404, -1405, -2101, -2202, -2204	140.49 AC.
PROPERTY NOT OWNED BY PETITIONER	
PPM (PREFIX = 2109-02 FOR ALL PARCELS)	AREA
MOOT PARCELS -2101, -2202, -2204	15.98 AC.
R.O.W US-131	72.16 AC.
R.O.W W-SS	8.27 AC.
OTHER PARCELS -1202, -1206, -2205, -2206, -2207, -2208, -2209	6.41 AC.
	241.31 ACRES TOTAL

PART I

CLAM LAKE TOWNSHIP
CITY OF CADILLAC
T. 21 N. - R. 9 W.
WEXFORD COUNTY, MICHIGAN

EXHIBIT B



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

October 24, 2011

William Fahey
4151 Okemos Road
Okemos, MI 48864

RE: Conditional transfer of property

Dear Mr. Fahey:

This letter serves to acknowledge the Office of the Great Seal's receipt on October 20, 2011 of the filing of the conditional transfer of property pursuant to Public Act 425 of 1984 amended, from Clam Lake Township to the Haring Township. The receipt date is the effective date of this boundary change. This filing is designated as Job Number 11-412.

All property descriptions for any boundary changes are reviewed by the Michigan Department of Transportation (MDOT), and then published annually in the Michigan Public and Local Acts manual. If any property description is found inaccurate by MDOT, this office will contact you at that time and request a corrected description, which will not impact the effective date of the boundary change.

*****No further acknowledgment will be sent*****

Sincerely,

Michele Martin, Technician
Office of the Great Seal
517-241-1829

cc: Clam Township Clerk
Haring Township Clerk
Wexford County Clerk
Michigan Department of Labor and Economic Growth, State Boundary Commission
Michigan Department of Labor and Economic Growth, Liquor Control Commission
Michigan Department of Labor and Economic Growth, Office of Land Survey and Remonumentation
Michigan Department of Information Technology, Center for Geographic Information
Michigan Department of Treasury, Office of Revenue and Tax Analysis
Michigan Department of Transportation, Bureau of Transportation Planning
U.S. Bureau of the Census
Office of the Great Seal Job Number: 11-412

RECEIVED
DEPT. OF LABOR & ECONOMIC GROWTH

OCT 27 2011

STATE BOUNDARY COMMISSION

Job Number: 11-412

Townships
Wexford County

In the matter of the conditional transfer of certain property located in Clam Lake Township to Haring Township. Conditionally transferred in accordance with the provisions of Public Act 425 of 1984, as amended the following described property:

Beginning at the Northwest Corner of said Section 2; thence Easterly along the North line of said Section 2 to the North 1/4 Corner of said section; thence continuing Easterly along said North line of Section 2 to the Northeast Corner of said section; thence Easterly along the North line of said Section 1 to the Northeast Corner of said West 1/2 of the Northwest fractional 1/4 of Section 1; thence Southerly along the East line of said West 1/2 of the Northwest fractional 1/4 to the East - West 1/4 line of said Section 1; thence Westerly along said East - West 1/4 line to the 1/4 Corner common to said Sections 1 and 2; thence Westerly along the East - West 1/4 line of said Section 2 to the Center 1/4 Corner of said section; thence continuing Westerly along said East - West 1/4 line to the West right-of-way line of U.S. Highway 131; thence Northerly and Northwesterly along said right-of-way line to the South line of the North 836.10 feet of the Northwest fractional 1/4 of said Section 2; thence Westerly along said South line to the West line of said Section 2; thence Northerly along said West section line to the Point of Beginning.

AGREEMENT FOR CONDITIONAL TRANSFER

This Agreement is entered into by and between the Charter Township of Haring, a Michigan charter township, 515 Bell Avenue, Cadillac, Michigan 49601 (hereinafter referred to as "Haring") and the Township of Clam Lake, a Michigan general law township, 8809 East M-115, Cadillac, Michigan 49601-9786 (hereinafter referred to as "Clam Lake"), effective as of October 19, 2011.

WHEREAS, Haring and Clam Lake are local units as that term is defined by Public Act 425 of 1984, as amended, MCL 124.21, *et seq* ("Act 425"), and

WHEREAS, Haring is organized under the Charter Township Act, Public Act 359 of 1947, as amended, MCL 42.1, *et seq*, and

WHEREAS, Clam Lake is organized under Chapter 16, Revised Statutes of 1846, MCL 41.1, *et seq*, and

WHEREAS, properties within Haring and Clam Lake are currently used for residential, commercial and industrial purposes, or are proposed for future residential, commercial or industrial uses, and

WHEREAS, Haring and Clam Lake currently receive wastewater treatment services under agreements with the City of Cadillac (the "City"), but the City has announced that it will cease to provide wastewater treatment services to properties within Haring and Clam Lake after 2017, when the current wastewater treatment agreements with the City expire, and

WHEREAS, through litigation with the City, Haring has obtained the right to purchase an additional 121,000 gpd of wastewater treatment capacity in the City's wastewater treatment plant, and

WHEREAS, in anticipation of the cessation of City wastewater treatment service in 2017,

FILED WITH SECRETARY OF STATE

ON 10/20/11 AT 2:57 PM

Haring is currently pursuing a number of options for future wastewater treatment, including, among others, pending litigation in the Michigan Supreme Court to extend the period during which it may continue to receive wastewater treatment service through the City's wastewater treatment plant, and the construction and operation of a new Haring wastewater treatment plant, and

WHEREAS, Haring and Clam Lake recognize that the existing and future wastewater needs of both townships will benefit from the townships' mutual cooperation, and

WHEREAS, the territory legally described in attached Exhibit A and depicted on the map attached as Exhibit B (hereinafter referred to as the "Transferred Area") is partially developed for residential housing and is proposed under the Wexford County Zoning Ordinance and Master Plan to be developed for additional residential housing, and

WHEREAS, the owners of the portion of the Transferred Area that has not yet developed for residential housing have suggested that they may need municipal wastewater treatment service in order to develop that property, and

WHEREAS, if the portion of the Transferred Area that has not yet been developed for residential housing does need municipal wastewater treatment services for some reason, Haring is currently in a better position than Clam Lake to provide that service, since Haring has a contract right to purchase additional wastewater treatment capacity from the City, and

WHEREAS, pursuant to Act 425, the Township Boards of Haring and Clam Lake held a joint public hearing on September 19, 2011, regarding this Agreement, notice of which was given in the manner required by law, and

WHEREAS, the Haring Charter Township Board and the Clam Lake Township Board have each decided, by majority vote of the members duly elected and serving on each respective body, to

enter into this Agreement and have authorized their respective representatives to execute this Agreement on their behalf.

NOW, THEREFORE, it is hereby agreed as follows:

ARTICLE I
CONDITIONAL TRANSFER

1. Factors Considered.

Prior to the execution of this Agreement, Harling and Clam Lake have considered numerous factors including, but not limited to, the following:

- a. density and composition of population;
- b. land area and uses;
- c. topography and natural boundaries;
- d. assessed valuation;
- e. drainage and soil erosion;
- f. both proposed and possible future commercial and industrial development and growth;
- g. residential development and growth;
- h. the need for organized community services; the present cost and adequacy of governmental services, the future need of those services and the ability to provide those services;
- i. the practical effect of transferring property from one township to another including the impact on taxes and tax rates in relation to the benefits expected to accrue from the transfer;
- j. the general effect upon local units involved and the relationship of such an agreement to established city, village, township, county or regional land use plans.

2. Conditional Transfer of Property

The territory legally described in attached Exhibit A and depicted on the map attached as Exhibit B shall be known as the "Transferred Area." From the effective date of this Agreement until the Termination Date of the Conditional Transfer (the "Duration of the Conditional Transfer"), the Transferred Area shall be conditionally transferred for all purposes from the jurisdiction of Clam

Lake to the jurisdiction of Haring.

3. Economic Development Project

The Transferred area is currently used for existing residential housing, and is proposed for the development of additional residential housing as an economic development project under Act 425. In addition, this Agreement provides for wastewater infrastructure and services for the protection of the environment, including, but not limited to ground water or surface water, as an economic development project under Act 425.

4. Governmental Services and Authority

For the Duration of the Conditional Transfer, Haring shall provide the Transferred Area all municipal facilities and services afforded to property owners within Haring, to the extent that such services are available, and shall have the same local governmental authority within the Transferred Area as in the balance of Haring; provided, however, that wastewater and/or public water services shall be provided to the Transferred Area only if it is determined, in the discretion of the Haring Township Board, that such services are needed and can be reasonably and cost-effectively provided to the Transferred Area.

5. Ordinance Enforcement

For the Duration of the Conditional Transfer, the Transferred Area shall be subject to the enforcement of Haring ordinances, codes, rules and regulations in effect or subsequently amended.

6. Zoning and Building

The Transferred Area is currently zoned by Wexford County for residential use. The existing residential zoning of the Transferred Area shall remain in effect only until Haring can amend its zoning ordinance to incorporate the Transferred Area as designated for residential housing under the

Haring Township Zoning Ordinance. After such amendment, and for the Duration of the Conditional Transfer, the Transferred Area shall be subject to Haring's Zoning Ordinance and building codes as then in effect or as subsequently amended.

7. Assessing and Taxation

For the Duration of the Conditional Transfer, the Transferred Area shall be deemed to be within Haring's corporate limits and jurisdiction for all purposes of assessing and taxation, including but not limited to *ad valorem* real and personal property taxes, specific taxes, payments in lieu of taxes, and tax abatements, as provided by law.

8. Special Assessments

For the Duration of the Conditional Transfer, the Transferred Area shall be subject to Haring's jurisdiction for all purposes of special assessments. Clam Lake states and represents that there are no special assessment districts currently in place within the Transferred Area.

9. Charges for Governmental Services

For the Duration of the Conditional Transfer, the Transferred Area shall be subject to the same rates and charges for governmental services as provided to other properties within the jurisdiction of Haring.

10. Liens

For the Duration of the Conditional Transfer, all liens provided by Township Ordinance or State Law pertaining to the provision of services and the enforcement of special assessments and *ad valorem* real and personal property taxes shall have the same force and effect with respect to the Transferred Area as to other property within the corporate limits of Haring.

11. Voting

For the Duration of the Conditional Transfer, any qualified person residing within the Transferred Area shall be deemed to be qualified as an elector of Haring and shall be entitled to vote in all elections as a qualified elector of Haring.

12. Limitation on Annexation

For the Duration of the Conditional Transfer, the Transferred Area shall only be subject to the method of transfer included in this Agreement; no other method of annexation or transfer shall take place for any portion of the Transferred Area. In the event that any petitions for annexation are filed for any portion of the Transferred Area, Haring and Clam Lake agree to actively oppose such petitions by, at a minimum, stating their opposition in writing, requesting in writing that such petitions be dismissed and denied, and refraining from providing any direct or indirect assistance or support to the petitioners.

13. Taxes and Other Revenues

For the Duration of the Conditional Transfer, all taxes, revenue sharing and other revenues of any source or kind received by Haring due to or from the Transferred Area, or due to or from any activities conducted, use, occupation or population on the Transferred Area, shall be retained solely by Haring and shall not be shared with Clam Lake.

14. Duration of the Conditional Transfer

The Conditional Transfer shall be in effect only from the Effective Date of this Agreement until the Termination Date of the Conditional Transfer.

15. Effective Date

The Effective Date of this Agreement shall be the date first listed above.

16. Termination Date of the Conditional Transfer

The Conditional Transfer shall be terminated on the earliest date below:

- a. on the date that is ten (10) years after the Effective Date of this Agreement;
- b. on the date that is mutually agreed in writing by the parties;
- c. on the date that this Conditional Transfer is rejected in a referendum election of the residents of a local governmental unit that is party to this Agreement as permitted by Act 425; or
- d. by operation of law should a tribunal of competent jurisdiction order the termination or invalidity of this Agreement.

17. Jurisdiction after Termination

a. Immediately following the Duration of the Conditional Transfer, without any further agreement or writing, the Transferred Area shall automatically and permanently return to the jurisdiction of Clam Lake for all purposes, and thereafter shall no longer be within the jurisdiction of Haring for any purposes.

b. If, during the Duration of the Conditional Transfer, Haring provides either public wastewater service or public water supply service to the Transferred Area, from a Haring public wastewater or public water supply system (each a "Utility System" and together, the "Utility Systems"), or both, then effective upon the Termination Date of the Conditional Transfer in accordance with Article I, Paragraph 16, Clam Lake agrees to enter into an intermunicipal agreement with Haring with respect to the services provided by Haring from either or both Utility Systems to the Transferred Area. This intermunicipal agreement shall contain mutually agreeable provisions, which, at minimum, shall: (1) provide for the consent by Clam Lake to the use of the public rights-

of-way in Clam Lake by Haring for purposes of the Utility Systems; (2) provide for the consent by Clam Lake to the installation, construction, extension, improvement, operation, maintenance, repair and replacement of all Utility System Infrastructure by Haring within Clam Lake; (3) provide for the ownership of the Utility Systems by Haring; (4) provide appropriate provisions for the extension and improvement of the Utility System infrastructure which serves Clam Lake, whether such infrastructure is located within or without Clam Lake; (5) provide that Utility System customers located in Clam Lake shall pay to Haring fees, rates and charges for services rendered by the Utility Systems; (6) provide for the adoption by Clam Lake of Utility System ordinances providing for matters pertinent to the connection to, the use of and rates and charges payable with respect to the Utility Systems within Clam Lake, with such Clam Lake ordinances being (i) subject to the prior review and approval by Haring and (ii) not less restrictive than similar ordinances in effect in Haring; (7) provide for the billing and collection of Utility System fees, rates and charges to customers of the Utility Systems located in Clam Lake and appropriate provisions for the collection of delinquent fees, rates and charges; (8) provide for Clam Lake to place, in the manner provided by law, delinquent Utility System fees, rates and charges, upon certification by Haring, on the Clam Lake Township tax roll and, upon collection of the same, to pay the collected amounts to Haring; (9) provide for the adoption and implementation of appropriate notice and claim procedures provided by Act 222 of the Public Acts of Michigan of 2001, as amended; and (10) provide for insurance coverage with regard to the Utility Systems and the use thereof. Haring and Clam Lake agree that the term of such intermunicipal agreement shall, to the extent permitted by law, extend for a period of time that, at minimum, is co-extensive with the terms of the then outstanding bonded or contractual indebtedness of Haring which pertains to the Utility Systems which serve the Transferred

Area. Clam Lake agrees to provide all necessary assurances requested by Haring to satisfy requirements of Haring's lenders with regard to the Utility Systems, including entering into any required supplemental service agreements. If requested by Haring, separate Intermunicipal agreements shall be negotiated for wastewater service and public water supply service. Haring and Clam Lake agree to negotiate the Intermunicipal agreement(s) required by the terms of this paragraph in good faith and to commence such negotiations not less than six (6) months prior to the Termination Date of the Conditional Transfer.

ARTICLE II ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and may not be modified or amended except by the written consent of the parties.

ARTICLE III GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Michigan. The parties hereby consent to the jurisdiction and venue in the Circuit Court for the County of Wexford with respect to all complaints, claims, demands, or other issues related to or arising from this Agreement. In the event of a dispute between the parties arising under this Agreement, this Agreement shall be enforced by either party in an action commenced in Wexford County, Michigan, and under Michigan law.

ARTICLE IV NON-ASSIGNMENT

No party to this Agreement shall assign any of its rights, duties or obligations hereunder without the written consent of all parties.

ARTICLE V
SEVERABILITY

In the event that any provision of this Agreement is held to be unenforceable for any reason, such holding shall not affect the validity and enforceability of the remainder of this Agreement.

ARTICLE VI
FILING

In accordance with Act 425, this Agreement shall be filed with the Wexford County Clerk and the Secretary of State Office of the Great Seal.

ARTICLE VII
BINDING EFFECT

This Agreement is binding upon the parties hereto, their successors and their assigns.

ARTICLE VIII
NOTICES

Any notice, demand, or communication required, permitted or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by first class or certified mail addressed to the then acting officials follows:

Township Supervisor
Charter Township of Haring
515 Bell Avenue
Cadillac, Michigan 49601

Township Supervisor
Clam Lake Township
8809 East M-115
Cadillac, Michigan 49601-9786

The parties may, by written notice, designate any further or different addresses to which subsequent notices, demands, or communications may be given.

ARTICLE IX
MODIFICATION

No party to this Agreement may unilaterally modify this Agreement. There are no third party beneficiaries to this Agreement and none are intended.

ARTICLE X
CONTINUING RESPONSIBILITIES FOR INDIVIDUAL LIABILITIES

Haring and Clam Lake shall each be responsible for such liabilities as may be incurred through their respective provision of governmental services and other performances of this Agreement and each shall respond to and provide for such liabilities on the same basis as Haring and Clam Lake do generally, except as set forth in Article XII of this Agreement.

ARTICLE XI
EMPLOYEES

Haring shall be solely responsible for the manner of employing, engaging, compensating, transferring or discharging any employees, independent contractors or other personnel with respect to the governmental services Haring shall provide under this Agreement. Clam Lake shall be solely responsible for the manner of employing, engaging, compensating, transferring or discharging any employees, independent contractors or other personnel with respect to the governmental services Clam Lake shall provide under this Agreement.

ARTICLE XII
REIMBURSEMENT AND INDEMNIFICATION

1. Clam Lake agrees to reimburse Haring for any and all costs and expenses, including without limitation actual attorney fees, which Haring incurs prior to execution of this Agreement for the Agreement's review, preparation, hearing and notice.
2. Clam Lake agrees to reimburse Haring for any and all costs and expenses, including

without limitation actual attorney fees, which Haring incurs to return jurisdiction of the Transferred Area to Clam Lake upon the termination of the Conditional Transfer under this Agreement.

3. Clam Lake agrees, to the extent permitted by law, to indemnify and hold harmless Haring from any and all claims for damages, costs, expenses, fees, liabilities and all other forms of monetary relief, whether legal or equitable in nature, arising in any way from the execution and implementation of this Agreement, including, without limitation, claims that might arise from the zoning or rezoning of the Transferred Area or the provision or the proposed provision of public sanitary sewer and/or public water supply service to the Transferred Area. Clam Lake further agrees to reimburse Haring for all costs, expenses and actual attorney fees Haring incurs, whether in administrative or judicial proceedings, involving the execution and implementation of this Agreement, including, without limitation, (a) proceedings before the State Boundary Commission involving the validity of this Agreement and/or annexation of the Transferred Area, (b) judicial proceedings involving the validity of this Agreement and/or annexation of the Transferred Area, or (c) administrative or judicial proceedings relating, in any way, to the zoning or rezoning of the Transferred Area. Haring may submit such reimbursable expenses, to the extent they are incurred, to Clam Lake on a monthly basis. Clam Lake shall pay Haring within 45 days following receipt of a written request for reimbursement from Haring. In the event that Clam Lake fails to indemnify and hold Haring harmless or fails to pay reimbursable expenses within the required 45 day period, Haring may commence an action in the Wexford County Circuit Court for recovery of the unpaid amount(s) and/or to otherwise enforce Clam Lake's indemnity/hold harmless obligations under this provision. If Haring prevails in such an action, whether in whole or in part, Clam Lake shall be required to pay Haring all costs, expenses and actual attorney fees Haring incurred in the action. The Haring

Township Board retains its right to select its own legal counsel to represent Harlug in any and all of the foregoing matters, including, without limitation, proceedings that might arise from the zoning or rezoning of the Transferred Area. The obligations of this Article shall survive the termination of the Agreement and shall be binding on the parties, even if this Agreement is otherwise adjudged, whether in administrative or judicial proceedings, to be invalid for the purpose of satisfying the requirements of Act 425.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be effective on the day and year first above written.

IN THE PRESENCE OF

Will K. Fahy
William K. Fahy
Martha L. Nixon
Martha L. Nixon
Will K. Fahy
Martha L. Nixon

IN THE PRESENCE OF

Will K. Fahy
William K. Fahy
Martha L. Nixon
Martha L. Nixon
Will K. Fahy
Martha L. Nixon

CHARTER TOWNSHIP OF HARLUG

By: Robert Scarbrough
Robert Scarbrough, Supervisor

By: Kirk Soule
Kirk Soule, Clerk

TOWNSHIP OF CLAM LAKE

By: Dale Rosser
Dale Rosser, Supervisor

By: Delores Peterson
Delores Peterson, Clerk

EXHIBIT A

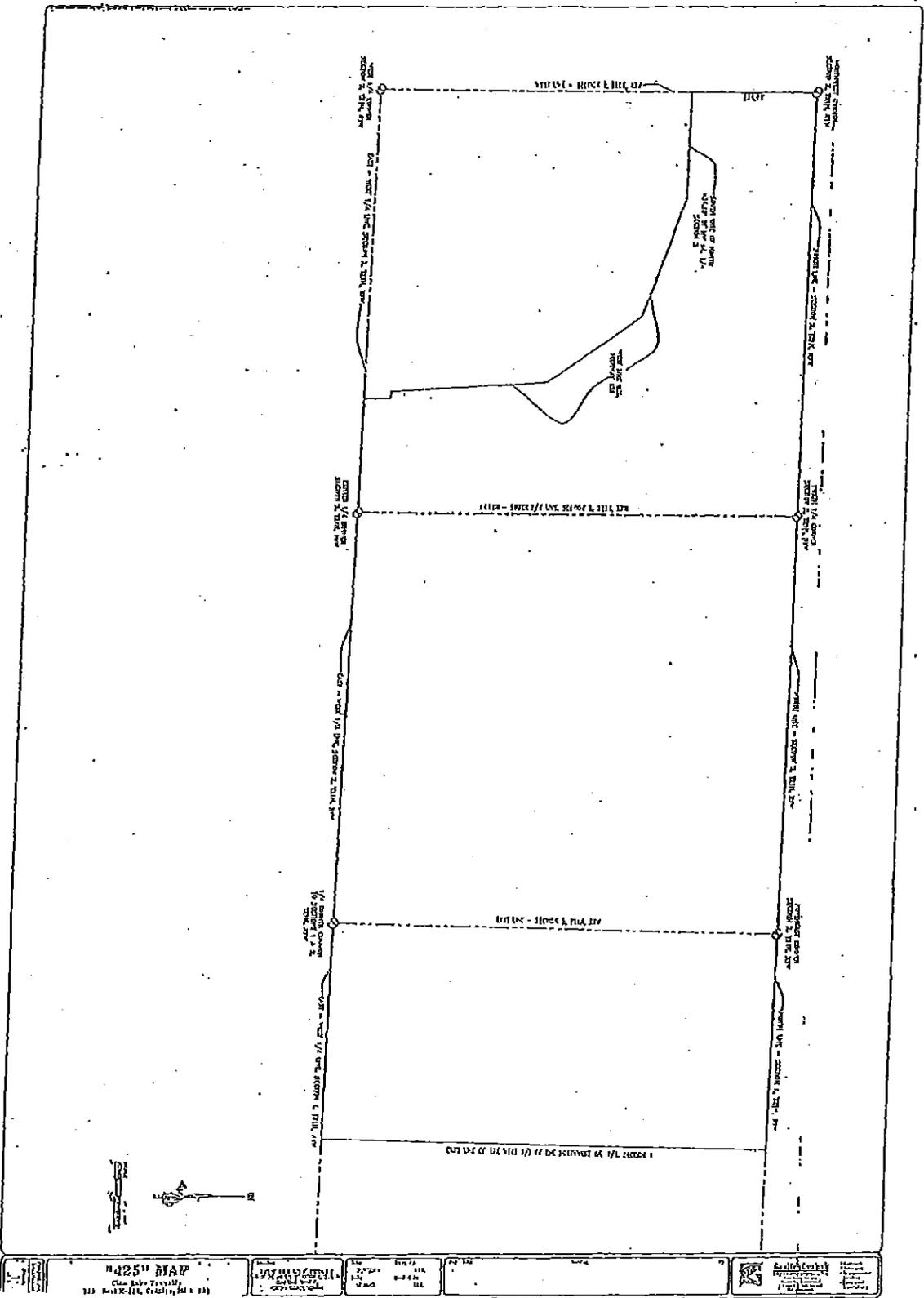
LEGAL DESCRIPTION OF TRANSFERRED AREA

Part of the North fractional 1/2 of Section 2 and the West 1/2 of the Northwest fractional 1/4 of Section 1, Township 21 North, Range 9 West, Clam Lake Township, Wexford County, Michigan, more fully described as follows:

Beginning at the Northwest Corner of said Section 2; thence Easterly along the North line of said Section 2 to the North 1/4 Corner of said section; thence continuing Easterly along said North line of Section 2 to the Northeast Corner of said section; thence Easterly along the North line of said Section 1 to the Northeast Corner of said West 1/2 of the Northwest fractional 1/4 of Section 1; thence Southerly along the East line of said West 1/2 of the Northwest fractional 1/4 to the East - West 1/4 line of said Section 1; thence Westerly along said East - West 1/4 line to the 1/4 Corner common to said Sections 1 and 2; thence Westerly along the East - West 1/4 line of said Section 2 to the Center 1/4 Corner of said section; thence continuing Westerly along said East - West 1/4 line to the West right-of-way line of U.S. Highway 131; thence Northerly and Northwesterly along said right-of-way line to the South line of the North 836.10 feet of the Northwest fractional 1/4 of said Section 2; thence Westerly along said South line to the West line of said Section 2; thence Northerly along said West section line to the Point of Beginning.

EXHIBIT B

MAP OF TRANSFERRED AREA



1425' MAP
 CITY OF JACKSONVILLE
 FLORIDA
 PLAT 1425'



Neutral

As of: November 22, 2013 1:26 PM EST

Township of Casco v. Michigan Boundary Comm'n

Court of Appeals of Michigan
September 6, 2000, Submitted ; November 28, 2000, Decided
No. 217621

Reporter: 243 Mich. App. 392; 622 N.W.2d 332; 2000 Mich. App. LEXIS 258

TOWNSHIP OF CASCO, TOWNSHIP OF COLUMBUS, and TOWNSHIP OF LENOX, Petitioners-Appellants, v MICHIGAN STATE BOUNDARY COMMISSION, Respondent-Appellee, and WALTER WINKLE, PATRICIA WINKLE, and CITY OF RICHMOND, Intervening Appellees.

Subsequent History: Motion granted by, Appeal denied by [Twp. of Casco v. Mich. State Boundary Comm'n, 465 Mich. 855, 632 N.W.2d 145, 2001 Mich. LEXIS 1363 \(2001\)](#)

Related proceeding at [Twp. of Casco v. Sec'y of State, 2004 Mich. App. LEXIS 804 \(Mich. Ct. App., Mar. 25, 2004\)](#)

Prior History: [***1] St. Clair Circuit Court LC No. 98-000886-AA.

Disposition: Affirmed.

Core Terms

annexation, townships, circuit court, local unit, commission's finding, economic development, annexation petition, revise, sewer

Case Summary

Procedural Posture

Appellant townships appealed, by leave granted, the St. Clair Circuit Court's (Michigan) conclusion that appellee Michigan Boundary Commission's decision to approve intervening appellees' petition for annexation was based on competent, material, and substantial evidence on the whole record, and was not arbitrary, capricious, or an abuse of discretion.

Overview

Intervenor appellees, landowners, filed a petition with appellee State Boundary Commission seeking to annex their land. However, appellant townships had previously filed two agreements pursuant to 1984 Mich. Pub. Acts 425; [Mich. Comp. Laws § 124.21 et seq.](#) (Mich. Stat. Ann. § 5.4087(21) et seq.), (Act 425 agreement), to

transfer a portion of one township to another, which covered intervenor landowners' property. The appellate court affirmed the trial court's affirmation of appellees' conclusion. In light of the broad grant of statutory authority to appellee over matters relating to the establishment of boundaries and annexations, appellee had the authority and jurisdiction to decide the validity of the Act 425 agreements. The statute did not preclude a finding that the agreement was a sham. Appellee found that the agreements were essentially an attempt to avoid annexation. Therefore, appellee's conclusion that the two Act 425 agreements were illusory in nature and that the townships entered into them in order to avoid future annexation was based on competent, material, and substantial evidence.

Outcome

Judgment affirmed because appellee the Commission had the authority and jurisdiction to decide the validity of the Act 425 agreements. Further, competent, material, and substantial evidence existed to support appellee Commission's conclusion that the two Act 425 agreements were illusory in nature and that the townships entered into them in order to avoid future annexation.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review
Administrative Law > Judicial Review > Standards of Review > Exceeding Statutory Authority
Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > General Overview
Environmental Law > Administrative Proceedings & Litigation > Judicial Review
Governments > Local Governments > Boundaries

HNI The appellate court reviews the decisions of the Michigan Boundary Commission in accordance with the Administrative Procedures Act, [Mich. Comp. Laws § 24.201 et seq.](#) (Mich. Stat. Ann. § 3.560(101) et seq.); [Mich. Comp. Laws § 123.1018](#) (Mich. Stat. Ann. § 5.2242(18)). Where an administrative agency exceeds its statutory authority or jurisdiction, the reviewing court shall set aside its decision or order if the agency prejudiced the petitioner's substantial rights. [Mich. Comp. Laws § 24.306\(1\)\(b\)](#) (Mich. Stat. Ann. § 3.560(206)(1)(b)).

Communications Law > Regulators > US Federal Communications Commission > Jurisdiction
 Governments > Local Governments > Administrative Boards
 Governments > Local Governments > Boundaries
 Governments > Local Governments > Home Rule
 Governments > State & Territorial Governments > Boundaries
 Governments > State & Territorial Governments > Relations With Governments

HN2 The Home Rule Cities act, 1909 Mich. Pub. Acts. 279 § 9(2); [Mich. Comp. Laws § 117.9\(2\)](#) (Mich. Stat. Ann. § 5.2088(2)), provides that the Michigan Boundary Commission has the power to determine the validity of the petition or resolution concerning annexation, and also recognizes the Commission's duties concerning processing and approving, denying, or revising a petition or resolution for annexation. [Mich. Comp. Laws § 123.1011a](#) (Mich. Stat. Ann. § 5.2242(11a)), setting forth procedures, provides that the commission shall have jurisdiction over petitions or resolutions for annexation as provided in [Mich. Comp. Laws § 117.9](#) (Mich. Stat. Ann. § 5.2088).

Governments > Local Governments > Boundaries

HN3 [Mich. Comp. Laws § 124.29](#) (Mich. Stat. Ann. § 5.4087(29)) states that where an agreement under 1984 Mich. Pub. Acts 425 (Act 425), [Mich. Comp. Laws § 124.21 et seq.](#) (Mich. Stat. Ann. § 5.4087(21) et seq.) is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract. This section provides a mechanism through which local units may conditionally transfer property in a manner controlled by a written contract agreed to by the affected local units. [Mich. Comp. Laws § 124.22](#) (Mich. Stat. Ann. § 5.4087(22)). [Mich. Comp. Laws § 124.30](#) (Mich. Stat. Ann. § 5.4087(30)) in turn provides that a duly filed Act 425 agreement is prima facie evidence of the conditional transfer. Act 425 agreements thus allow municipalities conditionally to revise their borders without recourse to, or interference from, the Michigan Boundary Commission.

Governments > Local Governments > Boundaries

HN4 The plain wording of [Mich. Comp. Laws § 124.29](#) (Mich. Stat. Ann. § 5.4087(29)), provides that a contract under 1984 Mich. Pub. Acts 425 (Act 425), [Mich. Comp. Laws § 124.21 et seq.](#) (Mich. Stat. Ann. § 5.4087(21) et seq.) presently "in effect" bars other forms of "annexation or transfer" of the affected territory. This language expressly requires an Act 425 agreement that is "in effect," and therefore necessitates a valid agreement. Consequently, this statutory bar to the Michigan Boundary Commission's consideration of an annexation petition requires an agreement that fulfills the statutory criteria, rather than a fictional agreement intended only to deprive the commission of jurisdiction.

Governments > Local Governments > Boundaries
 Governments > State & Territorial Governments > Boundaries

HN5 The Michigan Boundary Commission may proceed with an annexation petition where it has identified only "pro forma" or "de minimus" exercises of statutory measures that would otherwise supplant its jurisdiction.

Administrative Law > Agency Adjudication > Formal Adjudicatory Procedure > General Overview
 Communications Law > Regulators > US Federal Communications Commission > Jurisdiction

HN6 An administrative agency is competent to determine its own jurisdiction.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

HN7 The appellate court reviews the Michigan Boundary Commission's findings for whether competent, material, and substantial evidence existed to support the commission's findings. [Mich. Comp. Laws § 24.306\(1\)\(d\)](#) (Mich. Stat. Ann. § 3.560(206)(1)(d)).

Governments > Local Governments > Boundaries
 Public Health & Welfare Law > Social Services > Community & Economic Development

HN8 Agreements under 1984 Mich. Pub. Acts 425, [Mich. Comp. Laws § 124.21 et seq.](#) (Mich. Stat. Ann. § 5.4087(21) et seq.) are statutorily authorized to allow local units to establish an economic development project, [Mich. Comp. Laws § 124.22](#) (Mich. Stat. Ann. § 5.4087(22)).

Governments > Local Governments > Boundaries

HN9 See [Mich. Comp. Laws § 124.22](#) (Mich. Stat. Ann. § 5.4087(22)).

Governments > Local Governments > Boundaries
 Tax Law > Federal Income Tax Computation > Tax Accounting > Accounting Records

HN10 [Mich. Comp. Laws § 124.30](#) (Mich. Stat. Ann. § 5.4087(30)), which provides that the filing of an agreement under 1984 Mich. Pub. Acts 425; [Mich. Comp. Laws § 124.21 et seq.](#) (Mich. Stat. Ann. § 5.4087(21) et seq.) for land transfers, constitutes prima facie evidence of the existence of the conditional transfer of land. The statute, however, does not preclude a finding that the agreement was a sham.

Constitutional Law > Congressional Duties & Powers > Contracts Clause > General Overview
 Contracts Law > Defenses > Public Policy Violations
 Governments > State & Territorial Governments > Legislatures

HN11 Vested rights acquired under contract may not be destroyed by subsequent State legislation or even by an amendment of the State Constitution.

Counsel: James V. Dubay, for Casco Township and Columbus Township. Richmond.

Terry S. Welch, for Lenox Township. Mount Clemens.

Jennifer M. Granholm, Attorney General, Thomas L. Casey, Solicitor General, and George M. Elworth, Assistant Attorney General, for State Boundary Commission.

Freeman McKenzie (by Thomas L. Treppa), for city of Richmond. Mount Clemens.

Kerr, Russell and Weber, PLC (by Robert J. Pineau), for Walter K. and Patricia A. Winkle. Detroit.

Amici Curiae: Bauckham, Sparks, Rolfe, Lohrstorfer & Thall, P.C., (by John H. Bauckham), for Michigan Townships Association. Kalamazoo.

Eric D. Williams, for Michigan Municipal League. Big Rapids.

Elwood L. Brown, Corporation Counsel, and Timothy K. Morris, Assistant Corporation Counsel, for St. Clair County. Port Huron.

Judges: Before: Gribbs, P.J., and Neff and O'Connell, JJ.

Opinion by: Peter D. O'Connell

Opinion

[*395] [**333] Before: Gribbs, P.J., and Neff and O'Connell, JJ.

O'CONNELL, J.

Petitioners appeal by leave granted a circuit court order affirming a decision of the State Boundary Commission (the commission). We affirm.

I. Issues

This case presents two issues of first impression. The first is whether the commission had the jurisdiction and authority to determine the legal validity of an agreement entered into pursuant to the provisions of 1984 PA 425, [MCL 124.21 et seq.](#); MSA 5.4087(21) *et seq.* (Act 425 agreement). The second is whether competent, material, and substantial evidence supported the commission's determination that the Act 425 agreements were merely a pretext to avoid annexation.

II. Facts

At the time of the proceedings below, the Winkles owned a parcel of land that was situated in both Casco Township and Columbus Township, and that was close to the city of Richmond. The parcel was also near Lenox Township, which abuts both Casco Township and Colum-

bus Township. In July 1996, the Winkles and other landowners in Casco Township and Columbus Township filed a petition with the State Boundary Commission seeking to annex approximately [***2] [*396] 157 acres of land into the city of Richmond, pursuant to the state boundary commission act, [MCL 123.1001 et seq.](#); MSA 5.2242(1) *a seq.* According to the Winkles, they wished to develop their property commercially, and Richmond had the capacity to provide water, sewer, and other services immediately and at minimal cost, while the townships would not develop such capacity for several years. However, in November 1995, Columbus Township and Lenox Township had filed an 1984 PA 425, [MCL 124.21](#) Act 425 agreement that indicated an intent to transfer a portion of Columbus Township to Lenox Township. In January 1996, Casco Township and Lenox Township filed a similar agreement to transfer a portion of Casco Township to [**334] Lenox Township. These agreements covered the Winkles' land.

In November 1997, the commission concluded that the two Act 425 agreements did not meet the statutory criteria and approved the petition for annexation. The townships appealed to the circuit court, arguing that [MCL 124.29](#); MSA 5.4087(29) absolutely barred any method of annexation or transfer of land covered in the Act 425 agreements [***3] and that the commission lacked the legal authority to determine the validity of Act 425 agreements in the first place.

Circuit Judge Daniel J. Kelly, in a written opinion, concluded that the commission had the authority to determine the validity of the Act 425 agreements and that, in this instance, the commission correctly concluded that the townships entered into the agreements solely to avoid the city's annexation and not for the sake of any development project that the enabling legislation envisioned. The court therefore concluded that the commission's decision was based on [*397] "competent, material, and substantial evidence on the whole record," and was not arbitrary, capricious, or an abuse of discretion. This Court granted the township leave to appeal.

III. Jurisdiction

The first issue for our consideration is whether the State Boundary Commission exceeded its authority or jurisdiction when it undertook to decide the legal validity of the townships' Act 425 agreements. We conclude that it did not. *HNI* This Court reviews the decisions of the State Boundary Commission in accordance with the Administrative Procedures Act, [MCL 24.201 et seq.](#); MSA 3.560(101) [***4] *et seq.* [Midland Twp v Michigan Boundary Comm](#), 401 Mich. 641, 671-672; 259 N.W.2d 326 (1977); [Chase v State Boundary Comm](#), 103 Mich. App. 193, 203; 303 N.W.2d 186 (1981); [MCL 123.1018](#); MSA 5.2242(18). Where an administrative agency exceeds its statutory authority or jurisdiction, the reviewing court should set aside the agency's decision or order if the agency prejudiced the petitioner's substan-

tial rights. [MCL 24.306\(1\)\(b\)](#); MSA 3.560(206)(1)(b).

The legislative purpose behind the State Boundary Commission was to establish an independent authority with "broad powers concerning annexations" and to allow annexations to take place for the general benefit of the areas concerned, instead of for the private benefit of individuals. [Township of Owosso v City of Owosso](#), 385 Mich. 587, 590; 189 N.W.2d 421 (1971). **HN2** Subsection 9(2) of the Home Rule City Act, 1909 PA 279; [MCL 117.9\(2\)](#); MSA 5.2088(2), provides that the commission has the power to determine "the validity of the petition or resolution" concerning annexation and [*398] also [***5] recognizes the commission's duties concerning "processing and approving, denying, or revising a petition or resolution for annexation . . ." [MCL 123.1011a](#); MSA 5.2242(11a), setting forth procedures, provides, "The commission shall have jurisdiction over petitions or resolutions for annexation as provided in [[MCL 117.9](#); MSA 5.2088]."

HN3 [MCL 124.29](#); MSA 5.4087(29) states that where an Act 425 agreement "is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract." Act 425 provides a mechanism through which "local units may conditionally transfer property" in a manner "controlled by a written contract agreed to by the affected local units." See [MCL 124.22\(1\)](#); MSA 5.4087(22)(1). [MCL 124.30](#); MSA 5.4087(30) in turn provides that a duly filed Act 425 agreement "is prima facie evidence of the conditional transfer." Act 425 agreements thus allow municipalities conditionally to revise their borders without recourse to, or interference from, the commission.

At issue is the commission's role in determining [***6] whether an Act 425 agreement is valid for purposes of deciding whether the agreement bars the commission from entertaining a petition for annexation concerning the same land. **HN4** The [***335] plain wording of [MCL 124.29](#); MSA 5.4087(29), provides that "a contract under this act" presently "in effect" bars other forms of "annexation or transfer" of the affected territory. This language expressly requires an Act 425 agreement that is "in effect" and, therefore, necessitates a valid agreement. Consequently, this statutory bar to the commission's consideration of an annexation petition requires an agreement that fulfills the statutory criteria, [*399] rather than a fictional agreement intended only to deprive the commission of jurisdiction.

The townships argue that either the circuit court should review the issue of jurisdiction de novo or that the circuit court should have sole jurisdiction to determine the validity of an Act 425 agreement. According to the townships, any document purporting to be an Act 425 agreement, once signed and filed according to the specified procedure, absolutely bars any action on the part of the commission concerning the same territory, without regard to [***7] the substance of the agreement. We

disagree. In light of the broad grant of statutory authority to the commission over matters relating to the establishment of boundaries and annexations, we hold that the commission had the authority and jurisdiction to decide the validity of the Act 425 agreements. Logic dictates that the commission had the authority to consider the validity of two agreements that, if valid, would have barred its authority to process, approve, deny, or revise a petition or resolution for annexation. The commission would not otherwise have been able to perform its function of resolving the petition. See [Shelby Charter Twp v State Boundary Comm](#), 425 Mich. 50, 73-77; 387 N.W.2d 792 (1986) **HN5** (the commission may proceed with an annexation petition where it has identified only "pro forma" or "de minimus" exercises of statutory measures that would otherwise supplant its jurisdiction); [Judges of the 74th Judicial Dist v Bay Co](#), 385 Mich. 710, 728-729; 190 N.W.2d 219 (1971) **HN6** (an administrative agency is competent to determine its own jurisdiction). The commission's determination was thereafter subject to review in the [***8] circuit court. [MCL 24.301](#); MSA 3.560(201), [MCL 123.1018](#); MSA [*400] 5.2242(18); [Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp](#), 237 Mich. App. 721, 731; 605 N.W.2d 18 (1999).

IV. "Shark Repellent"

The second issue for our consideration is whether the commission erred in concluding that the underlying agreement was illusory and therefore not valid. **HN7** We review the commission's findings for whether competent, material, and substantial evidence existed to support the commission's findings. See [Midland Twp](#), 401 Mich. at 672; [MCL 24.306\(1\)\(d\)](#); MSA 3.560(206)(1)(d).

HN8 Act 425 agreements are statutorily authorized to allow local units to establish "an economic development project," [MCL 124.22](#); MSA 5.4087(22)(1), which is statutorily defined as follows:

HN9 "Economic development project" means land and existing or planned improvements suitable for use by an industrial or commercial enterprise, or housing development, or the protection of the environment, including, but not limited to, groundwater or surface water. Economic development project includes [***9] necessary buildings, improvements, or structures suitable for and intended for or incidental to use as an industrial or commercial enterprise or housing development; and includes industrial park or industrial site improvements and port improvements or housing development incidental to an industrial or commercial enterprise; and includes the machinery, furnishings, and equipment necessary, suitable, intended for, or incidental to a commercial, industrial, or residential use in connection with the build-

ings or structures. [[MCL 124.21\(a\)](#); MSA 5.4087(21)(a).]

The circuit court, in reviewing the commission's findings, noted that an advertisement [****336**] soliciting petition [***401**] signatures in opposition to the annexation contained the statement, "Help us in the preservation of farmland and open space." The court continued:

[MCL 124.21\(a\)](#); MSA 5.4087(21)(a) . . . requires that a valid Act 425 Agreement must provide for improvements to the property necessary for the planned industrial, commercial or housing development. The . . . Commission requested information from the townships by way of questionnaires regarding the provision of water and sewer services. [*****10**] The Columbus Township questionnaire indicated that 1) Columbus did not provide public water service; 2) Columbus did not provide sanitary sewer service, and 3) it could provide water services by the "fall of 1997" and that "Sewers [were] under study." The Casco Township questionnaire answers stated that 1) Casco did not provide public water services or sanitary sewer services, 2) public water services could be provided by the "fall of 1997"; 3) Casco did not provide an answer regarding when sanitary sewer services could be provided. They apparently indicated that water would be available to the Act 425 Agreement land, however, they do not indicate when water could be available to the annexed property. . . . Thus, the information presented to the . . . Commission for industrial, commercial, or industrial development may have been found to be more illusory than genuine.

The. . . Commission further determined that the Act 425 Agreements were simply agreements to share services and not a true transfer of property. The Commission stated that "the parties did not provide evidence of such transfer, which minimally could have included a showing of a transfer to Lenox Township of property [*****11**] tax records and voting records of any residents in the Act 425 area."

The circuit court concluded that the townships had not entered into any real plan for economic development. The court further concluded that the purpose of the agreements was to bind nonparties in derogation of their rights, to limit the authority of the commission, [***402**] and to "ward off any at-

tempts by municipalities to annex a portion of the Townships."

While the precise reasoning behind the commission's disregard of the Act 425 agreements is not entirely clear, it apparently concluded that the townships' entered into the conditional transfers as an act of subterfuge intended to preclude the commission's jurisdiction and to avoid future annexation. The circuit court, after reviewing the administrative record, agreed with the commission and dubbed the Act 425 agreements "shark repellent."

The townships do not dispute the specific factual findings underlying the commission's conclusions. Rather, the townships argue that transfer of neither tax records nor voting records is required for a valid transfer of land under an Act 425 agreement. However, the commission did not rule that they were necessary, only that they were [*****12**] relevant considerations. The townships also emphasize *HN10* [MCL 124.30](#); MSA 5.4087(30), which provides that the filing of an Act 425 agreement constitutes "prima facie evidence" of the existence of the conditional transfer of land. The statute, however, does not preclude a finding that the agreement was a sham. In our view, the parties who had filed the annexation petition with the commission developed a record that supported the commission's conclusion that the agreements were essentially an attempt to avoid annexation. Further, the Act 425 agreements themselves only vaguely contemplated a plan of development at some point in the future. On the basis of the factors discussed in Judge Kelly's carefully considered opinion, we conclude that competent, material, and substantial evidence existed to support the commission's conclusion that the two Act [***403**] 425 agreements were illusory in nature and that the townships [****337**] entered into them in order to avoid future annexation.

V. Contract Rights

The townships' final contention is that the commission's decision interfered with their contract rights in violation of US Const, art I § 10, and 1963 [Const, art 1, § 10](#). "*HN11* Vested rights acquired under contract may not [*****13**] be destroyed by subsequent State legislation or even by an amendment of the State Constitution." [Campbell v Michigan Judges Retirement Board, 378 Mich. 169, 180; 143 N.W.2d 755 \(1966\)](#). This argument fails. No subsequent legislation or constitutional amendment interfered with the townships' Act 425 agreements.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gribbs

/s/ Janet T. Neff

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
STATE BOUNDARY COMMISSION**

In the Matter of the Petition
for Annexation of Territory
in Clam Lake Township to the
City of Cadillac in Wexford County

Docket No. 13-AP-2

OBJECTIONS TO LEGAL SUFFICIENCY OF PETITION

Clam Lake Township (“Clam Lake”) and Haring Charter Township (“Haring”), by and through their attorneys, Mika Meyers Beckett & Jones PLC, respectfully present these Objections to the legal sufficiency of the Petition submitted by TeriDee, LLC. The purpose of these Objections is to demonstrate to the State Boundary Commission (“SBC”) that the Petition in this annexation case is legally insufficient. The SBC should dismiss the petition on grounds of legal insufficiency.

I. THE PROPOSED ANNEXATION AREA IS NOT CONTIGUOUS TO THE CITY UNDER MICHIGAN STANDARDS FOR “CONTIGUITY”

The proposed annexation area is not regular or compact, and is not substantially connected to the City of Cadillac. Instead, the annexation area is of an irregular shape, roughly resembling a “pistol” with 20 separate sides.¹ The proposed annexation area would be connected to Cadillac only by the narrow “barrel” of the “pistol,” which is about 836 feet wide along Crosby Court. In similar cases, the Michigan Supreme Court has held that such irregularly shaped parcels with only narrow connections to a city are not sufficiently “contiguous” to permit annexation of the property to the city. *Owosso Twp v City of Owosso*, 385 Mich 587, 590-91; 189 NW2d 421 (1971); *Genesee Twp v*

¹ Annexation of a “pistol” shaped parcel was also involved in *Charter Twp of Meridian v City of East Lansing*, 101 Mich App 805, 807; 300 NW2d 703 (1980), but in that case the annexation attempted to **remove** a “pistol” shaped irregular boundary and to “square-up” the boundary between a city and a township, not to **create** an irregularly-shaped new city-township boundary.

Genesee County, 369 Mich 592, 601-05; 120 NW2d 759 (1963). The SBC should similarly find that the annexation area is not sufficiently contiguous to Cadillac; that the proposed annexation would create an improper and irregular city boundary; and that the annexation is legally insufficient on these grounds.

II. THE SBC LACKS JURISDICTION OVER THE PETITION BECAUSE THE PROPERTY DESCRIBED IN THE PETITION HAS BEEN CONDITIONALLY TRANSFERRED UNDER ACT 425, SUCH THAT THE PETITION IS LEGALLY INSUFFICIENT.

The Part I Map and Part III Legal Description in the Petition describe property that is subject to a currently effective Act 425 Agreement between Clam Lake and Haring. **Tab A.** The Act 425 Agreement was approved by Clam Lake and Haring on May 8, 2013 (i.e., nearly a month *before* the Petition was filed on June 5, 2013). In accordance with MCL 124.25 and 125.30, the Act 425 Agreement became effective on June 10, 2013, upon filing with the Wexford County Clerk and the Secretary of State. The copy of the Act 425 Agreement certified by the County Clerk and Secretary of State, as provided at **Tab A**, is prima facie evidence of the conditional transfer having occurred on June 10, 2013. *See* MCL 125.30. Simply stated, the Transferred Area has been conditionally transferred to Haring, as a matter of law, effective June 10, 2013.

As a consequence of this, annexation of the property subject to the Act 425 Agreement would violate Act 425, which states as follows:

While a contract under this act is in effect, another method of annexation or transfer **shall not take place** for any portion of an area transferred under the contract.

MCL 124.29 [emphasis added].

The effect of the Petition, if granted by the SBC, would be to annex land that is already transferred under the Act 425 Agreement, which is expressly prohibited by MCL 124.29. And it is axiomatic that a petition that violates MCL 124.29's prohibition is legally insufficient.

The circumstances here are similar to those in *Matter of Muskegon Twp & City of Muskegon*, 66 Mich App 193, 195; 238 NW2d 578, 579 (1975), where the Court held that “a petition for incorporation . . . is defective when it includes territory of an adjoining, already incorporated, city.” The Court there upheld the SBC’s determination that the petition was legally insufficient because the map and legal description in the petition included territory that was already located in another city. The same result is even more appropriate here, because MCL 124.29 expressly prohibits the annexation of Act 425 property. Since the property has already been transferred to Haring under Act 425, the SBC has no jurisdiction to annex the property, and the Petition is therefore legally insufficient.

III. THE ACT 425 AGREEMENT IS VALID AND BARS THE ANNEXATION PETITION, AS A MATTER OF LAW

Petitioner and the City may argue (incorrectly so) that the Act 425 Agreement is a “sham” that is solely designed to interfere with annexation, and therefore should be held invalid under *Casco Twp v State Boundary Comm*, 243 Mich App 392, 402; 622 NW2d 332 (2000). That assertion, if made, has no legal or factual merit.

The Act 425 Agreement was approved by the Townships on May 8, 2013 – nearly a month before the Petition was even filed – and so it would have been impossible for the Act 425 Agreement to have interfered with an annexation petition; a relevant annexation petition did not even exist at that time. Moreover, it continues to be impossible for the Act 425 Agreement to interfere with a *proper* petition to annex the lands in question. In that regard, it needs to be remembered that the current Petition is *identical* to the former annexation petition that was already denied for the exact same lands, by way of a Final Decision and Order of the Director of the Department of Licensing

and Regulatory Affairs (“LARA”), dated October 3, 2012. **Tab B.**² And absolutely nothing has changed with respect to the annexation property in the short period of ten months that have passed since the Director’s previous denial. The Petitioner is simply trying to take a second bite at the exact same apple, hoping that the SBC will arbitrarily and capriciously reverse its prior denial of annexation for the exact same lands, even though there has been no change in the underlying facts or circumstances.

The point to be made here is that, when the Act 425 Agreement was approved by the Townships, the Director of LARA and the SBC had already determined that annexation should be denied for the lands in question (**Tab B**), and so it is ridiculous to suggest that the Act 425 Agreement could be for the purpose of interfering with annexation of those lands. It is simply not possible to interfere with an annexation petition that has already been adjudged, by both the SBC and the Director, to be improper. There is nothing to interfere with in these circumstances.

That notwithstanding, the Act 425 Agreement is valid for the additional reason that it has the purpose of promoting an economic development project on the property that is subject to the Petition. In that regard, Act 425 defines an economic development project as follows:

“Economic development project” means land and existing or planned improvements suitable for use by an industrial or commercial enterprise, or housing development, or the protection of the environment, including, but not limited to, groundwater or surface water. Economic development project includes necessary buildings, improvements, or structures suitable for and intended for or incidental to use as an industrial or commercial enterprise or housing development; and includes industrial park or industrial site improvements and port improvements or housing development incidental to an industrial or commercial enterprise; and includes the machinery, furnishings, and equipment necessary, suitable, intended for, or incidental to a commercial, industrial, or residential use in connection with the buildings or structures.

MCL 124.21

² The Director’s decision to deny the former petition was made pursuant to the written recommendation of the SBC to deny the Petition, dated August 8, 2012, which is incorporated into the Director’s decision as Attachment “B”. See **Tab B**.

As explained below, the Act 425 Agreement between Clam Lake and Haring promotes several aspects of an economic development project, and is also valid on numerous other grounds.

A. Mixed-Use Commercial/Residential Development

The Act 425 Agreement provides for the construction of a mixed-use commercial/residential development on the Transferred Area that is designed and constructed in accordance with the principles of planned unit development (“PUD”). **Tab A**, Act 425 Agreement at Art I, §3. In furtherance of that economic development project, the Act 425 Agreement prescribes the mixed-use PUD zoning regulations that Haring will adopt for the Transferred Area (*id.* at Art. I, §6.a.2), so as to permit a mixed-use commercial/residential PUD that will “balance the property owners’ desire for commercial use with the need to protect the interests of surrounding residential property owners” (*id.* at Art. I, §3).

This mix of “commercial enterprise” and “housing development” is squarely within the defined purpose of an “economic development project,” as stated in MCL 124.21 (quoted above). Moreover, it is necessary for the Townships to enter an Act 425 Agreement to establish and implement these type of quality zoning regulations for the Transferred Area. Clam Lake does not have its own zoning ordinance, and so the Transferred Area had been subject to County zoning, and was previously zoned in the F-R zoning district (i.e., prior to the effective date of the Act 425 Agreement). The F-R zoning district allows a variety of commercial uses, including motels and lodging, restaurants, retail stores, kennels and other uses, but the County zoning regulations are wholly inadequate to properly regulate this type of development at this location, where residential housing is located nearby. Haring, because it has its own zoning ordinance, is in the best position to develop and apply quality mixed-use commercial/residential PUD development regulations to the Transferred Area, so as to allow reasonable commercial development at the highway interchange, while still being adequately protective of surrounding residential populations. The Agreement

ensures that such regulations will be applied to the Transferred Area.³ This is a proper purpose under Act 425, such that the Townships' Act 425 Agreement is valid.

B. Required Provision of Haring Wastewater and Public Water Services

In order to allow the economic development project to proceed as planned, the Act 425 Agreement also *requires* that Haring public wastewater and public water services be extended to the Transferred Area.⁴ See **Tab A**, Act 425 Agreement at Art. I, §4(a) (“Haring shall promptly provide public wastewater services and public water services to the newly-developed portion of the transferred Area”). The details of how this will occur are set forth in Art. I, §4(a) of the Act 425 Agreement. Further, the Townships have expressly agreed to amend the revenue-sharing provisions of the Act 425 Agreement at the time when Haring wastewater and sewer services are extended to the Transferred Area, so as to enable Clam Lake to pay and finance the cost of (a) the wastewater and water infrastructure for the Transferred Area and (b) the provision of wastewater and water services to the Transferred Area. *Id.* at Art. II. Thus, the Agreement provides for an appropriate sharing of revenue between the two Townships for a proper purpose – paying for the utilities that will serve the Transferred Area.

Once again, the *required* provision of public wastewater and public water services to the Transferred Area is squarely within the defined purpose of an “economic development project,” as stated in MCL 124.21. Specifically, the *required* public wastewater and public water infrastructure

³ Haring Township has already begun the process of adopting the mixed-use commercial/residential PUD regulations. See **Tab C** (two versions of the regulations are being considered, each of which is attached). They were considered at the Haring Planning Commission’s regular meeting on July 16, 2013, and were further considered at a special meeting on July 30, 2013. A public hearing on the regulations has been scheduled for August 20, 2013 (**Tab D**), and the regulations will be promptly thereafter adopted by the Haring Township Board.

⁴ Haring already has its own public water supply system, and so could provide public water services to the Transferred Area immediately. In addition, Haring is in the process of building its own wastewater treatment plant that is scheduled to be available for service in the Spring of 2015. If wastewater service to the Transferred Area is needed before that time, Haring is currently able to extend those services under an existing 1980 Wastewater Contract with the City, through which the City is *required* to provide wastewater treatment capacity and services for the Transferred Area (along with other areas of Haring Township) through May 13, 2017.

constitute “planned improvements suitable for use by [a] . . . commercial enterprise, or housing development, or the protection of the environment, including, but not limited to, groundwater or surface water.” MCL 124.21. For this reason the Act 425 Agreement is valid.

C. The Act 425 Agreement Is Valid On Numerous Other Grounds

Not only does the Act 425 Agreement implement a valid, multi-faceted economic development project, there are many other factors showing that Haring and Clam Lake did not enter into the Act 425 Agreement as a “sham,” as the Court found in *Casco, supra*.

Act 425 requires in MCL 124.23(a) that the local units consider “land area and land uses” and “past and probable future growth.” Here, a portion of the Transferred Area has already developed for residential use, and the property in Haring immediately north of the Transferred Area has also developed for residential uses. However, the County F-R zoning that previously applied would have allowed a variety of commercial uses on the balance of the Transferred Area, without proper regulation on these more-impacting uses. It is no “sham” for the Townships to promote an economic development project that would allow quality, reasonable-scale commercial development at the highway interchange, while still being adequately protective of surrounding residential populations. That is exactly what the Act 425 Agreement accomplishes, by way of applying the mixed-use commercial/residential PUD regulations to the Transferred Area.

Act 425 further mandates that the local units consider:

The need for organized community services; the present cost and adequacy of governmental services in the area to be transferred; the probable future needs for services; the practicability of supplying such services in the area to be transferred; the probable effect of the proposed transfer and of alternative courses of action on the cost and adequacy of services in the area to be transferred and on the remaining portion of the local unit from which the area will be transferred; the probable change in taxes and tax rates in the area to be transferred in relation to the benefits expected to accrue from the transfer; and the financial ability of the local unit responsible for services in the area to provide and maintain those services.

MCL 124.23(b)

The Act 425 Agreement demonstrates, on its face, that Haring and Clam Lake devoted considerable attention to these criteria in formulating the Agreement. Indeed, the Act 425 Agreement includes detailed provisions, setting forth the means and methods by which Haring wastewater and water services will be provided to the Transferred Area during the term of the Agreement, as well as thereafter, when the Transferred Area has reverted back to Clam Lake, in 2033. **Tab A**, Act 425 Agreement at Art. I, §§4 and 17. Also, within the Act 425 Agreement, the Townships have even made long-term plans to engage in further regional cooperation with regard to the provision of utility services, by way of the possible extension of Haring wastewater services to other portions of Clam Lake, including the Clam Lake Downtown Development Authority District, and perhaps other Clam Lake lands. *Id.* at Art. 1, §4(b). As designed, the Act 425 Agreement is a proper vehicle for ensuring that the Transferred Area is preserved as a primary pathway for utilities to be extended from Haring to Clam Lake, in a cost-effective manner.

These provisions demonstrate that the Act 425 Agreement is not “illusory,” and is not simply being used as “shark repellent,” as in *Casco*. Instead, in this case, the 425 Agreement is an effective and good faith contract that will promote an economic development project on the Transferred Area that is consistent with the established land uses and the existing adjacent economic development. Moreover, there exists an actual plan for *required* provision of public water and wastewater services for the Act 425 area, to support the designated economic development project. The Act 425 Agreement is a model of good-faith regional cooperation, in the fields of both utility planning and land-use planning.

In addition, unlike *Casco*, this case involves a “true transfer of property.” *Casco, supra* at 243 Mich App at 402. The scope of the conditional transfer in this case is not limited as it was in *Casco*, where the townships did not transfer either voting or taxation as part of the Act 425 transfer.

In this case, Clam Lake has transferred the territory to Haring “for all purposes” during the term of the Agreement. The property described in the Petition is currently part of Haring “for all purposes” (Tab A, Agreement at Art I, §2), including for the purpose of the following governmental authority and services, among others:

- All municipal facilities and services afforded to property owners within Haring (*id.*, p. 4).
- Public wastewater and water service (*id.*, pp. 4-7).
- Enforcement of ordinances, codes, rules and regulations (*id.*, p. 7).
- Zoning and building ordinances and regulations (*id.*, pp. 7-18).
- Real and personal property tax assessing and taxation (*id.*, p. 18).
- Special assessments (*id.*).
- Rates and charges for governmental services (*id.*, pp. 18-19).
- Liens for services, special assessments and property taxes (*id.*, p. 19).
- Voting, suffrage and elections (*id.*).
- Revenues from taxes, revenue sharing and all other sources (*id.*, pp. 19-20).

Thus, the transfer in this case includes not only all taxing and election authority that were omitted in *Casco*, but also every other aspect of local governance and service as well. For these reasons, Petitioner cannot avoid the effect of the Act 425 Agreement. Pursuant to MCL 124.29, the SBC must find that it lacks jurisdiction to grant the Petition and conclude that the Petition is legally insufficient.

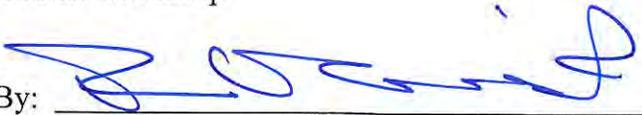
REQUEST FOR RELIEF

For the reasons discussed above, Clam Lake Township and Haring Charter Township respectfully request that the State Boundary Commission find that the Petition is legally insufficient and dismiss the Petition for Annexation.

Respectfully submitted,

MIKA MEYERS BECKETT & JONES ^{PLC}
Attorneys for Clam Lake Township and Haring
Charter Township

Dated: August 2, 2013

By: 

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Clam Lake Township

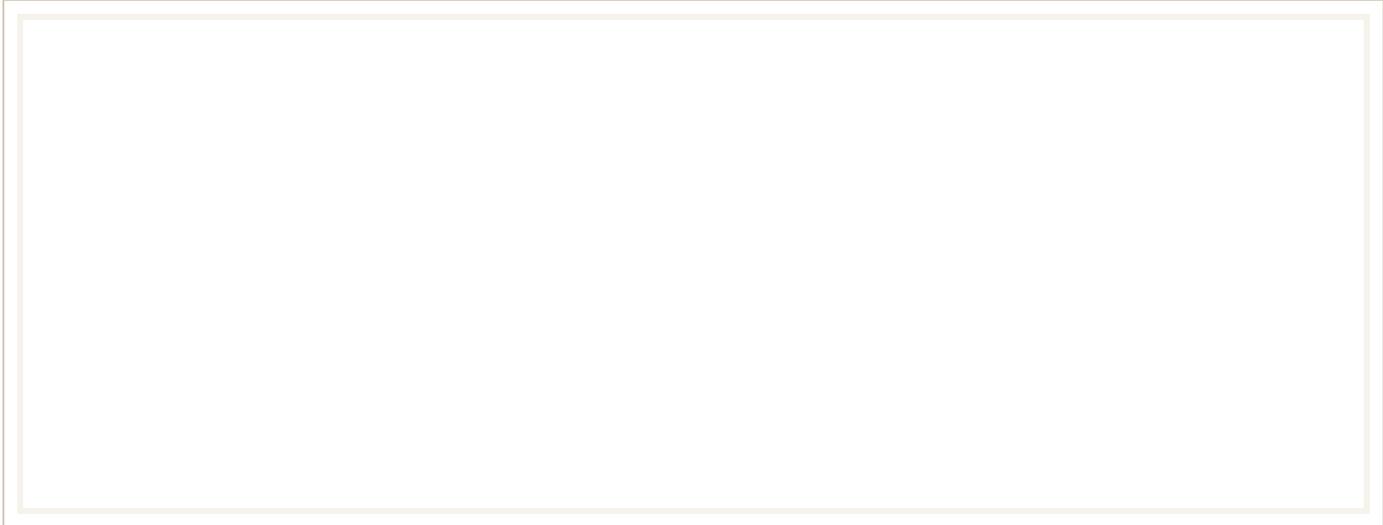
Township

DDA

Master Plan

Government

Agenda



CLAM LAKE TOWNSHIP

approved

8809 E. M-115

CADILLAC MI 49601

SPECIAL MEETING

May 8, 2013

6:00 P.M.

i. Special meeting was called to order by Supervisor Rosser. Meeting was properly noticed and posted in compliance with the State of Michigan Open Meetings Act, P.A. 267 of 1976, as amended. The purpose of the public hearing was to discuss a potential 425 agreement with Haring Township.

ii. Members present: Rosser, Payne, Houston, Mackey & Peterson. Absent: None (Mackey arrived at 7:00)

Others present: Attorney Ron Redick, M. Whetstone, S. Zakrajsek, Haring Twp. board members, and many other residents.

iii. Meeting was opened with the pledge to the American flag.

iv. Went into public hearing at 6:15 pm. After much discussion, the public hearing was closed at 6:45pm.

v. Motion by Houston, seconded by Payne, adopt Resolution 2013-3 a Resolution to approve an agreement for the conditional transfer of property from Clam Lake Township to Haring Charter Township under the terms of Public Act 425 of 1984, as amended. Roll call vote All in favor. Carried.

vi. Motion by Payne, seconded by Houston, to adjourn. Meeting adjourned at 7:15,.

AGREEMENT FOR CONDITIONAL TRANSFER

This Agreement is entered into by and between the Charter Township of Haring, a Michigan charter township, 515 Bell Avenue, Cadillac, Michigan 49601 (hereinafter referred to as "Haring") and the Township of Clam Lake, a Michigan general law township, 8809 East M-115, Cadillac, Michigan 49601-9786 (hereinafter referred to as "Clam Lake"), effective as of June __, 2013.

WHEREAS, Haring and Clam Lake are local units as that term is defined by Public Act 425 of 1984, as amended, MCL 124.21, *et seq* ("Act 425");

WHEREAS, Haring is organized under the Charter Township Act, Public Act 359 of 1947, as amended, MCL 42.1, *et seq*;

WHEREAS, Clam Lake is organized under Chapter 16, Revised Statutes of 1846, MCL 41.1, *et seq*;

WHEREAS, properties within Haring and Clam Lake are currently used for residential, commercial and industrial purposes, or are proposed for future residential, commercial or industrial uses;

WHEREAS, Haring owns and operates a public water supply system that has capacity to serve the current and reasonably anticipated users within Haring, and also a number of users within Clam Lake, provided that Clam Lake property owners need those services;

WHEREAS, Haring and Clam Lake currently receive wastewater treatment services under separate agreements with the City of Cadillac (the "City"), but Haring has undertaken a project to construct its own wastewater treatment plant ("WWTP"), which is designed to have capacity to treat wastewater from users within current and reasonably anticipated service districts in Haring, and also users within certain areas of Clam Lake, provided that Clam Lake properties need those services;

WHEREAS, the Haring WWTP is expected to be completed, operational, and receiving wastewater for treatment in the spring of 2015;

WHEREAS, Haring and Clam Lake recognize that the existing and future water and wastewater needs of both townships will benefit from the townships' mutual cooperation;

WHEREAS, the territory legally described in attached Exhibit A and depicted on the map attached as Exhibit B (hereinafter referred to as the "Transferred Area") is partially developed for residential housing;

WHEREAS, the owners of the portion of the Transferred Area that has not yet been developed have represented that they intend to develop the property, but that they need municipal wastewater treatment and public water supply services in order to develop the property;

WHEREAS, when the undeveloped portion of the Transferred Area is developed, Haring is currently in a better position than Clam Lake to provide that portion of the property with municipal wastewater treatment and public water supply services, because those services can be extended to the property from the Haring WWTP by the spring of 2015, but Clam Lake does not currently own or operate a wastewater treatment system or public water supply;

WHEREAS, when the undeveloped portion of the Transferred Area is developed, Haring is currently in a better position to reasonably regulate the development, for the reason that Haring has adopted and placed into effect zoning regulations for the entire Township of Haring, and Clam Lake is instead subject to County zoning, rather than having its own zoning ordinance;

WHEREAS, pursuant to Act 425, the Township Boards of Haring and Clam Lake held a joint public hearing on May 8, 2013 regarding this Agreement, notice of which was given in the manner required by law; and,

WHEREAS, the Haring Charter Township Board and the Clam Lake Township Board have each decided, by majority vote of the members duly elected and serving on each respective body, to enter into this Agreement and have authorized their respective representatives to execute this Agreement on their behalf.

NOW, THEREFORE, it is hereby agreed as follows:

**ARTICLE I
CONDITIONAL TRANSFER**

1. Factors Considered

Prior to the execution of this Agreement, Haring and Clam Lake have considered numerous factors including, but not limited to, the following:

- a. density and composition of population;
- b. land area and uses;
- c. topography and natural boundaries;
- d. assessed valuation;
- e. drainage and soil erosion;
- f. both proposed and possible future commercial and industrial development and growth;
- g. residential development and growth;
- h. the need for organized community services; the present cost and adequacy of governmental services, the future need of those services and the ability to provide those services;
- i. the practical effect of transferring property from one township to another including the impact on taxes and tax rates in relation to the benefits expected to accrue from the transfer;
- j. the general effect upon local units involved and the relationship of such an agreement to established city, village, township, county or regional land use plans.

2. Conditional Transfer of Property

The territory legally described in attached Exhibit A and depicted on the map attached as Exhibit B shall be known as the "Transferred Area." From the effective date of this Agreement until the Termination Date of the Conditional Transfer (the "Duration of the Conditional Transfer"), the Transferred Area shall be conditionally transferred for all purposes from the jurisdiction of Clam Lake to the jurisdiction of Haring.

3. Economic Development Project

The Transferred Area is currently used, in part, for existing residential housing, and the balance is currently undeveloped. The Transferred Area is proposed for the implementation of an economic development project under Act 425, with said economic development project consisting of two aspects, as follows: (a) the construction of a mixed-use, commercial/residential development that is designed and constructed in accordance with principles of planned unit development (as described further in Article I, Paragraph 6 of this Agreement), in order to balance the property owners' desire for commercial use with the need to protect the interests of surrounding residential property owners; and, (b) the provision of public wastewater services and public water supply services to the Transferred Area, so as to foster the new mixed-use development and to provide for the protection of the environment, including, but not limited to, protection of ground water and surface water on and below the Transferred Area.

4. Governmental Services and Authority

(a) For the Duration of the Conditional Transfer, Haring shall provide the Transferred Area all municipal facilities and services afforded to property owners within Haring, to the extent that such services are available, and shall have the same local governmental authority

within the Transferred Area as in the balance of Haring. In addition, Haring shall promptly provide public wastewater services and public water services to the newly-developed portion of the Transferred Area following the receipt by Haring of one or more certified resolutions duly adopted by the Clam Lake Township Board directing that the necessary infrastructure to effect the provision of such wastewater services and/or public water services be constructed (such infrastructure to be referred to as the "Transferred Area Wastewater and Water Infrastructure"), subject to the express conditions: (i) that Clam Lake shall be solely responsible for payment and financing of all allocable costs associated with extending such services to the Transferred Area by the construction of the Transferred Area Wastewater and Water Infrastructure, including, but not limited to, the costs of design, bidding, construction, permitting, easement acquisition (if needed), legal services, bonding, and all other costs of extending wastewater and water infrastructure to the Transferred Area; and (ii) that the obligation of Haring to provide public wastewater services is subject to the completion of construction and availability of the Haring WWTP for the receipt of wastewater for treatment in accordance with applicable law.

(b) After public wastewater services have been extended to the Transferred Area from Haring, the townships agree to mutually cooperate in exploring the extension of Haring public wastewater services to other areas of Clam Lake, subject to the availability of those services. In furtherance of this mutual cooperation, Haring agrees to promptly provide, in accordance with the provisions of this subparagraph (b), public wastewater services to the area designated as "Phase I" of the Clam Lake Downtown Development Authority ("DDA") District on the map attached hereto as Exhibit C, upon Clam Lake's request, as evidenced by a certified resolution adopted by the Clam Lake Township Board, if capacity is available in the Haring WWTP and related collection

infrastructure to accommodate the projected wastewater flow from this area, at the time Clam Lake's request is made. The determination of whether capacity is available shall be made by Haring, in its sole discretion, based on factors such as, but not limited to, (i) the then-current wastewater flows into the Haring WWTP, Haring collection infrastructure and the wastewater portion of the Transferred Area Wastewater and Water Infrastructure (the "Transferred Area Wastewater Infrastructure"); (ii) the anticipated and reasonably projected future wastewater flows into the Haring WWTP and Haring collection infrastructure, from Haring lands, over the following ten (10) years; (iii) any commitments that Haring has made to third-parties, by contract or otherwise, for the provision of wastewater treatment services; (iv) the limitations of the NPDES permit for the Haring WWTP; and (v) the anticipated flow and strength of wastewater from Clam Lake. If Haring determines, in its sole discretion, that capacity is not available to serve Phase I of the Clam Lake DDA District, the townships agree to mutually cooperate in determining whether it is feasible to expand the capacity of the Haring WWTP, the Haring collection infrastructure and/or the Transferred Area Wastewater Infrastructure, as the case may be, to accommodate Clam Lake's request for additional service. If the townships mutually agree that the capacity of the Haring WWTP, the Haring collection infrastructure and/or the Transferred Area Wastewater Infrastructure, as the case may be, can and should be expanded to accommodate Clam Lake's request for service to Phase I of the DDA District, Clam Lake shall be responsible for paying all costs, including financing, associated with the creation of the additional capacity, or if Haring decides to create additional capacity in excess of that needed by Clam Lake, Clam Lake shall be responsible for payment of its proportional share of the costs incurred to expand the capacity of the WWTP, the Haring collection system infrastructure and the Transferred Area Wastewater Infrastructure, as the case may be, as determined by the percentage of

capacity created for Clam Lake in relation to the total amount of new additional capacity being created. If wastewater services are extended to Phase I of the Clam Lake DDA District, Clam Lake shall be solely responsible for financing and payment of all costs associated with extending collection infrastructure and related appurtenances from the Transferred Area to Phase I of the DDA District (the "DDA District Wastewater Infrastructure"), including, but not limited to, the costs of design, bidding, construction, permitting, easement acquisition, legal services, bonding, and all other costs of extending wastewater infrastructure to Phase I of the Clam Lake DDA District. Haring's obligation to provide wastewater services to Phase I of the Clam Lake DDA District is conditioned upon Clam Lake entering an intermunicipal agreement with Haring with respect to the wastewater services to be provided by Haring, with said agreement having the minimum terms described in Article I, Paragraph 17.b of this Agreement, it being understood and agreed that such minimum terms applicable to the Transferred Area Wastewater and Water Infrastructure shall also apply to the DDA District Wastewater Infrastructure.

5. Ordinance Enforcement

For the Duration of the Conditional Transfer, the Transferred Area shall be subject to the enforcement of Haring ordinances, codes, rules and regulations in effect or subsequently amended.

6. Zoning and Building

a. The Transferred Area is currently zoned by Wexford County as Forest-Recreational (F-R), and is being used, in part, for residential purposes. The existing F-R zoning of the Transferred Area shall remain in effect only until Haring can amend its zoning ordinance to accomplish the following:

1. The following described portions of the Transferred Area that are already developed for residential housing shall be zoned in a Haring zoning district that is comparable to the existing County zoning and existing land use:

The West 1/2 of the Northwest fractional 1/4 of Section 1, Township 21 North, Range 9 West, Clam Lake Township, Wexford County, Michigan.

And also the North 386 Feet of the Northeast fractional 1/4 of Section 2, Township 21 North, Range 9 West, Clam Lake Township, Wexford County, Michigan, but only with respect to the lots or parcels within this area that are already developed for residential housing.

2. The balance of the Transferred Area that is currently undeveloped shall be rezoned, upon application of the property owner(s), to a planned unit development ("PUD") district that permits mixed commercial/residential use; provided, however, that Haring shall not consider a PUD rezoning application for this portion of the Transferred Area until (i) it has adopted provisions in its zoning ordinance that allow mixed-use commercial/residential PUDs, and which require that such PUDs comply with the following minimum requirements, and (ii) the property owner(s) have submitted an application that complies with the following minimum requirements:

MINIMUM PUD DEVELOPMENT REGULATIONS

I. General Requirements.

- A. Commercial uses shall comprise not more than 60% of the developed land area, exclusive of open space.
- B. The density of development in the residential phase of the PUD shall not be more than 4 units/acre. Multifamily buildings shall be permitted, but they shall be designed and constructed to avoid excessive length and box-like appearance and to have varied architectural features.

- C. Commercial uses shall be physically separated from adjacent residential uses (both existing residential uses and those included within the PUD) by means of a berm and buffer zone of undeveloped or landscaped open space that is of significant size, width and height, so as to visibly screen the commercial uses from the residential uses, and so as to ensure that noises from the commercial phase do not interfere with the peace, quiet and enjoyment of the residential uses. The open space used to buffer the commercial and residential uses shall comprise not less than 10% of the total land area included in the PUD plan.
- D. The development shall be served by public wastewater and public water supply systems.

II. Architecture

- A. All proposed commercial buildings shall utilize quality architecture to ensure a building is compatible with surrounding uses, protects the investment of adjacent landowners, blends harmoniously with the natural features and promotes a high quality image to those living in and traveling through the township.
- B. The applicant is required to submit and present architectural concepts and alternatives at a study session with the Planning Commission to receive comments on compliance with the architectural guidelines prior to preparations of detailed design drawings.

C. Building designs shall be reviewed by the Planning Commission as a part of site plan review under the following criteria:

1. Commercial buildings shall possess architectural variety.
2. Commercial buildings shall be consistent with the scale and proportion of existing structures in the surrounding area.
3. For commercial buildings, a minimum of eighty percent (80%) of the exterior finish material of all building facades (excluding the roof) visible from the public street, private street, parking lot or adjacent residentially zoned land, exclusive of window areas, shall consist of facing brick, cut stone, split face block fluted block scored block, native, field stone, cast stone or wood with an opaque or semi-transparent stain, or bleaching oil. Any other block or building material not specifically listed may be reviewed and approved by the Planning Commission if the material is compatible with surrounding uses, protects the investment of adjacent landowners, blends harmoniously with the natural features and promotes a high quality image to those living in and travelling through the Township.
4. Exterior Insulation and Finishing Systems (EIFS) material shall not be the primary building material. The remaining maximum twenty (20) percent of the façade may utilize other

material for architectural detailing such as fiberglass reinforced concrete, polymer plastic (fypon) or EIFS. The Planning Commission may permit other materials for facades not visible from a public street that are adequately screened from adjoining land uses.

5. Front building facades for commercial buildings shall provide a minimum 15% glass window but shall not exceed 80% glass. Calculations are exclusive of the roof area.
6. Building materials and colors shall be related to and harmonious with the surrounding area.
7. Roof shape and materials shall be architecturally compatible with adjacent buildings and enhance the predominant streetscape. Subtle colors shall be used for roofing material. Metal roofs shall only be permitted if compatible with the overall character of the building, and architectural elements are used to significantly reduce the roof mass when viewed from the street.
8. Commercial buildings shall provide architectural features, details, and ornaments such as archways, colonnades, cornices, peaked rooflines or towers.
9. Building walls (both commercial and residential) over 100 feet in length shall be broken up with items such as varying

rooflines, varying building lines, recesses, projections, wall insets, arcades, windows, architectural accents, bands of complementary building materials and trees.

10. Commercial building entrances shall utilize windows, canopies, and/or awnings, provide unity of scale, texture, and color and provide a sense of place.
11. Rooftop equipment shall be illustrated on the plans and shall be screened from view by parapet walls or other architectural elements that complement the overall building design.
12. Commercial building rear facades shall be constructed to a finished quality comparable to the front façade where visible to a public street or residential district or use.
13. Overhead canopies for gas stations or other uses shall be designed to be compatible with the architectural characteristics of the principal building such as peaked roofs, shingles, support structures that match or simulate materials of the principal building, lighting fixtures fully recessed into the canopy and in neutral colors.
14. Exterior neon lighting, or interior neon lighting that is visible from the exterior, is prohibited.
15. The commercial portion of the mixed use PUD shall complement the overall PUD plan and the commercial

buildings therein shall have an architecture and appearance that are reasonably compatible with the buildings in the residential portion of the PUD.

16. Loading docks, refuse accumulation areas, truck maneuvering area and other utility or service areas shall be appropriately screened from view by landscaping, berms or other effective means.

III. Landscaping and Overall Site Design

Landscaping and design elements of the PUD plan shall comply with the following requirements:

- A. Plants that have been identified as invasive or potentially invasive plants in the region shall not be used for any landscaping purposes.
- B. The overall design shall promote the impression of a natural landscape.
- C. Where practical, existing trees that are in good health and above three inches in caliper along the frontage and within the site shall be preserved.
- D. Landscaping shall be provided along walls to reduce the visual impact of building mass as viewed from the street.
- E. Retention, detention and the overall stormwater system shall be designed to use "best management practices" and create the appearance of a natural pond or feature including gentle (5:1) or

varying side slopes, irregular shapes, water tolerant grasses and seed mixes at the bottom of the pond/basin; appropriate flowers, shrubs and grasses along the banks based on environment (wet, dry, sedimentation basin v. pond) to improve views, filter runoff and enhance wildlife habitat.

F. *Parking Lots.* The following landscaping requirements shall apply to parking lots:

1. Parking lots, or any parts thereof, which are located in the front yard or which are adjacent to or visible from within 20 feet of any public right-of-way, shall have perimeter landscaping, between the parking lot and right-of-way, as follows:
2. The perimeter landscaping shall include a landscaped area measuring at least ten feet in width.
3. The landscaped area shall include at least one tree, measuring at least eight feet in height at the time of planting, for every 30 feet, or fraction thereof, of street frontage of the parking lot.
4. The landscaped area shall also include a continuous screen, measuring at least thirty-six inches in height above the street grade, consisting of a hedge, berm, brick wall, or combination thereof. The Planning Commission may determine the

location of the screen so that it does not cause a traffic hazard, vision obstruction or other hazard to public safety.

5. For parking lots of over 100 spaces or 30,000 square feet, the interior of the parking lot shall have one square foot of landscaped area for each 15 square feet of paved area. The following requirements shall apply to the interior landscaped areas:

- a. Traffic islands shall be located to improve traffic flow and views.
- b. Traffic islands shall have a minimum width of 18 feet and a minimum area of 150 square feet.
- c. Details on traffic islands shall be provided on the PUD site plan, including radii, dimensions, adjacent parking space depth, ground cover and any lighting or irrigation.
- d. There shall be at least one deciduous tree for each 150 square feet, or fraction thereof, of interior landscaped area. Around each tree, there shall be an open land area of at least 75 square feet, with a minimum diameter of four feet at the tree trunk.
- e. All interior landscaped areas of a parking lot shall be designed as "bio-retention" areas, to facilitate the

treatment and ground absorption of stormwater runoff using a combination of microbial soil process, infiltration, evaporation, and appropriate plantings.

- G. Loading and service bay doors shall not face a public street. Such doors shall be in the rear of the site. Where this is not practical, location on the side may be permitted provided additional walls and landscaping are provided, and/or such areas are recessed, to minimize the negative visual impact.
- H. Generally, curbs must be used throughout the parking lot and paved areas. The Planning Commission may grant an exception upon finding that overall stormwater disposition will be enhanced.
- I. The outdoor display of items for sale shall not be permitted.
- J. Fences, if proposed, must be shown on the site plan, including details on materials and color. Fences shall be durable and decorative in nature. Chain link fences shall only be approved for a location not generally visible to the public or dwelling unit occupants. Any visible segments of fence will be vinyl coated with additional landscaping provided to screen the view.
- K. A minimum 35 foot greenbelt is required along state highways, such as M-55, as measured from the edge of the highway right-of-way. Said greenbelt shall be landscaped and planted in accordance with this Chapter, except for approved driveways.

- L. Buildings shall be set back a minimum of 100 feet from the right-of-way for state highways, such as M-55.

IV. Commercial Lighting

- A. All exterior lighting shall be within fully-shielded fixtures, so that no light may escape above the horizontal plane. The wattage of any single lamp fixture shall not exceed 320 watts.
- B. Lighting mounted onto poles or any structures intended primarily for mounting of lighting shall not exceed a mounting height of 40% of the horizontal distance of the light pole from the property line, nor a maximum height of 30 feet, whichever is lower.
- C. No lighting on any site shall cause or create obtrusive light, or light which protrudes onto any adjacent or nearby residential property.

V. Other

The PUD plan shall be reviewed in accordance with, and shall otherwise comply with, the PUD regulations of the Haring Township Zoning Ordinance, to the extent that those regulations are not inconsistent with the above minimum requirements.

Where the above regulations are more stringent, the more stringent regulations shall apply.

- b. Haring will use reasonable efforts to adopt the above-described zoning provisions for the Transferred area within one year of the effective date of this Agreement, so that the property owner(s) of the undeveloped portion of the Transferred Area are able to make application to

Haring for PUD approval reasonably in advance of the date when public wastewater and public water are scheduled to be extended to the Transferred Area, in the spring of 2015.

c. After such amendments to the Haring zoning ordinance, and for the Duration of the Conditional Transfer, the Transferred Area shall be subject to Haring's Zoning Ordinance and building codes as then in effect or as subsequently amended.

7. Assessing and Taxation

For the Duration of the Conditional Transfer, the Transferred Area shall be deemed to be within Haring's corporate limits and jurisdiction for all purposes of assessing and taxation, including but not limited to *ad valorem* real and personal property taxes, specific taxes, payments in lieu of taxes, and tax abatements, as provided by law.

8. Special Assessments

For the Duration of the Conditional Transfer, the Transferred Area shall be subject to Haring's jurisdiction for all purposes of special assessments. Clam Lake states and represents that there are no special assessment districts currently in place within the Transferred Area.

9. Charges for Governmental Services

For the Duration of the Conditional Transfer, the Transferred Area, except as provided in the second sentence of this Paragraph 9, shall be subject to the same fees, rates and charges for governmental services provided by Haring to other properties within the jurisdiction of Haring. The parties understand and agree that connection, use and other fees, rates and charges for wastewater services and public water services for properties receiving such services in the Transferred Area may be based in part on the cost of the Transferred Area Wastewater and Water Infrastructure and, that

accordingly such fees, rates and charges may differ in amount from fees, rates and charges applicable to Haring wastewater and public water customers located in other portions of Haring.

10. Liens

For the Duration of the Conditional Transfer, all liens provided by Township Ordinance or State Law pertaining to the provision of services and the enforcement of special assessments and *ad valorem* real and personal property taxes shall have the same force and effect with respect to the Transferred Area as to other property within the corporate limits of Haring.

11. Voting

For the Duration of the Conditional Transfer, any qualified person residing within the Transferred Area shall be deemed to be qualified as an elector of Haring and shall be entitled to vote in all elections as a qualified elector of Haring.

12. Limitation on Annexation

For the Duration of the Conditional Transfer, the Transferred Area shall only be subject to the method of transfer included in this Agreement; no other method of annexation or transfer shall take place for any portion of the Transferred Area. In the event that any petitions for annexation are filed for any portion of the Transferred Area, Haring and Clam Lake agree to actively oppose such petitions by, at a minimum, stating their opposition in writing, requesting in writing that such petitions be dismissed and denied, and refraining from providing any direct or indirect assistance or support to the petitioners.

13. Taxes and Other Revenues

For the Duration of the Conditional Transfer, all taxes, revenue sharing and other revenues of any source or kind received by Haring due to or from the Transferred Area, or due to or from any

activities conducted, use, occupation or population on or within the Transferred Area, shall be retained solely by Haring and shall not be shared with Clam Lake.

14. Duration of the Conditional Transfer

The Conditional Transfer shall be in effect only from the Effective Date of this Agreement until the Termination Date of the Conditional Transfer.

15. Effective Date

The Effective Date of this Agreement shall be the date first listed above.

16. Termination Date of the Conditional Transfer

The Conditional Transfer shall be terminated on the earliest date below:

- a. On the date that is twenty (20) years after the Effective Date of this Agreement;
- b. On a date that is mutually agreed in writing by the parties;
- c. On the date that this Conditional Transfer is rejected in a referendum election of the residents of a local governmental unit that is party to this Agreement as permitted by Act 425; or
- d. By operation of law should a tribunal of competent jurisdiction order the termination or invalidity of this Agreement.

17. Jurisdiction after Termination

a. Immediately following the Duration of the Conditional Transfer, without any further agreement or writing, the Transferred Area shall automatically and permanently return to the jurisdiction of Clam Lake for all purposes, and thereafter shall no longer be within the jurisdiction of Haring for any purposes. Upon return of the Transferred Area to Clam Lake, the Transferred Area

shall be subject to Clam Lake's Zoning Ordinance and building codes as then in effect or as subsequently amended.

b. Pursuant to Article I, Paragraph 4 of this Agreement, Haring will provide public wastewater service and public water supply service to the newly-developed portion of the Transferred Area by the construction of the Transferred Area Wastewater and Water Infrastructure from the Haring public wastewater and public water supply systems (each a "Utility System" and together, the "Utility Systems"). Effective upon the Termination Date of the Conditional Transfer in accordance with Article I, Paragraph 16, Clam Lake agrees to enter into an intermunicipal agreement with Haring with respect to the services provided by Haring from the Utility Systems to the Transferred Area. This intermunicipal agreement shall contain mutually agreeable provisions, which, at minimum, shall: (1) provide for the consent by Clam Lake to the use of the public rights-of-way in Clam Lake by Haring for purposes of the Transferred Area Wastewater and Water Infrastructure; (2) provide for the consent by Clam Lake to the installation, construction, extension, improvement, operation, maintenance, repair and replacement of all Transferred Area Wastewater and Water Infrastructure by Haring within Clam Lake; (3) provide for the ownership by Haring of that portion of the Transferred Area Wastewater and Water Infrastructure located within Haring and the ownership by Clam Lake of that portion of the Transferred Area Wastewater and Water Infrastructure located within the Transferred Area or Clam Lake; (4) provide appropriate provisions for the extension and improvement of the Utility System infrastructure or the Transferred Area Wastewater and Water Infrastructure which serves Clam Lake, whether such infrastructure is located within or without Clam Lake; (5) provide that Utility System customers located in Clam Lake shall pay to Haring fees, rates and charges for services rendered by the Utility Systems; (6) provide for the

adoption by Clam Lake of Utility System ordinances providing for matters pertinent to the connection to, the use of and rates and charges payable with respect to the Utility Systems within Clam Lake, with such Clam Lake ordinances being (i) subject to the prior review and approval by Haring and (ii) not less restrictive than similar ordinances in effect in Haring; (7) provide for the billing and collection of Utility System fees, rates and charges to customers of the Utility Systems located in Clam Lake and appropriate provisions for the collection of delinquent fees, rates and charges; (8) provide for Clam Lake to place, in the manner provided by law, delinquent Utility System fees, rates and charges, upon certification by Haring, on the Clam Lake Township tax roll and, upon collection of the same, to pay the collected amounts to Haring; (9) provide for the adoption and implementation of appropriate notice and claim procedures provided by Act 222 of the Public Acts of Michigan of 2001, as amended; and (10) provide for insurance coverage with regard to the Utility Systems, the Transferred Area Wastewater and Water Infrastructure, and the use thereof. Haring and Clam Lake agree that the term of such intermunicipal agreement shall, to the extent permitted by law, extend for a period of time that, at minimum, is co-extensive with the terms of the then outstanding bonded or contractual indebtedness of (1) Haring with respect to the Utility Systems which serve the Transferred Area, and (2) Clam Lake with respect to the Transferred Area Wastewater and Water Infrastructure. Clam Lake agrees to provide all necessary assurances requested by Haring to satisfy requirements of Haring's lenders with regard to the Utility Systems, including entering into any required supplemental service agreements. Haring agrees to provide all necessary assurances requested by Clam Lake to satisfy requirements of Clam Lake's lenders with regard to the Utility Systems and the Transferred Area Wastewater and Water Infrastructure. If requested by Haring, separate intermunicipal agreements shall be negotiated for wastewater service

and public water supply service. Haring and Clam Lake agree to negotiate the intermunicipal agreement(s) required by the terms of this paragraph in good faith and to commence such negotiations not less than six (6) months prior to the Termination Date of the Conditional Transfer.

ARTICLE II ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and may not be modified or amended except by the written consent of the parties.

The parties acknowledge and agree that one or more amendments to the provisions of this Agreement, including without limitation Article I Paragraph 13 relating to Taxes and Other Revenue, may be necessary and appropriate to enable Haring to provide wastewater services and public water services to the Transferred Area and to enable Clam Lake to pay and finance the cost of the Transferred Area Wastewater and Water Infrastructure and providing wastewater services and public water services to the Transferred Area, and, accordingly, each party agrees to negotiate in good faith one or more amendments to this Agreement proposed as necessary or appropriate by the other party for the foregoing purposes.

ARTICLE III GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Michigan. The parties hereby consent to the jurisdiction and venue in the Circuit Court for the County of Wexford with respect to all complaints, claims, demands, or other issues related to or arising from this Agreement. In the event of a dispute between the parties arising under this Agreement, this Agreement shall be enforced by either party in an action commenced in Wexford County, Michigan, and under Michigan law.

**ARTICLE IV
NON-ASSIGNMENT**

No party to this Agreement shall assign any of its rights, duties or obligations hereunder without the written consent of all parties.

**ARTICLE V
SEVERABILITY**

In the event that any provision of this Agreement is held to be unenforceable for any reason, such holding shall not affect the viability and enforceability of the remainder of this Agreement.

**ARTICLE VI
FILING**

In accordance with Act 425, this Agreement shall be filed with the Wexford County Clerk and the Secretary of State Office of the Great Seal.

**ARTICLE VII
BINDING EFFECT**

This Agreement is binding upon the parties hereto, their successors and their assigns.

**ARTICLE VIII
NOTICES**

Any notice, demand, or communication required, permitted or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by first class or certified mail addressed to the then acting officials follows:

If to Haring:

Township Supervisor
Charter Township of Haring
515 Bell Avenue
Cadillac, Michigan 49601

If to Clam Lake:

Township Supervisor
Clam Lake Township
8809 East M-115
Cadillac, Michigan 49601-9786

The parties may, by written notice, designate any further or different addresses to which subsequent notices, demands, or communications may be given.

**ARTICLE IX
MODIFICATION**

No party to this Agreement may unilaterally modify this Agreement. There are no third party beneficiaries to this Agreement and none are intended.

**ARTICLE X
CONTINUING RESPONSIBILITIES FOR INDIVIDUAL LIABILITIES**

Haring and Clam Lake shall each be responsible for such liabilities as may be incurred through their respective provision of governmental services and other performances of this Agreement and each shall respond to and provide for such liabilities on the same basis as Haring and Clam Lake do generally, except as set forth in Article XII of this Agreement.

**ARTICLE XI
EMPLOYEES**

Haring shall be solely responsible for the manner of employing, engaging, compensating, transferring or discharging any employees, independent contractors or other personnel with respect to the governmental services Haring shall provide under this Agreement. Clam Lake shall be solely responsible for the manner of employing, engaging, compensating, transferring or discharging any employees, independent contractors or other personnel with respect to the governmental services Clam Lake shall provide under this Agreement.

**ARTICLE XII
REIMBURSEMENT AND INDEMNIFICATION**

1. Clam Lake agrees to reimburse Haring for any and all costs and expenses, including without limitation actual attorney fees, which Haring incurs prior to execution of this Agreement for the Agreement's review, preparation, hearing and notice.

2. Clam Lake agrees to reimburse Haring for any and all costs and expenses, including without limitation actual attorney fees, which Haring incurs to adopt and implement the new zoning

regulations described in Article I, Paragraph 6 of the Agreement, including the costs and expenses to review any zoning application submitted under the new mixed-use PUD regulations.

3. Clam Lake agrees to reimburse Haring for any and all costs and expenses, including without limitation actual attorney fees, which Haring incurs to return jurisdiction of the Transferred Area to Clam Lake upon the termination of the Conditional Transfer under this Agreement, or upon any other event causing the termination or invalidation of this Agreement.

4. Clam Lake agrees, to the extent permitted by law, to indemnify and hold harmless Haring from any and all claims for damages, costs, expenses, fees (including without limitation actual attorney fees), liabilities and all other forms of monetary relief, whether legal or equitable in nature, arising in any way from the execution and implementation of this Agreement, including, without limitation, claims that might arise from the zoning or rezoning of the Transferred Area or the provision of public sanitary sewer and/or public water supply service to the Transferred Area. Clam Lake further agrees to reimburse Haring for all costs, expenses and actual attorney fees Haring incurs, whether in administrative or judicial proceedings, involving the execution and implementation of this Agreement, including, without limitation, (a) proceedings before the State Boundary Commission involving the validity of this Agreement and/or annexation of the Transferred Area, (b) judicial proceedings involving the validity of this Agreement and/or annexation of the Transferred Area, or (c) administrative or judicial proceedings relating, in any way, to the zoning or rezoning of the Transferred Area. Haring may submit such reimbursable expenses, to the extent they are incurred, to Clam Lake on a monthly basis. Clam Lake shall pay Haring within 45 days following receipt of a written request for reimbursement from Haring. In the event that Clam Lake fails to indemnify and hold Haring harmless or fails to pay reimbursable expenses within the required 45 day

period, Haring may commence an action in the Wexford County Circuit Court for recovery of the unpaid amount(s) and/or to otherwise enforce Clam Lake's indemnity/hold harmless obligations under this provision. If Haring prevails in such an action, whether in whole or in part, Clam Lake shall be required to pay Haring all costs, expenses and actual attorney fees Haring incurred in the action. The Haring Township Board retains its right to select its own legal counsel to represent Haring in any and all of the foregoing matters, including, without limitation, proceedings that might arise from the zoning or rezoning of the Transferred Area. The obligations of this Article shall survive the termination of the Agreement and shall be binding on the parties, even if this Agreement is otherwise adjudged, whether in administrative or judicial proceedings, to be invalid for the purpose of satisfying the requirements of Act 425.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be effective on the day and year first above written.

IN THE PRESENCE OF

CHARTER TOWNSHIP OF HARING

By: _____
Robert Scarbrough, Supervisor

By: _____
Kirk Soule, Clerk

[signatures continue on next page]

IN THE PRESENCE OF

TOWNSHIP OF CLAM LAKE

By: _____
Dale Rosser, Supervisor

By: _____
Delores Peterson, Clerk

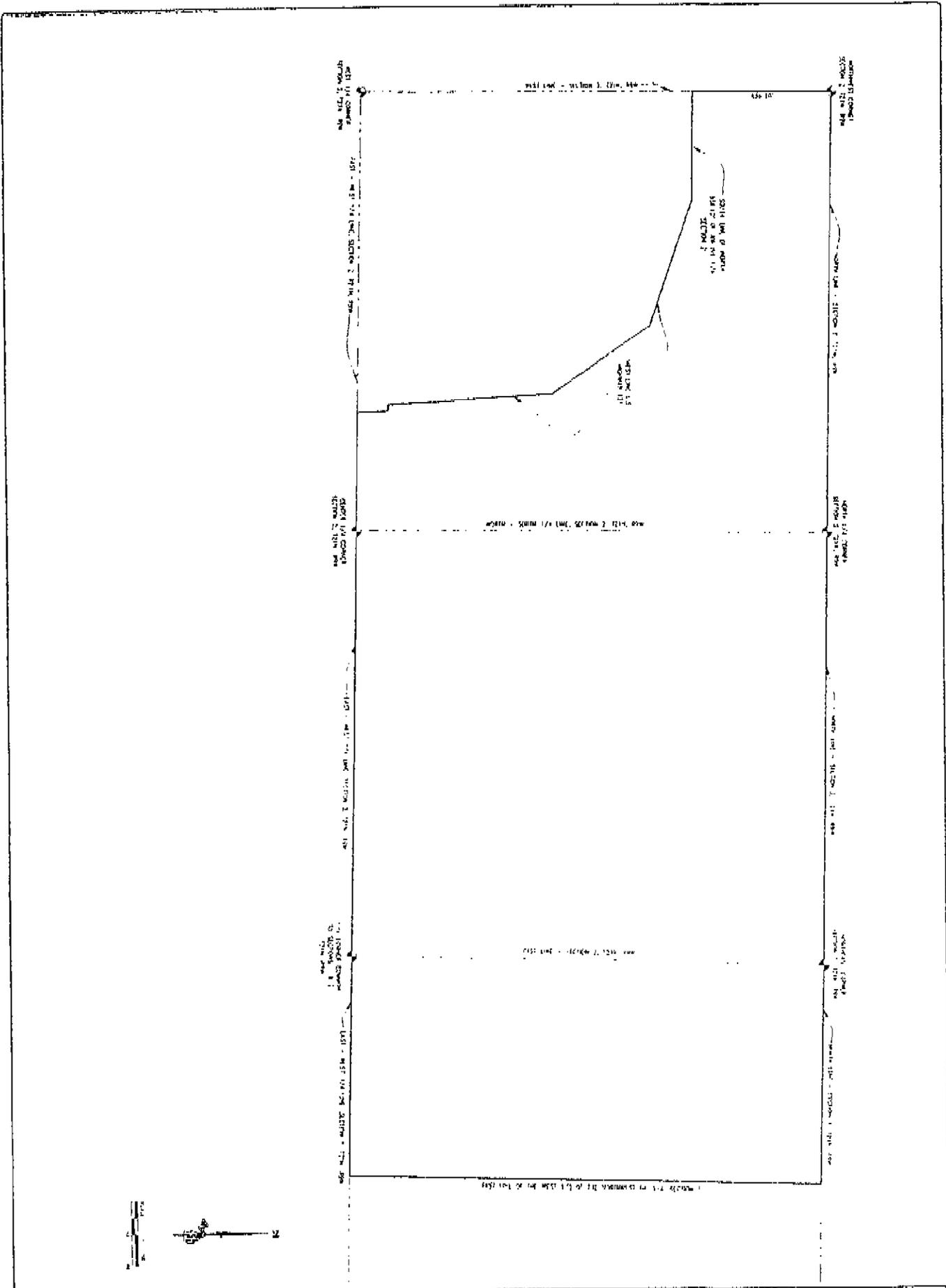
EXHIBIT A

LEGAL DESCRIPTION OF TRANSFERRED AREA

Part of the North fractional 1/2 of Section 2 and the West 1/2 of the Northwest fractional 1/4 of Section 1, Township 21 North, Range 9 West, Clam Lake Township, Wexford County, Michigan, more fully described as follows:

Beginning at the Northwest Corner of said Section 2; thence Easterly along the North line of said Section 2 to the North 1/4 Corner of said section; thence continuing Easterly along said North line of Section 2 to the Northeast Corner of said section; thence Easterly along the North line of said Section 1 to the Northeast Corner of said West 1/2 of the Northwest fractional 1/4 of Section 1; thence Southerly along the East line of said West 1/2 of the Northwest fractional 1/4 to the East – West 1/4 line of said Section 1; thence Westerly along said East – West 1/4 line to the 1/4 Corner common to said Sections 1 and 2; thence Westerly along the East – West 1/4 line of said Section 2 to the Center 1/4 Corner of said section; thence continuing Westerly along said East – West 1/4 line to the West right-of-way line of U.S. Highway 131; thence Northerly and Northwesterly along said right-of-way line to the South line of the North 836.10 feet of the Northwest fractional 1/4 of said Section 2; thence Westerly along said South line to the West line of said Section 2; thence Northerly along said West section line to the Point of Beginning.

EXHIBIT B
MAP OF TRANSFERRED AREA
(next page)



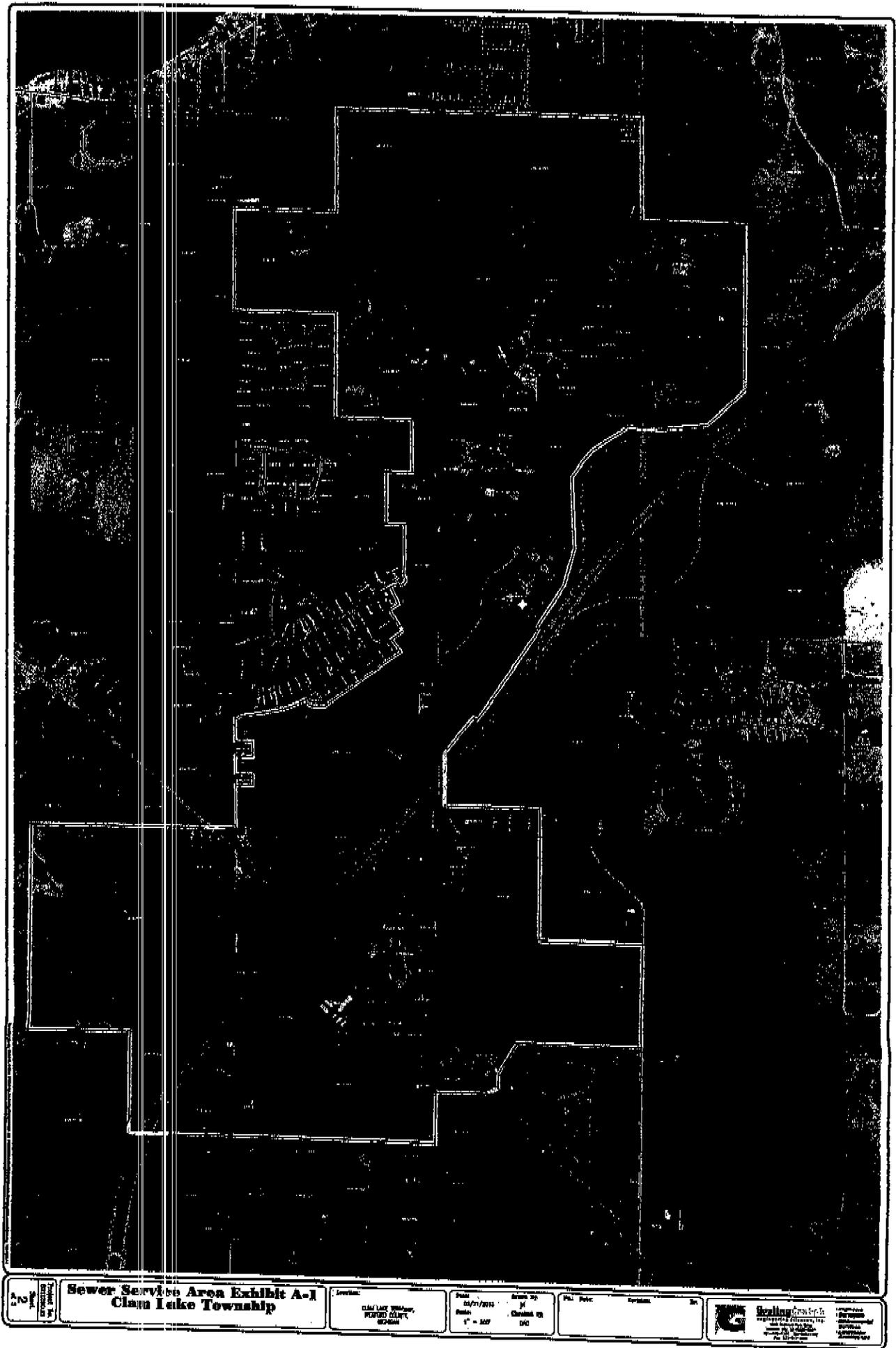
125" MAP
 City of...
 Date...



EXHIBIT C

MAP OF PHASE I OF THE CLAM LAKE DDA DISTRICT

(next page)



CITY COUNCIL MINUTES

May 6, 2013

The Cadillac City Council met in a scheduled regular meeting on Monday, May 6, 2013, at 7:00 p.m. in the Council Chambers of the Municipal Complex, 200 N. Lake Street, Cadillac, Michigan.

COUNCIL PRESENT: Spoelman, Stevens, Mellema, Mayor Barnett

COUNCIL ABSENT: Schippers,

Staff Present: Peccia, Homier, Roberts, Dietlin, Benson

Others: Rick Charmoli, Cadillac News

Mayor Barnett called the Cadillac City Council meeting to order at 7:09 p.m.

APPROVAL OF AGENDA

City Manager Peccia asked to amend the agenda to add Chris Shankland to APPOINTMENTS.

2013.085 Agenda approved as amended

Motion was made by Spoelman and supported by Mellema to approve the agenda as amended.

Motion unanimously approved.

PUBLIC COMMENTS

Richard Poulos, 9650 S. 41 Rd., Clam Lake Township, asked what was going on with the sewer system between the city and Clam Lake Township.

CONSENT AGENDA

2013.086 Consent agenda approved as amended

Motion was made by Spoelman and supported by Mellema to approve the City Council amended minutes, by adding motion 2013.079 which was inadvertently omitted, from the regular City Council meeting held April 15, 2013, the minutes from the Council Retreat from meeting held April 13, 2013 and the request from the Downtown Cadillac Association to hang a banner over Mitchell Street July 22-29, 2013 for the annual Sidewalk Sales event.

Motion unanimously approved.

PROCLAMATIONS

Mayor Barnett presented a proclamation to Lieutenant Chris Shankland in recognition of his retirement after 25 years with the Cadillac Fire Department.

Mayor Barnett presented a proclamation to Captain Jeff Holly in recognition of his retirement after 25 years with the Cadillac Fire Department.

PUBLIC HEARINGS

At 7:27 p.m., Mayor Barnett opened a public hearing to consider adoption of a resolution to approve an application for an Industrial Facilities Tax Exemption Certificate for Avon Automotive in the amount of \$343,821.30. Avon representative Denise Delancey told council the IFT will help Avon update equipment enabling the company to remain competitive and retain jobs. The public hearing closed at 7:28 p.m.

2013.086 Avon Automotive IFT application approved, Resolution No. 2089

Motion was made by Stevens and supported by Mellema to adopt the resolution to approve an application for an Industrial Facilities Tax Exemption Certificate for Avon Automotive in the amount of \$343,821.30.

Motion unanimously approved.

COMMUNICATIONS

Friends of the Library together with the Wexford County Historical Museum will hold a hula hoop demonstration and contest, featuring a Seward Johnson Sculpture of a girl with a hula hoop, at the museum and are requesting Beech Street be closed.

2013.087 Street closure approved

Motion was made by Spoelman and supported by Stevens to close Beech Street from 5:00 p.m. to 7:00 p.m. on June 9, 2013 for a hula hoop demonstration and contest.

Motion unanimously approved.

Gabby Chapman, Chairperson of the Freedom Festival Committee, requested that the south side of the Farmers Market parking lot be closed on Friday, July 5, 2013 from 4:30 until 9:00 p.m. and again on Saturday July 6, 2013 from 7:00 a.m. to 7:00 p.m. for Monster Truck Rides.

2013.088 Parking lot closure approved

Motion was made by Stevens and supported by Mellema to approve the closure of the south side of the Farmers Market parking lot on July 5, 2013 from 4:30 p.m. to 9:00 p.m. and on Saturday, July 6, 2013 from 7:00 a.m. to 7:00 p.m. for Monster Truck Rides, and also to close any other street or parking lot, as needed, to accommodate the event.

Motion unanimously approved.

Cadillac Festival of Races representative Michael Battaglia asked council to approve the closure of Lake Street from Chestnut Street to Harris Street on Saturday, August 31, 2013 from 6:00 a.m. to 10:00 a.m. and to close Lake Street from Harris Street to Chapin Street from 6:00 a.m. to 4:00 p.m. for the annual Festival of Races event.

2013.089 Street closures approved

Motion was made by Stevens and supported by Spoelman to close Lake Street from Chestnut Street to Harris Street on Saturday, August 31, 2013 from 6:00 a.m. to 10:00 a.m. and to close Lake Street from Harris Street to Chapin Street from 6:00 a.m. to 4:00 p.m. for the annual Festival of Races.

Motion unanimously approved.

A request was received from Allman Todd to close Lake Street every Monday beginning July 1, 2013 through August 12, 2013, from 6:00 p.m. to 8:15 p.m. for the annual Clam Lake Band concerts.

2013.090 Street closure approved

Motion was made by Spoelman and supported by Mellema to close Lake Street from Harris Street to Cass Street every Monday, beginning July 1, 2013 through August 12, 2013 from 6:00 p.m. to 8:15 p.m. for the annual Clam Lake Band concerts.

Motion unanimously approved.

APPOINTMENTS

2013.091 Tencza reappointed to LDFA

Motion was made by Spoelman and supported by Stevens to reappoint Bill Tencza to the Local Development Finance Authority for a 4-year term to expire May 19, 2017.

Motion unanimously approved.

2013.092 Clark reappointed to Airport Authority

Motion was made by Stevens and supported by Mellema to reappoint Bob Clark to the Cadillac-Wexford Airport Authority for a two-year term to expire May 15, 2015.

Motion unanimously approved.

2013.093 O'Neill reappointed to Brownfield Authority

Motion was made by Spoelman and supported by Stevens to reappoint Regan O'Neill to the Brownfield Redevelopment Authority for a three-year term to expire May 19, 2016.

Motion unanimously approved.

2013.094 French appointed to Civil Service Commission

Motion was made by Stevens and supported by Spoelman to appoint RuthAnn French to the Civil Service Commission to fill an unexpired term to end April 16, 2015.

Motion unanimously approved.

2013.095 Shankland appointed to Police and Fire Retirement Board

Motion was made by Stevens and supported by Spoelman to appoint Chris Shankland to the Police and Fire Retirement Board for an indefinite term.

Motion unanimously approved.

CITY MANAGER'S REPORT

City Manager Peccia explained that council is interested in implementing a

Complimentary Bicycle Program for the community. Stipulations and conditions were discussed.

2013.096 Bicycle Program authorization

Motion was made by Spoelman and supported by Mellema to authorize city staff to design and implement a bicycle sharing program for the 2013 season and that unclaimed bicycles secured by the Cadillac Police Department be made available for program use.

Motion unanimously approved.

Council discussed the purchase and placement of a Public Safety Memorial Monument to honor public safety personnel lost while on duty for public safety agencies working within Wexford County or lost while on duty for other public safety agencies outside the County but were originally from Wexford County. The monument would be placed in the city park by the Public Safety Memorial Fountain. Bendle-Lang of Cadillac recommended a granite monument at a cost of \$2,600.00.

2013.097 Memorial Monument approved

Motion was made by Spoelman and supported by Mellema to approve the purchase and placement of a memorial monument for lost public safety personnel working within Wexford County or that were originally from Wexford County.

Motion unanimously approved.

INTRODUCTION OF ORDINANCES AND RESOLUTIONS

Finance Director Owen Roberts explained that the public hearing for the General Appropriations Act for Fiscal Year 2014 was held on April 15 and he is now introducing Ordinance No. 2013-03 which sets another public hearing for May 20, 2013 to consider adoption of the ordinance. The ordinance must be adopted between May 15 and May 31.

2013.098 Public hearing set, Resolution No. 2090

Motion was made by Stevens and supported by Mellema to approve the resolution to set a public hearing for May 20, 2013 to consider adoption of the General Appropriations Act for Fiscal Year 2014.

Motion unanimously approved.

ADOPTION OF ORDINANCES AND RESOLUTIONS

City Manager Peccia told council an application has been received from Inland Lakes Machine for an Industrial Facilities Tax Exemption Certificate in the amount of \$155, 300.00 for purchase of a Mazak lathe. He added that 36 positions would be retained and 1 new position created. He asked council to set the public hearing for May 20 for consideration of the IFT application.

2013.099 Public Hearing set, Resolution No. 2091

Motion was made by Spoelman and supported by Mellema to adopt the resolution to set a public hearing for May 20, 2013 to consider a request from Inland Lakes Machine to file an application for an IFT Certificate in the amount of \$155,300.00.

Motion unanimously approved.

Jacques Emond, representing Rec Boat Holdings, LLC, told council that his company is investing over three million dollars in the community, plus the addition of 75 jobs. He requested council to adopt the resolution to set a public hearing to consider the request to file an application for an Industrial Facilities Tax Exemption Certificate.

2013.100 Public hearing set, Resolution No. 2092

Motion was made by Stevens and supported by Mellema to set a public hearing for May 20, 2013 to consider a request from Rec Boat Holdings, LLC to file an application for an IFT Certificate in the amount of \$3,127,285.00.

Motion unanimously approved.

City Manager Peccia read a portion of a resolution to authorize the city to amend the City Benefits Policy to pay COBRA benefits for 90 days on behalf of the spouse or dependents of a city employee who has been employed by the city for more than one year and who dies while actively employed by the city.

2013.101 City Benefits Policy amended, Resolution No. 2093

Motion was made by Stevens and supported by Spoelman to approve Resolution No. 2093 to amend the City Benefits Policy to pay for COBRA benefits for 90 days following the death of a city employee.

Motion unanimously approved.

REPORTS OF BOARDS AND COMMISSIONS

MINUTES OF BOARDS AND COMMISSIONS

The minutes of the Wexford County Airport Authority from meeting held April 11, 2013, the minutes of the Cadillac Planning Commission from the meeting held January 28, 2013 and the minutes of the Downtown Development Authority Business Improvement District Board from the meeting held March 27, 2013 were presented for information only.

PUBLIC COMMENTS

Gordy Maxwell, North Boulevard resident, feels the airport should support itself and not be co-funded by the county and city. He also felt that Northland Meadows has an illegal PILOT and public funds were spent on enhancing a private property owner.

Cindy Kanitz, wife of deceased police officer Bill Kanitz, thanked council for changing the benefits policy.

TABLED ITEMS

GOOD OF THE ORDER

City Manager Peccia said sidewalk plowing options were discussed in the work session

held previous to the regular council meeting and city staff would work together to address the issue.

Council Member Mellema informed the public that on May 14th there will be a Cadillac Area Manufactures Association/Career Tech Center Expo to give students a chance to talk to employers and find out about employment opportunities.

Council Member Stevens thanked everyone for attending the annual Volunteers Luncheon. He suggested that the resolution to change the employee benefits policy be recognized as the William Kanitz Resolution.

Mayor Barnett asked the city manager where the city is on the animal control issue. Peccia replied that he has sent a letter to the county on setting up a meeting. Mayor Barnett then asked if a person from the Grand Vision could come to a council meeting and tell us what is going on. Community Development Director Jerry Adams said we should talk to MDOT first. Peccia added that he could look into council's concerns.

Council Member Spoelman said it is exciting to see Rec Boat Holdings invest so much money in the community. She also reminded drivers to slow down because, now that the weather is nice, there are many out.

Mayor Barnett thanked all the volunteers and staff that worked on the parks clean-up.

City Manager Peccia asked boaters to keep their wake down close to shore, the lake is very high.

CLOSED SESSION

City Manager Peccia asked council for a motion to adjourn to closed session to discuss written legal opinions of the city attorney and pending civil litigation. Mayor William S. Barnett in his capacity as Mayor of the City of Cadillac vs Jim Blackburn and Haring vs City of Cadillac and to invite Jeff Dietlin, Director of Utilities for a portion of the closed session.

2013.102 Move to closed session approved

Motion was made by Spoelman and supported by Stevens to move to closed session to discuss written legal opinions of the city attorney and pending civil litigation between Mayor Barnett vs Jim Blackburn and the Township of Haring vs the City of Cadillac and to include staff member Jeff Dietlin.

Motion unanimously approved.

At 8:50 p.m., council moved to closed session.

2013.103 Return to open meeting approved

Motion was made by Mellema and supported by Spoelman to return to the open meeting. Motion unanimously approved.

At 11:52 p.m. council returned to the open meeting.

At 11:53 p.m. Mayor Barnett recused himself from the meeting due to a conflict with the upcoming motion.

Mayor Pro Tem Stevens continued the meeting.

2013.104 City Manager authorized

Motion was made by Spoelman and supported by Mellema to accept the offer made by Clam Lake Township, by letter on April 18, to meet with the city staff and to authorize the city manager to send a letter accordingly.

Motion unanimously approved.

ADJOURNMENT

The meeting was adjourned at 11:58 p.m.

Respectfully submitted,

William S. Barnett, Mayor

Christine L. Benson, City Clerk

201100003412
Filed for Record in
WEXFORD COUNTY
LORIE L. SORENSEN
05-06-2011 At 01:23 pm.
AGREEMENT 329.00
OR 11ber 639 Page 691 - 796
201100003412
NIKA MEYERS BECKETT & JONES PLC
900 MONROE AVE NW
GRAND RAPIDS MI 49503

MI - Cadillac
#1432-06

SANITARY SEWER CONNECTION AND SERVICE AGREEMENT

THIS SANITARY SEWER CONNECTION AND SERVICE AGREEMENT (the "Agreement") is entered into as of May 2, 2011, between WAL-MART REAL ESTATE BUSINESS TRUST, a Michigan corporation and Delaware Statutory Trust, whose address is 2001 S.E. 10th Street, Bentonville, AR ("Owner"), and the Charter Township of Haring, a Michigan charter township located in the County of Wexford, Michigan, and whose address is 515 Bell Avenue, Cadillac, MI 49601 ("Township"), with respect to the real property described on Exhibit A hereto (Parcel No. 2209-21-4301-01), which is commonly known as 8917 E. 34 Road, Cadillac, Michigan 49601 (the "Property").

RECITALS:

WHEREAS, Owner owns and occupies the Property, located within the Township, on which a Wal-Mart retail store (the "Wal-Mart Store") is located and operated; and

WHEREAS, the Property has previously been served by a privately owned and operated on-site wastewater treatment facility ("Wal-Mart Facility"), but the Wal-Mart Facility has been shut down by order of the Michigan Department of Natural Resources and Environment ("MDNRE"); and

WHEREAS, Owner therefore desires to obtain public wastewater collection, transportation, treatment and disposal services for the Wal-Mart Store located on the Property; and

WHEREAS, the Township is currently a third-party beneficiary to a April 8, 1980 wastewater contract (the "1980 Contract") between the County of Wexford (the "County") and the City of Cadillac (the "City"), in accordance with which the City has agreed to accept, treat and dispose of up to 100,000

gallons per day (“gpd”), average daily flow, of wastewater collected from a wastewater collection system located in a portion of the Township known as the “Haring Township System”; and

WHEREAS, although the Property is bisected by the boundaries of the Haring Township System, as depicted in the 1980 Contract, the Wal-Mart Store located on the Property is situated completely outside of the boundaries of the Haring Township System, and so the City has refused to provide wastewater treatment and disposal services for the Wal-Mart Store under the terms of the 1980 Contract; and

WHEREAS, the Township has filed a lawsuit against the City, in the matter captioned as *The Charter Township of Haring v The City of Cadillac*, Case No. 08-20967-CK (Wexford County Circuit Court) (the “Litigation”), asserting the following claims to enforce the 1980 Contract: **Count I** – that the City is required to sell additional capacity to the Township for the purpose of serving lands located outside the current boundaries of the Haring Township System (such as the Wal-Mart Store); **Count II** – that the City is required to accept, treat and dispose of the wastewater from the entire Property (and from the entirety of other bisected properties) under the terms of the 1980 Contract; and, **Count III** – the City is required to continue providing wastewater treatment and disposal services to the Township on and after May 12, 2017 (i.e., the expiration date of the 1980 Contract for properties located both within the Haring Township System and those hereafter receiving service outside the Haring Township System such as the Wal-Mart Store), through the design life of the Township and City treatment works; and

WHEREAS, the Wexford County Circuit Court has entered opinions and orders, holding as follows, with respect to the three claims being asserted by the Township in the Litigation: **Count I** - the City is required to sell the Township up to 121,000 gpd of additional capacity in the City’s existing sanitary sewer transportation system and wastewater treatment plant (the “WWTP”) (collectively, the “Cadillac Sewer System”) for the transportation and treatment of wastewater from areas of the

Township located outside of the Haring Township System; **Count II** – with respect to the 100,000 gpd of capacity that was initially allocated to the Haring Township System under the 1980 Contract, the City is not required to allow that capacity to be used to serve any lands or buildings that are located completely outside the drawn boundaries of the Haring Township System, including the Wal-Mart Store; and **Count III** – the City’s obligation to provide wastewater treatment and disposal services to Township lands terminates on May 12, 2017; and

WHEREAS, the Circuit Court’s decisions on Count I and Count II of the Litigation are currently on appeal in the Michigan Court of Appeals in COA Docket No. 299693, and that appeal remains pending; and

WHEREAS, the Circuit Court’s decision on Count III of the Litigation has been upheld by the Court of Appeals in a published opinion entered November 23, 2010, but the Township has filed an Application for Leave to Appeal that decision in the Michigan Supreme Court, as reflected in Supreme Court Docket No. 142117, and the Township’s Application for Leave to Appeal was granted by way of an Order entered by the Michigan Supreme Court on March 25, 2011; and

WHEREAS, in reliance on the Circuit Court’s decision on Count I of the Litigation, Owner has expressed its desire to have the Township purchase 8,000 gpd of additional capacity in the Cadillac Sewer System so that the wastewater from the Wal-Mart Store on the Property may be discharged to the Haring Township System and transported to the City for treatment and disposal by the Cadillac Sewer System; and

WHEREAS, the Township has been unable to obtain additional capacity in the Cadillac Sewer System for the purpose of obtaining wastewater service for the Wal-Mart Store located on the Property for the reason that the Township and the City have reached certain impasses regarding (a) the proper interpretation of the Circuit Court’s Count I decision (i.e., whether the court’s decision allows the Township to make incremental purchases of capacity over time, up to a maximum 121,000 gpd [the

Township's position], or whether it allows the Township to make only a one-time purchase of up to 121,000 gpd, with subsequent purchases to be analyzed by the City under a "good faith" standard [the City's position]), and (b) the unit cost of the additional capacity to be purchased; and

WHEREAS, in correspondence dated September 20, 2010, from the City of Cadillac's attorney, Michael Homier, to the Township's attorney Ronald M. Redick, the City agreed to provide 8,000 gpd average daily flow of wastewater treatment capacity to the Township for use by properties, like the Wal-Mart Store, located outside of the Haring Township System in exchange for the Township paying a "buy-in" charge of \$59,762.93 (copy of said correspondence is attached hereto as Exhibit "B"); and

WHEREAS, the Township and the Owner desire to beneficially resolve the above-described impasses with the City so that public wastewater services may be promptly provided to the Wal-Mart Store located on the Property either (a) without unduly compromising any of the rights the Township has obtained through the 1980 Contract and the Litigation, or (b) by having Owner compensate Township adequately for any compromise of rights the Township has obtained through the 1980 Contract and the Litigation; and

WHEREAS, it is Owner's intent to demolish and remove the Wal-Mart Facility as soon as the Wal-Mart Store is connected to public wastewater treatment facilities, and the Township has knowledge of, and will not interfere with, this intended course of action; and

WHEREAS, it is uncertain, due to the continuing pendency of Count III of the Litigation, whether the Township and the Owner will be able to utilize the Cadillac Sewer System and capacity in the City's WWTP after May 12, 2017 and, therefore, it is in the best interests of the Township and the Owner to make contingent arrangements, not only for providing wastewater services to the Wal-Mart Store through May 12, 2017, but also for the Township's construction, operation, maintenance and use of a wastewater treatment facility in the Township to serve Township customers, including the Wal-Mart Store (the "Township WWTP"), after May 12, 2017.

IT IS THEREFORE AGREED by and between the parties hereto, and in consideration of their respective undertakings and faith herein, as follows:

1. Purchase of and Payment for Capacity in the Cadillac Sewer System for the Wal-Mart Store; Connection to Haring Township System.

a. The Township hereby agrees to purchase capacity in the Cadillac Sewer System in the amount of 8,000 gpd to accommodate wastewater to be discharged from the Wal-Mart Store to the Haring Township System.

b. In accordance with the Township's sewer connection, use and rate ordinance, as amended, a complete copy of which is attached hereto as Exhibit "C" (the "Sewer Ordinance"), Owner agrees to pay to the Township the actual cost of the Township's purchase of the 8,000 gpd capacity from City (the "Capacity Charge Component"). Owner acknowledges that the City has represented to the Township that the cost ("buy-in figure") for the 8,000 gpd capacity is \$59,762.93 (*see* Exhibit "B"), and accordingly, Owner shall pay \$59,762.93, in immediately available funds, for the Capacity Charge Component to the Township upon approval and execution of this Agreement by both parties. Upon approval of this Agreement by the Township Board, execution of this Agreement by the Township and the Owner, and the payment by the Owner of the aforestated Capacity Charge Component to Township, in immediately available funds, the Township shall make payment to the City for the purchase of the capacity described herein.

c. In the event the Capacity Charge Component demanded by the City for the 8,000 gpd capacity exceeds \$59,762.93, by an amount of \$30,000 or less, Owner shall be responsible for the actual cost of the 8,000 gpd Capacity Charge Component and the Owner shall immediately remit the balance in excess of \$59,762.93 to the Township, in immediately available funds, and the Township shall in turn promptly remit the excess amount to the City. If the Capacity Charge Component demanded by the City for the purchase of 8,000 gpd of capacity exceeds the figure of \$59,762.93 by

more than \$30,000, then Owner and Township agree to meet to discuss a common course of action to compel the City to sell capacity consistent with the City's September 20, 2010 correspondence, as attached at Exhibit "B." In no case shall Owner be permitted to connect to or discharge any wastewater to the Haring Township System until Owner has paid to the Township the full amount due to the City for the purchase of 8,000 gpd of capacity, as provided within this Section 1.c. Township hereby represents and warrants that it has no actual notice that the Capacity Charge Component is or will be in excess of the \$59,762.93 set forth in the City's September 20, 2010 correspondence (*see* Exhibit "B"), and that there are no other known charges due any other unit of government for such a connection except as set forth herein.

d. Effective upon the purchase by the Township of the 8,000 gpd capacity as provided in Sections 1.a., 1.b. and 1.c., Owner shall have the right to discharge up to 8,000 gpd of wastewater from the Wal-Mart Store located on the Property to the Haring Township System, subject to: (1) the filing by the Owner of an administratively complete connection application to connect the Wal-Mart Store to the Haring Township System with the Township, or the County acting on behalf of the Township, and the due payment of all connection and inspection fees and charges required by the Sewer Ordinance in connection therewith, which Township represents are or will be substantially consistent with the estimated connection and inspection fees and charges shown on Exhibit "D," provided that connection of the Wal-Mart Store to the Haring Township System is completed within one year of the date of this Agreement; (2) the delivery of the Letter of Credit (as defined in Section 5.d., below) in accordance with Section 1.e.; (3) issuance by the Township, or the County acting on behalf of the Township, of a connection permit to the Owner for the Wal-Mart Store; (4) the connection of the Wal-Mart Store to the Haring Township System in accordance with Section 1.f; and (5) compliance by Owner with all terms and conditions of the Sewer Ordinance, as now in effect and as it may be amended, restated, superseded or replaced; provided that such amended, restated, superseded or

replaced form of the Sewer Ordinance shall not impair Owner's rights under the Moratorium Period provided by Section 5.i of this Agreement. Owner has prepared, and the Township Engineer has pre-reviewed, the "Sewer Connection Permit – Application for Service" and related plans (attached hereto as Exhibit "E" and hereafter collectively referred to as "Connection Permit Application"). Based on the Township Engineer's pre-review of the Connection Permit Application, the Township has a good faith belief that the Connection Permit Application substantially complies with the minimum requirements for County approval of the same.

e. In addition to all other requirements imposed by the Sewer Ordinance and this Agreement, Owner agrees that the delivery to the Township by Owner of the Letter of Credit (as defined in Section 5.d., below) shall be a condition precedent to the issuance by the Township, or by the County acting on behalf of the Township, of a connection permit to Owner for the Wal-Mart Store.

f. Owner shall be solely responsible for the construction, operation, maintenance, repair and replacement of the Building Drain and Building Sewer for the conveyance of wastewater from the Wal-Mart Store to the Haring Township System and all costs to connect the Wal-Mart Store to the Haring Township System. Following approval of the application to connect and issuance of a connection permit in accordance with the Sewer Ordinance and this Agreement, Owner shall connect the Wal-Mart Store to the Haring Township System at the nearest available point of connection approved by the Township (and/or by the County acting on behalf of the Township). Owner shall be solely responsible for all actions necessary or required to connect the Wal-Mart Store to the Haring Township System. Owner agrees to cause the connection of the Wal-Mart Store to the Haring Township System to be promptly inspected by or on behalf of the Township in the manner required by the Sewer Ordinance.

g. The Township shall use its best efforts for events within the control of the Township to ensure that the connection of the Wal-Mart Store to the Haring Township System is completed by

June 24, 2011. For purposes of the foregoing, events not within the control of the Township include, but are not limited to:

- i. a delay by the City of the sale to the Township of the 8,000 gpd capacity, or any portion thereof;
- ii. a failure by the Owner to timely remit to the Township the payments required by Sections 1.b., 1.c., 1.d., 2, and 3;
- iii. a delay by the Owner in delivering, or a failure by the Owner to deliver, the Letter of Credit (as defined in Section 5.d., below) to the Township, which in accordance with Section 1.e. is a condition precedent for the issuance of the connection permit for the Wal-Mart Store by the Township (or by the County acting on behalf of the Township);
- iv. a failure by the Owner to proceed diligently to file with the Township, or the County acting on behalf of the Township, an application to connect the Wal-Mart Store to the Haring Township System in accordance with all applicable requirements of the Sewer Ordinance, or a failure by the Owner to proceed diligently to apply to the MDNRE for approval to connect the Wal-Mart Store to the Haring Township System (if such approval is required) or the MDNRE's failure to timely approve such an application;
- v. a failure by the Owner to diligently retain the necessary contractors or otherwise make the physical connection of the Wal-Mart Store to the Haring Township System in accordance with all applicable requirements of the Sewer Ordinance; or,
- vi. entry of a court order or judicial decision with respect to Count I of the Litigation that either delays, prevents or enjoins connection of the Wal-Mart Store to the Haring Township System and/or the discharge of the Wal-Mart Store's wastewater to the Haring Township System.

h. If the connection of the Wal-Mart Store to the Haring Township System is not completed on or prior to June 24, 2011, for reasons other than those identified in subsection 1.g.i through vi of this Agreement, the total amount the Township may draw on the Letter of Credit, as defined in Section 5.d of this Agreement, shall be reduced by the amount of \$10,000 for each full calendar month of delay after June 24, 2011, provided that the cumulative reduction in the amount the Township may draw on the Letter of Credit shall not exceed \$720,000. If such delay is caused by a lawsuit to which the Township is a named defendant, and which is filed for the purpose of preventing the physical connection of the Wal-Mart Store to the Haring Township System in the manner intended by the parties in this Agreement and/or preventing the discharge of the Wal-Mart Store's wastewater to the Haring Township System in the manner intended by the parties in this Agreement, the following provisions shall apply:

i. Owner shall pay 80% of the Township's actual legal fees and costs incurred in such lawsuit, up to a maximum amount payable by Owner of \$50,000.

ii. Invoices for the Township's actual legal fees and costs shall be forwarded to Owner at Shinnars & Cook, P.C., 5195 Hampton Place, Saginaw, Michigan 48604, after they have been approved by the Township. Owner will then pay its 80% share of such invoices by making direct payment to the Township's legal counsel, not later than 37 days after receipt of the same.

2. **Payment of Access Charge Component.** Pursuant to the Sewer Ordinance, the Township has imposed and Owner hereby agrees to pay, in immediately available funds, the amount of \$150,000 as an "Access Charge Component" to the Township upon the approval of this Agreement by the Township Board and the execution of this Agreement by the Township and the Owner. Owner shall be eligible for partial reimbursement of the Access Charge Component so paid by Owner in the manner set forth in the Sewer Ordinance.

3. **Payment of Costs for Agreement.** Upon approval of this Agreement by the Township Board and the execution of this Agreement by the Township and the Owner, Owner shall pay the sum of \$53,000, in immediately available funds, to the Township toward the Township's costs associated with the preparation, negotiation and execution of this Agreement and related matters including, but not limited to, the Township's attorney fees. Township hereby agrees that payment of this \$53,000, in immediately available funds shall include and fully satisfy the requirements of all prior promises by Owner to pay or reimburse any of such Township's costs.

4. **Use of Haring Township System and Cadillac Sewer System; Payment of Applicable Rates, Charges and Fees.**

a. All wastewater discharges from the Wal-Mart Store to the Haring Township System and the Cadillac Sewer System shall be in accordance with: (1) this Agreement; (2) the Township's Sewer Ordinance, as amended, restated, superseded or replaced; (3) the City's sewer connection, use and rate ordinance, if any; (4) any Ordinance or rules and regulations properly promulgated by the Township or the City with respect to wastewater discharged to the Haring Township System and/or the Cadillac Sewer System and the treatment of wastewater; (5) applicable state and federal regulatory requirements; (6) the 1980 Contract; and (7) any amendment, restatement, superseding agreement, or replacement agreement to the 1980 Contract, so long as the Property and the Wal-Mart Store are treated in a manner consistent with state and federal law and with the terms of this Agreement.

b. In addition to the payment of the amounts and charges set forth in Sections 1.b., 1.c., 1.d., 2, and 3 of this Agreement, but except as provided in Section 5.i., the Owner agrees to pay all legally enforceable monthly, quarterly or annual rates, charges and fees established by resolution of the Township Board in accordance with the Sewer Ordinance for the collection, transportation and treatment of wastewater discharged from the Wal-Mart Store to the Haring Township System and the Cadillac Sewer System including, but not limited to, any legally enforceable rates, charges and fees

imposed by the City for use of the Cadillac Sewer System. Township hereby represents and warrants that all rates, charges and fees established by the Township shall be consistently applied to the Wal-Mart Store and others that are commercial users of the Haring Township System. All rates, charges and fees that are due or may become due with respect to the Property or the Wal-Mart Store under the terms of this Agreement and the Sewer Ordinance shall constitute a lien on the Property in accordance with applicable Michigan law and the Sewer Ordinance.

5. **Construction of Township WWTP; Township WWTP Project; Owner's Letter of Credit.** In express recognition of the present uncertainty caused by the continued pendency of Count III of the Litigation and the expiration of the 1980 Contract on May 12, 2017 as to whether the City shall be required, or the City shall agree on terms acceptable to the Township, to treat wastewater from the Township at the Cadillac Sewer System after May 12, 2017, the Owner agrees that the Township, in its sole discretion, may undertake the design, permitting, acquisition, construction and financing of the Township WWTP and related and necessary improvements to the Haring Township System including, but not limited to, pump stations, waste water treatment plant, and related improvements (collectively the "Township WWTP Project") to serve the Township's existing and future wastewater customers, including, but not limited to, the Wal-Mart Store and gas station located on the Property, as follows:

a. The Township may elect, in its sole discretion, to cause the Township WWTP Project to be designed, permitted, located, acquired, constructed and financed by the Township or by the County, acting on behalf of the Township, in accordance with applicable state law.

b. All decisions relating to the design, permitting, location, acquisition, construction, and financing of the Township WWTP Project, the timing thereof and whether to proceed with the Township WWTP Project, shall be in the sole discretion of the Township. Notwithstanding the foregoing, if the Township elects to proceed with the Township WWTP Project:

i. Subject to permit and applicable regulatory requirements, the Township WWTP shall have an initial capacity of not less than 100,000 gpd, and shall be expandable such that the total capacity of the Township WWTP may be increased to a capacity greater than 100,000 gpd.

ii. The Township shall enter into all necessary contracts for the design, permitting, engineering, location, acquisition, construction and financing of the Township WWTP Project. The Township represents that the most recent preliminary pre-design estimate of cost of the Township WWTP Project is \$3,818,000, as set forth in that certain "Engineering and Planning Review of Wastewater Treatment Improvements for Charter Township of Haring," dated as of November 20, 2006, and prepared by Gosling Czubak Engineering Sciences, Inc., consulting engineers based in Traverse City, Michigan, a copy of which is attached for reference only as Exhibit "F". The estimated cost of \$3,818,000 is subject to revision and, if so revised, shall not otherwise affect Township or Owner's obligations set forth herein.

iii. Subject to Section 5.k., the Township shall complete construction of the Township WWTP Project so that the Date of Initial Operation (as defined in Section 5.i., below) of the Township WWTP precedes May 13, 2017.

c. Except as otherwise provided herein, the Township shall pay, from legally available funds, including the proceeds of municipal bonds issued by or on behalf of the Township, and from proceeds of draws made on the Letter of Credit in accordance with the terms thereof and this Agreement (or payments by Owner in lieu of such draws under Section 5.f.v.), all costs of the design, permitting, location, acquisition and construction of the Township WWTP Project. Owner shall be responsible for no charges related thereto except as set forth herein.

d. As an express condition precedent to the issuance of a connection permit in accordance with Section 1.e., Owner shall provide to the Township the original of an executed irrevocable letter of credit in the stated amount of \$1,000,000, drawn on JP Morgan Chase Bank N.A.,

or other bank acceptable to the Township, (the "Bank") in the form and containing such terms and conditions substantially similar to those shown on attached Exhibit "G", in favor of the Township to be drawn upon by the Township to pay, in accordance with this Agreement, costs of the Township WWTP Project (the "Letter of Credit"). The stated amount of the Letter of Credit is subject to reduction, as follows: (i) it may be reduced to an amount of not less than \$280,000, in \$10,000 increments, but only in accordance with the provisions of Section 1.h., and (ii) it may be reduced by an amount equal to payment(s) made by Owner to the Township in accordance with Section 5.f.v.

e. Subject to draws on the Letter of Credit as specified in Section 5.f., below, Owner shall maintain the Letter of Credit for a period ending not less than 7 years from the date of this Agreement, as first set forth above. All draws on the Letter of Credit by the Township shall be presented to the Bank in accordance with the terms of the Letter of Credit, subject to Owner's right to pay any requested draw in accordance with Section 5.f.v., and, except for the final draw which may be in any amount, the minimum amount of any draw on the Letter of Credit shall be \$1,000.

f. The Township may draw on the Letter of Credit to pay a portion of the costs of the Township WWTP Project as set forth below, but only for those charges described below actually incurred by Township after the date of this Agreement. Draws submitted under this subsection 5.f. shall be submitted at the discretion of the Township and the total remaining amount available to be drawn on the Letter of Credit may be totally drawn and applied to the incurred costs of the Township WWTP Project.

i. The Township, at any time prior to the commencement of construction of the Township WWTP Project, may submit one or more draws on the Letter of Credit, up to an aggregate amount of \$500,000, to pay up to one-half (1/2) of the incurred preliminary pre-construction design and planning expenses of the Township WWTP Project including without limitation the cost of

financing, engineering, administration, legal services and the cost of site and right-of-way acquisition occurring after the date of this Agreement.

ii. Commencing with the commencement of construction of the Township WWTP Project, the Township may submit one or more draws on the Letter of Credit, up to an aggregate amount of \$1,000,000, less the aggregate draws previously submitted by the Township and honored by the Bank for preliminary expenses actually incurred in accordance with Section 5.f.i. (or payments by Owner in lieu of such draws under Section 5.f.v.), and less any reductions to the Letter of Credit in accordance with Section 1.h, to pay up to one-quarter (1/4) of the incurred cost of the Township WWTP Project, including without limitation the cost of construction, construction engineering and contingencies.

iii. Each draw request submitted by the Township in accordance with Sections 5.f.i. or 5.f.ii. shall include:

(a) the amount of the draw requested and the total amount shown on the applicable invoice(s);

(b) the total amount of all draws previously submitted to and honored by the Owner and Bank;

(c) the signature of the Township Supervisor or Clerk, certifying the information submitted;

(d) a statement that "The Charter Township of Haring ('Township') hereby draws under JP Morgan Chase Bank, N.A. Letter of Credit No. _____ in the amount of U.S.\$ _____. The undersigned hereby certifies that the Township has incurred expenses described in Sections 5.f.i. or 5.f.ii. of the Sanitary Sewer Connection and Service Agreement, dated April ____, 2011 between Haring Charter Township and Wal-Mart Real Estate Business Trust ('Agreement') in the amount of _____ Dollars (U.S. \$ _____), which

remain unpaid. This draw is made in accordance with Section 5.f.iii and either Section 5.f.vi. or 5.f.vii. of the Agreement.”

(e) the applicable invoice(s) which support such draw request; and

(f) the expected outstanding balance of the Letter of Credit, available

to be drawn by future draws, once the current draw request is honored and paid by the Bank.

iv. Each draw request on the Letter of Credit under Section 5.f.i. or 5.f.ii., together with the supporting documentation required by Section 5.f.iii., shall be submitted to Owner at least fifteen (15) days prior to submittal of the draw request to the Bank, to the attention of the following (or to such alternate contacts as Owner shall designate in writing to the Township):

Crystal Uphoff, Financial Security Coordinator
Wal-Mart Stores, Inc.
1301 SE 10th St
Bentonville, AR 72716-0655
crystal.uphoff@wal-mart.com

Adele E. Lucas
Wal-Mart Associate General Counsel
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Adele.Lucas@walmartlegal.com

Christopher J. Radke
Wal-Mart Outside Legal Counsel (Cadillac, MI)
Shiners & Cook, P.C.
5195 Hampton Place
Saginaw, MI 48604-9576
cradke@shinerscook.com

v. Owner shall have fifteen (15) days after the receipt of the draw request submitted to Owner in accordance with Section 5.f.iv. to pay to the Township, in immediately available funds, the amount of the requested draw (and send proof of such payment to Bank), or to provide to the Township a detailed written objection to the draw request (and send proof of such objection to the Bank), provided that the only type of objection Owner may raise in this context is that the draw request

does not relate to incurred expenses described in Sections 5.f.i or 5.f.ii of this Agreement. If full payment is made by Owner within the fifteen (15) day period, the stated amount of the Letter of Credit available for a draw shall be reduced by the same amount paid by Owner.

vi. If the Township does not receive full payment from Owner for the amount of the requested draw within fifteen (15) days after the receipt of the draw request submitted to Owner in accordance with Section 5.f.iv. and if Owner has not properly and specifically objected to all or a part of the requested draw within such fifteen (15) days, the Township shall submit the draw request to the Bank for the Bank's payment of the same.

vii. In the event that Owner has properly and specifically objected to all or part of a requested draw within the fifteen (15) day period provided by Section 5.f.v., Owner and Township shall diligently work in good faith to resolve their dispute over the proposed draw request, and the Township shall not submit the draw request to the Bank until the sooner of either of the following events has occurred: (i) the Bank has received written direction to pay the draw request from both the Owner and the Township, or (ii) thirty (30) days have elapsed since the Township's receipt of Owner's objection without the Owner obtaining and serving, in the manner required by applicable court rules, upon the Bank and the Township an order from a court of competent jurisdiction directing the Bank not to pay the draw request. In the latter instance, immediately upon completion of the thirty (30) day period, the Township may submit the draw request to the Bank and the Bank shall deliver to the Township the full amount stated in the draw request.

viii. If the Township receives 60 days' prior written notice from the Bank, provided in accordance with the terms of the Letter of Credit, that the Bank has elected not to extend the Letter of Credit for a subsequent year, and Owner has failed to provide the Township, with reasonable promptness, with what the Township considers, in its sole discretion, to be a satisfactory replacement letter of credit, the Township may draw upon the Letter of Credit, up to the full remaining balance of

the Letter of Credit available to be drawn, without providing any proof, documentation or certification of having incurred expenses described in Sections 5.f.i. or 5.f.ii. of this Agreement (to the extent that the preceding sentence might conflict with the Letter of Credit, the terms of the Letter of Credit shall control). In that instance, the provisions of Sections 5.f.i through 5.f.vii. shall not apply. Instead, the Township shall place the proceeds of the draw in a segregated Township account, and shall thereafter use those funds only for the purpose of paying preliminary pre-construction design and planning expenses of the Township WWTP Project, including without limitation the cost of financing, engineering, administration, legal services and the cost of site and right-of-way acquisition and/or construction costs of the Township WWTP Project, including without limitation the cost of construction, construction engineering and contingencies, as determined by the Township.

ix. A draw request submitted by the Township in accordance with Section 5.f.viii. shall include:

- (a) the amount of the draw requested;
- (b) the total amount of all draws previously submitted to and honored by the Bank;
- (c) the signature of the Township Supervisor or Clerk, certifying the information submitted;
- (d) a statement that "The Charter Township Haring (the 'Township') has received from JP Morgan Chase Bank, N.A. written notice, provided in accordance with the terms of Letter of Credit No. _____, that JP Morgan Chase Bank, N.A. has elected not to extend Letter of Credit No. _____ for a subsequent year, and Wal-Mart Real Estate Business Trust ('Wal-Mart') has failed to provide the Township, with reasonable promptness, with what the Township considers, in its sole discretion, to be a satisfactory replacement letter of credit. The draw hereunder is U.S. \$

_____. This draw is made in accordance with Section 5.f.viii and 5.f.ix of the Sanitary Sewer Connection and Service Agreement, dated April __, 2011 between the Township and Wal-Mart.”

g. The Township shall have no obligation to reimburse Owner for any portion of the amounts drawn on the Letter of Credit (or any portion of the amounts paid by Owner in lieu of such draws under Section 5.f.v.) and applied by the Township to pay preliminary pre-construction design and planning expenses of the Township WWTP Project in accordance with Section 5.f.i. or 5.f.viii.or construction and other costs of the Township WWTP Project in accordance with Section 5.f.ii. or 5.f.viii. regardless of the outcome of any count of the Litigation or the subsequent obligation or willingness of the City to accept, on terms acceptable to the Township, wastewater from the Township for treatment after May 12, 2017.

h. In the event that the Township WWTP Project is constructed and the improvements that comprise the Township WWTP Project become operational, and wastewater services are provided to the Wal-Mart Store from the Township WWTP on terms consistent herewith, the Owner, except as provided in Section 5.i., agrees to pay legally enforceable monthly, quarterly or annual rates, charges and fees established by resolution of the Township Board in accordance with the Sewer Ordinance for the discharge of wastewater from the Wal-Mart Store and for the transportation to and treatment of the Wal-Mart Store’s wastewater at the Township WWTP.

i. In consideration of the provision of the Letter of Credit to the Township and the partial funding of costs of the Township WWTP Project by proceeds of draws on the Letter of Credit in accordance with this Section 5 (or payments by Owner in lieu of such draws under Section 5.f.v.), for a period of time determined in accordance with the next succeeding sentence (the “Moratorium Period”), commencing from the date the Township WWTP is placed in operation (the “Date of Initial Operation”) as certified by the engineer for the Township WWTP Project, the Township shall not impose on Owner and Owner shall not be obligated to pay any debt service charge, special assessment or other similar

rates, charges or fees otherwise levied or imposed by the Township on the Township sewer system customers to pay for the costs of design, permitting, location, acquisition and construction of the Township WWTP Project or repayment of debt incurred by or on behalf of the Township to pay for any portion of the cost of the Township WWTP Project. The Moratorium Period shall be a maximum of eight (8) years and shall be reduced by one month for each \$10,000 reduction in the amount available to be drawn on the Letter of Credit determined in accordance with Section 1.h.; provided that the Moratorium Period shall in no event be less than two (2) years. Commencing upon the earlier of the eighth annual anniversary of the Date of Initial Operation or the end of the Moratorium Period (the earlier of such dates being, for purposes of this Section 5.i., the "Effective Date"), the Owner and the Property shall be subject to payment of debt service charges, special assessments or such similar rates, charges or fees for services rendered after the Effective Date as are payable by other Township sewer system customers to pay for debt incurred by or on behalf of the Township for the Township WWTP Project or for expansions of, or improvements to, that or any other aspect of the Township sewer system. In addition, should it become necessary for the Township to improve the Township sewer system, including the Township WWTP, pursuant to an order of the federal or state government or a federal or state court, or a more stringent federal or state law, regulation, or rule enacted after the date of this Agreement, for the purpose of improving the quality of wastewater treatment, the quality of effluent discharged by the Township WWTP, or the integrity or effectiveness of the Township Collection System, Owner shall be subject, on the same basis as other Township sewer system customers, and without regard to the Moratorium Period, to payment of any debt service charge, special assessment or other similar rate, charge or fee as set forth in any Township ordinance or resolution including, but not limited to the Sewer Ordinance and any rate resolution adopted thereunder, to pay for such improvements.

j. Owner shall have no ownership or ownership rights in any portion of the Township WWTP Project, the Township WWTP, the Haring Township System or any other Township sanitary sewer infrastructure. This Agreement shall not be construed as a joint venture or a joint partnership between Township and Owner.

k. All undertakings of the Township in accordance with this Section 5, with respect to the design, permitting, location, acquisition, construction and financing of the Township WWTP and the Township WWTP Project to provide that the Date of Initial Operation precedes the May 13, 2017 deadline set forth in Section 5.b.iii. shall be made on a best-efforts and with all due diligence basis by the Township, subject to the Township's sole discretion to determine the timing of commencement, progress and schedule of the Township WWTP Project, as set forth in Section 5.b. However, Township's obligation to achieve a Date of Initial Operation by May 13, 2017 shall be extended, to a date not later than February 13, 2018, by events and occurrences that are not within the control of the Township. For purposes of the foregoing, it is agreed that events and occurrences that are not within the control of the Township include only the following:

- i. acts of God or force majeure;
- ii. failure of applicable regulatory agencies or municipal entities to approve the design, location, construction or permitting of the Township WWTP or related improvements
- iii. litigation against the Township to prevent or delay construction of the Township WWTP Project;
- iv. inability, for any reason, of the Township to sell the necessary bond issue or otherwise incur the debt necessary to pay for costs of the Township WWTP Project that cannot be paid by draws on the Letter of Credit (or payments by Owner in lieu of such draws under Section 5.f.v.);

v. an adverse vote by Township electors on a ballot proposal, the passage of which is necessary under applicable law to enable the Township to acquire, locate, construct and/or finance the Township WWTP Project; or

vi. the cost and financing of the Township WWTP Project is determined to be financially unfeasible by an independent financial consulting firm.

1. The parties agree that time is of the essence for every date and timing provided herein and the parties acknowledge that the Township's failure to meet the May 13, 2017 deadline for completion of the Township WWTP Project (or the extended deadline of February 13, 2018, in the event that one or more of the events and occurrences specified in Sections 5.k.i through 5.k.vi has transpired) shall in all events release Owner and Bank from any further duty to pay on a draw request pursuant to the Letter of Credit for expenses incurred after May 13, 2017 or February 13, 2018 (as applicable), regardless of cause. Owner shall continue to be exempt from special assessment or other rates, charges or fees during the Moratorium Period, in accordance with Section 5.i, so long as the Bank has honored all draw requests submitted by the Township on the Letter of Credit (or Owner has, in lieu, paid those requests in full under Section 5.f.v.), and Township shall have a continuing obligation to use its best efforts to provide wastewater services to the Wal-Mart Store from the Township WWTP, as quickly as possible.

6. **Representations and Warranties of Owner.** Owner represents, warrants and certifies to the Township:

a. Owner agrees to be bound by the terms of this Agreement and to use its best efforts to comply herewith, including its obligation to provide an irrevocable letter of credit to the Township in the full amount of \$1,000,000, in accordance with Section 5, notwithstanding the outcome of any aspect of the Litigation.

b. The execution of this Agreement, the terms and provisions hereof and the performance thereof, including the obligations of Owner with respect to the Letter of Credit, do not, in Wal-Mart's belief, constitute a breach or a default under any other agreement, contract, instrument or other undertaking to which the Owner is a party, guarantor or otherwise bound by privity of contract.

7. **Representations and Warranties of Township.** The Township represents, warrants and certifies to the Owner:

a. Township agrees to be bound by the terms of this Agreement and to use its best efforts to comply herewith.

b. The execution of this Agreement, the terms and provisions hereof and the performance thereof do not, in the Township's belief, constitute a breach or a default under any other agreement, contract, instrument or other undertaking to which the Township is a party or otherwise bound by privity of contract.

8. **Reliance; Admissibility.** Owner acknowledges that the Township may, in reliance on this Agreement, incur the expenditures necessary for the design, permitting, location, acquisition, construction and financing of the Township WWTP and the Township WWTP Project. Owner consents to the use by the Township of this Agreement, the Letter of Credit and any amendment thereto in any manner relating to the Township WWTP Project, or the Township WWTP, including the admission of this Agreement, as each may be amended, into evidence in any judicial or administrative proceeding relating to the Township WWTP Project or the Township WWTP.

9. **Miscellaneous.**

a. This Agreement is binding upon the Owner and all future owners and parties of interest in the Property and supplements all rights and obligations of the Township with respect to the Haring Township System set forth in the Sewer Ordinance.

b. This Agreement shall be recorded in the Office of the Wexford County Register of Deeds. Owner shall pay the necessary recording fee to the Township to permit the Township to record this Agreement with the Wexford County Register of Deeds.

c. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

d. Unless otherwise specifically provided, all notices and other documents to be served or transmitted hereunder shall be in writing and addressed to the respective parties hereto at the addresses stated on the first page of this Agreement or such other address or addresses as shall be specified by the parties hereto from time to time and may be served or transmitted in person or by ordinary mail properly addressed with sufficient postage. Notices to the Township shall be sent to the attention of the Township Supervisor. Notices to the Owner shall be sent to Wal-Mart Stores East, LP, of 1301 S.E. 10th Street, Bentonville, Arkansas 72716-0550, with copies forwarded simultaneously to Christopher J. Radke, Shinnors & Cook, P.C., 5195 Hampton Place, Saginaw, Michigan 48604-9576.

e. This Agreement has been executed in the State of Michigan and shall be governed by Michigan law.

f. This Agreement may only be amended pursuant to a written document executed by all of the parties hereto. The waiver by any party hereto of a breach or violation of any provision of this Agreement shall not be a waiver of any subsequent breach of the same or any other provision of this Agreement.

g. If any section or provision of this Agreement is unenforceable for any reason, the unenforceability thereof shall not impair the remainder of this Agreement, which shall remain in full force and effect.

h. It is contemplated that this Agreement shall be executed in multiple counterparts, all of which together shall be deemed to be one agreement.

i. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the matters addressed herein. All prior oral or, except to the extent provided herein, written understandings and agreements with regard to the matters addressed herein are specifically merged herein.

j. The captions in this Agreement are for convenience only and shall not be considered as a part of this Agreement or in any way to amplify or modify the terms and provisions hereof.

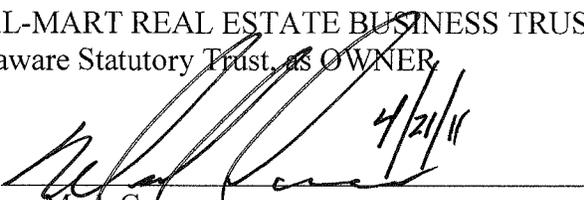
k. This Agreement shall be enforceable only by the parties hereto and their successors in interest by virtue of an assignment which is not prohibited under the terms of this Agreement, and no other persons shall have the right to enforce any of the provisions contained herein.

l. The execution of this Agreement by each party has been duly authorized by the governing board of said entity in the manner required by applicable law, and its articles of incorporation, operating agreement or other applicable instrument.

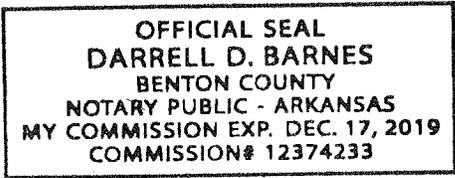
m. Both parties represent and agree that they have negotiated this Agreement in good faith and will likewise interpret and perform their duties under this Agreement in accordance with principles of good faith and fair dealing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust, as OWNER

By:  4/21/11
Mark Casperneyer
Its: Senior Director, Realty Construction

Acknowledged before me in Benton County, Arkansas, this 21st day of April, 2011, by Mark Caspermeyer, the Senior Director of Realty Construction of Wal-Mart Real Estate Business Trust, on behalf of Wal-Mart Real Estate Business Trust.



[Signature]
Darrell Barnes, Notary Public
Benton County, Arkansas
Acting in Benton County, Arkansas
My Commission Expires: 12/17/19

CHARTER TOWNSHIP OF HARING

By: [Signature]
Robert Scarbrough
Its: Supervisor
By: [Signature]
Kirk Soule
Its: Clerk

Acknowledged before me in Wexford County, Michigan, this 2 day of May, 2011, by Robert Scarbrough, Supervisor of the Charter Township of Haring, and Kirk Soule, Clerk of the Charter Township of Haring, on behalf of the Township.

[Signature]
Shelia L. Hill, Notary Public
Wexford County, Michigan
Acting in Wexford County, Michigan
My Commission Expires: June 20, 2011

Prepared by and when recorded, return to:
Ronald M. Redick
MIKA MEYERS BECKETT & JONES PLC
900 Monroe Ave., N.W.
Grand Rapids, MI 49503-1423

COMPARISON OF INFRASTRUCTURE CAPITAL COST AND PROPERTY TAXES

Proposed TeriDee, LLC Development

	<u>City of Cadillac¹</u>	<u>Haring Charter Township²</u>
Property Taxes (10 years) ³	\$ 1,772,920 ⁴	\$ 208,000 ⁵
Public Water Extension	\$ 525,000 ⁶	\$ 1,182,000 ⁷
Public Sewer Extension	\$ 512,500 ⁶	\$ 1,257,000 ⁷
	<u>\$2,810,420</u>	<u>\$2,647,000</u>

Notes:

- ¹ Assumes annexation of TeriDee, LLC property by City of Cadillac.
- ² Assumes conditional transfer of TeriDee, LLC property to Haring Charter Township in accordance with Act 425 PA 1984.
- ³ Based on projections of Taxable Value made by TeriDee, LLC in October 29-30, 2011 *Cadillac Evening News* ad.
- ⁴ Based on total 2013 City levy of 17.0473 mills.
- ⁵ Based on projected 2013 total Haring Township levy of 2.0 mills.
- ⁶ Based on estimate of cost dated February 8, 2012 prepared by Exxel Engineering, Inc.
- ⁷ Based on estimate of cost dated September 16, 2013, prepared by Gosling Czubak.

**PROJECTION OF PROPERTY TAXES
PAYABLE BY PROPOSED TERIDEE, LLC DEVELOPMENT
(CITY OF CADILLAC VS. HARING CHARTER TOWNSHIP)**

Based on Projections of Taxable Value by TeriDee, LLC¹

<u>Years</u>	<u>True Cash Value TeriDee, LLC Investment</u>	<u>Taxable Value</u>	<u>2013 City Millage Rate</u>	<u>Property Taxes Payable on City Millage</u>	<u>2013 Haring Township Millage Rate</u>	<u>Property Taxes Payable on Township Millage</u>
1	\$ 7,000,000	\$ 3,500,000	17.0473	\$ 59,666	2.0	\$ 7,000
2	7,000,000	3,500,000	17.0473	59,666	2.0	7,000
3	7,000,000	3,500,000	17.0473	59,666	2.0	7,000
4	7,000,000	3,500,000	17.0473	59,666	2.0	7,000
5	28,000,000	14,000,000	17.0473	238,662	2.0	28,000
6	28,000,000	14,000,000	17.0473	238,662	2.0	28,000
7	28,000,000	14,000,000	17.0473	238,662	2.0	28,000
8	28,000,000	14,000,000	17.0473	238,662	2.0	28,000
9	28,000,000	14,000,000	17.0473	238,662	2.0	28,000
10	40,000,000	20,000,000	17.0473	340,946	2.0	40,000
Total				\$ 1,772,920		\$ 208,000

Notes:

¹ October 29-30, 2011 *Cadillac Evening News* ad.

COMPARISON OF INFRASTRUCTURE CAPITAL COST AND PROPERTY TAXES

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Total				\$ 1,772,920		\$ 208,000

Notes:

¹ October 29-30, 2011 *Cadillac Evening News* ad.

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755



Mayor
William S. Barnett

Mayor Pro-Tem
Art Stevens

Councilmembers
Douglas Mellema
Shari Spoelman
Tiyi Schippers

RESOLUTION NO. 2013-3025

**RESOLUTION SUPPORTING ANNEXATION PETITION
OF TERIDEE, LLC TO STATE BOUNDARY COMMISSION**

At a regular meeting of the City Council of the City of Cadillac, Wexford County, Michigan, held in the Council Chambers, Cadillac Municipal Complex, 200 North Lake Street, Cadillac, Michigan, on the 21st day of October, 2013, at 7:00 p.m.

PRESENT: Council Member: Stevens, Schippers, Mellema

ABSENT: Council Member: Spoelman, Mayor Barnett

The following preamble and resolution was offered by Schippers and seconded by Mellema.

WHEREAS, TeriDee, LLC has filed a petition with the State Boundary Commission to annex certain property in Clam Lake Township to the City of Cadillac to allow for commercial development that would bring jobs and new revenue to the area, which petition has been assigned Docket No. 13-AP-2; and

WHEREAS, the City wishes to express its support for the annexation requested in TeriDee, LLC's petition.

NOW, THEREFORE, the City Council of the City of Cadillac, Wexford County, Michigan, resolves as follows:

1. The City unequivocally supports the petition filed with the State Boundary Commission by TeriDee, LLC.
2. The City finds that the purported agreement between Haring Township and Clam Lake Township pursuant to Public Act 425 of 1984 is again a sham agreement and, instead of promoting economic development, serves the purpose of thwarting it.
3. The proposed annexation will foster economic development and immediately create new jobs in the area by ensuring that necessary public infrastructure from the City

of Cadillac is extended to the subject property in a timely manner and at a more reasonable cost due to availability and proximity.

4. The City authorizes the City's Mayor pro tem, Arthur Stevens, the City Manager, Marcus Peccia, and the City Attorney, Michael Homier, to appear at the public hearing on October 23, 2013 to represent the City and convey the City's support for the proposed annexation.

5. The City authorizes the City Attorney to prepare and file briefs in support of the annexation with the State Boundary Commission.

6. Any and all resolutions that are in conflict with this Resolution are hereby repealed to the extent necessary to give this Resolution full force and effect.

YEAS: Stevens, Schippers, Mellema

NAYS: none

STATE OF MICHIGAN)
)
COUNTY OF WEXFORD)

I, Sandra Wasson, City Clerk of the City of Cadillac, hereby certify this to be a true and complete copy of Resolution No. ~~302~~ ³⁰⁵ duly adopted at a regular meeting of the City Council held on the 21st day of October, 2013.

Sandra J. Wasson

Sandra Wasson, Clerk
Cadillac Municipal Complex
200 Lake Street
Cadillac, Michigan 49601
Telephone No: (231) 775-0181

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
STATE BOUNDARY COMMISSION

IN RE:

PETITION FOR ANNEXATION OF
TERRITORY IN CLAM LAKE
TOWNSHIP TO THE CITY OF
CADILLAC (WEXFORD COUNTY)

Docket No. 13-AP-2

PROOF OF SERVICE

On this 22nd day of November, 2013, I served a copy of the City of Cadillac's Brief in Support of Annexation Petition, along with a copy of this Proof of Service, upon Ronald Redick, Mika Meyers Beckett & Jones PLC, 900 Monroe Avenue, N.W., Grand Rapids, MI 49503 and Randall Kraker, Varnum LLP, P.O. Box 352, Grand Rapids, MI 49501, by first class U.S. mail, postage prepaid.

I declare that the statements above are true to the best of my information, knowledge and belief.

Date: November 22, 2013


Beverly Albright