



RICK SNYDER
GOVERNOR

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

STEVE ARWOOD
DIRECTOR

STATE BOUNDARY COMMISSION

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

MINUTES
April 16, 2014

WEXFORD COUNTY
DOCKET #13-AP-2

MEMBERS PRESENT

Mr. Dennis Schornack, Chairman
Mr. David Doyle, State Commissioner
Mr. James Stewart, State Commissioner
Mr. Edward Van Alst, Local Commissioner
Mr. Steven Cross, 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
Mr. Patrick Fitzgerald, Deputy Assistant Attorney General

OTHERS IN ATTENDANCE

Mr. Randall Kraker, Attorney for the Petitioner
Mr. Michael Homier, Attorney for the City of Cadillac
Mr. Ron Redick, Attorney for Charter Township of Haring and Clam Lake Township
Mr. Dale Rosser, Clam Lake Township Supervisor
Mr. Marcus Peccia, City Manager for the City of Cadillac
Mr. Arthur Stevens, Mayor Pro-Tem for the City of Cadillac

1. CALL TO ORDER AND DETERMINATION OF QUORUM

Chairman Schornack called the meeting to order at approximately 3:10 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 Van Alst to approve the agenda for the meeting. **MOTION CARRIED UNANIMOUSLY.**

3. **APPROVAL OF DRAFT MINUTES**

A **MOTION** was made by Commissioner Doyle and seconded by Commissioner Van Alst to approve the draft minutes for Wexford County from the August 13, 2013 meeting on Docket 13-AP-2. **MOTION CARRIED UNANIMOUSLY.**

4. **ADJUDICATIVE SESSION**

a. **Docket Activity:**

Chairman Schornack asked petitioner and parties to please be brief in their comments and to leave time for commission discussion.

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

b. **Involved Parties:**

Mr. Randall Kraker, Attorney for the Petitioner, talked about the location of the property and how perfect it is for commercial development. He said his clients have been trying to develop this parcel for 7 years. He said that the petitioner has the only developable vacant property within the 425 Conditional Transfer area, yet the developers did not request and were not contacted prior to the signing and filing of this agreement. Mr. Kraker discussed how he feels the 425 Conditional Transfer was rushed through to deprive the commission of their statutory jurisdiction to decide the merits of the annexation and to impede the economic development of this property. He stated that the commission had already made a decision to reject a 425 Conditional Transfer in this matter once previously, and he feels that nothing has changed. That this agreement, similar to the agreement rejected by the Boundary Commission in the Casco Twp. case, has no specific economic development project as a subject of the agreement. He went on to say that this agreement has page after page of zoning restrictions, and that 1984 PA 425 was adopted by the legislature so that townships could cooperate in and foster the development of a specific identified project, not to create a set of restrictions to impede development. He referred to emails between officials of Clam Lake Township, the Charter Township of Haring and area residents that make clear that the intention of the 425 Conditional Transfer was to avoid annexation to the City of Cadillac. He referred to cost studies to provide the needed water and sewer services from the Charter Township of Haring through the 425 Conditional Transfer and said that the capitol costs alone are at least a million and a quarter dollars higher than getting the services from the City of Cadillac and that the services from the City would be available immediately. He

went on stating that the 425 Conditional Transfer was rushed through so that it would be ready before Teri-Dee filed the petition, and that this agreement, as well as the previous 425 Conditional Transfer, are both “shams.” Mr Kraker closed by saying that the annexation should be approved because it meets several of the criteria in the SBC Act, especially the “present cost and adequacy of governmental services in the area” and “the practicability of supplying such services in the area.” He also pointed out that the criteria to be considered in the SBC Act and 1984 PA 425 are identical and that Clam Lake Township has, by their action of attempting to transfer the property to the Charter Township of Haring without any revenue sharing, agreed that this annexation meets the necessary criteria.

Mr. Mike Homier, City of Cadillac Attorney, talked about the “damning” emails from the townships, how they stated at the public hearing that there were no such emails and that twice now the Townships have supplemented this record and not once did they disclose to this commission the existence of these emails. He referred to specific emails from Mr. George Giftos, a member of the Charter Township of Haring’s Planning Commission, to a group of people including the Township Supervisors. He quoted one email from Mr. Giftos, regarding the zoning restrictions in the 425 Conditional Transfer, “these restrictions are so restrictive that no one will ever locate there.” He referred to another email from Mr. Giftos to the Clam Lake and Haring Township Supervisors saying “We’re gonna fight the good fight and continue to oppose any commercial development on the TeriDee property.” Mr. Homier said these emails are not honest, they aren’t saying the 425 Conditional Transfer is good for the township and we want to develop this property – they are saying we don’t want it here, and this 425 Conditional Transfer is designed around that concept. The emails were concealed from this commission, these townships have no credibility in relation to these emails – it’s a fabrication. He said one thing particularly disturbing that they discovered in the emails is an email from Probate Judge Tacoma who appointed the local members to the Boundary Commission. He said he suspects that Local Commissioner Van Alst regularly appears before Judge Tacoma in his legal practice, which he sees as a conflict of interest. He said this is an area in desperate need of jobs and this project would create jobs and the city has the means to provide utilities to it. He closed saying this annexation is good for the area and the community.

Mr. Arthur Stevens, Mayor Pro-Tem for the City of Cadillac, said that he takes some responsibility in what led to the “email campaign” because he had been “too transparent and open” and had told Clam Lake Township that TeriDee was considering filing an annexation petition with the Boundary Commission. He now realizes that after he shared that information, it resulted in the emails and the effort of a 425 Conditional Transfer being designed quietly, privately, and quickly without the involvement of the developers. The City of Cadillac has approved a resolution supporting the annexation of this area and they feel they have the capacity to service the project after the developers go through the process with the proper committees to get approval. The City thinks that they need to involve the business owner in the process. This is something that will help the area with jobs. He shared a concern that this 425 Conditional Transfer could be used

as an example throughout Michigan as a way to stop development along municipal boundaries. He closed by asking on behalf of the City of Cadillac that the commission consider the annexation request and deny the 425 Conditional Transfer.

Mr. Marcus Peccia, City Manager for the City of Cadillac, stated that the intersection of this property is closest to the city's population base and its urban core. This annexation itself would be the best way to facilitate the most rapid commercial development. The City has a strong industrial base, but they need this type of commercial development to continue to support growth and supply jobs to the community. He said this development could bring anywhere from 500-1000 jobs where the unemployment rate is still very high. Even a couple hundred jobs would make a huge difference in this community. He said the City of Cadillac needs and supports this development; they have on file a resolution for support of the petition for annexation. He said they are ready to provide the needed infrastructure immediately. He closed asking that the commission consider approving the petition.

Mr. Ron Redick, Attorney for the Charter Township of Haring and Clam Lake Township, referred to the question of whether the township agreement is interfering with the annexation. He said it has to interfere because the legislature says that when a contract is in effect covering the land, annexation shall not take place over those lands. He said the legislature who created the Boundary Commission has a ban on annexations where a valid 425 Conditional Transfer is in effect. He talked about the role of judges and the standards to which they are held and their decisions are made. He requested that the commission be very mindful of its limited jurisdiction. He said there is no support in the law for the Commission to weigh a 425 Conditional Transfer against economic development. He said he agrees that the location is very important to the Commission's decision. The property is located entirely in the township, separated from the city by nearly ½ mile due to the width of the interchange. He said the Property has no connection to the city and that everything that surrounds it is Township jurisdiction. Mr. Redick went on to address the emails and said that there were zero emails going back and forth between the two townships, only from members of the neighborhood who have no decision making ability, except for Mr. Giftos who has nothing to do with the 425 Conditional Transfer. He said that the Township Board cannot control the emails they receive, and that the only response made was from Clam Lake Supervisor Dale Rosser saying "I have nothing to say, we are exploring our options." He closed saying the neighborhood does not want the development, so of course they were sending emails trying to oppose it.

Mr. Dale Rosser, Clam Lake Township Supervisor, said that their primary goals in entering into the 425 Conditional Transfer were first to create a cooperative sharing environment in order to obtain public water and sewer services for the Clam Lake Township Downtown Development Authority district (DDA) which is south of this site. Clam Lake Township was in negotiation with the City of Cadillac but the negotiations were not fruitful, so this 425 Conditional Transfer with Haring is another source for public services to the DDA. Secondly, the agreement was to ensure that any

development in that neighborhood would be subject to adequate zoning to protect the surrounding residential neighborhoods. He addressed the emails saying they were not forwarded to anyone, nor was the content shared with the Township Boards, and they didn't influence his thinking or decision making in this matter.

Commissioner Stewart asked Mr. Homier to respond to Mr. Redick's comments about the emails. Mr. Homier said that Mr. Redick had the facts wrong. Mr. Giftos was the "central hub" of the emails and that he included the Clam Lake and Haring Township Supervisors in his emails. He read in part from one of the emails from Mr. Giftos stating that the reason the Boundary Commission rejected the previous 425 Conditional Transfer was that it was seen as a ploy because it was filed after the annexation petition was filed with the Commission and if it was filed before the annexation petition than that would take away that argument. Mr. Homier went on to say that there is not one email from the Township Supervisors saying "stop sending me these emails." He said that Mr. Rosser is on every email including the one from Judge Tacoma. He continued saying that there is no credibility in their statements because they denied there were any emails at all, and even after they knew about the emails they did not update the record to reflect them.

Commissioner Val Alst asked Mr. Redick about contingencies in the 425 Conditional Transfer regarding whether Clam Lake Township was to pay for extension of water and sewer services that is contingent on treatment plant capacity and Clam Lake Township's passing of a resolution requesting construction of the infrastructure. He said the agreement had been amended twice and asked if those contingencies had been changed or resolved in any way.

Mr. Redick, responded saying not by way of amendment, but that some of them had been satisfied. The contingency of capacity has been satisfied. He said the Townships' resolutions are part of the 30-day submittals and both Boards passed concurrent resolutions authorizing the construction of water and sewer from Haring Township's infrastructure to the transferred area. He said that Clam Lake Township wants the services there and is telling Haring Township they want services, and Haring Township is saying that they will provide it.

Mr. Kraker asserted that there is a resolution by Clam Lake Township that if there is going to be a provision of service, they are not going to pay for it and the developer will pay for everything.

c. Commission Discussion

A **MOTION** was made by Commissioner Stewart and Seconded by Commissioner Doyle that the Commission recommend to the Director that the 425 Conditional Transfer between the Charter Township of Haring and Clam Lake Township is invalid and does not bar the Commission from processing this annexation petition #13-AP-2.

Discussion on the Motion Ensued.

Commissioner Stewart stated that he had three issues with the 425 Conditional Transfer. First he feels the timeline is almost illogical on the filing of the new 425 Conditional Transfer. The Township's had ample time to negotiate a new 425 Conditional Transfer after the Commission's previous rejection yet nothing happened until they heard that a new annexation petition was pending. Second, he said it bothered him that there is no project on the horizon and nothing produced from a developer that's ready to go with a project under the Townships' agreement. Thirdly, the emails are an issue because the tone appears that the agreement is for the purpose of barring the annexation petition. He said if he was receiving these he would respond by making clear that the agreement isn't being done to bar the annexation, but to promote an economic development project.

Chairman Schornack stated that the whole purpose of a valid 425 Conditional Transfer is to promote and not thwart economic development. He feels history in this case is not irrelevant. These are the same people and property that were involved in the previous case. He said he does not feel this agreement is any different from the last agreement and feels they are both "shams." He cited the following evidence to support his determination: There is no revenue sharing and no benefit to Clam Lake Township under this agreement other than protection from annexation to Cadillac. He said that the zoning requirements in this agreement are unusual, very detailed, expensive and unnecessary and are intended to thwart development. The developer has to pay the up-front capital costs for the water and sewer services. Neither Township is required to perform under the 425 Conditional Transfer so Haring Township would have sole discretion whether to provide water and sewer services even if Clam Lake Township asked them to.

Commissioner Doyle agreed that the 425 Conditional Transfer was designed to thwart economic development and feels that it should be deemed invalid.

Commissioner Cross had no comment.

Commissioner Van Alst shared the differences he felt that there were between the last agreement and this one. He said that the one distinction between the last time and this time is that Clam Lake Township is giving everything this time in terms of revenue to Haring which is different than the Casco v SBC case where Casco Township did not transfer any governmental functions to the local unit to which the area was to be transferred. He said Clam Lake Township does not have its own zoning ordinance – it relies on Wexford County. Clam Lake does not have control of the zoning, but the Charter Township of Haring and the City of Cadillac have control over theirs, so Clam Lake is trying to get either one of those to do the zoning which is why Clam Lake wants this Agreement. He said all the land use plans say that this area should be kept as green space. He said that all zoning impedes development, that's why it's there and that's what they are doing with this agreement. He believes there is a requirement to perform and provide services in this agreement. He said he has now changed his opinion of this

agreement and does not think it is a sham and feels that it might be valid. When the previous case was decided the Haring Township wastewater treatment plant was more speculative, now they have financing, permits and have awarded construction bids for the treatment plant. He went on to say that the conditions to provide services from Haring Township are “not as speculative as they were before.”

Commissioner Schornack asked why the Township’s didn’t go to the petitioner, as the owner of the property, and ask for their input on the proposed 425 Conditional Transfer. He read several of the statutory criteria in the SBC Act and 1984 PA 425 and he felt that the water and sewer services would be of higher quality and cheaper from the City than from Haring Township due to the distance and the need of easements from Haring’s current infrastructure.

MOTION CARRIED 4-1; with Commissioner Van Alst Opposed.

A **MOTION** was made by Commissioner Doyle and Seconded by Commissioner Stewart that the Commission recommend to the Director that the petition for the annexation of land in Clam Lake Township to the City of Cadillac Docket #13-AP-2 be approved.

Discussion on the Motion Ensued.

Commissioner Doyle said that he felt that the petitioners have met the legal criteria and therefore feels the petition should be supported.

Commissioner Van Alst talked about how this will adversely affect the local and county land use plans regarding this property, which is a criterion in the SBC Act for the Commission to consider. He said that the residents and local governments in this area, in his opinion, do not want commercial development on this property. He said that it’s important to area residents that the area stay the way it is (green) and not commercial.

Commissioner Stewart stated that the statute requires the petitioner to address the criteria and he feels like they have addressed most, if not all, of them. He specifically cited the criterion of “past and probable future urban growth, including population increase and business, commercial and industrial development in the area.” He thinks the petition should be approved as presented. He said that he hopes that if the petition is approved that there will be consideration given to the effect on the downtown businesses and hopefully there will be interaction with the residents to minimize any adverse impact there might be.

Discussion Ensued.

MOTION CARRIED 4-1; with Commissioner Van Alst Opposed.

5. **ADJOURNMENT**

MOTION was made by Chairman Doyle and Seconded by Commissioner Van Alst to adjourn the session on Wexford County. **MOTION CARRIED UNANIMOUSLY.** Meeting adjourned at approximately 4:30 p.m.

APPROVED:

Dennis Schornack, Chairman
State Boundary Commission

Date

DRAFT