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
August 13, 2013

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. 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

1. CALL TO ORDER AND DETERMINATION OF QUORUM

Chairman Schornack called the meeting to order at approximately 2:13 p.m. and read the Opening Statement. A quorum was determined present at that time.

2. APPROVAL OF AGENDA

A **MOTION** was made by Commissioner Doyle and seconded by Commissioner Stewart 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 Wexford County from the October 10, 2012 meeting on Docket 11-AP-2. **MOTION CARRIED UNANIMOUSLY.**

4. DETERMINATION OF LEGAL SUFFICIENCY

a. Commission and Staff:

Mr. Kevin O'Brien, Office of Land Survey and Remonumentation, read from his Legal Sufficiency Memo. He commented that the Commission staff believes this petition meets legal sufficiency. Kevin also explained the handouts that were given to Commissioners (Legal Sufficiency objections and responses to those objections).

Chairman Schornack asked Mr. O'Brien if there is any difference in the property description and details of this petition and the one that was filed two years ago except that it is a new filing with a new docket number.

Mr. O'Brien responded saying no, not that he could see.

b. Involved Parties:

Mr. Randall Kraker, Attorney for Petitioners, he stated that this petition has already been seen by the Commission and found to be legally sufficient by staff. He said the Townships have adopted an Act 425 Agreement that is effective after this annexation petition was filed. The petitioners will contest the validity of that Agreement. Today they have filed a Declaratory Judgment Action in the Wexford County Circuit Court challenging the validity of the Act 425 Agreement on the grounds that it violates Act 425 and also that it is an unlawful contractual allegation of legislative zoning authority. They decided to seek a judicial action for two reasons; first because judicial court rules allow for a wider range of discovery, also the second count in the complaint doesn't address the Act 425 issue directly, it is focused more on points of municipal law. He stated that what is at issue today is whether or not this petition is legally sufficient and it is in effect the same petition that the Commission has already previously found to be legally sufficient two years ago.

Discussion Ensued.

Mr. Michael Homier, Attorney for the City of Cadillac, stated that the City agrees that even though the main focus of this meeting is to determine legal sufficiency, which they believe the petition is, he anticipates that the City will challenge the validity of the Act 425 Agreement. The City fully supports this annexation.

Mr. Ron Redick, Attorney for the Charter Township of Haring and Clam Lake Township, said that he felt that the Commission would feel bound by their previous decision that this petition is legally sufficient. He wanted to let Commissioners know that they listened to the Commission last time with respect to the Act 425 Agreement and the several reasons they had for finding the Act 425 Agreement to be invalid and they have made changes to address the issues that the Commission raised. He went through each reason the Commission had given for finding the Act 425 as invalid in the previous petition and discussed how they have changed those items for this petition. He went on to say that this Act 425 Agreement was approved at a time when, just 7 months earlier, the Commission and the Director of LARA had already determined that this annexation should not occur. He submitted that it is not possible to interfere with an annexation which has already been determined by the Commission that it should not occur.

Mr. Kraker reiterated that this is not the time to discuss the Act 425 Agreement, only to decide legal sufficiency. He said they have quite a different view on the Agreement than Mr. Redick, but they will wait to discuss those at the Public Hearing.

c. **Commission Discussion**

A **MOTION** was made by Commissioner Van Alst and Seconded by Commissioner Doyle that the petition for Docket 13-AP-2 be determined as Legally Sufficient (without a revised area) for the purpose of consideration of the proposed annexation and to receive comment at the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Commissioner Stewart stated that it would be more appropriate to discuss the validity of the Act 425 Agreement at the Public Hearing as opposed to at this meeting which is meant only to determine the legal sufficiency of the petition.

Discussion Ensued.

Commissioners unanimously approved October 23, 2013 for the Public Hearing to be held @ 4pm.

5. ADJOURNMENT

MOTION was made by Chairman Doyle and Seconded by Commissioner Stewart to adjourn the session on Wexford County. **MOTION CARRIED UNANIMOUSLY.** Meeting adjourned at approximately 2:43 p.m.

APPROVED:

Dennis Schornack, Chairman
State Boundary Commission

4/16/14
Date