



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
ACTING DIRECTOR

STATE BOUNDARY COMMISSION

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

MINUTES
November 5, 2014

HILLSDALE COUNTY
DOCKET #14-AR-1

MEMBERS PRESENT

Mr. Dennis Schornack, Chairman
Mr. David Doyle, State Commissioner
Mr. James Stewart, State Commissioner
Mr. Timothy Dixon, Local Commissioner
Mr. Daniel Boyd, Local Commissioner

DEPARTMENT PERSONNEL ATTENDING

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

OTHERS IN ATTENDANCE

Mr. John Lohrsturfer, Litchfield Township Attorney
Mr. Kevin Shirk – City of Litchfield
Mr. Ed Smith – Mayor of City of Litchfield
Mr. Doug Terry – City of Litchfield Manager

1. CALL TO ORDER AND DETERMINATION OF QUORUM

Chairman Schornack called the meeting to order at approximately 2:41 p.m. and read the Opening Statement. A quorum was determined present at that time.

Providing for Michigan's Safety in the Built Environment

2. **APPROVAL OF AGENDA**

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

3. **APPROVAL OF DRAFT MINUTES**

A **MOTION** was made by Commissioner Stewart and seconded by Commissioner Doyle to approve the draft minutes for Hillsdale County from the June 11, 2014 meeting on Docket 14-AR-1. **MOTION CARRIED UNANIMOUSLY.**

4. **ADJUDICATIVE SESSION**

a. **Docket Activity:**

Mr. Kevin O'Brien, Office of Land Survey and Remonumentation, read through docket activity to date.

b. **Involved Parties:**

Mr. Ed Smith, Mayor of City of Litchfield, said that the letter sent by the property owner's attorney asking to rescind the annexation was sent in error. He said when they discovered it had been sent they contacted the owner of the property and she contacted her attorney immediately. He said the Property Owner, Laura Brubaker, is in financial difficulty so her attorney hasn't been paid and therefore hasn't responded to her requests. Mr. Smith said that the property and golf course is closed at this time.

Commissioner Stewart read aloud for the commission the letter dated October 8, 2014, from Ms. Brubaker's attorney, Aaron Bartel, referenced by Mr. Smith.

Mr. Chris Beland, Director, Office of Land Survey & Remonumentation, asked Mr. O'Brien to clarify who filed the petition.

Mr. O'Brien replied that this petition was requested by the City of Litchfield, not the land owner.

Mayor Smith said the land owner, Ms. Brubaker, wants that letter rescinded, and he can provide a letter from her stating that is her preference.

Chairman Schornack said he would have liked to have had the opportunity to speak with the property owner in person at the meeting, but she was not present. He asked if the City is withdrawing their request.

Mayor Smith answered saying no.

Mr. Doug Terry, City of Litchfield Manager, noted that in the documents that the City submitted that they had responded after the public hearing, as required, as did the Township and other interested parties, and that responses were based on the criteria set by the statute of what the SBC needs to review. The City maintains that all the information that they have provided is accurate. He referred to the Part 1 Map and described the City's motive to promote the opportunity for economic development. They would like to see the golf course and restaurant open and running. The City, through their Tax Increment Finance Authority (TIFA) has assisted Ms. Brubaker in developing the golf course. He said the City's TIFA is willing to take temporary ownership of the property until a new buyer can be found as the current property owner cannot continue to run it with her husband's recent passing. He said it is unfortunate that this attorney (Aaron Bartel), is probably not aware of Ms. Brubaker's contractual obligations to the City, and threw a "curveball" in sending the October 8th letter out asking to rescind the annexation. He said they understand that the Township would assert that it's an erosion of their boundaries, but the financial impact of what they would receive is approximately \$600 (annually through taxes) – what the City sees is the economic opportunity of allowing the golf course to continue to run and to serve the community. He said the City is one of the leading economic forces in Hillsdale County and he feels that this property would be a good venture and good investment for their community. That is why they are willing to take on ownership until they can sell it.

Commissioner Boyd asked how much money is owed to the City of Litchfield for this property.

Mr. Terry responded that the TIFA has lent approximately \$200,000, but they have not forced any type of payback at this point. They are working with her trying to find a new buyer to own and/or operate the property.

Commissioner Doyle asked if the City has located someone to operate the golf course and asked if they do will be in partnership with the new owner.

Mr. Smith said they would lease it out until they find a buyer. He said they have some interested parties, but no one confirmed.

Commissioner Boyd asked if there is any equity in this property for Ms. Brubaker.

Mr. Smith said they offered her a price and if they sell it for anything over that, she will get those overages after taxes and other obligations are paid. He said she has made a couple of payments to the bank and the City has helped with loans as well to keep the property out of foreclosure.

Commissioner Schornack said that the golf course does not need public water or sewer services and the restaurant has an operational well and septic field. He reasoned that the increase in taxes that would accompany an annexation would make

the property harder to sell, so he is having difficulty understanding the reasoning for this annexation.

Mr. Terry said they see their intervention as trying to save a viable business. If it were to be auctioned off, it would probably be turned into tillable farmland. Once they lose the golf course, it will be gone forever.

Commissioner Schornack said they may have already been lost as a golf course in the sense that it has not been maintained since September 15th.

Mr. Terry said that the City police responded to recent break-in of the clubhouse which is in the Township, even though the Township does not pay for City police protection. They do this because the County Sheriff takes a long time to respond. He went on to say that their motivation is honorable to try to keep the golf course and restaurant open for business. He said they have even used public money, raised through the industrial park, because they believe the golf course complements the industrial park. He said in this case, the intervention of local government to support a local business shines through this effort. He closed saying they are not doing it to make money, they just want to save the restaurant and golf course.

Commissioner Doyle asked how much the City TIFA invested in this property.

Mr. Terry answered saying approximately \$200,000.

Mayor Smith said that the property has been winterized, mowed and maintained to get it ready for winter.

Commissioner Stewart asked what the property owner's original motivation was to approach the City to file the annexation.

Mr. Smith answered saying police protection mostly; also, sewer, water and economic aspects. He said there is property along with the golf course that could be developed into housing.

Commissioner Stewart asked if all prospective buyers are looking to keep the property as a restaurant and golf course.

Mayor Smith answered saying yes, and there is property to possibly expand the golf course to 18-holes.

Chairman Schornack asked where they are ranked in the payoff of the property if the property went into foreclosure.

Mayor Smith answered that they are second, with the bank being first.

Commissioner Boyd asked what Ms. Brubaker's contractual obligations are to the City and TIFA and how that relates to the request for annexation.

Mr. Terry said Ms. Brubaker would support the City's request for annexation as part of her contractual obligation. He said that she was dissatisfied with the tax review at the Township level and that also lead to her request.

Commissioner Dixon asked that with the status of the plat of Hawthorn Heights having many vacant lots, then why would they need another property development.

Mayor Smith answered saying that they don't really, but they would like to save this golf course and it has the potential to be developed eventually if the buyer would like.

Mr. Terry said it was mentioned by potential buyers in the past that the property could be developed for home owners, but that is not the City's main goal; their main goal is just to keep the golf course and restaurant open.

Mayor Smith said that the money they are going to pay Ms. Brubaker to purchase the property plus a third loan that is out there for the property would be waived if the City purchases the property.

Mr. O'Brien asked what is to keep the City from going forward as is, as the owner of the property. He asked if there is something keeping the City from owning the property because it is in the Township.

Mr. Terry said no, but they would like to find a permanent owner eventually other than the City, but they do not want to see it tilled up and in foreclosure so they are willing to step up and purchase it in the meantime.

Mr. O'Brien asked if the annexation has to happen in order for them to sell the property.

Mayor Smith said no they are in the process of purchasing it now with or without annexation, but they still wish to have it annexed.

Commissioner Stewart asked what will happen if it is annexed after they purchase it and then they can't find a new buyer, would it become farmland then?

Mayor Smith answered saying they are not thinking along those lines, they don't want to think that far down the road; they want to see it opened and maintained.

Commissioner Stewart asked if the golf course has league play by companies from the industrial park.

Mr. Terry said yes, some.

Commissioner Doyle asked regardless of annexation, will the City purchase the property with the intent to keep it operating if possible.

Mayor Smith answered saying yes, absolutely.

Mr. John Lohrsturfer, Litchfield Township Attorney, said they are concerned that the City has received formal notice from Ms. Brubaker's attorney and neither he or she is attending this meeting and the City is saying the letter was a mistake and he wishes they had some clarification in writing in this case. He said he does not see a request or need for sewer or water which is typically the types of things the Commission looks at in terms of needed services to grant annexation. He said police services could enter into a contract if need be but there does not appear to be a need so far. He said in looking at future need, it is mostly speculation, because of the expense there is not going to be water or sewer extended for homes and there are no plans for other homes to be developed in the near future. He does not see where the City meets the criteria for annexation for this property. He is surprised they got into so much discussion about the TIFA. He said the Township is very concerned about all the financial obligations regarding that. The Constitution says you cannot use public funds for private services unless it's specific in the statute. He does not know why someone would go outside the TIFA district to finance something like this. He said he is very concerned with government going into this type of a thing to try to keep a private business open. He does not know of any community who has done that for a private enterprise. The City can operate the golf course on their own and trying to sell it to a private owner the increase in taxes that would come with an annexation will be more of an obstacle than a benefit. Possibly somewhere down the line there might be a need for annexation, but not right now, and he does not feel that the City has met their burden based on the criteria currently. He thinks selling it now as part of the Township with a lower tax rate would make more sense. The Township is also concerned that this is their only liquor license and the Township does not want to lose their one and only liquor license. He said there is no immediate need for extended services, 35 acres of the property is farm land. He proposed that if they do annex, to leave farm land out of it. He does not think the Commission should annex this property right now. He thinks the money, loans and ownership should be figured out first and possibly do an annexation later.

Mr. Mike Burns, Litchfield Township Supervisor, said he has been on the Township board for 20 years and they have been pretty tolerant of annexations over the years. However, they've become concerned recently about annexations because properties have remained stagnant. He said this golf course/restaurant is a great buffer between the City and the agricultural industry in that part of Township. He said TIFA has quite a sum of money and they are trying to expand their City limits with no benefit to the tax payers. He closed asking that the SBC turn down the annexation process.

Commissioner Stewart asked how many acres total are in the property proposed to be annexed.

Mr. O'Brien answered saying 117 acres.

Commissioner Stewart asked of that how much is golf course.

Mr. O'Brien answered saying 90 acres, the difference would be agricultural.

Commissioner Stewart asked if the agricultural section of the property is currently being leased.

Mr. Burns answered saying yes, to a local farmer for many years now.

Commissioner Stewart asked if there has been any discussion with Ms. Brubaker about not including the agricultural part of the land in the annexation petition.

Mr. Terry said no. The City has other areas within the City that are farmed.

Mayor Smith said the extra 35 acres were meant for expanding the holes in the golf course at some point.

Commissioner Doyle asked if there would be a possibility that the City would lose the golf course even if City were to buy it.

Mr. Smith answered that after a certain amount of time the City would not be able to continue to afford to run it without a buyer and that the theory is that the land is more valuable as farmland than as a golf course and restaurant.

Commissioner Doyle said it would be easier to find someone to buy the property at a much lower tax rate before annexation, and he's not sure annexation helps their cause to sell it.

c. Commission Discussion:

Commissioner Schornack said he was inclined to deny the petition because he does not see that there is a need for City services, and with no prospect of people to hook up to water and sewer. He thinks that if they are trying to sell the property it would be better to not annex so they can sell at a lower tax rate and he's also not sure it meets the section 9 criteria. He said Ms. Brubaker seems to be checked out of the situation and a City that wants 116 acres. However, he said he remembered that residents were concerned about a buffer zone at the public hearing and he thinks that's a valid concern.

Commissioner Dixon said overall he does not have a sense that this property needs to be annexed. However, he feels that a golf course in the area does bring in industry. He said the next closest golf course is about 15 minutes away in Jonesville.

Commissioner Boyd said the community is better off if the property remains a golf course. He said the question he has is what is the best way to keep it as a golf course. If this property is sold and loses its character as a golf course, it will never be back. He is sympathetic to the Township's concerns, but he is also sympathetic that they come from a poor county and anything that will help to bring business to our county is a good thing.

Commissioner Stewart said it makes more sense to him to have the whole golf course in the Township, but the City, who is the petitioner, asked for this to be annexed. He said why not deny it for now and if they find a new owner, then have the new owner request the annexation.

Commissioner Boyd said police protection is not insignificant to him. The County Sheriff is down to one road deputy, so it could take up to 15 minutes or more to get to the golf course when needed. He thinks it's important just to have the presence of police protection. He said he feels if he were a prospective buyer that would be an important consideration.

Commissioner Doyle said he just does not see how it meets the criteria, and does not see any other choice but to deny petition.

A **MOTION** was made by Commissioner Doyle and seconded by Chairman Schornack that the State Boundary Commission recommend to the Director of Licensing and Regulatory Affairs that the proposed annexation in Docket# 14-AR-1 be **denied**.

Commission discussion on the motion ensued.

Chairman Schornack called for a vote on the prior motion to deny annexation. MOTION FAILED 2-3 (Doyle & Schornack voting - YES; Stewart, Dixon, and Boyd voting - NO).

A **MOTION** was made by Commissioner Boyd and seconded by Commissioner Dixon that the State Boundary Commission recommend to the Director of Licensing and Regulatory Affairs that the proposed annexation in Docket# 14-AR-1 be **Approved**. **MOTION CARRIED 3-2 (Stewart, Dixon, & Boyd voting - YES; Schornack & Doyle voting - NO)**

5. ADJOURNMENT

A **MOTION** was made by Commissioner Doyle and Seconded by Commissioner Stewart to adjourn the session on Hillsdale County. **MOTION CARRIED UNANIMOUSLY.** Meeting adjourned at approximately 2:50 p.m.

APPROVED:

Dennis Schornack, Chairman
State Boundary Commission

Date

DRAFT