

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
STATE BOUNDARY COMMISSION

In the matter of:

Boundary Commission
Docket # 05-AP-1

**The proposed annexation of territory
in Lapeer Township to the City of Lapeer,
Lapeer County.**

**SUMMARY OF PROCEEDINGS,
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

SUMMARY OF PROCEEDINGS

1. On May 17, 2005, a petition designated as Docket #05-AP-1 was filed with the State Boundary Commission requesting the annexation of certain territory in Lapeer Township to the City of Lapeer, Lapeer County, as described in Attachment A.
2. On October 20, 2005, the State Boundary Commission examined the petition for legal sufficiency at an adjudicative meeting held in Lansing. The Commission declared the petition to be legally insufficient.
3. On January 19, 2006, the State Boundary Commission adopted the Summary of Proceedings, Findings of Fact and Conclusions of Law to reject this petition for legal sufficiency at an adjudicative meeting held in Okemos.

FINDINGS OF FACT

1. The Part I map does not meet the criteria for legal sufficiency as described in Boundary Commission Rule 123.25. It is not substantially consistent with the Part III legal description. The area identified on the Part I map is less than the area described in the Part III legal description, and the Part I map includes area not described in the Part III legal description.

The Part I map does not identify major geographic features, identifiable roads, and section corners and lines. In addition to the findings that will be presented later by Mr. Lambert (Office of Land Survey and Remonumentation), a line drawn on the unnamed lake in the southwest property of the area proposed for annexation is questionable. An excerpt of Michigan Riparian law for boundary lines of riparian property owners for inland lakes and streams is included in your docket information. This law states “a riparian on an inland lake or stream, in effect, owns the submerged soil fronting his property to the center of the lake or the thread of the stream. On lakes, this ownership would be wedge or pie-shaped.” Because the Part I map does not contain section lines and geographic features, it is difficult for staff to determine whether the boundary line of the lake drawn on the Part I map is consistent with the Part V legal description for this parcel.

2. In Part IIa, the petitioner is identified as Citizens for a Greater Lapeer. However, in Part IV, Mr. Thomas Kenny signs as president of Citizens for a Greater Lapeer LLC. Citizens for a Greater Lapeer LLC is not a record title holder of land identified in this petition. Boundary Commission Rule 123.25(4) requires that an annexation petition by a firm, corporation, or other formal organization shall contain documents necessary to show that the petitioner was authorized to file. Records on file with the State of Michigan indicate Thomas Kenny as the resident agent of Citizens for a Greater Lapeer LLC, and that the company is managed by members. In the Articles of Organization filed with the State of Michigan, the resident agent is identified as Matthew C. Quinn; these Articles are signed by Thomas Kenny, Member. The Michigan Limited Liability Company Act (PA 23 of 1993 - MCL 450.4103[2]) states:

“Any document other than original articles of organization required or permitted to be filed under this act that this act requires be executed on behalf of the domestic limited liability company shall be signed by a manager of the company if management is vested in 1 or more managers, by at least 1 member if management remains in the members, or by an authorized agent of the company.... The document shall state the name of the person signing the document and the capacity in which he or she signs beneath or opposite his or her signature.”

No documentation was included to indicate that Mr. Kenny is authorized to act on behalf of either Citizens for a Greater Lapeer, Citizens for a Greater Lapeer, LLC, or on behalf of the other corporate or individual entities listed in Part IIa and Part V, or that Mr. Kenny is president of Citizens for a Greater Lapeer, LLC.

3. In Part V of an annexation petition, the petitioner is required to provide record title for the property proposed for annexation. This petition contains numerous documents such as legal descriptions, warranty deeds, quit claim deeds, and land contracts by persons who claim property ownership. However, the documentation submitted, such as unrecorded deeds, partial deeds, or the lack thereof, is insufficient to accurately substantiate record legal title.
 - a. Nine Part V's were submitted. Seven of these parts were signed by persons acting on behalf of a legal entity. No documentation was provided to substantiate that the seven people who signed the Part Va pages were authorized to sign or act on behalf of the entity for which they signed. (Boundary Commission Rule 123.25(4) requires that organizations for which an officer or other authorized agent initiates a petition, it shall be documented that the proper governing body of that organization was fully informed before approving the annexation petition; also, that an annexation petition by a firm, corporation, or other formal organization shall contain copies of resolutions, meeting minutes, correspondence, transmittal letters, or other documents that are necessary to show that the petitioner was authorized to file.)
 - b. Fritz Properties of Lapeer LLC claims legal title to four parcels--a total of 41 acres. Mr. Thomas Kenny signed Part Va as a member of Fritz Properties of Lapeer, LLC. The Articles of Organization on file with the State of Michigan are signed by Thomas A. Kenny, managing member. The petition does not contain an instrument of authorization for Mr. Kenny to sign or act on behalf of Fritz Properties of Lapeer, LLC. Of the documents included for property ownership, a recorded Quit Claim Deed was provided for one parcel, an unrecorded warranty deed was provided for two parcels, and an unrecorded warranty deed was provided for another parcel. The property described in the unrecorded title company warranty deed transfers property to Fritz Properties of Lapeer LLC, excluding an existing two story home and pole barn building. These two buildings appear to be included in the Part I map area proposed for annexation and the Part III legal description. Also, a referenced recorded deed to the Michigan Department of Transportation was not included.
 - c. Kellie L. Krane signed Part Va as a member of Krane Properties LLC. According to their records on file with the State of Michigan, Ms. Krane is listed as resident agent and member/manager. The Articles of Organization state that the company will be managed by managers. The petition does not contain an instrument of authorization for Ms. Krane to sign this petition or act on behalf Krane Properties LLC. Also, Part V provides three parcel identification numbers, two of which cannot be identified on the Part I map (012-017-033-00 and 012-017-033-10). These are two of the three parcel numbers listed on the recorded quit claim deed. The recorded legal description appears to be fairly consistent with the area identified as parcel 012-017-028-10 on the Part I map. This parcel is also identified in the Part V property associated with Ray Clemens Properties LLC (see next section). Further, Part V refers to "part of" a certain parcel—this certain parcel is the property identified in the following section; however, the "part of" could not be identified in the legal description provided or associated with the Part I map.

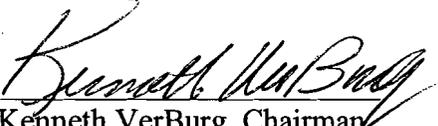
- d. Mr. Robert Lawrence signed Part Va as a member of Raco Associates, LLC. The recorded title provided conveys this property to Ray Clemens Properties LLC. Records on file with the State of Michigan identify Ingrid Connell as the resident agent and general partner of Raco Associates, LLC, and Thomas Kenny as trustee, member, and resident agent of Ray Clemens Properties LLC. No documentation was provided in the petition to indicate that Mr. Lawrence was authorized to act or sign on behalf of either Raco Associates LLC or Ray Clemens Properties LLC. The legal description for the recorded warranty deed appears to match with the area identified for parcel 012-017-028-00 on the Part I map.
- e. Mr. Thomas Kenney signed Part Va as a member on behalf of Ray Clemens Properties, LLC. The Articles of Organization of Ray Clemens Properties, LLC, on file with the State of Michigan, state that the LLC shall be managed by its members, and identifies Mr. Thomas Kenny as trustee, member, and registered agent. No documentation was provided in the petition to indicate that Mr. Kenny was authorized to act or sign on behalf of Ray Clemens Properties LLC. In the documents provided, Raco Associates LLC claims legal title to the four parcels listed on Part V. Record legal title to one parcel was not included in the petition. A recorded quit claim deed grants from the Michigan Department of Transportation to Raco Associates, a co-partnership, an undivided ½ interest, and Elmer H. Taylor, Inc., a Michigan corporation, an undivided ½ interest in two of the parcels. A recorded deed grants Raco Associates, a Michigan partnership, one parcel. Neither of these entities signed the petition nor was authorization for representation provided.
- f. The Part V and Va signed by George and Claudia Roberts contains one unrecorded quit claim deed and one recorded quit claim deed. The unrecorded deed dated in 1985 transfers property from Raco Corporation to Roberts Buick Pontiac Inc, and bears the signature of Ingrid Connell-Hasse, president of Raco Corporation. The recorded deed dated 1993 transfers property from Roberts Buick Pontiac Inc to George and Claudia Roberts.

It appears that another party signed Part Va for Ingrid Connell; if so, the signature is not legible, and no authorization was provided to indicate the person is authorized to sign on her behalf. Title is claimed for the two parcels identified on Part V. Record title for a land contract was provided for parcel 2. Reference to a recorded deed for the I-69 expressway right of way was not provided. An unrecorded title document was provided for parcel 2. Reference to a land contract purchase between Ingrid Connell (purchaser) and Ralph and Cynthia Diffenderfer (owners) was not provided. One of the parcel numbers on Page V (44-012-017-008-01) does not correspond to the parcel number (44-012-017-008-10) listed on both the Part I map and the unrecorded title provided; however, the legal description appears to match.

- g. Part V for the Saad and Eymad Bahri contains a recorded deed and legal description.

CONCLUSIONS OF LAW

1. The Findings of Fact in this docket support the unanimous decision of the Commission to **reject** this petition for legal sufficiency on the ground that it fails to conform to the Boundary Commission Act and Administrative Rules.
2. Pursuant to Section 8 of Public Act 191 of 1968, as amended, and Boundary Commission Administrative Rule R 123.47, a copy of this Summary of Proceedings, Findings of Fact and Conclusions of Law shall be transmitted to the petitioner, and to the clerks of the City of Lapeer, the Township of Lapeer, and the County of Lapeer.


Kenneth VerBurg, Chairman

January 19, 2006