

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 MOTION
PURSUANT TO RULE 123.34 TO SUPPLEMENT RECORD

Introduction

In their 30-day submission, Clam Lake Township and Haring Township (the “Townships”) claimed that they had remedied the deficiencies of their prior, sham Act 425 Agreement and that this time, “**there are no e-mails** or other communication showing improper motive.” Certainly this Commission will recall the Townships proudly boasting that “the City can point to **no emails** or other communications between Haring and Clam Lake officials, suggesting that there was a motive to interfere with annexation. **They do not exist.**” (Townships’ 30-Day Submission, p. 14, emphasis added.)

In fact, e-mails do exist, and they are attached to this motion. The e-mails undeniably show that the Townships contrived the new Act 425 Agreement to again specifically thwart TeriDee’s annexation petition and to prevent economic development of the subject property. Either the Townships or their counsel, or both, deliberately concealed the e-mails from this Commission. The e-mails and the Townships’ obvious bad faith establishes that the “new and improved” Act 425 Agreement is, once again, nothing more than a sham, and thus the Act 425 Agreement does not deprive this Commission of its jurisdiction to consider the annexation

petition. The City requests that this Commission supplement the record to consider this critical evidence of the Townships' motives.

Argument

I. E-mails exchanged between the Townships' officials show that the Act 425 Agreement is a sham and that the Townships intended to block economic development, and the Townships deliberately concealed those e-mails from this Commission.

Attached to this motion are numerous e-mails between the Townships' officials, including Haring Township Planning Commissioner George Giftos, Clam Lake Township Supervisor Dale Rosser, and Haring Township Supervisor Bob Scarbrough. The authors of the e-mails should be familiar to this Commission because they are the same officials who exchanged e-mails shortly before the first Act 425 Agreement was hastily approved in 2011. This Commission relied on those e-mails and concluded that the Act 425 Agreement was a sham and did not divest this Commission over the 2011 petition.

In this annexation proceeding, the Townships proudly boasted that this time, "the City can point to no e-mails" showing an intent to thwart annexation because "[t]hey do not exist." (Townships' 30-Day Submission, p. 14.) The City initially responded that "[t]he lack of incriminating e-mails shows only that the Townships' officials were more cautious in their written communications this time." (City's 7-Day Rebuttal, p. 8.) Apparently, the Townships were *not* more cautious, and they once again put their bad-faith motives in writing – but this time it is even more egregious because they hid those e-mails from this Commission by falsely claiming they did not exist. The City requests that this Commission supplement the record with these important e-mails.

A. The e-mails between the Townships' officials establish that the new Act 425 Agreement was intentionally designed to thwart TeriDee's annexation petition.

The Townships have falsely told this Commission that “[t]he timing of their Act 425 Agreement was not influenced” by the fact that TeriDee “might reapply [for annexation] in June 2013.” (Townships’ 30-Day Submission, p. 19.) The Townships claim that a new annexation petition was a “well-known fact,” and that the Township officials were “all quite able” to predict that a new petition would be filed. (Townships’ 30-Day Submission, p. 18.)

But the e-mails show that a “rumor” about a new annexation petition spurred the Townships to begin throwing together a new, illusory Act 425 Agreement. Specifically, an e-mail from George Giftos (Haring Township Planning Commissioner) to numerous individuals, including Dale Rosser (Clam Lake Township Supervisor) and Mike Lueder (Clam Lake Township Downtown Development Authority Vice-Chair), dated April 15, 2013, states as follows in relevant part:

“**New developments** in an issue we thought had been put to rest . . .

The rumor is that Teri-Dee will re-file for annexation to the City on June 4. How can that happen, you ask? I thought we had 2 years before they could file again. Well, we did, but it’s 2 years from the original date of their filing and that was June 4, 2 years ago! If they fast-track the project and the State Boundary Commission approves, Terri-Dee [sic] could conceivably be all set to go by the end of summer.”

(Exhibit A, emphasis added.) This e-mail was sent just four days after a City official disclosed that TeriDee would be filing a new annexation petition. (City’s 30-Day Submission, p. 6.) Moreover, Mr. Giftos’s characterization of the “rumor” as a “new developmen[t]” certainly does not suggest that it was a “well-known fact,” as the Townships now allege.

In any event, Mr. Giftos had a plan for the Townships to thwart the annexation, which he included in the same e-mail message:

Now, **what are our options?** As I see it, the reason that the 425 agreement with Haring TWP was thrown out by the State Boundary Commission was that it was **deemed to be a**

ploy and had been filed AFTER the filing by Terri-Dee [sic] for annexation. If we were to pursue this again and got it done BEFORE June 4, that argument would no longer apply."

(Exhibit A, emphasis added, capitalization in original.) This e-mail shows that on April 15, 2013 – just days after they learned of TeriDee’s forthcoming petition – the Townships were already devising a scheme to block the annexation by approving a new Act 425 Agreement. Mr. Giftos noted that the previous sham Act 425 Agreement failed because it was “deemed to be a ploy and had been filed AFTER” the annexation petition, but if the Townships were to approve a new Act 425 Agreement *before* the annexation petition were filed, then the Townships would be able to thwart annexation. The Townships’ intentions could not be clearer.

The e-mail continues on to discuss Clam Lake’s negotiations with Haring Township for sewer services, but Mr. Giftos stated that “[t]he only drawback to this is that **these services are not immediately available** but will be within a few years . . .” (Exhibit A, emphasis added.) This bolsters the City’s claim that Haring will not be able to provide services immediately. Conversely, the City stands ready to provide immediate, economical water and sewer services.

Giftos also noted in the e-mail that “Clam Lake TWP is planning on meeting with their attorney to investigate what other options may be available to them in a closed session Wednesday night [April 17, 2013]. Haring TWP will have a special meeting at 3PM tomorrow (Tuesday) [April 16, 2013], which I will attend.”¹ (Exhibit A.) Shortly after Clam Lake’s meeting, on April 21, 2013, George Giftos e-mailed Dale Rosser:

Hi Dale,

What was the result of the meeting between you, the Clam Lake TWP attorney and Bob Scarbrough this week? **I know we don’t want to tip our hand** but is there anything I can pass along as far as the course of action we plan to take is concerned?

¹ It is worth noting again for the Commission that Mr. Ronald Redick represents both Clam Lake Township and Haring Township.

George

(Exhibit B, emphasis added.) Mr. Rosser then sent Mr. Giftos a coy response on April 24, 2013:

George,

Nothing to say at this time. We were just exploring options that may be available to us.

hopefully [sic] more to come.

Dale

(Exhibit C.)

Later, on May 4, 2013, Mr. Giftos sent a message to Mr. Rosser and Haring Township Supervisor Bob Scarbrough, discussing his conversation with Clam Lake Township DDA Vice-Chair Mike Lueder. (Exhibit D.) Mr. Giftos explained that Mr. Lueder “**wants me to continue to oppose any commercial development of the TerriDee [sic] property, an[d] if that goes down to defeat, so be it. We at least have fought the battle and been consistent.” (Exhibit D, emphasis added.)**

Mr. Giftos also admitted that the PUD requirements proposed by the Townships in the Act 425 Agreement would thwart economic development of the TeriDee property, not promote it:

I also told him my personal feeling that if I were bringing a retail business to Cadillac, and I were to investigate this PUD with its restrictions, I would choose to locate at Boon Road where the other commercial development is going on, so I feel that **while we would allow commercial development at M55, it wouldn't happen.**

(Exhibit D, emphasis added.) Thereafter, the Townships approved the new Act 425 Agreement with those restrictive PUD requirements.

Although the Townships' counsel claims that the new agreement “represents the fruition of a long-established, thoroughly-evaluated plan,” the e-mails paint a very different picture. (Townships' 7-Day Submission, p. 7.) These e-mails show that the new Act 425 Agreement was

petition. The Townships intentionally approved the agreement before the deadline for filing the annexation petition so that it would not look like a “ploy” – which is exactly what it is.

The e-mails further make clear that the Act 425 Agreement was designed to **block** economic development, not promote it. Mr. Giftos openly stated that if he were a commercial developer, he would **not** develop the TeriDee property with the restrictive PUD requirements in the Townships’ Act 425 Agreement. (Exhibit D.) The Townships knew that economic development simply “**wouldn’t happen**” under their sham Act 425 Agreement. In fact, they openly opposed “**any economic development**” of the TeriDee property. These e-mails confirm that once again, the Townships have manufactured a sham Act 425 Agreement in a misguided effort to deprive this Commission of its jurisdiction because they simply do not want the property developed.

B. The Townships knowingly concealed the e-mails from this Commission.

In their filings with this Commission and at the public hearing, the Townships (through their attorney, Ronald M. Redick), repeatedly and adamantly claim that there are “**no e-mails** or other communication showing improper motive” by the Townships. Yet the e-mails discussed above clearly show the Townships’ bad-faith motives for approving the Act 425 Agreement. The Townships never sought to correct the record or disclose these damning e-mails to this Commission, even though the Townships have supplemented the record twice with other materials.

The Townships and Attorney Redick knew the e-mails existed, but they only recently provided the e-mails to TeriDee. In a Wexford County Circuit Court civil action between TeriDee and the Townships, the Townships recently provided discovery responses on that – for the first time – disclosed the existence of the e-mails. The Townships have had numerous

opportunities to disclose these e-mails to this Commission, but they never have. Instead, they lied about the existence of the e-mails, presumably because the e-mails so plainly reveal the Townships' bad faith in approving their sham Act 425 Agreement. These are exactly the kinds of e-mails that this Commission previously relied upon to conclude that the Townships' Act 425 Agreement was a sham, and this Commission should reach the same conclusion here.

C. The Townships' ongoing amendments to the Act 425 Agreement further show that the agreement is a sham.

As discussed above, the Townships quickly threw together their sham Act 425 Agreement in a matter of weeks, solely to thwart TeriDee's annexation petition. Since then, the Townships have amended the Act 425 Agreement multiple times in an effort to fix its numerous deficiencies and to try to make it appear lawful. In particular, the Townships have amended the agreement in response to decisions in the Wexford County Circuit Court lawsuit filed against the Townships by TeriDee. The Townships then filed a motion to supplement the record in this proceeding with the changes to their ever-evolving sham agreement.

The numerous amendments to the Act 425 Agreement are further evidence that the agreement was *not* the result of a "long-established, thoroughly-evaluated plan," as the Townships claim. Rather, the Townships scrambled to sign an illusory agreement that was designed to prevent commercial development of TeriDee's property. The Act 425 Agreement is a sham, and it does not strip this Commission of its authority over the annexation petition.

Conclusion

The Townships have disingenuously tried to convince this Commission that *this time*, they have good intentions. *This time*, they are not trying to block economic development of the property. *This time*, they did not approve the Act 425 Agreement solely to thwart annexation.

But the Townships concealed and lied about the existence of e-mails that reveal the Townships' true intentions. Those e-mails show that the Townships hurried to approve their new Act 425 Agreement before the annexation petition was filed to improve their chance of defeating the annexation. More importantly, the e-mails show that the Townships' officials are determined to "oppose any economic development" of the TeriDee property – and if "that goes down to defeat, so be it." The Townships will fight the battle, apparently at any cost.

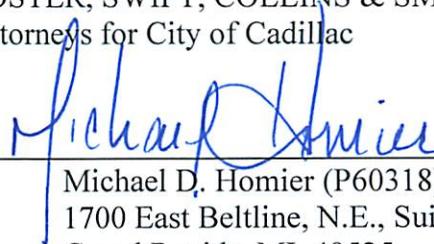
The Townships' Act 425 Agreement is a sham, and the Townships know it. The City requests that this Commission supplement the record with these e-mails and conclude, as it did in the last annexation proceedings, that the Townships' sham Act 425 Agreement does not deprive this Commission of its jurisdiction to consider TeriDee's annexation petition.

Respectfully submitted,

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

Date: April 4, 2014

By:



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

EXHIBIT A

One thing I find interesting is that the last time the annexation to the City was attempted, the Mayor and several City Council Members stated publicly that they were not pursuing the annexation and didn't really want it. It looks like things have changed and the true colors are beginning to show.

Clam Lake TWP is planning on meeting with their attorney to investigate what other options may be available to them in a closed session Wednesday night. Haring TWP will have a special meeting at 3PM tomorrow (Tuesday), which I will attend.

Third, there is the issue of County-wide zoning. The county has suggested that it may do away with zoning and leave it up to the individual townships. Haring already has zoning and its master plan mirrors the county master plan. Clam Lake does not have their own zoning, but could adopt the county plan. That would require hiring a zoning administrator, at least part-time.

Second, Clam Lake TWP could decide to end negotiations with the City and decide to negotiate with Haring TWP for sewer services. The only drawback to this is that these services are not immediately available but will be within a few years as Haring TWP also gave up negotiating with the City because the demands from the City kept changing. Haring is going ahead with plans to construct their own wastewater treatment plant.

Now, what are our options? As I see it, the reason that the 425 agreement with Haring TWP was thrown out by the State Boundary Commission was that it was deemed to be a ploy and had been filed AFTER the filing by Terri-Dee for annexation. If we were to pursue this again and got it done BEFORE June 4, that argument would no longer apply. That's one possibility.

As reported by the Cadillac News, Clam Lake TWP has been negotiating with the city of Cadillac in order to obtain sewer services at the south end of the City and extending to McGuire's Resort.....eventually extending west to 15. The TWP had been informed that the original estimates for the additional financing.....BUT.....in the last few days, the City has reverted to a ploy, used so often in the past.....annexation. The City is now holding Clam Lake TWP hostage and demanding that the parcel on the southeast corner of the M55/131 interchange must be annexed to the City, most likely along with those homes along Crosby Road which had been involved with the last annexation request so that the result would be a contiguous boundary with the City. The rumor is that Terri-Dee will re-file for annexation to the City on June 4. How can that happen, you ask? I thought we had 2 years before they could file again. Well, we did, but it's 2 years from the original date of their filing and that was June 4, 2 years ago! If they fast-track the project and the State Boundary Commission approves, Terri-Dee could conceivably be all set to go by the end of summer.

New developments in an issue we thought had been put to rest:

From: "George Gifos" <ggifos@me.com>
To: "Coe-Vokes Carol" <advanccerality@bignorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcussse" <smarcussse@charter.net>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <wlrnce@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <marldic@charter.net>, "Sandy Deming" <sandymdeming@att.net>, "Nancy Denison" <ndeni1@issm.org>, "Ken Tacoma" <KennethTacoma@hotmail.com>, "Larry Luthaner" <jluthane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <lhubb@yahoo.com>, "Helen Kay Quinn" <rhkquinn@hotmail.com>, "Dale Rosser" <DRRosser@charter.net>, "Bill & Jan Lucas" <bjucc@prodigy.net>, "Dale & JoEllen Voice" <dvoice47@hotmail.com>, "Melissa Holmes" <mjc-h7@charter.net>, "Ross & Teri Meyering" <rmeyering@charter.net>, "Charles & Marcia Wilson" <cmwilson2@charter.net>, "Marybeth" <marybeth49601@yahoo.com>, "Keith Vandervel" <kvav20@hotmail.com>, "Mike & Kathy Lueder" <MkLueder@CharterMI.net>, "Al Meyer" <ameyerve@gmail.com>, "Anton Coliasacco" <acoliasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Joe & Tina Piotrowski" <sheddman@msn.com>, "Nate & Peg Swiger" <pswiger@hotmail.com>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson" <bruceconradson@att.net>, "Mark Mckeown" <mckeowns@charter.net>
Date: 04/15/2013 09:58:02 EDT
Subject: Here we go again.....

: Here we go again.....

Apparently the City now wants the annexation. I've seen this happen repeatedly in the years I've lived in the area.

Perhaps one of these years, we'll have a nice peaceful Spring and Summer, but it doesn't look like it's going to be this year!

Take a look at the addresses above. If you see any of them which are outdated, please advise me with the corrected email addresses. If you know of some we should add, let me know.

EXHIBIT B

From: "George Giftos" <gcgiftos@me.com>
To: "Dale Rosser" <DHRosser@charter.net>
Date: 04/21/2013 08:13:29 EDT
Subject: **Meeting outcome**

Hi Dale,

What was the result of the meeting between you, the Clam Lake TWP attorney and Bob Scarbrough this week? I know we don't want to tip our hand but is there anything I can pass along as far as the course of action we plan to take is concerned?

George

EXHIBIT C

From: dhrosser@charter.net
To: "George Giftos" <gcgiftos@me.com>
Date: 04/24/2013 01:09:58 EDT
Subject: **RE: Meeting outcome**

George,
Nothing to say at this time. We were just exploring options that may be available to us.

hopefully more to come.
Dale

On Sun, Apr 21, 2013 at 8:13 AM, George Giftos wrote:

Hi Dale,

What was the result of the meeting between you, the Clam Lake TWP attorney and Bob Scarbrough this week? I know we don't want to tip our hand but is there anything I can pass along as far as the course of action we plan to take is concerned?

George

EXHIBIT D

From: "George Giftos" <gcgiftos@me.com>
To: "Bob Scarbrough" <caroscar@netonecom.net>
Cc: "Dale Rosser" <DHRosser@charter.net>
Date: 05/04/2013 08:33:24 EDT
Subject: Mike Lueder

Bob, Dale,

I had a looong phone conversation with Mike Lueder last night. Basically, he has met with the city who tells him that they will accept the annexation of the TerriDee property with the restrictive PUD guidelines which are proposed when annexed to Haring TWP. The City has told him that many of the demands he has heard just weren't true and that our attorney is stirring up the pot in order to increase his billing to us. He's accused me of throwing all of the people who have relied on me under the bus. He doesn't want sewer service to the DDA to cost \$700,000 when that same level of service could be obtained immediately from the city for much less. He met with the City yesterday and tells me that the City wants to meet with me and will put whatever demands we insist on in writing.

OK, that was his side of the conversation. Unfortunately, the gist is that we are all being told about several situations when all the information is second hand and not necessarily accurate. According to Mike, we have to stop pursuing this based on emotion and history.

Now my side: You must look at history, which then results in some emotions being factored in, because even though the people have changed, history shows us that the City does not bargain in good faith and that meeting with them is just an exercise in futility. He wants me to continue to oppose any commercial development of the TerriDee property, and if that goes down to defeat, so be it. We at least have fought the battle and been consistent. He pointed out that a PUD can be changed in the future and that this PUD was only a tool to allow the future development of this project by TerriDee. I agreed that a PUD can be changed, but since I was on the Haring TWP Planning Commission and knew all the members, at least while we were on the Commission, I didn't see us altering our position on this PUD. I told him that I would not meet with the City, but that if they were sincere, which I really doubt, get me something in writing from them to that effect and I would pursue it from there. This is the City which told me last year that they didn't want that property, but now they do. I also told him my personal feeling that if I were bringing a retail business to Cadillac, and I were to investigate this PUD with its restrictions, I would choose to locate at Boon Road where the other commercial development is going on, so I feel that while we would allow commercial development at M55, it wouldn't happen.

I'll keep you both informed as to further developments, but I thought you should be aware of this situation which currently exists.

George

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 4th day of April, 2014, I served a copy of the City of Cadillac's Motion Pursuant to Rule 123.34 to Supplement Record, 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, Randall Kraker, Varnum LLP, P.O. Box 352, Grand Rapids, MI 49501 and Brion Doyle, Varnum LLP, P.O. Box 352, Grand Rapids, MI 49501, by e-mail.

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

Date: April 4, 2014


Beverly Albright