



RICK SNYDER
GOVERNOR

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

STEVE ARWOOD
DIRECTOR

Memorandum

DATE: July 17, 2013

TO: Boundary Commissioners

FROM: Kevin O'Brien, P.S. 
Office of Land Survey and Remonumentation

SUBJECT: Docket # 13-AP-2 Legal Sufficiency Review
Petition for Annexation of land in Clam Lake Township to the City of
Cadillac (Wexford County)

Staff Review of Legal Sufficiency:

1. This petition is a re-file of the same area as SBC Docket #11-AP-2 which was filed on June 3, 2011 and was denied by the Boundary Commission. The petition was filed with the Commission on June 5, 2013. Section 9(6) of the Home Rule City Act 1909 PA 279, MCL 117.9(6) specifies the Commission to reject a petition that includes all or any part of a petition that was filed within the preceding 2 years.
2. The petition contains copies of deeds, trust documentation, corporation documents and other documents to verify that the petitioners own record title to at least 75 percent of the area proposed for annexation. OLSR has calculated the percentage of the land owned by the petitioners as 84 percent, which is sufficient to file an annexation petition under section 9(7)(b) of the Home Rule City Act, 1909 PA 279, MCL 117.9(7)(b).
3. The Part I Map submitted with the petition clearly shows the area proposed for annexation as required by State Boundary Commission Rule 37.
4. The Part III Legal Description is substantially accurate and consistent with the Part I Map as required by State Boundary Commission Rule 37.
5. Based on the documentation provided by the Secretary of State as of June 26, 2013, the territory proposed for annexation in the Part III Description is contiguous with the limits for the City of Cadillac as required by State Boundary Commission Rule 37.
6. All requirements of State Boundary Commission Rule 37 have been met.

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Staff Opinion on Legal Sufficiency:

Based upon our review of the content of the petition, we are of the opinion that the petition to request the annexation of land in Clam Lake Township to the City of Cadillac, Docket 13-AP-2, meets legal sufficiency. The Commission may consider our review and opinion, along with the petition and other evidence and testimony presented at the August 13, 2013 meeting, when making their decision.

Additional Comments for Consideration:

On June 10, 2013, a PA 425 of 1984 Conditional Transfer Agreement between Clam Lake Township and Haring Township (that includes the same area as this annexation petition) was filed with the Secretary of State. A copy of this agreement is provided in your notebooks. This 425 Agreement does not have any bearing on the determination of the legal sufficiency of the petition. OLSR recommends that the Boundary Commission examine the validity of this agreement following a review of the evidence to be provided at a public hearing in Wexford County if the petition is found to be sufficient.

The Boundary Commission's jurisdiction and authority to determine the legal validity of a 425 Agreement was affirmed in Township of Casco et al vs. State Boundary Commission. In Township of Casco et al vs. State Boundary Commission, both the Circuit and Appeals Courts confirmed that the Boundary Commission has both the jurisdiction and the authority to determine if an agreement is legal/valid and was entered into as a means of promoting economic development. Copies of both of these decisions are included in your notebooks.

KMO