

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

TERIDEE'S REBUTTAL COMMENTS

Petitioners for annexation are TeriDee, LLC and certain related parties ("TeriDee"). For more than six years, TeriDee has been trying to develop its property at the interchange of a major divided highway and a state highway. As described by the Petitioner in various media, it proposed to develop a first class, professionally landscaped commercial development with a single boulevard entrance, with 90% of the development set back over 175 yards from M-55, and with 15 to 20 acres of undeveloped property as a buffer from the abutting property to the East. The Townships have continually connived with one another to effectively preclude that from happening through Act 425 agreements.

Teridee submits that the Townships' 2013 Act 425 agreement is a sham. The sham is much better disguised than the 2011 Act 425 agreement (between the same parties with regard to the same property). But, it is still a sham. The Act 425 agreement was constructed not to promote economic development but to thwart it and to deprive the Commission of its statutory authority to decide this annexation petition on its merits. By itself, the enormous differential in capital costs for provision of utilities under the agreement defeats economic development of Petitioner's property, which is exactly what the Townships have been trying to do for the past six years.

Petitioner has reviewed the City of Cadillac's Rebuttal comments and finds them very persuasive. Petitioner incorporates those comments in their entirety. Instead of repeating those comments here, the Petitioner asks the Commissioners to re-read the Rebuttal comments from the City of Cadillac.

The gross disparity in the cost of providing Township utilities to Petitioner's property as opposed to using City of Cadillac utilities and other issues related to utilities deserve additional comment, both as to the illusory nature of the Act 425 agreement and as compelling evidence in support of the Annexation Petition. *Please review pages 7-11 of the Petitioner's 30 day comments and referenced reports which discuss illusory utilities and which are attached hereto.*

The Township Engineer concedes that the capital cost of providing public sewer and public water to Petitioner's property will be more than twice as much as obtaining those services from the City. That is \$1,250,000.00 more, not counting additional cost attributable to acquisition of necessary easements and not counting approximately \$300,000.00 for a water storage tank. Petitioner's engineer projects that actual cost of Township utilities will be nearly three times the cost of City utilities, a difference of almost \$2,000,000.00.¹ These are upfront costs to be borne entirely by the Petitioner. As these differences do not take into account the continuing higher O&M and commodity costs for Township utilities compared to City utilities.

¹ At the hearing, the Townships attempted to show that property tax differentials somehow overcame the exorbitant additional capital costs of Township utilities. Of course, that discussion still fails to address other issues such as reliability, fire safety, water pressure, commodity and O & M costs, etc. The extreme differences in upfront, immediately payable capital cost were to be overcome in ten years. However, the document is based on the fallacy that the developer will pay all of the property taxes over the next ten years. In fact, the Petitioner, as the property developer, is very unlikely to pay much, if any, of the property taxes. Property taxes will become an obligation of the owners or tenants of the individual developed sites within the Project. There is also the significant fact that, pursuant to the Township resolution, all of the capital costs become immediate, upfront costs to the developer. Even if you accept the Township's calculation, it still requires ten years to repay the developer (which does not reflect the time value of money).

In addition, there are significant issues with regard to a 2-3 mile long dead end water main as to water reliability and adequate pressure for firefighting and fire suppression.

Availability of utilities has to include a component of reasonable cost. In fact, the State Boundary Commission Act requires the Commission to consider "the probable effect... of alternative courses of action on the cost and adequacy of services in the area to be incorporated...." MCLA 123.1009(b). (*Emphasis supplied.*) Act 425 identifies a factor necessary in formulating an Act 425 agreement as "the probable effect... of alternative courses of action on the cost and adequacy of services in the area to be transferred...." MCL 124.23(b). (*Emphasis supplied.*) The Township's exorbitant cost for utilities makes a potential development of the property problematic. The development can't be justified with the huge differential in utility costs, both with regard to immediate capital costs and the long term continuing O & M and commodity cost differences, payable upfront entirely by the developer. There can be no economic development project on Petitioner's property with the Township's utility cost structure, which is exactly with the Townships intended. The entire Act 425 agreement is illusory and should not be utilized to thwart a reasonable development (which now even the Townships concede is appropriate for the area).

Conclusion

Petitioner respectfully requests that the State Boundary Commission reject the Act 425 agreement as a sham agreement. Further, Petitioner respectfully requests that the State Boundary Commission approve the proposed annexation and allow the primarily vacant property to be served by immediately available and reasonably priced utilities from the City of Cadillac. The Petitioner requests your approval to finally, after six years, put the property to beneficial use

generating hundreds of thousands of tax dollars for the area, hundreds and hundreds of jobs where jobs are badly needed and more shopping opportunities for the entire region.

Respectfully submitted,

VARNUM LLP
Attorneys for Petitioners

Dated: December 18, 2013

By: 
Randall W. Kraker (P27776)
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(616) 336-6000

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

Petitioner's proposal will result in millions and millions of taxable value to the region including the schools, county, transit, seniors, and library resulting in hundreds of thousands of tax dollars for those entities. In addition, this project will create hundreds of jobs as well as a substantial number of construction jobs in an area that has a very significant unemployment rate. This project is logically located for development at the intersection of two major highways. Any objective view of the annexation area results in the conclusion that the area should be used for commercial purposes. In fact, testimony at the public hearing indicated that, in the past, some of the property in question was devoted to commercial use. It is time to allow the property to develop and be served by public utilities from Cadillac. Clam Lake Township has no public utilities. Haring Charter Township has a more costly water system and it is speculative as to whether and when it will ever be able to provide sewer services. What is certain is that the service if ever provided will be substantially more expensive. See the Exxel Report.

Illusory Utilities

Clam Lake Township has no public water or public sewer services. The purported availability of Haring Charter Township services to serve Petitioner's property merits additional discussion.

A. Sewer

1. Timing

Petitioners have been trying to develop the property for over six years. Now it appears that it will be at least two more years before the waste water treatment plant in

Haring Charter Township is constructed. There are earlier estimates that it would be available in 2014, then the spring of 2015, then it became the summer of 2015. Now, according to published reports, it may be ready "as early as summer of 2015." It appears that the completion date continues to slip. In fact, that waste water treatment plant is not currently under construction nor have construction bids been taken nor bonds sold for its financing. What happens if the bids come in higher than estimated? What will the final cost be? In addition to the treatment plant construction, significant infrastructure improvements must be constructed in order to connect Petitioner's property to the proposed waste water treatment plant. What will be the cost and timing of that construction and the acquisition of easements necessary to construct the connecting infrastructure? In contrast, the City of Cadillac has reasonably priced public sewer available immediately across the highway and a fully functioning available waste water treatment plant.

2. Prohibitive Cost

a. Capital Cost.² Petitioner estimates that it will cost approximately \$539,000 to connect to the City of Cadillac sewer system. In contrast, Petitioner estimates it will cost \$1,378,000 to connect to the proposed Haring Charter Township waste water treatment plant. See attached Exxel Report. The Township's own engineer

² At the hearing, the Townships attempted to show that property tax differentials somehow overcame the exorbitant additional capital costs of Township utilities. Of course, that discussion still fails to address other issues such as reliability, fire safety, water pressure, commodity and O & M costs, etc. The extreme differences in upfront, immediately payable capital cost were to be overcome in ten years. However, the document is based on the fallacy that the developer will pay all of the property taxes over the next ten years. In fact, the Petitioner, as the property developer, is very unlikely to pay much, if any, of the property taxes. Property taxes will become an obligation of the owners or tenants of the individual developed sites within the Project. There is also the significant fact that, pursuant to the Township resolution, all of the capital costs become immediate, upfront costs to the developer. Even if you accept the Township's calculation, it still requires ten years to repay the developer (which does not reflect the time value of money).

concedes that it will be at least \$1,257,000. Petitioners estimate does not include the cost of obtaining necessary easements. The Township concedes that easements are likely necessary and that its cost estimate also does not include those costs. In addition, the Township has not considered the legal costs and timing issues involved in the acquisition and possible condemnation for acquisition of such easements. So, the Township concedes an additional cost to the developer for sewer services of over \$700,000. Petitioner believes the difference will likely be closer to \$900,000. And the Townships have adopted resolutions indicating that no tax dollars will be allocated to the extension of the utilities for this site. These exorbitant and unnecessary costs will be entirely upfront costs to the development of the property.

b. Commodity and O & M costs for the proposed Township waste water treatment plant are unknown, but are certain to be significantly more than those charged by the City of Cadillac.

B. Water

1. Timing

The City has a well field across the highway on Crosby. Haring Charter Township's nearest water supply is approximately 2 /12 miles away. Again, there is an issue of timing as to the provision of the infrastructure necessary for extension of the services to this property in question. Again, there are questions with regard to the time and costs for the acquisition and possible condemnation of necessary easements.

2. Prohibitive Cost

a. Capital Cost.² Petitioner estimates that it will cost \$635,000 to connect to the City of Cadillac water system. Petitioner estimates that it will cost \$1,527,000 to

connect to the Haring Charter Township's water system. See attached Exxel Report. The Township's engineer concedes that it will cost at least \$1,182,000 to connect. The Townships concede that the additional cost for connection to its services will be at least \$550,000 more than connection costs to Cadillac's system. Petitioner estimates that this difference will exceed \$900,000. Neither of these calculations takes into account the probable necessity and cost of booster pumps and a water storage tank. Petitioner's estimates for that construction add another \$300,000 to the cost of connection to Haring Charter Township's system. It is clear that the cost to connect to Haring Charter Township water utility is likely to be two to three times the cost of connection to Cadillac's system. Again, the Townships require that these exorbitant and unnecessary costs will be entirely an upfront cost to the developer of the property.

b. O & M Commodity Cost

It is undisputed that the cost for O & M and commodity services provided by Haring Charter Township are significantly higher than those same costs in Cadillac. See attached Gosling Czubak Report. Ready to serve charges and the cost per thousand gallons of water used are nearly double in the Township as compared to the City.

3. Safety/Reliability/Pressure

Perhaps even more significant than the exorbitant and unnecessary costs, is the issue of safety and reliability. Provision of Haring Charter Township water to the site is dependent on a dead end water main two to three miles in length. Such a long dead end water main may not even be approved by MDEQ. There are obvious questions as to reliability and fire safety inherent in a dead end water main of that length. See attached

Exxel Report. The pressure necessary for firefighting purposes is likely to be unacceptable. At minimum, another \$300,000 for booster pumps and a water storage tank is likely to be necessary. In contrast, the firefighting safety and pressure capacity of the Cadillac system is not an issue.

Thus, the total capital cost differentials for both water and sewer are likely to range from \$1,575,000 to over \$2,000,000 without adding on the costs of easements and easement acquisition. Nor do those numbers reflect the ongoing additional commodity and O & M charges. Effectively, these amounts make the provision of utilities by the Townships illusory in nature. These exorbitant and unnecessary costs and impediments to the creation of jobs, increased public revenues, and to growth of the economy are exactly what the Commission should address and prevent and are further evidence of the sham nature of the Act 425 Agreement. See below

Act 425 Agreement Considerations

Petitioners request that the Commission reject the 2013 Act 425 Agreement as it did the 2011 Agreement. Again, as in 2011, the Townships, now both represented by the same attorney, have entered into an Act 425 Agreement in an attempt to thwart the requested annexation and deprive the Commission of its statutory authority to decide annexation requests on the merits. Again, the Agreement was effective after the annexation petition was filed. The Township only took action to enter into this Act 425 Agreement AFTER it was informed that Petitioner was going to file an Annexation Petition.

In this case, the Petitioner first approached Clam Lake Township requesting an Act 425 with the City of Cadillac approximately six years ago. It appears that it will be at least another



REVISED – October 22, 2013

REVISED – February 8, 2012

January 5, 2012

Concerns regarding water and sanitary sewer service from Haring Township rather than the City of Cadillac.

Water

- Usage rates for Township are twice City rates.
- Quality of Township water is inferior to City.
- Ability of Township system to provide adequate pressure and fire flows.
- Cost to extend Township service to annexed area is \$900,000 more expensive than City connection (see accompanying cost estimate).
- Reliability of Township system due to 2 mile length of dead end main

Sanitary Sewer

- Usage rates are unknown from Township but anticipated to be higher than City.
- Cost to extend Township service to annexed area is \$840,000 more expensive than from City (see accompany cost estimate).
- Multiple easements would have to be secured as compared to one for connection to City system.

DJS/sw
1052312E

CADILLAC JUNCTION

Cost to extend water from City well field on Crosby to Cadillac Junction (based on Exxel Engineering preliminary plan)

12" Watermain	4400	I.f.	\$ 70.00	\$ 308,000.00
Bore & jack steel casing (3)	400	I.f.	\$ 400.00	\$ 160,000.00
Restoration	4000	I.f.	\$ 10.00	<u>\$ 40,000.00</u>
				\$ 508,000.00
Engineering/Inspection (15%)				\$ 76,200.00
Contingencies (10%)				<u>\$ 50,800.00</u>
				\$ 635,000.00

Cost to extend Haring Township water from Casa Road/13th Street to Cadillac Junction (based on Gosling Czubak preliminary plan)

12" Watermain	11,000	I.f.	\$ 80.00	\$ 880,000.00
Bore & jack steel casing (2)	320	I.f.	\$ 400.00	\$ 128,000.00
Restoration	10,680	I.f.	\$ 20.00	<u>\$ 213,600.00</u>
				\$1,221,600.00
Engineering/Inspection (15%)				\$ 183,240.00
Contingencies (10%)				<u>\$ 122,160.00</u>
				\$1,527,000.00

Cost to extend City sanitary sewer from Crosby Road to Cadillac Junction (based on Exxel Engineering preliminary plan)

8" Forcemain	3000	I.f.	\$ 40.00	\$ 120,000.00
Bore & jack steel casing (3)	400	I.f.	\$ 400.00	\$ 160,000.00
Lift station	1	each	\$125,000.00	\$ 125,000.00
Restoration	2600	I.f.	\$ 10.00	<u>\$ 26,000.00</u>
				\$ 431,000.00
Engineering/Inspection (15%)				\$ 64,650.00
Contingencies (10%)				<u>\$ 43,100.00</u>
				\$ 538,750.00

Cost to extend Haring Township sanitary sewer from treatment plant to Cadillac Junction (based on Gosling Czubak preliminary plan)

10" Sanitary sewer	2400	I.f.	\$ 70.00	\$ 144,000.00
8" Forcemain	9500	I.f.	\$ 40.00	\$ 380,000.00
Bore & jack steel casing (1)	140	I.f.	\$ 400.00	\$ 56,000.00
4' Manhole	5	each	\$ 2,000.00	\$ 10,000.00
Lift station	2	each	\$125,000.00	\$ 250,000.00
Restoration	11,900	I.f.	\$ 20.00	<u>\$ 238,000.00</u>
				\$1,102,000.00
Engineering/Inspection (15%)				\$ 165,300.00
Contingencies (10%)				<u>\$ 110,200.00</u>
				\$1,377,500.00



CADILLAC JUNCTION

Water Quality

According to the 2007 Moore & Bruggink report prepared for Haring Township, there have been user complaints of odor due to stale water caused by lack of system looping and the presence of iron in the water. This was according to Ms. Ann Renken, MDEQ Water Division area engineer. Mr. Jeff Dietlin, City of Cadillac Utilities Director, has also heard the same complaint.

Water Pressure

According to the 1/5/12 memo from Doug Coates, project engineer of Gosling-Czubak, the estimated static water pressure at M-55 is 44 psi and with a fire flow of 500 gpm, the estimated residual pressure would be 32 psi. Based on our calculations, we believe the static pressure would be closer to 33 psi. Insurance carriers will require fire flow at hydrants in the neighborhood of 1,500 gpm. The increase of flow from 500 to 1,500 gpm will reduce the residual pressure to near zero. I believe to provide adequate pressure to Cadillac Junction could require a booster pump and storage tank which is not reflected in the Gosling-Czubak cost estimate.

Water Reliability

The proposed Haring Township distribution system extension to Cadillac Junction will result in over a 3 mile long dead end main with a limited number of current customers. The longer the dead end watermain, the more susceptible it becomes to interruption of services and stale water.

City System

In comparison to Haring Township's proposed service, the City's dead end watermain will be a quarter as long. This will result in a much more reliable and quality supply. In addition, the city supply will deliver a static pressure of 55 psi and a residual of 35 psi with a 1,500 gpm fire flow.

WATER RATE INFORMATION

Community	Monthly Ready to Serve Charge	Ready to Serve Included Use (gal.)	Consumption Charge per 1000 gal.	Approx. No. of Customers	Outstanding Debt	Notes
Acme Township (Grand Traverse Co.)						see App. A
Alpena, City	\$7.79	2,000	\$3.14	4,798	Yes	1,5,6
Alpena Township (Alpena Co.)	\$15.66	2,333	\$5.00	2,365	Yes	1
Ausable Township (Iosco Co.)	\$18.95	0	\$2.61	1,252	Yes	3
Baldwin Township (Iosco Co.)	\$15.00	0	\$7.00	360	Yes	3
Baldwin, Village	\$19.48	5,600	\$1.85	320	Yes	6
Bear Lake, Village	\$20.00	0	\$0.00	180	No	1, 3, 4, 6
Bellaire, Village	\$10.38	0	\$1.54	661	No	3, 6
Benzonia, Village	\$18.00	3,333	\$2.50	240	Yes	1, 3, 6
Beulah, Village	\$12.83	0	\$3.10	369	Yes	1
Blair Township (Grand Traverse Co.)	\$19.00	0	\$1.85	946	Yes	5
Boyne City, City	\$8.99	0	\$2.45	1,750	Yes	1, 3, 6
Boyne Falls, Village	\$27.50	0	\$0.00	150		1,3
Briley Township (Montmorency Co.)	\$20.00	5,000	\$0.33	182	No	1
Buckley, Village	\$17.00	0	\$2.00	237	Yes	3
Cadillac, City	\$5.79	0	\$1.62	3,800	Yes	2, 3, 5, 6
Central Lake, Village	\$8.00	1,666	\$0.75	600	Yes	1,3, 6
Charlevoix, City	\$11.45	2,000	\$2.54	4,300	No	3, 5, 6
Charlevoix Township (Charlevoix Co.)	\$7.00	2,000	\$1.10	635	No	6
Chatham, Village	\$26.75	4,000	\$5.00	130	Yes	3
Cheboygan, City	\$0.00	0	\$4.71	1,867	Yes	1
Clare, City	\$11.00	4,000	\$2.34	1,149	Yes	3
DeTour, Village	\$35.00	0	\$2.50	288	Yes	5
East Bay Township (Grand Traverse Co.)	\$20.36	4,488	\$3.09	1,416	Yes	1, 2
East Jordan, City	\$9.33	0	\$6.10	1,041	Yes	1, 2, 5
East Tawas, City	\$12.30	0	\$3.55	1,389	Yes	3
Elberta, Village	\$3.10	0	\$1.90	270	No	3
Elk Rapids, Village	\$17.50	0	\$1.00	1,277	Yes	
Ellsworth, Village	\$10.00	0	\$3.50	228	Yes	3
Elmwood Twp. - Greilickville (Leelanau Co.)	\$21.00	4,488	\$2.21	65	No	1, 2
Elmwood Twp. - Timberlee (Leelanau Co.)	\$31.00	3,500	\$2.34	122	No	1, 2
Empire, Village	\$10.50	2,000	\$1.45	348	Yes	1, 3
Escanaba, City	\$9.81	0	\$2.23	5,500	Yes	5
Evert, City	\$1.69	3,000	\$1.61	546	Yes	1, 5
Farwell, Village	\$19.81	3,500	\$1.00	425	Yes	
Filer Township (Manistee Co.)	\$11.02	0	\$1.53	400	Yes	1, 3, 6
Frankfort, City	\$10.24	0	\$2.27	933	Yes	3
Garfield Township (Grand Traverse Co.)	\$11.50	3,455	\$2.41	2,614	Yes	1, 2
Gaylord, City	\$7.25	0	\$0.94	1,800	No	2, 6
Germfask Township (Schoolcraft Co.)	\$35.00	0	\$0.00	90	Yes	3, 4
Grayling, City	\$7.45	0	\$2.40	800	Yes	1, 6
Harbor Springs, City	\$23.10	0	\$1.73	1,336	No	3, 6
Harbor Springs Area Sewage Disposal Authority	\$13.69	0	\$1.44	92	No	1, 4
Haring Township (Wexford Co. DPW)	\$10.30	0	\$3.10	313	Yes	3
Harrisville, City	\$14.67	3,333	\$0.70	330	Yes	1, 5, 6
Hillman, Village	\$12.25	3,333	\$2.00	314	No	3, 6
The Homestead (Leelanau Co.)	\$13.70	0	\$3.04	680	No	1, 3, 5
Kaleva, Village	\$15.00	0	\$0.00	300	No	1, 3, 4
Kalkaska, Village	\$12.50	0	\$1.20	900	Yes	3
Kingsley, Village	\$11.00	2,000	\$1.25	681	Yes	5
Lake City, City	\$23.00	0	\$0.00	800	Yes	1, 3, 4
Little Traverse Township (Emmet Co.)	\$20.00	0	\$0.00	456	Yes	1, 4

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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

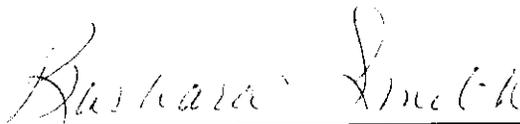
As provided by MCR 2.107(D) and MCR 2.114(A), on the date set forth below, I served a copy of TeriDee's Rebuttal Comments and a copy of this Proof of Service upon the following individuals via first-class mail with postage prepaid:

Ronald M. Redick
Mika Meyers Beckett & Jones, PLC
900 Monroe Avenue NW
Grand Rapids, MI 49503

Michael Homier
Foster Swift Collins & Smith PC
1700 E. Beltline NE, Suite 200
Grand Rapids, MI 49525

I declare that the foregoing is true and correct to the best of my information, knowledge, and belief.

Date: December 18, 2013



Barbara Smith