

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

**TERIDEE'S RESPONSE TO MOTIONS TO SUPPLEMENT THE RECORD AND
COUNTER-MOTION TO SUPPLEMENT THE RECORD**

Petitioners for annexation, TeriDee LLC and certain related parties ("TeriDee"), hereby submit the following response to the Townships' March 17, 2014, and March 27, 2014, Motions to Supplement the Record. TeriDee also moves, pursuant to Rule 123.34, to supplement the record with the additional information contained herein.

Introduction

The Townships recently filed two separate Motions to Supplement the Record, claiming that they provided additional materials so that this Commission is able to base its decision on "accurate information." However, even though they have now had two additional opportunities to do so, the Townships have still withheld key information from this Commission. Specifically, in response to discovery requests in the related circuit court matter,¹ the Townships produced a series of e-mail exchanges among the Townships supervisors and members of the planning

¹ As the Commission is aware, TeriDee filed suit against the Townships in the Wexford County Circuit Court, Case No. 13-24803-CH, on August 13, 2013. TeriDee's Complaint in the circuit court matter seeks a declaration from the court that the 2013 Act 425 agreement is invalid as a sham agreement under Act 425 and, alternatively, that it is illegal and void as it impermissibly delegates Haring Charter Township's legislative authority and improperly binds future township boards in the exercise of their legislative power.

commissions that reveal the true motive behind the Townships' 2013 Act 425 agreement: to block TeriDee's proposed annexation and prevent commercial development.

This Commission's previous finding that the Township's 2011 Act 425 Agreement was invalid was based in part on a series of e-mails that discussed using that agreement as a means to prevent the proposed annexation. The e-mails that the Townships recently produced in the circuit court matter, which are attached as **Exhibit A**, should give the Commission a sense of déjà vu. They involve the same key individuals, they are sent to the same distribution lists, they express the same alarm at the proposed annexation and development of the property, and they propose the same solution to this perceived problem: an Act 425 Agreement.

Indeed, the Commission need look no further than the attached April 15, 2013, e-mail exchange among, among others, George Giftos (vice-chairman of the Haring Charter Township Planning Commission), Dale Rosser (the Clam Lake Township supervisor), and Ken Tacoma (the Wexford County probate judge who appoints local representatives to this Commission). That e-mail exchange, entitled "here we go again," makes clear that the parties had learned within "the last few days" that TeriDee was preparing to file an annexation petition:

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, Teri-Dee could conceivably be all set to go by the end of summer.

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 Teri-Dee for annexation. If we were to pursue this again and got it done BEFORE June 4, that argument would no longer apply.

See Ex. A (emphasis added).

Thus, in response to a rumor that TeriDee was planning to file an annexation petition, there is an immediate e-mail exchange (among the same individuals who previously supported the effort to prevent TeriDee's annexation petition by filing a sham Act 425 agreement) that specifically mentions using an Act 425 Agreement as a strategy to prevent annexation. The e-mail further suggests that, this time around, the Townships' should enact the agreement "BEFORE" the annexation petition is filed, in order to convince this Commission that the Townships are not engaged in a "ploy." Less than a month later, the agreement was both introduced and approved at a joint special meeting of the Township Boards.

The attached e-mails also make clear that the Townships and their supporters did not suddenly change their minds about the development of the property. They continue to vigorously oppose any commercial development of the property, and the e-mails express optimism that the stringent zoning requirements in the 2013 Act 425 Agreement will stifle any proposed development and send it somewhere else. On May 4, 2013, four days before the Townships entered into the 2013 Act 425 Agreement, George Giftos wrote to the Townships' supervisors, Dale Rosser and Bob Scarbrough, to express his optimism that the restrictive PUD requirements in the agreement would drive away any potential development:

[I]f 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 M-55, it wouldn't happen.

See Ex. A (emphasis added).

The Townships' failure to disclose or provide these e-mails to the Commission is particularly disturbing given the Townships' repeated claims in these proceedings that, this time around, there are no e-mails showing improper motive. Given the timing of the attached e-mails, it is now clear that these claims by the Townships were false when made. More importantly, the

e-mails make clear that the Townships' story to the Commission about why they entered into this second agreement is simply not true. The Townships' motives have not changed. Their new agreement is just as much of a sham as their previous one.

The Townships Have Presented this Commission with a False Narrative Regarding Their Motive and Intent in Entering Into the 2013 Act 425 Agreement.

The Townships' first Act 425 Agreement was characterized as "bovine scatology" and rejected without dissent by this Commission. The Townships realize that they will face strict scrutiny and an uphill battle in now trying to convince this Commission, less than ten months later, that their motives are now pure, that they have completely changed their position regarding development of the property, and that they did not simply enter into the new agreement as a means to prevent annexation. As a result, the Townships have devoted significant time and effort in describing the supposed genesis of the 2013 Act 425 Agreement.

According to the Townships in their filings in these proceedings, the 2013 Act 425 Agreement "represents the fruition of a long-established, thoroughly-evaluated plan."² Indeed, the Townships would have this Commission believe that the 2013 Act 425 Agreement was the result of deliberation and discussions that date back to 1999 regarding the Townships' plans for sharing utility services. The Townships further maintain that they each independently decided that May 8, 2013, was an "ideal time" to hold a special meeting to enter into the 2013 Act 425 Agreement which, as they claim, is "the culmination of long-established plans to extend Haring utility services to Clam Lake."³ Respectfully, their story does not add up.

First, public water and public sewer utilities will only be extended to the property and provided to Clam Lake Township if the Townships enter into an agreement with TeriDee to

² See Townships' 7-Day Rebuttal Submission at p. 7.

³ See *Id.* at p. 5.

develop the property. However, the attached e-mails make clear that the Townships drafted the restrictive PUD requirements in the agreement with the specific intent to discourage and prevent TeriDee from ever developing the property. The agreement is not, as the Townships claim, a "model of regional cooperation" for sharing utilities. It is an illusory agreement that ties the provision of utilities to the approval of a development project that the Townships are actively working to prevent.

Second, the attached e-mails paint a very different picture about the origin of the 2013 Act 425 Agreement. There is not a single e-mail (or any other communication) between the Townships that discusses or proposes entering into an Act 425 for the purpose of sharing utilities. The subject of utility sharing is never raised at all in connection with the agreement. Instead, just as with the e-mails that were produced in connection with the 2011 annexation petition, the only time an Act 425 agreement is ever mentioned is solely in connection with preventing annexation and development.

Specifically, the idea of the Townships entering into a new Act 425 agreement in order to prevent the development of the property was first raised (again) in a February 21, 2013 e-mail from George Giftos to Dale Rosser, Bob Scarbrough, Ken Tacoma, and the rest of the same group of opponents of development that this Commission saw in the 2011 e-mail correspondence. Mr. Giftos's e-mail, entitled "new threat on the horizon," discusses his concern that the Wexford County Commissioners might eliminate county-wide zoning. If that happened, Mr. Giftos feared that "Terri-Dee would have the ability to begin their development." A few hours later, Mr. Giftos sent a follow up e-mail to the same group to express a further thought: "I wonder if it's time to pursue another 425 agreement to cover the property by Haring's zoning?"

Mr. Tacoma responded to Mr. Giftos that same day, telling Mr. Giftos that "there is no chance" that the Clam Lake Township Board would enter into another Act 425 Agreement, "as there is nothing in it for the township."⁴ Notably, neither Mr. Giftos, nor anyone else on the e-mail string, discusses entering into an Act 425 agreement so that the Townships could share utilities. Instead, when there is a "new threat" of development, the same parties fall back to a familiar scheme – turning to an Act 425 agreement to prevent that development. It is also notable that there is no further discussion of an Act 425 agreement again until two months later, when the Townships learn of another new threat of development. In other words, the parties' communication does not in any way present a "thoroughly-evaluated plan" for sharing utilities.

At the public hearing in these proceedings, the City of Cadillac's Mayor Pro Term, Art Stevens, reported that on April 11, 2013, a City official informed Clam Lake officials that TeriDee would be filing a new annexation petition. Four days later, on April 15, 2013, the same parties resumed their discussion of using an Act 425 agreement to prevent the annexation from occurring. As noted above, the Townships entered into the 2013 Act 425 Agreement less than a month later. Once again, the contemporaneous e-mail exchanges make no mention whatsoever of entering into the agreement for the purpose of sharing utilities.

In sum, the attached e-mail traffic among the Clam Lake Township Supervisor (Dale Rosser), the Haring Charter Township Supervisor (Bob Scarbrough) and the leaders of the opposition in Woodland Estates (George Giftos) and Pointe East subdivisions (Probate Judge

⁴ This is the same conclusion that this Commission reached in 2011! It remains true today. The Agreement provides that Clam Lake Township gives up total control of the Transferred Area, gives up hundreds of thousands of dollars of taxable value, tens of thousands of tax dollars, receives no tax sharing, no property tax, no personal property tax, no revenue sharing, no specific infrastructure, and no time frame for any services. In fact, it receives no guarantee of any services at all, and yet it pays all of Haring Charter Township's legal bills and indemnifies Haring Charter Township against all claims and damages flowing from the Act 425 Agreement.

Kenneth Tacoma), as well as the absence of any communication that supports the Townships' narrative, leads to the inescapable conclusion that the 2013 Act 425 Agreement was conceived and adopted for no other reason than to prevent the annexation and to prevent the State Boundary Commission from fulfilling its statutorily required role in these matters. These e-mails do not in any way support the Townships' repeated statements to this Commission that the reason they entered into the 2013 Act 425 Agreement was for the purpose of sharing utilities. If the 2013 Act 425 Agreement truly was the culmination of over 15 years of "thorough" planning, it would not condition the sharing of utilities on a development project that the Townships vehemently oppose.

The Townships Quickly Threw Together a Fatally Flawed Agreement that Violates Michigan Law.

As set forth above, it is obvious that the 2013 Act 425 Agreement was not the "fruition" of a "thoroughly-evaluated plan." It was quickly thrown together in less than a month in a panicked reaction to news of a new annexation petition. The reason for the Townships' haste is evidenced in the attached e-mails, which indicate the belief that the Townships needed to get the agreement in place "BEFORE" TeriDee's annexation petition was filed. However, in their rush to put together a new agreement to block the proposed annexation, the Townships drafted an illegal contract.

It is well-settled law that a township board cannot lawfully contract away its legislative power and/or bind future township boards in the exercise of that power. Yet the 2013 Act 425 Agreement does exactly that, as it (1) requires that Haring Charter Township rezone the property to a PUD district that complies with the various requirements set forth in the agreement, (2) precludes Haring Charter Township from even considering a PUD rezoning application for the Transferred Area that does not comply with the zoning requirements of the 2013 Act 425

Agreement, and (3) requires that Haring Charter Township rezone those portions of the property that were already developed for residential housing to a specified Haring zoning district, in addition to the other illegal provisions that are set forth in TeriDee's circuit court complaint.

While the Townships argued that the Townships either had the authority to contractually bind Haring Township to a particular discharge of its legislative authority, or, alternatively, that the contract does not contract away Haring Township's legislative authority, the circuit court rejected those contentions. Specifically, in its December 20, 2013, Opinion and Order on the parties' cross-motions for summary disposition, a copy of which is attached hereto as **Exhibit B**, the court held that the only remaining issues in the case are whether the Townships' otherwise illegal agreement can be saved (1) by virtue of a severability provision that would allow the Townships to remove the illegal portions of the agreement or (2) because the Townships have not carried out their agreement in an illegal manner. These two remaining issues will be addressed by further motion practice after the completion of discovery in the circuit court matter.

Recognizing the error of their ways, the Townships have since engaged in continuous efforts to "fix" their sham agreement, including through the passage of multiple amendments specifically aimed at manufacturing a defense to TeriDee's lawsuit and resolutions "proclaiming" their intended interpretation of the agreement (i.e., it is not illegal because they say it is not illegal).⁵ The Townships' motions to supplement actually highlight these maneuvers as if they somehow support the Townships' claims that their motives are pure. The opposite could not be more true. The Townships' scrambling only further reveals the fact that the 2013 Act 425 Agreement is not a legitimate effort to promote development. It was designed for the sole

⁵ At the same time, the Township Board members refuse to have their depositions taken under oath in the circuit court matter, which will force TeriDee to file a motion to compel those depositions.

purpose to block the annexation petition and stymie development, which is why the Townships are working so feverishly to salvage their illegal contract.

There are Significant Reliability, Functionality and Cost Concerns Associated with the Townships' Provision of Utilities to Petitioners' Property.

The Townships cannot dispute that the capital cost of providing Township public sewer and public water to Petitioners' property would be more than twice as much, or an additional \$1.25 million, as obtaining those same services from the City of Cadillac.⁶ The Townships do, however, attempt to minimize the other demonstrated problems associated with their proposed provision of utilities, including reliability and functionality, by way of a December 17, 2013, letter from the Townships' engineers that is included with the Townships' 7-Day Rebuttal Submissions. However, as the attached comments from Exxel Engineering, Inc. make clear, (1) water utility service from the City of Cadillac would be more reliable than service from Haring Charter Township; (2) the City of Cadillac can provide superior water pressure and fire flow than the minimal service that Haring Charter Township "should" be capable of providing; (3) the Townships' engineers did not address the concern of higher usage rates associated with Haring Charter Township water utilities; and (4) the Township engineers, while conceding that it will take longer for the Townships to construct the necessary utility extensions, did not properly account for the added time associated with designing and obtaining easements or permission and permits to install the watermain along county or MDOT right of ways. See **Exhibit C**.

⁶ Indeed, as the attached e-mails reflect, even the vice chairman of the Clam Lake DDA does not appear to be interested in Haring Charter Township's sewer services that will cost substantially more than those same services from the City of Cadillac. See 5/4/13 e-mail from G. Giftos to B. Scarbrough and D. Rosser, Ex. A ("[Mike Lueder, the vice chairman of the Clam Lake DDA] 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.").

Conclusion

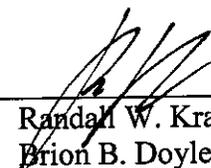
The Townships' 2013 Act 425 Agreement suffers from all of the same fatal flaws as the Townships' prior agreement. It is, again, a sham agreement. The only thing that had been missing were damning internal e-mail exchanges among the Township representatives and their supporters expressing alarm at the prospect of annexation and then proposing an Act 425 Agreement to deal with that issue. Those e-mails have now been produced.

Based on all of the foregoing, TeriDee respectfully requests that the State Boundary Commission utilize its authority, as recognized in *Casco v State Boundary Commission*, 243 Mich App 392 (2001), to reject the Act 425 Agreement and exercise its statutory authority to decide the annexation request.

Respectfully submitted,

VARNUM LLP
Attorneys for TeriDee

Date: April 4, 2014

By:  _____
Randall W. Kraker (P27776)
Brion B. Doyle (P67870)
Business Address and Telephone:
Bridgewater Place, P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000

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From: "George Giftos" <gcgiftos@me.com>
 To: "Coe-Vokes Carol" <advancerealty@bignorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcusse" <csmarcusse@charter.net>, "Bob Scarbrough" <supervisor@twpofharing.org>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <jwirnce@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <mardic@charter.net>, "Sandy Deming" <sandydeming@att.net>, "Nancy Denison" <nden1@lssm.org>, "Ken Tacoma" <KennethTacoma@Hotmail.com>, "Larry Luhtanen" <lluhtane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <l_hubb@yahoo.com>, "Dale Rosser" <DHRosser@charter.net>, "Helen Kay Quinn" <hkquinn@hotmail.com>, "Bill & Jan Lucas" <bjluc@prodigy.net>, "Dale & JoEllen Voice" <dvoice47@hotmail.com>, "Ross & Teri Meyering" <rmeyering@charter.net>, "Melissa Holmes" <mjch7@charter.net>, "Charles & Marcia Wilson" <cmwilson2@charter.net>, "Marybeth" <marybeth49601@yahoo.com>, "Keith Vanderwal" <kvav20@hotmail.com>, "Mike & Kathy Lueder" <MKLueder@CharterMI.net>, "Al Meyer" <ameyervet@gmail.com>, "Anton Colasacco" <acolasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Joe & Tina Piotrowski" <sheddman@msn.com>, "Nate & Peg Swiger" <pnswiger@hotmail.com>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson" <bruceconradson@att.net>, "Mark McKeown" <mckeowns@charter.net>
 Date: 02/21/2013 08:17:11 EST
 Subject: **New threat on the horizon.....**

We are approaching spring and as in past years, we have a new issue to contend with. The Wexford County Commissioners voted last night to investigate the possibility of eliminating county-wide zoning and letting the issue of zoning fall on the individual townships. This is part of an effort to reduce the county budget, but it poses a problem. I was on the committee which developed the county master plan. As a member of Haring Township's Planning Commission, I was also involved in updating the Haring Township Master Plan. Haring used the Wexford County plan as a model and added more detail. Currently, Clam Lake Township has no master plan of its own to control zoning within that township. We have two options as I see it. We have to convince the county that they should not do away with county zoning or suggest that Clam Lake Twp develop their own master plan. The latter might include the county phasing out zoning on a schedule which would allow the townships the time to implement their own master plans.

If the County Commissioners eliminate zoning immediately, I believe that Terri-Dee would have the ability to begin their development.

Developing a master plan, even using the county master plan as a template does take time. It took us (Haring) over a year to complete the task meeting over a dozen times throughout that year. I would think that a township emergency plan could be developed much quicker and then tweaked to achieve the desired final results in the future.

The biggest advantage to having a county master plan is the continuity which results. In other words, if the zoning is left to the townships, the result could be conflicting development of the lands at the township borders. That would be the case in our situation. We have a residential community in our area and the county has the land in question zoned residential and forest rec. Lack of zoning would result in commercial contiguous to residential....not what we desire. The county plan looks at the larger picture and protects against this.

The elimination of county zoning does appear (IMHO) to be a step backwards. We need to come up with a plan to encourage the county to continue zoning, and a back-up plan to encourage Clam Lake TWP to develop their own master plan. Again, if the county does proceed to eliminate zoning, it needs to be done over a scheduled time period to allow the townships which have relied on county zoning to react to this change.

I'm open to all suggestions you may have and as of this writing, I don't know how much time we have to accomplish the above.

George Giftos

From: "George Giftos" <George@cadillacvacuum.com>
To: "Coe-Vokes Carol" <advancerealty@bignetnorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcusse" <csmarcusse@charter.net>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <jwlrnice@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <mardic@charter.net>, "Sandy Deming" <sandydeming@att.net>, "Nancy Denison" <nden1@lssm.org>, "Ken Tacoma" <KennethTacoma@Hotmail.com>, "Larry Luhtanen" <lluhtane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <l_hubb@yahoo.com>, "Dale Rosser" <DHRosser@charter.net>, "Helen Kay Quinn" <hkquinn@hotmail.com>, "Billi & Jan Lucas" <bjluc@prodigy.net>, "Dale & JoEllen Voice" <dvoice47@hotmail.com>, "Melissa Holmes" <mjch7@charter.net>, "Ross & Teri MeyerIng" <rmeyerling@charter.net>, "Charles & Marcia Wilson" <cmwilson2@charter.net>, "Marybeth" <marybeth49601@yahoo.com>, "Keith Vanderwal" <kvav20@hotmail.com>, "Mike & Kathy Lueder" <MKLueder@CharterMI.net>, "Al Meyer" <ameyervet@gmail.com>, "Anton Colasacco" <acolasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Joe & Tina Piotrowski" <sheddman@msn.com>, "Nate & Peg Swiger" <pnswiger@hotmail.com>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson" <bruceconradson@att.net>, "Mark McKeown" <mckeowns@charter.net>
Date: 02/21/2013 10:01:45 EST
Subject: **Further thought**

I wonder if it's time to pursue another 425 agreement to cover the property by Haring's zoning?

George

Further thought

From: "Kenneth Tacoma" <kennethtacoma@hotmail.com>
 To: "George Giftos" <george@cadillacvacuum.com>, "Cob-Vokes Carol" <advancerealty@bignetnorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcusse" <smarcusse@charter.net>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <jwirnce@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <mardic@charter.net>, "Sandy Deming" <sandydeming@att.net>, "Nancy Denison" <nden1@lssm.org>, "Larry Luhtanen" <lluhtane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <l_hubb@yahoo.com>, "Dale Rosser" <dhrosser@charter.net>, "Helen Kay Quinn" <hkquinn@hotmail.com>, "Bill & Jan Lucas" <bjluc@prodigy.net>, "Dale & JoEllen Voice" <dvoice47@hotmail.com>, "Melissa Holmes" <mjc-h7@charter.net>, "Ross & Teri Meyerling" <rmeyerling@charter.net>, "Charles & Marcia Wilson" <cmwilson2@charter.net>, "Marybeth" <marybeth49601@yahoo.com>, "Keith Vanderwal" <kvav20@hotmail.com>, "Mike & Kathy Lueder" <mklueder@chartermi.net>, "Al Meyer" <ameyervet@gmail.com>, "Anton Colasacco" <acolasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Joe & Tina Piotrowski" <shedman@msn.com>, "Nate & Peg Swiger" <pnswiger@hotmail.com>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson" <bruceconradson@att.net>, "Mark McKeown" <mckeowns@charter.net>
 Date: 02/21/2013 08:00:02 EST
 Subject: RE: Further thought

George,

No, I don't think so.

1. There is no chance the Clam Lake Board would do this, as there is nothing in it for the township.
2. They will need to deal with the zoning issue on their own anyway, to protect the whole township, especially their DDA.
3. Plus, I think they will act in a timely fashion if forced to do so.
4. Finally, I'm sorry, but I don't trust your Harling Township Board.

The best option is to convince the Wexford County Commissioners not to fall for this short-sighted idiocy. What have they been drinking? Everybody should get a hold of Bill Goodwill and beg him (and the other commissioners) to keep the County zoning for the sake of everybody's property values. What are they thinking? Hundreds of hours of thoughtful, caring citizens work go into a Master Plan, years of people relying on the County stabilizing property values through a promise to have development stable in accordance WITH THEIR IMPOSED RULES, an areawide, orderly zoning plan to give citizens the right to plan on it, and now they want to just pull it away??? To shift the cost to the Townships? Many of which may not adopt an ordinance if the county pulls out? Don't they care about the community at all? It might be different if they had never had a zoning ordinance, but since they have, and repressed everyone's freedom, to now pull it away and allow the Wild West is reprehensible. This is irresponsible, illogical and crazy, even if VanderLaan isn't behind it.

K. Tacoma

> From: George@cadillacvacuum.com
 > Subject: Further thought
 > Date: Thu, 21 Feb 2013 10:01:45 -0500
 > To: advancerealty@bignetnorth.net; drenaud5229@charter.net; ridleyj@att.net;
 csmarcusse@charter.net; greybaby2007@yahoo.com; jwirnce@yahoo.com;
 cathytacoma@hotmail.com; mhudgins3@yahoo.com; mardic@charter.net; sandydeming@att.net;
 nden1@lssm.org; KennethTacoma@Hotmail.com; lluhtane@yahoo.com; rdheeres@charter.net;
 l_hubb@yahoo.com; DHRosser@charter.net; hkquinn@hotmail.com; bjluc@prodigy.net;
 dvoice47@hotmail.com; mjc-h7@charter.net; rmeyerling@charter.net; cmwilson2@charter.net;
 marybeth49601@yahoo.com; kvav20@hotmail.com; MKLueder@CharterMI.net;
 ameyervet@gmail.com; acolasacco@chartermi.net; edvokes@att.net; shedman@msn.com;
 pnswiger@hotmail.com; rdcraig101@yahoo.com; bruceconradson@att.net; mckeowns@charter.net
 >
 > I wonder if it's time to pursue another 425 agreement to cover the property by Harling's zoning?

From: "Lueder" <mklueder@chartermi.net>
 To: "Kenneth Tacoma" <kennethtacoma@hotmail.com>
 Cc: "George Giftos" <george@cadillacvacuum.com>, "Coe-Vokes Carol" <advancerealty@bignetnorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcusse" <csmarcusse@charter.net>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <jwirnce@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <mardic@charter.net>, "Sandy Deming" <sandydeming@att.net>, "Nancy Denison" <nden1@lssm.org>, "Larry Luhtanen" <lluhtane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <l_hubb@yahoo.com>, "Dale Rosser" <drosser@charter.net>, "Helen Kay Quinn" <hkquinn@hotmail.com>, "Bill & Jan Lucas" <bjluc@prodigy.net>, "Dale & JoEllen Voice" <dvoice47@hotmail.com>, "Melissa Holmes" <mjch7@charter.net>, "Ross & Teri Meyering" <rmeyering@charter.net>, "Charles & Marcia Wilson" <cmwilson2@charter.net>, "Marybeth" <marybeth49601@yahoo.com>, "Keith Vanderwal" <kvav20@hotmail.com>, "Al Meyer" <ameyervet@gmail.com>, "Anton Colasacco" <acolasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Joe & Tina Piotrowski" <sheddman@msn.com>, "Nate & Peg Swiger" <pnswiger@hotmail.com>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson" <bruceconradson@att.net>, "Mark McKeown" <mckeowns@charter.net>
 Date: 02/22/2013 10:37:18 EST
 Subject: **RE: Further thought**

Ken, I totally agree with your thoughts.

I will contact Bill. As I see it, the best scenario would be to keep the county zoning and the professionaliam it would offer with an administrator vs.the township boards. Unfortunately that may not be the result due to budget constraints. I am confident that Clam Lake Township would simply adopt the plan that they developed for their portion of the county master plan.

Perhaps this could be kept at the county level if the townships contributed funds specifically for zoning administration to the county. Just a thought.

That would be far a far more resonable expense than defending a zoning law suit directed at a township by an entity with sunbstantial resources in the future.

Mike Lueder

On Thu, Feb 21, 2013 at 8:00 PM, Kenneth Tacoma wrote:

George,

No, I don't think so.

1. There is no chance the Clam Lake Board would do this, as there is nothing in it for the township.
2. They will need to deal with the zoning issue on their own anyway, to protect the whole township, especially their DDA.
3. Plus, I think they will act in a timely fashion if forced to do so.
4. Finally, I'm sorry, but I don't trust your Haring Township Board.

The best option is to convince the Wexford County Commissioners not to fall for this short-sighted idloicy. What have they been drinking? Everybody should get a hold of Bill Goodwill and beg him (and the other commissioners) to keep the County zoning for the sake of everybody's property values. What are they thinking? Hundreds of hours of thoughtful, caring citizens

work go into a Master Plan, years of people relying on the County stabilizing property values through a promise to have development stable in accordance WITH THEIR IMPOSED RULES, an areawide, orderly zoning plan to give citizens the right to plan on it, and now they want to just pull it away??? To shift the cost to the Townships? Many of which may not adopt an ordinance if the county pulls out? Don't they care about the community at all? It might be different if they had never had a zoning ordinance, but since they have, and repressed everyone's freedom, to now pull it away and allow the Wild West is reprehensible. This is irresponsible, illogical and crazy, even if VanderLaan isn't behind it.

K. Tacoma

> From: George@cadillacvacuum.com
> Subject: Further thought
> Date: Thu, 21 Feb 2013 10:01:45 -0500
> To: avancerealty@bignetnorth.net; drenaud5229@charter.net;
ridleyj@att.net; csmarcusse@charter.net; greybaby2007@yahoo.com;
jwirnce@yahoo.com; cathytacoma@hotmail.com; mhudgins3@yahoo.com;
mardic@charter.net; sandydeming@att.net; nden1@lssm.org;
KennethTacoma@Hotmail.com; lluhtane@yahoo.com; rdheeres@charter.net;
l_hubb@yahoo.com; DHRosser@charter.net; hkquinn@hotmail.com;
bjluc@prodigy.net; dvoice47@hotmail.com; mjc-h7@charter.net;
rmeyering@charter.net; cmwilson2@charter.net;
marybeth49601@yahoo.com; kvav20@hotmail.com;
MKLueder@CharterMI.net; ameyervet@gmail.com;
acolasacco@chartermi.net; edvokes@att.net; sheddman@msn.com;
pnswiger@hotmail.com; rdcraig101@yahoo.com; bruceconradson@att.net;
mckeowns@charter.net
>
> I wonder if it's time to pursue another 425 agreement to cover the
property by Haring's zoning?
>
> George

"ADVANCE REALTY" <advancerealty@bignetnorth.net>
George@cadillacvacuum.com
drenaud5229@charter.net, ridleyj@att.net, csmarcusse@charter.net,
greybaby2007@yahoo.com, jwlrnce@yahoo.com, cathytacoma@hotmail.com, mhudgins3@yahoo.com,
mardic@charter.net, sandydeming@att.net, nden1@lssm.org, KennethTacoma@Hotmail.com,
lluhtane@yahoo.com, rdheeres@charter.net, l_hubb@yahoo.com, DHRosser@charter.net,
hkquinn@hotmail.com, bjluc@prodigy.net, dvoice47@hotmail.com, mjc-h7@charter.net,
rmeyering@charter.net, cmwilson2@charter.net, marybeth49601@yahoo.com, kvav20@hotmail.com,
MKLueder@CharterMI.net, ameyervet@gmail.com, acolasacco@chartermi.net, edvokes@att.net,
sheddman@msn.com, pnswiger@hotmail.com, rdcraig101@yahoo.com, bruceconradson@att.net,
mckeowns@charter.net

02/22/2013 04:31:12 EST

Re: Further thought: FROM CAROL COE-VOKES, BROKER, ADVANCE REALTY

Hi all! I think the word INCONCEIVABLE could not possibly cover this latest preposterous proposal/thoughts by our representatives "of, by, and for the people" - Ken: funny you should ask "what are they drinking"? When something this idiotic surfaces I always ask "what are they smoking???"

Anyway, perhaps "we, the people," need to a)hire an attorney ourselves to prevent such? b)insist that what is already on the books will remain, ie "grandfathered" regarding future uses? c)insist that the zoning as it stands BE LEFT IN PLACE, with the "rules/regulations" our Zoning Committees/Panels/Etc have followed in the past continue? d) consider this a legal matter, insisting that the County pay additional monies out of the existing budget to hire an Attorney ON BEHALF OF US, THE TAXPAYERS? e)have the whole lot of them removed???? I FOR ONE AM SURE GETTING TIRED OF FIGHTING THE FIGHT TO PROTECT WHAT WE HAVE ALREADY AGREED UPON, AND RELY UPON, FOR THE GOOD OF "ALL OF US, THE PEOPLE!"

What the County already has in place, sufficing for surrounding Townships working in conjunction with what the Townships ALREADY have in place, seems to be working all these years - each of us taxpayers would be paying additional tax monies if forced to take steps to protect WHAT WE ALREADY HAVE! It seems these "representatives" need to be reminded that WE THE PEOPLE MOVE FORWARD, NOT ARCHAICALLY BACKWARDS!

What a grandiose "plan" for any "foe" with a commercial development in mind to take advantage of! (Got anyone particular in mind????)

on Feb 21, 2013, **George Giftos** <George@cadillacvacuum.com> wrote:
I wonder if it's time to pursue another 425 agreement to cover the property by Harling's zoning?

George

Here we go again.....

From: "George Giftos" <ggiftos@me.com>
 To: "Coe-Vokes Carol" <advancerealty@bignetnorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcusse" <csmarcusse@charter.net>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <jwirnce@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <mardic@charter.net>, "Sandy Deming" <sandydeming@att.net>, "Nancy Denison" <nden1@issm.org>, "Ken Tacoma" <KennethTacoma@Hotmail.com>, "Larry Luhtanen" <lluhtane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <l_hubb@yahoo.com>, "Helen Kay Quinn" <hkquinn@hotmail.com>, "Dale Rosser" <DHRosser@charter.net>, "Bill & Jan Lucas" <bjluc@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>, "Kelth Vanderwal" <kvav20@hotmail.com>, "Mike & Kathy Lueder" <MKLueder@CharterMI.net>, "Al Meyer" <ameyervet@gmail.com>, "Anton Colasacco" <acolasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Joe & Tina Plotrowski" <sheddman@msn.com>, "Nate & Peg Swiger" <pnswiger@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.....

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

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 115. The TWP had been informed that the original estimates were low and they would need to come up with additional monies. Clam Lake agreed and arranged 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 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 could conceivably be all set to go by the end of summer.

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.

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.

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.

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.

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.

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.

Re: Fwd: Here we go again.....

From: "Mckeowns" <mckeowns@charter.net>
 To: "Mike Lueder" <mklueder@chartermi.net>, "Dale Rosser" <drosser@charter.net>
 Date: 04/16/2013 04:18:24 EDT
 Subject: Re: Fwd: Here we go again.....

Yes Mike, it appears true. I've been making phone calls today to confirm this email. The township is holding a closed session meeting tomorrow. We will have plenty to discuss on Monday.

Mark McKeown
 www.clamlakedda.org

Sent via my Samsung Transform Ultra from Boost Mobile

Mike Lueder <mklueder@chartermi.net> wrote:

Dale and Mark, I received this email from our neighborhood watchdog on the Teri dee project. Does any of what he is saying about the city and our sewer project have a basis or been discussed?

Sent from my iPhone

Begin forwarded message:

From: George Giftos <ggiftos@me.com>
Date: April 15, 2013, 9:58:02 PM EDT
To: Coe-Vokes Carol <advancerealty@bignetnorth.net>, Karen & David Renaud <drenaud5229@charter.net>, Judy Ridley <ridleyj@att.net>, Carol Marcusse <cmarcusse@charter.net>, Carol Carlson <greybaby2007@yahoo.com>, Jim Lawrence <jwlance@yahoo.com>, Cathy Tacoma <cathytacoma@hotmail.com>, Marty Hudgins <mhudgins3@yahoo.com>, Dick Loughmiller <mardic@charter.net>, Sandy Deming <sandydeming@att.net>, Nancy Denison <nden1@lssm.org>, Ken Tacoma <KennethTacoma@Hotmail.com>, Larry Luhtanen <lluhtane@yahoo.com>, Randy & Deb Heeres <rdheeres@charter.net>, Hubb Hubb <l_hubb@yahoo.com>, Helen Kay Quinn <hkquinn@hotmail.com>, Dale Rosser <DRRosser@charter.net>, Bill & Jan Lucas <biluc@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 Vanderwal <kvav20@hotmail.com>, Mike & Kathy Lueder <MKLueder@CharterMI.net>, Al Meyer <ameyerve1@gmail.com>, Anton Colasacco <acolasacco@chartermi.net>, Vokes Vokes <edvokes@att.net>, Joe & Tina Piotrowski <sheddman@msn.com>, Nate & Peg Swiger <pnswiger@hotmail.com>, Richard Craig <rdcraig101@yahoo.com>, Bruce Conradson <bruceconradson@att.net>, Mark McKeown <mckeowns@charter.net>
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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

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,

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George

From: "George Giftos" <George@cadillacvacuum.com>
 To: "Coe-Vokes Carol" <advancerealty@bignetnorth.net>, "Karen & David Renaud" <drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Carol Marcusse" <csmarcusse@charter.net>, "Carol Carlson" <greybaby2007@yahoo.com>, "Jim Lawrence" <jwlrncc@yahoo.com>, "Cathy Tacoma" <cathytacoma@hotmail.com>, "Marty Hudgins" <mhudgins3@yahoo.com>, "Dick Loughmiller" <mardic@charter.net>, "Sandy Deming" <sandydeming@att.net>, "Nancy Denison" <nden1@lssm.org>, "Ken Tacoma" <KennethTacoma@Hotmail.com>, "Larry Luhtanen" <lluhtane@yahoo.com>, "Randy & Deb Heeres" <rdheeres@charter.net>, "Hubb Hubb" <L_hubb@yahoo.com>, "Dale Rosser" <DHRosser@charter.net>, "Helen Kay Quinn" <hkquinn@hotmail.com>, "Bill & Jan Lucas" <bjluc@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>, "Keith Vanderwal" <kvav20@hotmail.com>, "Mike & Kathy Lueder" <MKLueder@CharterMI.net>, "Al Meyer" <ameyervet@gmail.com>, "Anton Colasacco" <acolasacco@chartermi.net>, "Vokes Vokes" <edvokes@att.net>, "Nate & Peg Swiger" <pnswlger@hotmail.com>, "Joe & Tina Plotowski" <shedman@msn.com>, "Bob Scarbrough" <caroscar@netonecom.net>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson" <bruceconradson@att.net>, "Mark McKeown" <mckeowns@charter.net>
 Date: 05/02/2013 02:35:01 EDT
 Subject: Update as of 5/2/13

Hi folks,

Many of you have received a notice of Joint Public Hearing by the Charter TWP of Haring and Clam Lake TWP at the Clam Lake TWP Hall, 8809 East M-115, Cadillac. The date and time of the hearing is May 8 at 6 PM. I strongly urge you to attend this meeting and to support the proposed plan.

As you know, last year, the State Boundary Commission ruled that the 425 annexation agreement between Clam Lake and Haring Townships was invalid. They also voted 3-2 to deny the annexation of the TerriDee property at the Southeast corner of the M55/131 interchange to the City of Cadillac. One of the reasons for the reversal of the annexation between Clam Lake and Haring was that there was no plan for any economic improvement by that move. In the meantime, Clam Lake has been negotiating with the City for water and sewer in their DDA district and McGuire's Resort. They thought they had a deal, but the City changed their demands and would only decide to provide those services to Clam Lake as long as they would allow the annexation of that property to the City. (These are the same City officials who told me last year that they didn't want that property!). Allowing the City to annex that property would set a precedent and could result in further property loss from Clam Lake to the City. Talks with the City for these services have ceased and Clam Lake again began discussing the possibility of obtaining those services from Haring. (Haring is set to begin construction on their own water treatment plant)

Current plans are to reenter into a 425 agreement between Clam Lake and Haring Townships with the objective to provide sewer service to the TerriDee property and continue to the Clam Lake DDA district. This plan also allows for rezoning and development of that property as a PUD, with a set of restrictions as to the development of that property. These restrictions are necessary to protect the surrounding residential areas, and recognize that another bout with the State Boundary Commission could result in their allowing annexation to the City. That would result in a development far more distasteful than the one proposed in our agreement. I know that most of us would prefer no development at all, but long term, that's not practical. At some point in the future, that property will be developed and this proposed zoning would be in our best interests. This is a pro-active step and after sitting through several meetings during the development of this plan, I can live with it. Our best plan of action is to support this plan.

I know many of you will have questions and may disagree with me. I urge you to email me with any concerns or call me (775-3532). I have a copy of the proposed agreement with the restrictions.

George

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

Bob, Dale,

I had a Loong 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, an 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

"George Giftos" <gcgiftos@me.com>
"Coe-Vokes Carol" <advancerealty@bignetnorth.net>, "Karen & David Renaud"
<drenaud5229@charter.net>, "Judy Ridley" <ridleyj@att.net>, "Hubb Hubb"
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<caroscar@netonecom.net>, "Richard Craig" <rdcraig101@yahoo.com>, "Bruce Conradson"
<bruceconradson@att.net>, "Mark McKeown" <mckeowns@charter.net>
05/07/2013 12:43:18 EDT
Public Hearing

Hi Folks,

There will be a joint Haring TWP/Clam Lake TWP public hearing at the Clam Lake TWP hall, tomorrow (Wed, May 8) at 6 PM. I urge you all to attend to find out the latest information and to participate in the hearing.

Thanks,

George

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WEXFORD

TERIDEE LLC, a Michigan limited liability company; THE JOHN F. KOETJE Trust, u/a/d 5/14/1987, as amended; and THE DELIA KOETJE TRUST, u/a/d 5/13/1987, as amended,

Plaintiffs,

v

File No. 13-24803-CH

CLAM LAKE TOWNSHIP, a Michigan municipal corporation; and HARING CHARTER TOWNSHIP, a Michigan municipal corporation,

Defendants.

OPINION AND ORDER ON MOTION FOR SUMMARY DISPOSITION

The defendants to this action, Clam Lake Township (Clam Lake) and Haring Township (Haring) (collectively "townships") bring a motion for summary disposition as to the complaint brought against them by plaintiff, TeriDee LLC, The John F. Koetje Trust and the Delia Koetje Trust (TeriDee) asserting grounds based upon MCR 2.116(C)(8) & (10). TeriDee requests summary disposition based on MCR 2.116(I)(2).

The parties to this action have previously engaged in very similar litigation in this Court's case file 11-23576-CH which was filed on the 1st of November, 2011. (TeriDee #1). The TeriDee #1 action was dismissed by summary disposition based on the determination that the State Boundary Commission (SBC) had primary jurisdiction.

The TeriDee #1 case involved litigation by TeriDee against Haring and Clam Lake with respect to an Act 425 agreement between Haring and Clam Lake. Ultimately, the SBC considered the validity of the Act 425 agreement as it would effect the eligibility for TeriDee to be annexed to the City of Cadillac pursuant to authority granted to the SBC by MCL 123.1001 et seq. The SBC determined that the 2011 Act 425 agreement was invalid because the agreement "was not being used to promote economic development". The SBC did not approve the petition to annex the TeriDee property to the City of Cadillac. No appeal was taken pursuant to the Administrative Procedures Act, MCL 24.201 et seq.

In Count I, TeriDee requests declaratory relief that the Act 425 agreement between Haring and Clam Lake is invalid because it does not promote economic development but rather is intended to deprive the SBC of jurisdiction to process a petition for annexation of the subject property to the City of Cadillac. Count I is essentially identical to the claim that was brought in the TeriDee #1 litigation. Count II requests declaratory relief that the Act 425 agreement is invalid because the agreement is against public policy and by contracting away Haring's legislative zoning powers with respect to the transferred property in violation of law. The townships assert that summary disposition should be granted based upon the Doctrine of Primary Jurisdiction or failure to exhaust administrative remedies as to both Counts. The townships further assert that the agreement does not constitute a contracting away of legislative authority of Haring Township with respect to zoning contrary to Michigan law and that the motion should be granted on that basis as to Count II.

Standard of Review

Standard for Summary Disposition

Motions for Summary Disposition pursuant to 2.116(C)(8) test the legal sufficiency of the complaint. *Dolan v Continental Airlines*, 454 Mich 373, 653 NW2d 23 (1997). All well pleaded factual allegations are accepted as true and construed in the light most favorable to the nonmovant. *Wade v Department of Corrections*, 439 Mich 158, 483 NW2d 26 (1992). A "(C)(8)" motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id* at 163. A mere statement of a pleaders conclusions, unsupported by allegations of fact will not suffice to state a cause of action. *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 516 NW2d 498 (1994). When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

Motions under MCR 2.116(C)(10) test the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this section, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding a material fact, the moving party is entitled to judgment as a matter of law. Summary disposition is also appropriate under (C)(10) and may be granted when issues raised are merely those of contractual interpretation rather than a factual dispute. *Allstate Insurance Company v Freeman*, 432 Mich 656, 443 NW2d 734 (1998).

Summary disposition is properly granted to the opposing party if it appears to the Court that the opposing party rather than the moving party is entitled to judgment.

MCR 2.116(l)(2), *Sharper Image Corp. v Department of Treasury*, 216 Mich App 698, 550 NW2d 596 (1996).

Analysis

Count I

The allegations contained in Count I of the current litigation are identical in legal theory to the allegations contained in the case of TeriDee #1. Although the terms and conditions of the agreement are different and the actual timing of the filing of the lawsuit with respect to the actions of the State Boundary Commission are not identical. Those represent distinctions without a legal difference with respect to the analysis of the concept of the Primary Jurisdiction Doctrine. The standards for applying the Doctrine are well-defined by the case of *Rinaldo's Construction Company Corp v Michigan Bell Telephone Co*, 454 Mich 65; 559 NW2d 647 (1997) as noted in the township's brief, the Court having held as follows at pages 70 and 71:

Primary jurisdiction "is a concept of judicial deference and discretion." LeDuc, Michigan Administrative Law, § 10:43, p 70. The doctrine exists as a "recognition of the need for orderly and sensible coordination of the work of agencies and of courts." *White Lake Improvement Ass'n v. City of Whitehall*, 22 Mich. App. 262, 282, 177 NW2d 473 (1970). In *White Lake*, the Court of Appeals correctly noted that "[t]he doctrine of primary jurisdiction does not preclude civil litigation; it merely suspends court action." *Id.* At 271, 177 NW2d 473. Thus, LeDuc notes, "[p]rimary jurisdiction is not a matter of whether there will be judicial involvement in resolving issues, but rather of when it will occur and where the process will start," *Id.* at § 10:44, p 73. A court of general jurisdiction considers the doctrine of primary jurisdiction "whenever there is concurrent original subject matter jurisdiction regarding a disputed issue in both a court and

an administrative agency." *Id.*, § 10:43 at 70.

In *Attorney General v. Diamond Mortgage Co.*, 414 Mich. 603, 613, 327 N.W.2d 805 (1982), we applied the United States Supreme Court's definition of the doctrine from *United States v. Western Pac. R. Co.*, 352 U.S. 59, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956):

"Primary jurisdiction' . . . applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body."

The Court observed, "No fixed formula exists for applying the doctrine of primary jurisdiction. In every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation." *Id.* at 64, 77 S.Ct. at 165."

The *Rinaldo* Court goes on to quote *Davis and Pierce*, 2 Administrative Law (3d ed), § 14.1, page 272 as follows:

"Professors Davis and Pierce identify three major purposes that usually govern the analysis when a court is deciding whether to defer to an administrative agency under this doctrine. First, a court should consider "the extent to which the agency's specialized expertise makes it a preferable forum for resolving the issue Second, it should consider "the need for uniform resolution of the issue . . ." Third, it should consider "the potential that judicial resolution of the issue will have an adverse impact on the agency's performance of its regulatory responsibilities."

As in the *TeriDee* case, the townships rely upon the case of *Casco Township v State Boundary Commission*, 243 Mich App 392, 622 NW2d 332 (2002). The *Casco* case clearly addressed the issue of the propriety of the SBC ruling on the validity of an Act 425 agreement. *Casco* specifically reject the proposition that jurisdiction should be exclusive to the Circuit Court to determine the validity of such agreements. The Court found that the legislation enacting the SBC and its authority as contained in that legislation is harmonious with the determination of the validity of an Act 425 agreement

as it affects the establishment of boundaries and annexations and specifically held as follows:

"In light of the broad grant of statutory authority to the commission over matters relating to the establishment of boundaries and annexations, we hold that the commission had the authority and jurisdiction to decide the validity of the Act 425 agreements. Logic dictates that the commission had the authority to consider the validity of two agreements that, if valid, would have barred its authority to process, approve, deny, or revise a petition or resolution for annexation. The commission would not otherwise have been able to perform its function of resolving the petition." *Casco Twp* at 397-400 [emphasis added]."

Clearly, *Casco* case establishes the ability of the SBC to make a determination as to the legality of an Act 425 agreement. The question then presented is whether or not this Court should continue to evaluate that agreement in light of the ability of the SBC to do the same.

Applying the factors previously enumerated in *Rinaldo*, the first analysis must be the extent to which the agency's specialized expertise makes it a principle forum for resolving the issue. Here, the holding in *Casco Township* clearly identifies this as a proper forum for determining the dispute involving the establishments of boundaries and annexations and in so doing must determine the legal validity of Act 425 agreements. The second *Rinaldo* factor has to do with the issue of a need for uniform resolution of the issue. In this case, the need for uniformity in determining the validity of an Act 425 agreements that are potentially used to deprive the SBC of jurisdiction of annexation petitions is clear. Although it is true that Courts would have to evaluate Act 425 agreements where no annexation petition is pending, there still is need for uniformity in those instances where annexation petitions are competing with Act 425 agreements. This factor favors resolution of the issue with SBC. The last

factor from *Rinaldo* with respect to applicability of the Doctrine of Primary Jurisdiction has to do with the potential that judicial resolution of the issue will have an adverse impact on the agency's performance of its regulatory responsibilities. Here, clearly if the agency was required to wait until a Court makes a determination as to the legality as to an Act 425 agreement, they would be impeded in discharging their duties. The administrative resolution of the issues with respect to an annexation can be completed by the SBC in a much more efficient fashion than protracted litigation in the court of general jurisdiction. Also, having parallel litigation take place would have a major impact on the administration of the agency's responsibilities. This factor likewise favors resolution of the issue by the SBC.

The SBC has previously addressed the validity of the prior Act 425 agreement between Haring and Clam Lake and would have particular ability to determine whether or not the present Act 425 agreement is valid in light of its prior determinations that the prior Act 425 agreement was invalid. Having determined the primary jurisdiction is with the SBC, dismissal is the appropriate remedy and summary disposition pursuant to MCR 2.116(C)(4) & (8) should be granted as to count 1. *Rinaldo's, supra* at 657.

It should be noted that the townships have raised the issue that summary jurisdiction should be granted because there was a failure to exhaust administrative remedies with the SBC before bringing this action. This Court rejected that argument in *TeriDee #1* and the matter becomes moot in this litigation in light of the ruling above.

It should also be noted that there is no provision in the enabling legislation for an Act 425 agreement that there be a review by the SBC before there is an action brought in Circuit Court. As properly pointed out by *TeriDee*, unless an annexation petition is filed, the

SBC would have no jurisdiction to address the validity of an Act 425 agreement and, therefore, there cannot be a requirement that a challenge to such an agreement requires review by the SBC prior to bringing an original action.

Count II

In Count II, TeriDee argues that the Act 425 agreement is invalid because it improperly contracts away the legislative authority of Haring and binds future Haring Township Boards in the exercise of their legislative power. *City of Hazel Park v Potter*, 169 Mich App 714; 426 NW2d 789 (1988). The townships seem to concede that the issue of zoning or rezoning of property is appropriately a legislative function as pointed out by TeriDee and supported by *Schwartz v City of Flint*, 426 Mich 295; 395 NW2d 678 (1986). The townships are advocating that they either have the authority to contractually bind Haring to a particular discharge of its legislative authority with respect to zoning, or, that alternatively, the contract itself does not so bind Haring. TeriDee argues that both propositions fail.

The townships first argue that the Doctrine of Primary Jurisdiction should also preclude the Court from considering Count II and grant summary disposition applying the principles of *Casco Township*. The townships argue that the ability of the SBC to determine the validity of an Act 425 agreement should likewise encompass the determination of whether or not the agreement is void as a matter of public policy. The *Casco* decision essentially addresses the propriety of the SBC determining whether or not a particular Act 425 agreement complies with the requirement of the statute.

TeriDee properly argues that Count II of their complaint requests an equitable determination that the contract is void because of an unlawful delegation of legislative powers of the townships in violation of the Michigan Constitution. It is equally well-settled that administrative boards are not vested with the authority to make determinations with respect to constitutional challenges. *Wronski v Sun Oil Company*, 108 Mich App 178; 310 NW2d 321 (1981). It has further been held that administrative boards charged with exercising specific legislative designated powers do not have inherent judicial power and do not have the jurisdiction of a court of equity. *Woody v American Paint Company*, 49 Mich App 217; 211 NW2d 666 (1973). To expand the decision of *Casco Township* to extend to the exercise of such powers is inappropriate. As a result, summary disposition on the theory of primary jurisdiction must be denied.

TeriDee's argument is essentially that the Act 425 agreement entered into between Haring and Clam Lake improperly delegates the legislative powers of Haring to Clam Lake by virtue of the contract terms and is in violation of the Michigan Zoning Enabling Act (MZEA). They assert that neither the language of Act 425 or the MZEA provides for any specific ability of one municipality to contract with another municipality with respect to specific zoning of a particular parcel which would be the subject of an Act 425 agreement. In the case of *Inverness v Bedford Township*, 263 Mich App 241, 687 NW2d 869 (2004), the Court of Appeals determined that a consent judgment, that provided that a municipality must rezone a parcel of property, if an application was made, constituted an inappropriate limitation on the legislative power of the future

township boards and was, therefore, void. Here, the townships counter that the Act 425 agreement provides, at MCL 124.26(b), that the agreement may provide for "the adoption of ordinances and their enforcement by or with the assistance of the participating local units." Although the Act goes on to enumerate certain areas in which a transfer of jurisdiction can be coupled with the requirement that certain ordinances be enforced, there is no provision that specific terms of an ordinance must be provided. The Act 425 agreement before this Court dictates that a certain Planned Unit Development (PUD) zoning provision be enacted by Haring Township and be made applicable to the subject property. The townships argument that Act 425 allows such a zoning provision or that it is allowed by MZEA is unavailing.

Next, the townships argue that the agreement itself does not provide for a specific zoning of the property but only provides that such zoning shall be approved if the property owner makes application for PUD zoning as provided in the Act 425 agreement. Therefore, the townships argue, there is not a mandatory requirement that Haring Township zone the property but that it is contingent upon the application by the property owner. TeriDee counters that such a requirement still constitutes a binding contract on Haring, and the fact that it is contingent upon the property owners application does not change the impropriety of that provision. In the *City of Hazel Park v Potter, supra*, it was determined that a contract that also authorized further modification did not avoid the impropriety of contracting away legislative authority. Further, *Inverness, supra*, clearly established that such a contingency does not cure the impropriety of contracting away such legislative authority.

The townships further argue that the Act 425 agreement as applied does not

bind Haring Township to specific action. The townships assert that Haring Township has taken specific actions after the enactment of the Act 425 agreement that have modified their zoning regulations and, therefore, they have exercised their legislative authority independent of the contract and that the agreement, therefore, does not bind the future boards. TeriDee argues that such a determination requires that TeriDee be allowed to engage in discovery to determine and evaluate the factual basis for any post Act 425 agreements actions taken by Haring Township and its impact upon their legal theory with respect to the Act 425 agreement. They assert that it is, therefore, premature for a ruling on a (C)(10) motion with respect to the validity of the agreement. *Kassab v Michigan Basic Property Ins. Ass'n*. 185 Mich App 206, 406 NW2d 300 (1990). A ruling, as to whether the Act 425 agreement as applied is compliant with constitutional and statutory provisions, is premature in light of discovery being incomplete.

The townships further argue that if a determination is made that the Act 425 agreement is contrary to public policy as a result of their required rezoning with respect to the subject property at the request of the property owner, the Court could sever that portion from the contract and the balance of the Act 425 agreement is still in compliance with the statute and, therefore, enforceable precluding annexation proceedings. TeriDee properly points out that severing a portion of the contract which is essential to the parties' agreement and that is interdependent with the remainder of the agreement, is fatal to the agreement's enforceability. *Stokes v Millen Roofing Company*, 466 Mich 660; 649 NW2d 371 (2002). Severing a portion of the agreement that relates to the rezoning of the subject property by Haring appears to be

central to the agreement. Further, such provision is central to the underlying compliance with the statutory requirements of Act 425 in making a transfer for appropriate economic development. Severing the provision of the contract with respect to zoning may well be fatal to the statutory compliance of the balance of the Act 425 agreement. Factual development may be necessary in order to establish an appropriate resolution of that issue.

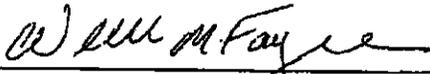
As a result of the above, the Court is required to grant the summary disposition motion with respect to Count I of TeriDee's complaint pursuant to MCR 2.116(C)(4) & (8). Because factual development is necessary to evaluate some of the arguments presented as to Count II of TeriDee's complaint, summary disposition pursuant to MCR 2.116(C)(10) is premature. This determination in no way is intended to impede the SBC in proceeding further with their determination of the validity of the Act 425 agreement or the pending annexation proceedings.

ORDER

IT IS HEREBY ORDERED that defendants' motion for summary disposition as to Count I of plaintiff's complaint is granted pursuant to MCR 2.116(C)(4) & (8).

IT IS FURTHER ORDERED that defendants' motion for summary disposition as to Count II of plaintiff's complaint pursuant to MCR 2.116(C)(8) & (10) is denied as premature.

Dated: December 20, 2013



WILLIAM M. FAGERMAN P27271
Circuit Judge



CADILLAC JUNCTION

4/2/14

I would offer the following comments in response to the Gosling Czubak (GC) letter of December 17, 2013.

While it is true both the City and Haring Township proposed methods of providing water to Cadillac Junction involve dead end watermain, service from the City is more reliable in my opinion because:

1. Haring Township dead end main is **three times** the length of the City. Longer main means higher probability of service interruption.
2. At the time the MDEQ is requested to issue an Act 399 construction permit I would predict they will request a contingency plan to provide a future loop. I would suggest the City system is much more suited to provide a future loop than Haring Township.

It is stated by Gosling Czubak, that "the Haring system **should** be capable of furnishing a fire flow of 828 gpm while maintaining a residual system pressure of 20 psi."

- While the residual pressure meets the MDEQ requirements, it should be pointed out the 20 psi is the absolute minimum accepted by the state.
- While it is stated the Haring system would be capable of providing a "sufficient fire flow," potential users would consider 828 gpm far less than ideal.

Although the Haring Township proposed water system **should** be capable of providing minimal service to the project, why wouldn't you prefer the City system with 1500 gpm fire flow and 48 psi residual pressure.

The suggested solution if the fire flow and residual pressure are inadequate is to provide a storage tank and/or booster pump. These significant costs would be passed onto Terri Dee which would not be necessary if the project were serviced from the city.

In response to the statement that Exxel used incorrect quantities and pipe sizes in the latest cost estimate of October 22, 2013, I would offer the following:

1. After repeated unsuccessful attempts to obtain the Gosling Czubak utility routing, I made my best judgment to determine the length of utilities.
2. As a comparison:

	GC	Exxel
12" Watermain	12,250	11,000
8" Gravity Sewer	3,200	2,400 (10")
8" Forcemain	12,200	9,500

I would conclude from this comparison that Exxel under estimated the utilities lengths for Haring Township. Using the "correct" quantities by Gosling Czubak would only increase the cost differential between the City and Haring Township methods of serve.

Exxel did assume 10" sanitary for commercial service as compared to 8" by Gosling Czubak. This would only reduce the Haring Township cost by \$10,000 if 8" sanitary sewer were used.

The reason for the higher Haring Township unit prices for 12" watermain and restoration as compared to the City is that much of the Haring Township utility routing is along existing streets which will involve driveway crossings, lawn repair, other utility conflicts, traffic control, etc. Most of the City watermain route would be in open areas and therefore a lower unit price was applied for installation and restoration.

Concern of higher usage rates for Haring Township water and sewer has not been addressed in GC response.

If the Haring Township watermain route does not require easements, then all construction would be within either County or MDOT R.O.W.

I would suggest to obtain permission and permits to install a significant amount of the Haring Township watermain along MDOT R.O.W. will be a much more difficult and timely process than the City's crossing of MDOT R.O.W.

It is not only the added construction time, but design, possible easements or MDOT permission that needs to be considered in the Haring Township timing to provide the service.

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

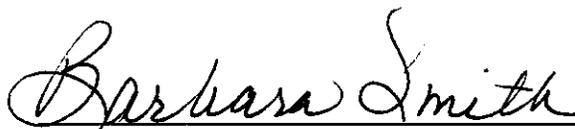
As provided by MCR 2.107(D) and MCR 2.114(A), on the date set forth below, I served a copy of TeriDee's Response to Motions to Supplement the Record and Counter-Motion to Supplement the Record and a copy of this Proof of Service upon the following individuals via first-class mail with postage prepaid:

Ronald M. Redick
Mika Meyers Beckett & Jones, PLC
900 Monroe Avenue NW
Grand Rapids, MI 49503

Michael Homier
Foster Swift Collins & Smith PC
1700 E. Beltline NE, Suite 200
Grand Rapids, MI 49525

I declare that the foregoing is true and correct to the best of my information, knowledge, and belief.

Date: April 4, 2014



Barbara Smith